ICJ

Agenda Item:

Agenda Item I:

Bosnia and Herzegovina v. Serbia and Montenegro

Agenda Item II (Advisory Opinion):

In accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo

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LETTER FROM THE SECRETARY GENERAL

Esteemed Participants and Honored Guests,

It is a profound honor to extend my most formal welcome to you as we convene for the 13th edition of the Bilkent University Model United Nations Conference, MUNBU'26. My name is Zehra Yıldırım, and I'm a senior year law student at İhsan Doğramacı Bilkent University. As the Secretary-General of MUNBU 2026, I welcome you not only to a forum of debate but to a tradition of academic and diplomatic excellence that has defined our institution for over a decade.

The art of diplomacy is one of patience, precision, and profound responsibility. My own commitment to this discipline has been forged over nine years of active engagement within the international circuit—a journey that has evolved alongside my formal education in the Faculty of Law. These years have instilled in me a steadfast belief that the resolution of global conflict lies in the mastery of legal frameworks and the cultivation of refined statesmanship. It is this standard of rigor and intellectual integrity that I am committed to upholding throughout our deliberations.

Bilkent University stands as a bastion of higher learning, dedicated to the pursuit of truth and the development of future leaders. It is our distinct privilege to host you within an environment that reflects the visionary principles of the founder of our Republic, Mustafa Kemal Atatürk, who declared: *"Peace at Home, Peace in the World."* Guided by this transcendent ideal, we are committed to providing you with the highest level of hospitality, ensuring that your experience is marked by the grace, professionalism, and mutual respect that our University and the Republic of Türkiye represent on the international stage.

MUNBU Conferences remain a premier platform where the complexities of the global order are met with the sharpest minds of our generation. As we embark on this 13th session, I invite you to embrace the gravity of your roles. Let us ensure that our discourse remains as sophisticated as the challenges we face, and that our hospitality remains as enduring as our commitment to justice.

I wish you all fruitful debates and a joyful conference. Should you have any inquiries, please do not hesitate to contact me via my email, zehray@ug.bilkent.edu.tr

Best Regards,

Zehra YILDIRIM

Secretary General of MUNBU'26

LETTER FROM THE UNDER SECRETARY GENERAL

Dear Delegates,

Welcome to MUNBU. As the Under-Secretary-General of the International Court of Justice, it is a pleasure to have you with us, and I sincerely hope you will find the conference both intellectually demanding and genuinely enjoyable.

Before anything else, I would like to extend my sincere gratitude to the entire Secretariat and Organization Team for the dedication, professionalism, and countless unseen hours that made this conference possible. I am also grateful to MUNBU for supporting courts that require a distinctive level of academic preparation and procedural discipline. In that regard, I would like to offer special thanks to our Secretary-General, **Zehra Yıldırım**, for actively championing the role of courts within MUN conferences and helping create space for rigorous, law-focused debate.

I would also like to express my heartfelt thanks to two people whose contributions were especially important for this agenda. First, to my Academic Assistant, **Tuna Unutmaz**, whose support—particularly in the drafting and refinement of the case materials—has been invaluable. And second, to my friend **Pelin Onat**, for kindly accepting the role of President Judge. Her commitment is essential to ensuring a serious, fair, and high-quality set of proceedings.

This agenda centres on disputes that sit at the very core of contemporary international law: the relationship between sovereignty and self-determination, the legal meaning of territorial integrity, the role of international institutions in post-conflict governance, and the limits and possibilities of international adjudication. These are not abstract themes. They shape how the international community responds to conflict, humanitarian crises, and contested statehood—making this agenda not only academically significant, but also practically relevant.

You will notice that the **Study Guide is intentionally comprehensive**. Please do not let its length intimidate you. It is designed to function as a self-contained foundation so that you will **not need to conduct extensive additional research** in order to participate effectively. If you work through the guide carefully and use it as your reference point, you will already have what you need to build strong arguments, anticipate counter-arguments, and engage in substantive debate.

That said, you are never expected to navigate this agenda alone. **If you have questions**—whether about the legal framework, factual background, terminology, or how to prepare your position—please do not hesitate to reach out. I would much rather answer your questions early than see you struggle unnecessarily.

Contact: hakki.duman@bahcesehir.edu.tr (preferred) +90 546 914 0709 (emergency)

I look forward to meeting you all and to witnessing a conference defined by rigorous debate, respectful diplomacy, and memorable collaboration. I wish you the very best of luck, and an outstanding MUNBU experience.

Sincerely,
Hakkı Atanur DUMAN
Under-Secretary-General, International Court of Justice, MUNBU

LETTER FROM THE ACADEMIC ASSISTANT

Honorable Secretariat, Most Respected Presidency, Your Excellencies Judges and Judges Ad-Hoc, Meticulous Registry and Most Distinguished Agents of the International Court of Justice;

It is my utmost honor to welcome you all to the most executive judiciary organ of the United Nations: ICJ. It is absolutely a pleasure to serve you all as the Academic-Assistant of the International Court of Justice. I am currently a Law major sophomore in Antalya Bilim University who has been munning for more than 7 years.

Our agenda items both being advisory & contentious proceedings, are crucial topics to be upheld within the walls of the Peace Palace since the hidden factors behind these cases facilitate a tremendous importance to the welfare and co-dependence between neighbouring states in Europe (Bosnia and Herzegovina and late Yugoslavia) in our present day.

Under the judicial capacity of the Court; the applicant and respondent parties gradually seek the ultimate judgment with deep respect to principles of good faith, proportionality, distinction alongside international customs and binding legal frameworks. Henceforth this International Court will provide an unprecedented ambience to reassess cases of the past via also utilizing modern retrospectives and contemporary approaches.

I hereby encourage every courtier and agency of our respective court to meticulously prepare and act vigilant in our oral and written proceedings in order to infrastructure and secure a flawless ambience of deliberations, defenses, legal arguments and so on. Your endeavors and hard work will forever be acknowledged diligently.

As your Court Under-Secretariat-General we are once again glad to house you in another session of MUNBU and are looking forward to seeing your participation on the conference dates. If any inquiry arises do not refrain from contacting either me or my colleagues via e-mailing.

My Most Genuine Regards,

Tuna Unutmaz

Academic-Assistant

tunaunutmaz@gmail.co

ABBREVIATIONS

ICJ	International Court of Justice
UN	United Nations
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
WHO	World Health Organization
UNESCO	United Nations Educational, Scientific and Cultural Organization
NGO	Non-Governmental Organization
AO	Advisory Opinion
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
JNA	Yugoslav People's Army
KLA	Kosovo Liberation Army
RBiH	Republic of Bosnia and Herzegovina
SFRY	Socialist Federal Republic of Yugoslavia
UN Charter	Charter of the United Nations
UNGA	United Nations General Assembly
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSC	United Nations Security Council
UDI	Unilateral Declaration of Independence
UNPROFOR	United Nations Protection Force
NATO	North Atlantic Treaty Organization
FRY	Federal Republic of Yugoslavia (Serbia and Montenegro)

1. INTRODUCTION TO THE INTERNATIONAL COURT OF JUSTICE

The UN flag is positioned in front of the Peace Palace in The Hague, which houses the International Court of Justice (ICJ). Also called the "World Court," ICJ is the primary judicial organ of the UN. Founded through the UN Charter in 1945 and commencing operations in April 1946, ICJ fulfills two major roles in the international legal framework: first, to resolve legal issues arising between and involving countries as plaintiff and defendant; second, to provide advisory opinions regarding questions of international law posed by authorized agencies of the UN and other legal bodies. ICJ is one and only universal court that has universal jurisdiction over disputes involving cases of countries, playing a pivotal part in encouraging respect for rule of law across all of international society. ICJ Statute makes all UN member countries automatic parties to it, ascertaining that it has a universal coverage although in a situation, it relies upon consensus of countries in question before ICJ acquires any authority. In essence, ICJ represents an old dream that dates to late 19th century that seeks an end to resolution of international matters through might and power and not law.

1.1. Historical Overview and Founding of the ICJ

The ICJ has historical roots that date back to other attempts to implement international adjudication. This was actualized through The Hague Peace Conferences of 1899 and 1907, which resulted in the formation of the Permanent Court of Arbitration (PCA), which was a crucial forerunner that provided a basis for adjudicatory resolutions of disputes. Later in 1920, under the sponsorship of the League of Nations, a Permanent Court of International Justice (PCIJ) was founded as a true world court. This court exercised jurisdiction and rendered advisory opinions from 1922 until the Second World War and made a crucial contribution to jurisprudence during this period. After WWII, it was important to formulate a new structure and basis as a consequence of which the United Nations was born in 1945 during the San Francisco Conference, and the ICJ as the principal judicial organ of that entity was established to supplant the PCIJ with very little elaboration of changes to structure and statute. Nonetheless, it should be noted that ICJ Statute (which is a constitution for this court) was annexed to that of UN Charter in 1945 and borrowed heavily from PCIJ Statute. This court first held a plenary session in April of 1946 and opened a new stage upon which settlement of disputes through judicial means became one of the cornerstones of an international structure.

1.2. Structure of the Court and Relationship with the United Nations

The ICJ has historical roots that date back to other attempts to implement international adjudication. This was actualized through The Hague Peace Conferences of 1899 and 1907, which resulted in the formation of the Permanent Court of Arbitration (PCA), which was a crucial forerunner that provided a basis for adjudicatory resolutions of disputes. Later in 1920, under the sponsorship of the League of Nations, a Permanent Court of International Justice (PCIJ) was founded as a true world court. This court exercised jurisdiction and rendered advisory opinions from 1922 until the Second World War and made a crucial contribution to jurisprudence during this period. After WWII, it was important to formulate a new structure and basis as a consequence of which the United Nations was born in 1945 during the San Francisco Conference, and the ICJ as the principal judicial organ of that entity was established to supplant the PCIJ with very little elaboration of changes to structure and statute. Nonetheless, it should be noted that ICJ Statute (which is a constitution for this court) was annexed to that of UN Charter in 1945 and borrowed heavily from PCIJ Statute. This court first held a plenary session in April of 1946 and opened a new stage upon which settlement of disputes through judicial means became one of the cornerstones of an international structure.

Since the ICJ's inception, it has been widely recognized for its utility in the promotion of peace and the "rule of law" in the international community. Indeed, in accordance with the provisions of Article 92 of the UN Charter, the ICJ has been recognized as the "principal judicial organ of the UN." Indeed, its unique role in international relations is an affirmation of its intended role in providing a peaceful resolution of disputes that have the potential of igniting international peace and security. Over the years, the ICJ has addressed a full range of matters relating to the resolution of international disputes, including those concerning territory, maritime boundaries, diplomatic and consular relations, interpretation of treaties, and many others. Through the years, the role of the ICJ has also involved a contribution in the clarification and development of international law in the resolution of the said matters. Moreover, the decisions and opinions of the ICJ in the aforementioned matters are advisory in nature in the sense that they are binding on the contesting parties for each matter. In fact, the advisory opinions of the ICJ are, on the one hand, without binding authority on those entities for whom they are addressed.

1.3. Structure of the Court and Relationship with the United Nations

The UN Security Council voted to fill an open position on the international court of justice (ICJ) bench. The structure and administration of the ICC are specifically designed to ensure independence, impartiality and representation throughout the world's legal systems. The ICJ consists of fifteen judges, each elected for a nine-year term by a concurrent express vote of the United Nations General Assembly and the United Nations Security Council. There is a staggered election process whereby three years after each instance of election, one-third of the judges (totaling 5 judges) will be elected, which ensures that continuity exists on the

bench. Judges can be re-elected and there are restrictions that ensure that not every judge comes from the same country; this restriction ensures that judges display both geographical and legal diversity on the court. The ICJ Statute requires that the wash represents broadly "the principal legal systems in the world and the main forms of civilization" of the human race; these principles are the same principles that were inherited from the Permanent Court of International Justice (PCIJ). Once elected, judges serve individually and not on behalf of their respective states; they are required to act independently in judging cases and to rely solely on International Law.

The leadership of the Court consists of its President and Vice-President, who are elected by the judges and serve terms of three years. The President is responsible for presiding over the Court's hearings/deliberations and also has certain administrative duties. The President continues to be an active judge on the Court. The Registry is the Court's permanent administrative secretariat and supports the operation of the Court. For example, the Registry is responsible for managing administrative support services such as communications, research, translations of documents, and other logistical functions in the Court. The Registrar of The Registry (assisted by the Deputy Registrar) is elected by the judges for seven years, and may be re-elected. The Registrar has broad responsibilities, including the management of the administrative staff of the Court, management of the budget of the Court, maintenance of official records of the Court, and liaison with States and the United Nations. The Registry is accountable to the Court only, clarifying the autonomy of the ICJ; although the ICJ is a UN organ, its judicial functions and administrative activities are not managed by the Secretariat of the UN or any other political bodies.

The International Court of Justice (ICJ) is one of the principal organs of the United Nations and as such maintains a special position within the UN System. The ICJ is located in The Hague, Netherlands, in the Peace Palace and therefore the only principal organ headquartered outside of New York City. This separation of location is intended to preserve the independence of the Court while still operating within the broader framework of the UN System. The UN General Assembly and Security Council not only have the power to elect judges to the Court but are also entitled to receive an annual report from the Court and participate in decisions relating to the budget of the Court. All member states of the UN automatically become parties to the ICJ Statute, and all member states are required by the UN Charter (Article 94) to comply with any judgment of the ICJ that relates to a case in which they are a party. If a member state does not comply with a judgment of the Court, the issue may be referred to the Security Council, which has the authority to recommend or determine what actions should be taken in order to enforce the judgment. In practice, however, enforcement of judgments is politically difficult, and Security Council action may be blocked by the veto power of any of its permanent members.

Even though it doesn't have an enforcement mechanism, the authority of The International Court of Justice (ICJ) comes from each of the nations that belong to the UN agreeing to uphold the 'Rule of Law' and the influence of its reasoning. The ICJ works co-operatively with other arms of the UN; for example, both the UN General Assembly (UNGA) and the

UN Security Council (UNSC) can request Advisory Opinions from the ICJ, and Judges on the ICJ occasionally present to UN Committees within the area of International Law. In short, the structural integrity of the ICJ comes from the fact that it operates within the framework of the UN but has a substantial amount of judicial autonomy, operates with its own staff and procedures, and relies on the United Nations for funding and the possibility of the enforcement of its decisions.

1.4. Types of Cases: Contentious Cases and Advisory Opinions

The International Court of Justice (ICJ) deals with two main kinds of case types:

a. *Contentions Cases*
b. *Advisory Opinions.*

A contention case is one which has two or more parties in a dispute at law and the ICJ's function is to settle that specific dispute in accordance with international law. In contentions cases, only sovereign states can bring a matter before the ICJ or be respondents to an ICJ judgment. The ICJ's Statute prohibits individuals, corporate bodies, non governmental organisations, and all other entities from filing a claim in contentions cases. Contentions case types often involve disputes over boundaries (either land or sea), ownership of territory, safety of maritime navigation, agreement obligations, use of force, & all matters subject to International Law. Since the establishment of the ICJ in 1946, the International Court of Justice has issued over 200 judgment in contentions cases and has had many disputes of such major significance in the world today. All parties to an ICJ case are obligated to comply with the judgment of the ICJ; while the ICJ's judgment is enforceable through a number of other methods. Compliance by states with the judgment is reliant on good faith by states & when necessary, by the political enforcement mechanisms available to the United Nations.

In contrast, advisory proceedings are not legal disputes between states, but requests from recognised intergovernmental bodies for an opinion on a legal question. The International Court of Justice (ICJ), by the authority of the United Nations (UN) Charter (Article 96) and Statute (Article 65), has the authority to render an advisory opinion on any question of law that is presented on behalf of designated UN organs or specialised agencies. With regard to the vast majority of issues, the General Assembly and the Security Council each may request an advisory opinion on virtually any legal question. Other UN organs and specialised agencies, including (but not limited to) the World Health Organisation, United Nations Educational, Scientific and Cultural Organisation, etc., are entitled to request an opinion on legal questions only to the extent that the General Assembly has granted that agency's authority in that specific area. Advisory opinions are considered non-binding, and are, therefore, not enforceable as decisions of a tribunal, but they carry the weight of moral and legal authority.

As with before, the PCIJ provided similar advisory opinions on issues that are of great significance to the international legal community. Advisory opinions have covered a wide variety of subjects, including the admission of states into the UN and their subsequent legal effects, the legality of UN spending, the status of territories in an international mandate (such as Namibia and Western Sahara), and the legality of the use/threat of nuclear weapons. While there are no binding effects of advisory opinions on states, the prestige of the Court often leads to advisory opinions being considered in international negotiations and the development of international legal norms. Additionally, the advisory opinions provide guidance to the requesting UN body in its policies and/or resolutions related to international law.

Whether in cases of a contentious or advisory character, it is key to note that the International Court of Justice makes decisions on only legal matters; thus, it cannot act as a forum for locating political solutions or investigating issues that do not relate to the legal issues at stake in a case. Regarding contentious cases, the Court can only exercise its competence over a legal dispute, meaning that the Court can only exercise its competence if there is a legal disagreement about a legal right or obligation, pursuant to international law. **The focus on legal disputes allows the ICJ to function as a judicial body rather than as a diplomatic or political body.** The Court will take no action in contentious cases unless it has jurisdiction and the admissibility of the case, which is covered next.

1.5. Jurisdiction and Procedure of the International Court of Justice

States are the only parties who have access to the ICJ for matters involving contention, and as such jurisdiction is not automatically granted between two states. The principle on which the ICJ has jurisdiction regarding contentious disputes is based on the agreement of those parties to permit the ICJ to hear their case. There are many methods available by which states may agree to permit the Court to have jurisdiction over them in regards to their own cases or for particular instances:

- **Compromissory Clauses in Treaties:** States typically enter into Treaties which include Jurisdictional Clauses that provide for the resolution of Treaty related disputes by the International Court of Justice (ICJ). If a dispute arises under a Treaty relating to its interpretation or application, any party may independently commence proceedings in the ICJ on the strength of the Jurisdictional Clause included in that Treaty. As of the end of the 1990's, there were in excess of 400 Jurisdictional Clauses contained within Bilateral and Multilateral Treaties conferring ICJ jurisdiction upon the parties to the Treaty.

- **Optional Clause Declarations:** Optional Clause Declarations allow a state to accept the compulsory jurisdiction of the International Court of Justice (ICJ) under **Article 36(2) of the ICJ Statute** with respect to any other state that has made the same declaration (commonly referred to as an "Optional Clause Declaration"). A state may file an Optional Clause Declaration with the United Nations Secretary-General,

stating that it consents to possible ICJ jurisdiction over a broad range of legal issues. Many states choose to file their Optional Clause Declarations with certain exceptions (e.g., certain types of disputes excluded, limits on the scope of their jurisdiction). In the 2020s, about 1/3 of membership from the United Nations has filed Optional Clause Declarations; for example, the United Kingdom, Australia, and Japan all accept majority jurisdiction under the ICJ, while others such as the United States have withdrawn or limited their Optional Clause Declarations. The effect of an Optional Clause Declaration is both voluntary and reciprocal, which means that the ICJ only has jurisdiction under the Optional Clause Declaration where the applicant and the defendant state both have filed an Optional Clause Declaration and the matter in dispute is encompassed within both states' respective declarations.

- **Special Agreement (Compromis):** States may mutually agree in the form of a Special Agreement, sometimes referred to as a "compromis," wherein they agree to submit a specific dispute for resolution to the International Court of Justice (ICJ). Even if states have not accepted the compulsory jurisdiction of the court for all disputes, any combination of two or more states may execute a Special Agreement that identifies the subject matter at issue for resolution by the ICJ. This has been used extensively by states seeking to submit disputes to the ICJ on an ad hoc basis, as it represents a direct expression of the parties' consent to submit the matter to the Court for determination. In practice, many contentious matters have been submitted to the ICJ under Special Agreements, particularly when the parties believe that resolution through the Court would be more effective than either negotiations or arbitration.

- **Forum Prorogatum:** Forum Prorogatum, derives from Latin and means "Postponed Jurisdiction."The term refers to the acceptance of a Court's jurisdiction at a later date. It is possible for a State that has not accepted the jurisdiction of the International Court of Justice (ICJ) to give its acceptance of the court’s jurisdiction after another State has filed an action against it in an attempt to raise the court's jurisdictional defect. This is called "forum prorogatum," allowing the State that is the subject of the action filed against it to cure the jurisdictional defect. An example of this is where State A has brought an action against State B to the ICJ and State B has not accepted the jurisdiction of the ICJ at that time. State B may subsequently choose to give its acceptance of the ICJ’s jurisdiction for this action. However, incidents of this type are infrequent, although it has occurred. One early case that illustrates this concept is the Corfu Channel case (United Kingdom v. Albania, 1949) which is often cited as an example of forum prorogatum. Albania accepted the jurisdiction of the ICJ to allow the ICJ to hear the Corfu Channel case after the United Kingdom filed a case requesting for the Court to hear Albania's actions in the Corfu Channel.

The International Court of Justice (ICJ), before it hears the substantive issues and merits of a contentious case, must determine whether it has the authority to hear the case and whether the application is appropriately before the Court. Normally, a state that has been sued will contest the Court's ability to consider a case based on a jurisdictional basis or contest an application

for judicial resolution based on an admissibility basis through "preliminary objections." These preliminary objections will then be handled separately from the merits of the case, meaning the judges will review them, issue a decision on those objections (which could result in the Court dismissing the case or allowing the case to go forward), and determine whether to hear the merits of the dispute and evidence. For instance, the respondent state may object in court that it has not provided valid consent to jurisdiction, or it may argue in court that there is no "legal dispute" that is within the scope of the Court's jurisdiction for judicial consideration. If the ICJ establishes that it does not have jurisdiction, or finds the case inadmissible (as there may be a non-party that should be joined or in some cases where the Court must require that local remedies have been utilized), then the case will be closed. If the Court establishes that it does have jurisdiction to hear the dispute on the merits, it will proceed to review and hear the case on the substantive legal issues that were raised.

During contentious cases that are submitted to the International Court of Justice (ICJ), procedural steps include an initial written phase followed by an oral phase of the proceedings. The party bringing the case (the applicant state) initiates the case by submitting a written application to the ICJ, stating its jurisdictional basis, and including all the applicable claims. The applicant state will then submit its written pleadings (known as memorials and counter-memorials), with the opposing party also submitting written pleadings according to the Court's schedule. After the completion of the written pleadings, the Court will typically conduct public hearings where both parties may present arguments to the Court, call witnesses or experts, and respond to questions from the Bench.

While it is rare, the ICJ also has the power to appoint experts to investigate facts or obtain expert opinions independent of the parties (for example, to obtain information from a scientific or medical professional). After the conclusion of all evidence presented at the public hearings, the Judges will deliberate in closed session and render a written Judgment, which will be read in public. Judges can issue separate opinions (concur or dissent); thus, it does not require unanimity from all Judges, and it is common for the ICJ to hand down Judgments that differ in opinion from one another, reflecting the diversity of the views of Judges on the Bench. The final Judgment is binding on both parties and cannot be appealed, but both parties can request that the Court provide them with an interpretation or modification of the Court's Judgment if new evidence emerges or for other exceptional reasons, as provided in the Court's Statute.

Advisory opinions have a slightly simplified procedure to follow when requesting such opinions from the Court. A UN organ can make a request for an advisory opinion to the Court by submitting their specific question to the Court. The Court generally will then send out an invitation to all Member States (and potential observers, if so desired) to send in written and/or oral statements regarding the question posed. The Court will take into account the statements that were received and following their deliberation, the Court will render the advisory opinion in writing with several judges sometimes giving their individual dissenting opinions. The decision will be sent back to the requesting body along with a publication of

the advisory opinion, but the advisory opinion itself is not legally binding and only represents the Court's view on the question put to them.

The International Court of Justice (ICJ) has two types of jurisdiction for state cases: either prior agreement through formal treaties or optional declarations, or through ad hoc agreement. In either case, the Court will always have to establish its authority to hear a case based on agreed-upon criteria. To ensure that states' legal arguments are given thorough, objective consideration, the Court follows the procedures set by international law and the Statute and Rules of the International Court of Justice. This method of reviewing cases reinforces both the legitimacy of the Court and the acceptance by the international community of its rulings.

1.6. Key Legal Principles Applied by the ICJ and Its Contributions to International Law

The sources and principles of International Law, as defined in Article 38(1) ICJ Statute, guide the International Court of Justice (ICJ) as a Judicial Body.

The ICJ will utilize treaties or relevant agreements first when deciding a dispute, then rely on customary International Law norms and on general legal principles. It may refer to decisions made by other courts (including previous decisions made by the ICJ) as well as writings by respected authorities on Public Law as secondary methods of establishing the rule of law.

While it is true that there is no formal requirement (stare decisis) to follow previous decisions made by the ICJ, in practice it will cite and adhere to its own prior case law to achieve consistency and stability in the development of International Law. **The use of precedent, although it is not binding on the International Court of Justice, promotes uniformity in the evolution of the Law.**

The Court's work relies on a number of essential legal principles, with **state sovereignty and consent being the most significant.** The ICJ can only adjudicate a dispute involving a state if that state agrees to the Court's jurisdiction; states are all equal under international law and thus, cannot adjudicate without their consent (as noted in the jurisdiction section above). However, while the ICJ respects state sovereignty, it also requires states, when they consent to having their dispute resolved by the ICJ, to act in good faith to comply with the Court's decision **(pacta sunt servanda)**, or agreements must be kept. Thus, the ICJ supports the principle of settling disputes by peaceful means, including Article 2(3) and Chapter VI of the UN Charter, which establish that all disputes should be resolved through peaceful means, and that legal disputes should be settled through Courts or Arbitral Tribunals rather than by force. Finally, the ICJ demonstrates that even large, powerful states are accountable to the international rule of law. An instance of how ICJ has promoted the understanding of international legal principles is the **Nicaragua v. United States case in 1986**, **in which the Court ruled on the United States' violation of the principle of non-intervention, and use**

of force, under international law. This decision reaffirmed the application of these norms even where they are applied to a major power, and despite that the United States subsequently rescinded its acceptance of compulsory jurisdiction, following the Court's ruling against it. Although the issues before the ICJ do not specifically deal with individual cases, ICJ decisions provide a further clarification of certain principles under international law, including but not limited to: **Equality of States, Territorial Integrity, the Right to Self-Determination and Human Rights.**

The International Court of Justice's contribution towards the development of international law is much larger than that of an individual party; rather, it has vast implications for the whole world community through its decisions regarding international conflicting claims (in turn, clarifying or defining the substantive content of international law regarding specific issues). For example, the ICJ has defined the methods by which countries may delineate their maritime boundaries, elaborated upon what diplomatic immunity may entail, clarified the terms under which states may be held responsible for violations of international law (such as the definition of what constitutes a violation of international obligation, and how and to whom reparations must be paid), and applied various principles of international environmental law in determining issues arising from transboundary harm. **A decision of the court becomes a part of international jurisprudence and will be cited often by lawyers and future courts in making legal arguments.** Although only the parties before the Court are technically bound to follow its ruling, because the court's reasoning is viewed as being authoritative by virtually every country in the world, it is highly probable that many other states will eventually adopt similar reasoning and practice based on the court's decision(s). In fact, in many cases, the jurisprudence developed by the court has been subsequently recognized by countries' conduct and/or passed by UN legislatures as legal, thereby demonstrating that ICJ jurisprudence is normative in relation to other international law principles. Moreover, given that the judges are from various areas of the world and represent a wide range of approaches to legal issues, the opinions rendered by the ICJ can be viewed as a product of deliberation among judges from diverse legal cultures, and therefore carry with them an added level of universal weight and validity than would otherwise be found from decisions created in only one specific region or legal culture.

In a similar fashion to the role played by advisory opinions issued by the International Court of Justice (ICJ), advisory opinions have also played an important part in the evolution of international law. **Although advisory opinions do not have binding force, t**hey **frequently answer novel and unsolved legal issues and thus may address gaps and ambiguities in international legal regulation.** The Advisory Opinion on Reparations for Injuries Suffered in the United Nations (1949) provided authority as to what constitutes a legal personality of an international organization i.e., United Nations; it established that, as an organization, the United Nations possesses the right to submit international claims for compensation on behalf of its personnel for damages incurred in the course of performing their responsibilities as agents of the United Nations. The Advisory Opinion of Namibia (1971) provided guidance regarding the legal status of South West Africa (Namibia) and established a framework for the obligations of states regarding an illegally occupied territory, thereby advancing the law

relating to decolonisation and relating to the consequences of illegality. The Advisory Opinion of the Court Concerning the Legality of the Use of Nuclear Weapons (1996) addressed questions concerning international humanitarian law and the use of armed force, influencing the ongoing discourse surrounding disarmament (despite the Court's conclusions regarding this issue, being more nuanced and leaving many questions on the topic unaddressed). Recently (outside of the scope of the assignment defined by "recent landmark decisions"), the Advisory Opinion of the Court Concerning the Chagos Archipelago (2019), addressed self-determination, and colonial era treaties; based on these examples, through its advisory opinions, the Court has repeatedly helped consolidate evolving principles or articulate legal standards which guide the global community.

The International Court of Justice (ICJ) represents and reflects the commitment of governments around the world to uphold international law and justice. The Court provides states with a forum where they can bring their disputes to be resolved according to international law and not through force. As such, the Court promotes stability in the international system because even though there will be differences among States regarding individual decisions of the Court, the mere act of using legal arguments to resolve disputes and the general adherence to the Court's decisions demonstrates that law has a civilized effect on the interaction of States in the international system. Over time, the ICJ has established an extensive body of case law that will often be utilized as guidance by other international courts, such as the International Tribunal for the Law of the Sea (ITLOS) or the International Criminal Court (ICC), as well as by national courts who will be addressing issues that deal with international law. The opinions of the Court have been relied upon by many researchers and practitioners which is another way of establishing them as being part of the framework of the international legal system. The Statute of the ICJ forms part of the Charter of the United Nations, which was intended to demonstrate that the enforcement of international law by the World Court was to be an important component of a world organization that promotes peace and cooperation among States.

The International Court of Justice is governed by established legal principles employed with impartial and rigorous application, and through its case law (jurisprudence), it develops international law on an ongoing basis. The authority of the Court does not derive from coercive strength, but rather from the trust established between states and the international community regarding the Court's wisdom and expertise. The International Court of Justice is an important component of international law by defining the rights and responsibilities of states and providing a non-violent way to settle international disputes. With every evolution in the international system that is driven by emerging problems and cases, the principle of the rule of law governs relationships between states.

2. CASE OF BOSNIA AND HERZEGOVINA V. SERBIA AND MONTENEGRO (FORMER YUGOSLAVIA), (CONTENTIOUS CASE - AGENDA ITEM I)

2.1. Introduction to the Case

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) is a landmark contentious case in which Bosnia and Herzegovina sought to frame the violence of the 1992–1995 Bosnian war through the lens of **state responsibility** under the Genocide Convention. The application was filed at a moment when Bosnia claimed that the scale, pattern, and organisation of violence against protected groups—together with cross-border political and material links—required international adjudication rather than purely diplomatic management. Bosnia's core legal strategy was to argue that genocide is not only an individual crime but a treaty-regulated field of **state obligations**: states must not commit genocide, must not conspire to commit it, must not directly and publicly incite it, must not attempt it, must not be complicit in it, and must prevent and punish it.

The case therefore raised two intertwined sets of issues. The first concerns **what happened on the ground** and how reported conduct should be legally characterised. Bosnia's narrative emphasised widespread killings, serious bodily and mental harm, forced displacement, detention and camp allegations, sexual violence, and the destruction of communities and cultural-religious property—presented not as episodic excesses but as elements of a systematic campaign directed against protected groups. Within the Genocide Convention framework, the crucial legal challenge was to connect such patterns to the Convention's definition, especially the requirement of genocidal intent (dolus specialis), distinguishing genocide from other forms of mass atrocity such as persecution, crimes against humanity, or war crimes.

The second set of issues concerns **attribution and linkage** between the respondent state and the principal perpetrators alleged by Bosnia. Because many acts were attributed to Bosnian Serb forces and political structures operating within Bosnia and Herzegovina, Bosnia's theory required the Court to examine whether those actors' conduct could be legally attributed to Serbia/Montenegro under the law of state responsibility, or alternatively whether Serbia/Montenegro could incur responsibility through **complicity** or through breach of the duty to **prevent** genocide. This brought into focus the degree and nature of support (financial, logistical, political, operational), the existence of direction or control, the respondent's capacity to influence actors on the ground, and what contemporaneous knowledge or warnings could trigger prevention obligations.

Procedurally, the case was also shaped by jurisdictional and admissibility controversies linked to treaty participation and the respondent's international status during the 1990s, as well as by the Court's need to manage the boundary between assessing genocide-related obligations and being drawn into adjudicating the war as a whole. Overall, the dispute crystallised how the Genocide Convention can function as a vehicle for litigating state responsibility in contexts of complex armed conflict, where factual patterns, intent, and attribution interact in a demanding legal evidentiary setting.

2.2. The Structural Erosion of the Yugoslav Federation (1980–1990)

2.2.1. Post-Tito institutional vacuum and the weakening of federal equilibrium

The passing of Tito in May 1980 stripped the political sphere of a figure who could resolve issues among the various divisions of Yugoslavia (Republics, Autonomous Provinces) via the use of his own personal influence, rather than through established Federal mechanisms. Following Tito's death, there were not only changes in Leadership but also tests applied to the structural framework of the 1974 Constitutional Settlement as a result of its significant degree of decentralization. After the passage of the 1974 Constitution, there had already been transferred significant areas of Competency from Federal bodies and institutions to the Republics and Autonomous Provinces. With the loss of Tito, effective Political Authority over the Federated Government had been transferred in practice to the Republics and Autonomous Provinces and the effective Political Executives of these Units were increasingly able to exert Political Power over the Federal Institutions.

A Federal Coalition Governed by a Collective Presidency (with very limited Political Executive Powers) would prove increasingly ineffective in attempting to coordinate National Policy and a Decentralized Federated Government; therefore, over time Federal Government would become less capable of serving the collective will of the several Republics and Autonomous Provinces. The unprecedented degree of decentralization that had occurred between the Republics and Autonomous Provinces and the Federal Government following the death of Tito has important implications for subsequent events, particularly Bosnia, because this decentralized environment created a Power Vacuum which allowed (i) for the later Fragmentation of Command and Control over Security Structures, (ii) for the Nationalization and politicization of Federal Institutions (most importantly the Yugoslav National Army, JNA) according to the interests of individual Republics, and (iii), for the emergence of multiple and often conflicting claims regarding who “spoke for” the country of Yugoslavia, as it began its disintegration — claims that later resonate throughout the different Legal Arguments regarding Attribution, Continuity/Succession Narratives and the Relationship of the Republic of Serbia and its political/military Structures outside of the Republic of Serbia.

2.2.2. Economic crisis, centre–republic tensions, and constitutional deadlock

Yugoslavia had to deal with high international debt, high unemployment, and high inflation, creating an environment where conflict between republics and the Yugoslavian federal government increased. Eventually, as economic hardship continued to increase, Governments and governmental institutions in Yugoslavia could no longer negotiate with each other or find common ground for a solution to their problems. Susan Woodward's perspective shows the connection between long-term foreign debt, mass unemployment in the 1980s, and hyperinflation to fuel the formation of independent nations based on creeds and ethnicity.
the socialist register.

The inability of government institutions in Yugoslavia to agree on a practical way to resolve economic conflicts through negotiations created a constitutional stalemate. The Constitution of 1974 stated that all republics in Yugoslavia have a right to self-determination, including the right to secession; however, it did not provide any procedure for legally seceding from the federation, which resulted in a significant amount of uncertainty. Elite members of republics were able to claim their extreme positions as legal and ethical, while the federal government could deny the existence of any orderly process for secession.

The end result was a federation of member states that struggled to reach meaningful collective solutions—"institutional paralysis"—making it extremely difficult to find legal or political solutions to future crises, such as the Bosnia crisis.

2.2.3. The rise of nationalist politics and deepening societal polarisation

With the weakening of federal mechanisms, political entrepreneurs were incentivized to mobilize constituencies within various ethno-national frames. They reinterpreted claims of economic decline, and constitutional grievances as evidence of the domination of one ethnic group over another. By the late 1980s, Serbian politics under the leadership of Slobodan Milošević utilized this "vacuum" of central authority to engender mass mobilization and consolidated power within Serbia, while at the same time reducing the autonomy of Kosovo and Vojvodina and therefore altering the internal balance of power within the federation.

The significance of this for the broader discussion of the ICJ case lies in the fact that societal polarization, combined with elite-led nationalist mobilization, led to (a) the creation of the political conditions needed for armed "community security" based narratives, (b) the acceptance of exclusionary territorial and statehood claims, and (c) the establishment of the rhetoric used to justify later policies that the Bosnian government would describe as part of a larger project that culminated in atrocities, including acts that would subsequently be judicially determined to fall under the definition of genocide.

2.2.4. The 1990 multi-party elections and the federation's slide toward de facto disintegration

In 1990, the transition to multi-party politics was about more than just generating pluralism, it restructured politics into a republican arena that favoured "exit" vs. "reform." As election outcomes created the potential for non-communist and/or nationalist rule in two key republics (Slovenia and Croatia), the battle for sovereignty increased within the framework of constitutional hierarchy. Republican authorities submitted to republican law and demanded to create a confederation to replace the federal system. The republic of Serbia took a contrary position and resisted any perceived dilution of the federal system.

Across the globe, many international analysts were becoming convinced that Yugoslavia's disintegration was imminent. A U.S. intelligence estimate cited in documents from that period expressed belief that within 12 months Yugoslavia would no longer function as a federal system, resulting in widespread civil unrest during its fragmentation.

This electoral era will be seen as transitioning into the pre-war political landscape affecting Bosnia-Herzegovina's case. The de facto collapse of the federation allowed for the opportunity to create and pursue national projects that would come into conflict shortly thereafter—both within the country of Bosnia and with the republic capitals surrounding Bosnia. This conflict set the stage for war in Bosnia-Herzegovina from 1992 to 1995, which is at the heart of the current proceedings in the International Court of Justice.

2.3. The "Breakaway" Phase of Federal Collapse (1991)

2.3.1. Intensifying sovereignty disputes within Yugoslavia (federal authority vs. republican autonomy)

The evolving struggle from the deadlocked nature of the federal constitution regarding the future of Yugoslavia resulted in a competition for sovereign control over each republic of the federation. This struggle was illustrated by the differing opinions on who should be accountable for national borders and National Defense, in which representative of the Federal Government believed they had authority over this, whereas the respective Republics believed sovereignty was confined to their respective Republic. The consequences of this struggle were substantial as the ability of any entity to maintain control of military (defence), police (internal security), and territorial force will ultimately determine if the act of secession could be peaceful through negotiation or would resort to violence. Therefore, the breakdown of the common ability of the federation to make decisions through a constitutional process became quickly transformed into a race for coercion and to control the strategic assets involved.

2.3.2. The independence declarations of Slovenia and Croatia and the onset of armed conflict dynamics

The first major disruption of the federation's territorial and legal system occurred on June 25, 1991, when Croatia and Slovenia announced independence from Yugoslavia. The declaration of independence in Slovenia led to a brief period of military conflict known as the Ten-Day War, where the Yugoslav People's Army entered Slovenia, but soon withdrew from it.

The importance of the Slovenian period is that it not only confirmed that the Federal Imperial State was incapable of maintaining unity through force, but also shifted the focus of violence to Croatia, where there was already considerable internal conflict due to overlapping territorial disputes and communal tensions.

In Croatia, violence increased through conflict in Serb-majority or Serb-populated areas and through the rapid below marginalization of "self-defense" and "paramilitary" ideas and operations by both sides. This established the frameworks for future acts of conflict and future acts of state responsibility and international criminal investigations.

2.3.3. The positioning of the Yugoslav People's Army (JNA) and the contest over the security apparatus

In 1991, the Yugoslav People's Army was at the forefront of the breakup of Yugoslavia. It was not only a federal institution made up of many ethnic groups; however, after the Slovenian War, it evolved into a way to maintain central authority and give leadership to all of the republics of Yugoslavia. After the fighting had ended in Slovenia, the JNA withdrew into Croatia, where it became embroiled in a military confrontation with Croatian Forces and paramilitary groups that were part of that armed conflict. Thus, the military question replaced the constitutional dialogue as the primary battleground.

Further complicating things were the critical themes regarding legal and political authorities, as well as how courts assessed the actions of representatives that executed the control of the JNA and the actions of others that represented a part of that control. The European Institution's descriptive language during this period described the JNA acting beyond the institutional control of the Yugoslav Federal Government, as well as condemning paramilitary actions. Even without applying the later law regarding the attribution of control to individuals and groups, the actions of the JNA during this time will be seen as the basis for future decisions regarding the actions of the JNA and how that influence spread to Serbia and the other republics within Yugoslavia.

2.3.4. Early international responses and attempts at crisis management

The focus of the initial international response to the crisis in 1991 was on managing the conflict rather than determining statehood issues through a legal framework. The European Community (EC) sought to encourage a ceasefire and slow the rate of disintegration due to concerns about borders and precedents set for other regional states.

Examples of early crisis response initiatives include:

1. **The Brioni Agreement** (July 7, 1991) was developed through EC mediation as a way to call for a ceasefire. The Brioni Agreement provided for a three-month delay on implementing Slovenia's independence declaration and called for negotiated solutions regarding Yugoslavia's future. Also the Organization for Security and Cooperation in Europe (OSCE)

2. **The Hague Peace Conference** (September 7, 1991) was chaired by Lord Carrington and aimed to establish a framework for political resolution but was hampered by the fragmented situation on the ground and continuing hostilities.

These early crisis-response initiatives clearly demonstrate that the crisis was being "internationalised" institutionally prior to the war in Bosnia and prior to Bosnia's subsequent International Court of Justice (ICJ) filing in regard to the war in Bosnia, through monitoring missions, diplomatic conferences, and the beginning of UN Security Council involvement.

2.3.5. The UN Security Council arms embargo and the escalation of regional war risk

Given the increase in tensions, The UN Security Council passed Resolutions 713 on September 25, 1991. This resolution supports ongoing European-led peace initiatives while also placing an arms embargo on all deliveries of weapons and military equipment to Yugoslavia under Chapter VII.

The embargo represented both a symbolic message that the situation had escalated from an internal political disaster to one that impacts peace and security internationally (Chapter VII) as well as a structural risk by providing an incomplete and broad definition of how it would be enforced across the former Yugoslavia (North/South). As the result, many who held large weapons arsenals in Croatia used that to advantage over the forces in Bosnia who were not able to find ways to get the same amount of weapons or the same type of machinery (heavy machinery).

Many studies and reports that contain assessments of the impact of embargoes conclude that embargoes are very difficult for importers and exporters to enforce. Thus, embargoes cannot be solely depended on as a tool to stop arms transfers.

2.4. Bosnia and Herzegovina's Divergence and the Outbreak of War (Late 1991–Spring 1992)

2.4.1. Institutionalisation of ethno-political bloc formation within Bosnia and Herzegovina

The political fragmentation of Bosnia and Herzegovina by the end of 1991 had progressed beyond the conceptual framework of "social tension" or "rhetorical polarisation" and could be viewed as becoming institutionalised, through partisan structures and parliamentary practice and decision-making by the executive, among other elements that mutually defined the manner of exercising state authority on the municipal level. The process of institutionalising politics is the critical first step toward explaining the underlying factual architecture of the current case of Bosnia and Herzegovina v. Serbia and Montenegro, where, once a political framework is created based upon competing community frameworks, subsequent violence will likely mirror that political reorganisation, and coercive measures will reflect an organised agenda of geographical and demographic reorganisation.

This parallel project had a political basis wherein representative institutions created and claimed to represent the political will of all Bosnian Serbs as an independent political entity, outside of Bosnia's existing constitutional framework. In November 1991, Bosnian Serb factions met to discuss the formation of an assembly that would function as an alternate legislature that would allow the formation of "Serb" political opinions (and subsequently laws) regardless of the status of the prevailing assembly in Sarajevo, at the same time as Bosnia' s official assembly was conducting business. It was important that this assembly was not only created as a formality; it represented an assertion by Bosnian Serb leadership that the unity of the Bosnian state had ended, and there were now distinct political communities residing in Bosnia that could no longer be treated as a single political entity or community. In essence, Bosnian Serb leadership sought to establish themselves as an ethnic group with a constitutional role: they wanted to be seen as a political entity capable of determining their own destiny.

The ending point of the past single-party system and the rise of popular national parties for each of Bosnia's major ethnic groups (Bosniaks, Serbs, Croats). In Bosnia's first post-1990 election, there were three dominant parties that represented the three major ethnic groups: SDA represents Bosniaks, SDS represents Serbs, and HDZ BiH represents Croats. Coalition arrangements were established among these parties, but their basis on which these parties established coalitions was the existence of an existential interest for each of these ethnic

communities. The importance of this change was that a political setting meant to address the differences and concerns of the political parties became less about competition between political parties for the establishment of policies and laws, and instead, represented a vehicle for competing for the interests and safety of each ethnic group. Compromise would be considered as betrayal of one's ethnic group, and disagreements on procedures would be viewed as "national issues".

The establishment of administerial structures for these territorial arrangements was realised through two primary methods: the appropriation of municipal apparatus by SDS-affiliated entities as well as through creation of alternative or duplicate institutions within existing municipalities which had yet to fall under the complete control of SDS. Examples of these alternative or duplicate SDS-affiliated institutions include mixed governance bodies (municipal), emergency management committees, and emergency governmental organisations established by SDS to serve "Serb" residents within municipalities. The establishment of these alternative or duplicate institutions was important for two primary reasons. The first reason was that the "Serb" municipal institutions could take direct action by preparing and issuing instructions and regulations to police, local governments, and non-government organisations (NGOs); secondly, they provided the mechanism for coordinating efforts with adjacent municipalities. Thus, the municipal level was an important training ground for mechanisms of power and authority that allowed for the establishment of a new power structure from below - the creation of the "Sovereign State of Bosnia." Ultimately, these foundational structures provided a fertile ground for violence - coercive methods could be used and regulated through parallel authoritative structures, and war-related population transfer policies could be executed through the establishment of civilian authorities and military forces with governmental legitimacy.

Another significant contributing factor to its escalation was political and military duplication. Only when parallel militarized institutions can provide asserting capability to political authority can they become integrated into tests of illegitimacy. Bosnian police authorities were beginning to deteriorate in 1991 & early 1992 due to the destabilization of the security environment in the region caused by the overall collapse of the former Yugoslavia, resulting in confusion regarding arms, domestic defensive forces, and military chains of command. In order to maintain control over military force, as opposed to Sarajevo, Bosnian Serb forces began to establish their own police agencies and began forming local defensive forces. In addition, the economic support and military presence left behind by the former Yugoslav army accelerated this process. Although full-scale conflicts were not yet erupting everywhere in Bosnia-Herzegovina, the trends were evident in the diminishing capacity of central institutions to maintain and enforce the rule of law, as it was being usurped by parallel policing structures.

2.4.2. Secessionist steps and parallel institution-building by Bosnian Serb political structures

After establishing the bloc system of governance in Bosnia's formal structures, there was a need for a second, parallel system of governance that could assert authority over the land and its inhabitants regardless of the decisions made by the Government of Sarajevo. Beginning in late 1991, this became clear: The government of the Republic of Bosnia and Herzegovina developed the view that the future of Bosnia and its political structure as a nation would not be negotiated through parliamentary discussions but instead by creating a "state within a state" that could endure (and eventually enforce) secession from Sarajevo's authority.
The strategy was both sequential and strategic; first discrediting Sarajevo's claim to speak for "the Serb people," creating additional avenues for representation, mapping these new representatives to Serbia, and ultimately tying security (therefore "autonomy") to political authority will allow for "autonomy" to be fully realised in practice.

This initiative also involved establishing distinct representative agencies that sought to represent the collective political entity of Bosnian Serbs, separate from the Constitution of Bosnia. In November of 1991, the leadership of the Bosnian Serbs began forming an assembly to function as an alternate legislature to adopt Bosnian Serb ("Serb") political decisions and sometimes to adopt Serb legal documents while the Constitutional Assembly of Bosnia was still in operation in Sarajevo. The establishment of an alternative assembly was not only symbolic. When the Bosnian Serbs established the alternative assembly, they were asserting that Bosnia was no longer a single demos or having a single political will. Rather, it was being described as the territory of many separate political communities which could not be presumed to consent to the will of the others. Put another way, the Bosnian Serb leadership was transforming an ethnic group into a constitutional actor as an entity entitled to independently decide and act.

Subsequently, the creation of parallel institutions expanded into a territorial conception through the continuous establishment of Serb Autonomous Regions (SAOs) and different local affiliations. This was a major innovation. The establishment of an alternative assembly is compared to the upper tier or the top level of the parallel institution, whereas the SAOS or the bodies or districts acted to solidify and affirm national political claims to specific locations and regions, such as municipalities and routes of travel. The concept of the SAOs allowed the article of the Constitution that dealt with constitutional disagreements to be viewed in a different light. The SAOs suggested that specific areas, specifically those with a majority of Serbs or a large Serb population, should have Serb-defined government rather than being governed by Sarajevo. Furthermore, the location of the SAOs was not arbitrary; they followed geographic formations important to establish links between Serb-held areas and provide the resources necessary to maintain governance and logistics. The geographical elements noted above demonstrate that controlling municipalities also equates to controlling the routes, managing the forms of communication, and sustaining the federal government's ability to function.

Administrative infrastructure was necessary for the territorial project. It was created by capturing and duplicating municipalities through a combination of both. In a number of the municipalities, SDS-linked local structures were created to take over local assembly and

important local government offices, as well as the local security apparatus. In instances where outright control was impossible, several methods for duplication were created. These included the parallel establishment of "Serb" municipal institutions and the establishment of parallel municipal decision-making bodies and "emergency" groups claiming to represent Serb residents. These institutions became critical because they provided a vehicle through which concrete things could be done. For instance, they were used to issue local direct decisions, provide policing influence, control and regulate access to municipal capital equipment, and coordinate with adjacent municipalities. As such, the municipal level in Bosnia became the location in which sovereignty was "engineered" from a local level. This is precisely the scenario in which the rapid development of violence occurs. Once parallel authorities are created and in place, they are able to coordinate coercive actions, regulate movement, and enforce population policies backed by administrative documentation.
A major accelerator of this was when security duplication began to emerge and overshadowed the existing political duplication. Only when parallel institutions are able to transform political claims into the capacity to act coercively can they become a significant force.

In late 1991 and early 1992, the security environment in Bosnia was deteriorating as a result of the general collapse of Yugoslavia, which caused confusion over the status of arms, territorial defence structures and command chains. In this situation, the Bosnian Serbs began to establish their own structures, to guarantee access to Armed Forces through their own authorities and for their own interests, rather than those of Sarajevo. This was done through a variety of means, which all provided support to one another: through influence in local police, through mobilising local self-defence units, and through the influence of remnants of the Yugoslav military still in the region. While a complete breakdown of order and violence was not yet fully underway, the collapse of a single monopoly on the use of force was clearly underway. The central institutions in Bosnia were rapidly losing their ability to ensure the safety of the local citizens in a uniform manner, and the Serb structures created in the territories they desired to control were filling the void wherever they were able.

In addition, techniques of legitimating initiatives, such as plebiscitary and constitutional gestures indicating that the decisions of Sarajevo were not binding, were employed for the parallel project. Through a process called plebiscite logic, the Bosnian Serb leadership stated that if Bosnia was going to become independent, then the Serbs could choose whether or not to follow them. These kinds of votes and/or statements were done for the purpose of “public relations” and were used to develop a narrative architecture for future actions. The narrative was that Bosnia was changing its status unilaterally, and that therefore Serb geographic regions had the right to secure their own status unilaterally. The logical process of nested secession — the breaking away of a region from one nation and then responding by breaking away from the other nation — is how the political framing of the conflict would occur in the future, and reveals much of the basis for future political/legal disputes relating to issues like territorial integrity, self-determination, and (in the context of the International Court of Justice) the intersection of political projects and criminality.

Early 1992 brought a shift in what Bosnian Serb leaders wanted. Instead of speaking only of autonomy, they began demanding a separate Serb nation within Bosnia. Look at their words from January - no longer requests for safeguards, but moves toward a fresh political structure. This setup was meant to last, whether or not Bosnia went its own way. Tying this region to a Serbia-dominated Yugoslavia formed the core of their strategy.

This shift gains weight once the International Court of Justice steps in later. Seen like that, the wave of brutality starts to fit a pattern - each act helped cement Serb-held zones as lasting realities. Bosnia claimed the forced removals, prison camps, and brutal campaigns were far from accidental wartime outcomes. These actions had purpose; driven by intent to push entire communities away, reshaping who lived where - and who held control - so their proclaimed Serb entity might endure.

Here's how things unraveled. The groundwork had been laid long before Bosnia voted on leaving Yugoslavia. Separate systems weren't just forming - they were ready to act. So when the vote came, it wasn't about provoking anger. It hit a network that could push back right away, using its own rules, borders, power. That explains the sudden collapse in early 1992. Once the moment arrived, everything snapped into motion because the setup was already complete. In court arguments later, this shift matters most. Before violence filled the streets, two versions of order clashed. One didn't just oppose the other - it operated alongside it, making conflict inevitable.

2.4.3. The independence referendum process and contested legitimacy narratives

When 1991 ended, the vote on independence in Bosnia and Herzegovina did not function merely as a national election. Instead, it turned into a flashpoint where three developments converged unexpectedly: first, Yugoslavia breaking apart at increasing speed; second, Bosnia shifting inward toward separate ethnic political groups that distrusted one another; third, rising assumptions - particularly among European diplomats - that official expressions of public will, like referendums or legislative votes, should serve to confirm sovereignty just before nations grant recognition. That context made the ballot feel immediate and vital. Far beyond being only a poll, it acted as a tool determining which version of legal order would count as valid - and thus which vision for power might earn backing across borders.

Ahead of any voting, signs pointed toward fracture. By mid-October 1991, Bosnia's main legislative body passed a declaration focused on self-rule - sometimes called the "Memorandum on Sovereignty" - but the moment split along ethnic lines: Serbian members left the session early. That departure showed how fragile unity had become, hinting at deeper institutional decay. Because of this exit, competing claims took root later. Authorities in Sarajevo maintained that their choices reflected legal continuity. Opposing them, leaders among the Bosnian Serbs insisted such decisions held no power over their people after joint

representation collapsed. So the dispute stretched beyond abstract ideas of independence - it turned just as much on who got to speak for the nation
Soon after, the Bosnian Serb leaders acted quickly to build structures supporting their political stance. By late October 1991, they established the Assembly of the Serb People of Bosnia and Herzegovina - a body designed to function separately from Sarajevo's institutions. This new entity aimed to present Bosnian Serbs as a distinct constitutional group able to make autonomous decisions. The move went beyond symbolic assertion. It provided a foundation for tangible developments down the line: once such an assembly claimed legitimacy, it could enable duplicate local administrations, shape regional security setups, and justify changes in territorial control.

One way legitimacy grew came through public votes shaped by political goals. When, in November 1991, officials among Bosnian Serbs held a referendum in regions where Serbs lived, asking whether they should stay in Yugoslavia, the central Bosnian authority ruled it invalid. What mattered most wasn't legal standing but how the result could be used in debate. Leaders could point to the outcome whenever pressured by decisions coming from Sarajevo. Faced with moves toward independence by Bosnia's majority, they now had an answer rooted in voting: their people had chosen differently. This idea - that leaving one state justified forming another - helped build a narrative of rightful separation. Over time, such reasoning laid groundwork for efforts to take and hold land by force.

In early 1992, moves backed by institutions and public votes began clearly pointing toward Serb self-rule inside Bosnia. Come January that year, the Bosnian Serb assembly declared a separate "republic," later called Republika Srpska, framing it as a response to Bosnia's push for sovereignty. This name carried weight. When Bosnia moved forward with its referendum, resistance wasn't just about objection - it came with the assertion of an existing alternative system. Such a shift proved crucial in triggering conflict. Once two governing bodies each insist on ultimate authority, debate gives way to dominance - over towns, transit routes, law enforcement, arms, and people.

In this setting, Bosnia's push for independence became a pivotal constitutional moment. Held between 29 February and 1 March 1992, the referendum delivered a clear result among voters - strong support for leaving Yugoslavia. Most Bosnian Serbs did not take part, following guidance from the SDS and aligned groups. From here, disagreement over legitimacy grew into two separate narratives. For Sarajevo, the vote reflected genuine public desire; it also served as necessary groundwork for global acknowledgment and safety amid spreading conflict across former Yugoslav territory. Yet Serb leadership saw things differently - the absence of their population made the process invalid, they claimed. Since Serbs were recognized as one of the nation's core peoples, any shift in statehood status required their agreement, so they insisted. Without inclusion, decisions about sovereignty had no rightful foundation.

A form of resistance, the boycott shaped conditions around the referendum's legitimacy. In areas run by Serb authorities, election setups faced interference or failed to happen at all - a

pattern cited later by Sarajevo to argue the non-participation stemmed from pressure, not personal choice. During those weeks, isolated events quickly turned into tools for political claims. One moment stood out: on 1 March 1992, gunfire struck a wedding in Baščaršija where a Bosnian Serb family gathered; the groom's father died, another person injured. Almost immediately, interpretations split - some called it evidence that Serbs could no longer be safe if Bosnia broke away, others claimed such attacks served to justify blockades and division. This event, more than any other, made tangible the fear that Sarajevo itself might splinter along violent lines.

Soon after the vote came a swift unraveling - constitutional choices quickly gave way to breakdowns in safety. Independence for Bosnia and Herzegovina was proclaimed by Alija Izetbegović on 3 March 1992. Yet legal sovereignty failed to bring real control on the ground. What looked like closure only deepened existing tensions within the country's framework. From Sarajevo's view, that ballot marked the moment a nation claimed its existence. A sudden break reshaped Bosnian Serb leadership goals, pushing swift moves toward territorial separation. Following the ballot, momentum shifted fast - authorities in Sarajevo moved to stabilize authority and gain legitimacy. Meanwhile, rival structures worked urgently to weaken the central state across areas they aimed to hold.

Weeks of talks failed to settle the dispute over political authority. Instead, differing visions for Bosnia's future emerged more sharply through diplomacy itself. A notable case unfolded in early 1992, when efforts led by Carrington and Cutileiro - known as the Lisbon proposal - outlined a fragmented state based on ethnic divisions. By 18 March that year, representatives of the three major groups accepted the deal, yet support crumbled fast. Court records from later trials indicate one party pulled out by 24 March. Rather than seeing this moment as just another lost chance, consider how it deepened claims about rightful governance: some insisted survival depended on dividing power along ethnic lines, while others argued such plans undermined national unity by rewarding threats of breakup. When the foundation fell apart so quickly, many concluded peaceful solutions were unworkable - pushing those ready to seize territory toward forceful methods instead.

What happened next ties straight back to the ICJ proceedings, since the vote marked the moment when Bosnia's internal turmoil shifted into a fight about whether the country could endure at all. The foundation of Bosnia's argument in court - that widespread bloodshed stemmed from deliberate policy rather than chaos - hinges on the assertion that after voters chose sovereignty, force entered to undermine it by redrawing borders and altering population patterns through coercion. Meanwhile, Bosnian Serb leaders - and eventually those aligned with Serbia and the FRY - based their position on the notion that independence proceeded without approval from one of the key ethnic groups, making it invalid for regions under Serb authority. These clashing accounts transformed the ensuing conflict: killings and forced movement were more than horrors - they served as tools within a battle over which version of statehood would prevail.

2.4.4. The declaration of independence and the rapid deterioration of security conditions

March 3, 1992, marked Bosnia and Herzegovina's official break from Yugoslavia, though stability never followed. That day's declaration lit a fuse rather than established order, arriving amid pre-existing cracks in real control. The vote leading up to it gave legitimacy on paper, yet once announced, the claim to self-rule met resistance everywhere. Local administration, police forces, military supplies, along with what remained of federal oversight mechanisms, were already split among competing factions. Some held pieces here, others there, often overlapping without coordination. Reference sources agree on timing: following the public vote, Izetbegović made the announcement - but saying so aloud changed little at street level. Authority remained unclaimed, floating, fought over. What emerged was less about new institutions and more about whose force would dominate. Control shifted not through law, but pressure. Outcomes unfolded slowly, shaped by coercion far more than decree.

What mattered most was how Bosnia's move toward independence set up a clash between two rival systems. Not just sparked unrest, but demanded allegiance to one form or another. Sarajevo argued its path came from legal process - referendum included - and aimed at full international standing. Meanwhile, Bosnian Serb leaders had spent time building their own setup: shadow governments, local structures, assertions of sovereignty apart. Recognition of Bosnia as independent risked making those efforts vanish - or reclassify them as illegitimate. Words alone could not settle such stakes when actual authority hinges on holding territory: roads, signals, outposts, arms stores, offices where power shows itself daily. After 3 March, the land entered a stretch of uncertainty - not fully governed, yet claimed by competing sides. Sovereignty existed on paper, enforcement still hung in balance.

Ahead of everything else, what stands out is how quickly things unraveled after signs of conflict became clear in early March. Though meant for another case, the ICTY's Galić Trial Judgment gives a detailed look at how Sarajevo moved toward war, showing that barricades and checkpoints went up during that time, built by members of both SDS and SDA - a sign political tension now shaped street-level reality. When such barriers go up, security stops being an idea discussed behind closed doors; instead, movement depends on armed individuals, law enforcement loses shared meaning, and daily routines turn into repeated acts of passing through zones claimed by opposing sides. According to the same source, control over key locations shifted rapidly: units aligned with the Bosnian Presidency occupied vital installations and arms stockpiles, whereas the SDS steadily asserted dominance across large sections of the west and north outskirts. Behind these shifts lies the true shape of failing institutions - not just failed meetings in government halls, but rival groups wielding real power over slices of the city itself.

One morning in early April changed everything. That week, the idea of nationhood gained weight beyond borders. Independence did not stand only on declarations made inside the

country. What mattered just as much was how powerful nations reacted. On 7 April 1992, Washington gave its approval, marking Bosnia and Herzegovina as a sovereign entity. This fact appears clearly in archives kept by the U.S. Department of State. Meanwhile, across the Atlantic, European authorities moved in step. A document published by the EU confirms member states agreed to acknowledge Bosnia's status effective that same date. Recognition came fast, yet its effects unfolded slowly. For leaders in Sarajevo, it meant survival had a chance. From another view, those tied to Belgrade saw risk instead of progress. Their influence could weaken if world powers closed the door on reversing the outcome.

When awareness of sovereignty took hold, the situation shifted sharply from chaos toward full-scale war. Not long after the European Community acknowledged Bosnia and Herzegovina as an independent nation on 6 April 1992, gunfire erupted across Sarajevo - blame flew both ways about who fired first. According to the ICTY's account in the Galić case, what unfolded was not random street violence but rather the start of structured combat in a place already bristling with weapons and competing powers. On that day, per the Donia Report referenced during trial, JNA forces targeted strategic locations like the Vrace training grounds, the main tram storage site, and sections of the historic district, deploying mortars, artillery, and tanks. At the same time, JNA troops moved in and captured the city's airport. Regardless of how one labels such involvement - "backing," "intervention," or joint fighting" - the outcome remains unchanged: a powerful, coordinated army operating near and within the capital redefined the power struggle between emerging authorities and those opposing them.

Nowhere more clearly does collapse gain its own momentum. When artillery turns on neighborhoods and runways fall to hostile forces, risk shifts beyond skirmishes in alleys - it settles into patterns of enclosure: blocked routes, severed flows, cities squeezed to force deals behind closed doors. Evidence laid out in the Galić verdict captures this shift precisely: Yugoslav army units tightened grip by halting traffic at critical junctions, then - critically - "by the end of April, the contour of Sarajevo's siege was largely established." That phrase marks a hinge in time. It reveals how fast sovereignty disputes bled into occupation tactics now etched in legal archives. A capital once representing statehood begins serving as leverage; conflict stops being seen just as battles and starts showing design - shaping land control, shaping lives caught within it.

Far from unique, Sarajevo reflected a broader trend across the country. Wherever Serb-run structures took hold in towns or areas, similar dynamics unfolded - authority broke down here, security forces divided there, roadblocks appeared overnight, while armed groups stepped into roles normally held by officials. It was during this stage that people on the move stopped being seen simply as refugees fleeing chaos; instead, their removal began looking like part of a deliberate plan tied to gaining ground - a shift noticed early by global watchdogs. By May 1992, the UN Security Council condemned forced displacements and efforts to alter community makeup through coercion, urging dismantling of unofficial militias, showing awareness of deepening human and social disruption

What matters most is how quickly security broke down - it ties straight back to the case of Bosnia and Herzegovina against Serbia and Montenegro. This breakdown signals a move beyond legal arguments about constitutions, landing instead in real events where questions arise: who did what, which states backed whom, and whether violence took on a structured form. By early April, things changed fast - recognition came first, then fighting began without delay. Vital facilities fell under control. Siege patterns formed early. These steps set the stage for claims that conflict wasn't just random internal disorder. Instead, it linked clearly to coordinated strategies involving both political aims and armed force, reaching across borders with outside connections. Later, the Security Council described such actions as "interference from abroad," pointing especially at units tied to the JNA.

2.4.5. The siege of Sarajevo and the diffusion of conflict across the country

Sarajevo

Sarajevo held weight - not just as the capital of Bosnia and Herzegovina, but as home to its core government bodies. From both local and global perspectives, the city stood as a measure of stability at a moment when Yugoslavia's central authority was collapsing. As April 1992 approached, conditions deteriorated fast; what began as political turmoil now edged toward siege warfare. Roadblocks multiplied without warning, while control over artillery near urban zones grew uncertain. Elevated ground surrounding Sarajevo, along with key transport routes, started determining who could restrict or enable flow - of people, messages, resources.
Starting 5–6 April 1992, reports showed violence rising fast as protests turned deadly, marking a shift from tension to active combat. Though politics had stalled before, gunfire in the streets made clear it was now warfare unfolding daily. By then, Sarajevo faced relentless bombardment, snipers targeting movement across neighborhoods. People inside lost reliable access - not just power or clean water but medical care and meals too. Aid deliveries failed repeatedly, turning supply routes into urgent concerns instead of afterthoughts. Meanwhile, global institutions adjusted their stance: United Nations bodies called for outside troops to pull back, urging changes in how safety zones were managed. As Bosnia's internal fight drew more foreign elements, diplomatic efforts refocused on limiting intervention while trying to contain collapse.

When it came to fatalities, early accounts focused on rising numbers of civilians lost and worsening human suffering. Over time, clearer figures emerged from records and remembrance projects. A commonly mentioned estimate puts the death toll at 11,541 during the 44-month blockade, among them 72 children under twelve, according to one source often quoted in memorials. This number includes 643 minors, a detail highlighted in Sarajevo's "Red Line" events. Yet alternative tallies for child victims vary, shaped by how data was gathered and who was included.

Prijedor

What made Prijedor significant, particularly when tracing events before Bosnia and Herzegovina v. Serbia and Montenegro, was its swift transformation into a symbol of forceful territorial dominance. Control over local government structures emerged fast, followed by the systematic disarmament and sidelining of non-Serb leaders. Detention on a large scale took hold at the same time as widespread expulsion began. This occurred in an area critical for transport routes across northwestern Bosnia. By mid-1992, reports consistently portrayed Prijedor as operating under firm Serb authority. At that point, debate had shifted away from power transitions toward the fate awaiting those excluded from this new regime.

When looking at accounts from that time and just after, descriptions often start with control taken over city functions - like police, local media, emergency teams. Next comes a phase where living conditions for non-Serbs grew unstable, through methods like forced registrations, blocked travel, threats. Then followed mass detentions, using several locations built outside town. A turning point happened in early August 1992, once reporters reached these places, revealing extreme hunger and violence; suddenly the camps became key to how the world saw events there. At the same time, news coverage focused also on nearby areas - villages such as Kozarac and Hambarine - where assaults and forced departures supplied inmates to those centers, feeding both captivity and exile.

Rumours and early accounts shaped how losses were first understood, with numbers only becoming clearer over time through collection efforts. Some sources state about 3,173 to 3,176 individuals lost their lives in the Prijedor region during conflict years, though exact counts remain uncertain. Detention affected approximately 31,000 people, according to records compiled by groups focused on remembrance and data gathering. Displacement hit around 53,000, as many left under pressure. When remembering specific sites, Omarska surfaces frequently, tied in public memory to an estimated 700 deaths. Since methods change between institutions and moments in history, presenting these values as commonly referenced estimates fits better than treating them as absolute totals

Brčko

What made Brčko stand out wasn’t just location but how its position along the Sava River shaped access across northern Bosnia. Sitting astride a key east-west path, it became pivotal during conflict due to supply routes, troop movements, and land connectivity. By 1992, discussions about Brčko focused heavily on bridges and river passage points. Control over these spots tied directly into dominance of the broader Posavina area. Holding the northern stretch meant influence over isolated communities, logistics flow, and the shape of future political units.

Spring 1992 saw escalating conflict draw the town into hostilities, as accounts began detailing shifts in law enforcement and military activity. Soon after, arrests and forced movements of people took hold. Information about Brčko, gathered through media reports and eventually organized by the United Nations, connected it to a broader network of sites where non-combatants endured severe confinement. Attention abroad grew fast; the matter

reached the Security Council, which insisted on visitation rights for holding locations while calling for adherence to global standards protecting individuals during wartime. Detention practices thus shaped much of the diplomatic response and evidence collection at the time.
When it comes to fatalities in Brčko, early media accounts focused more on patterns - like organized mistreatment, vanishings, people forced out - than on exact death counts at the time. Over years, investigations and survivor groups have suggested numbers anywhere from small clusters to several hundred across different episodes tied to holding sites and mass removals. These estimates shift depending on who is compiling them and how cases are counted. It remains reasonable to note that loss of life was significant and frequently mentioned by aid workers and rights monitors, without settling on one fixed overall figure unless anchoring to a specific documented set.

Zvornik

Geography plays a role, yet timing shapes much more. Along the Drina River, near the edge of Bosnia, sits Zvornik - a place where crossing between countries feels almost inevitable. Control here does not just mean holding land; during early 1992, it opens doors to forced displacement along exposed borders. When describing events from that period - months after March - the pattern looks clear: seizure shifts fast into tighter grip. Camps appear. Non-Serb residents vanish. The town becomes an example, though hardly unique, of how speed alters outcomes.

Reported chronologies commonly begin with the early April 1992 capture of key parts of the town and surrounding settlements, followed by patterns of house searches, arrests, and the channelling of detainees into makeshift facilities. UN human-rights reporting from early 1993 - drawing on information then available - describes Zvornik as taken by Serb forces on6 April 1992, situating the municipality among the early cases used to illustrate how rapidly “ethnic cleansing” practices could follow local military control. Subsequent UN-compiled material (presented as collected witness statements and investigative summaries rather than as a court narrative) also describes detention, torture, and killings in specific sites tied to the Zvornik area, reinforcing how the municipality entered the international record as more than a conventional battlefield.

Hundreds appear in later tallies for 1992, though initial counts drew debate. Some accounts suggest between 491 and 700 during the first wave of violence. Broader calculations rise further when including the entire region over the conflict's duration. When citing such data, it is most accurate to say that later estimates commonly range from X to Y. These numbers remain approximations, never confirmed by legal judgment.

Foča

Foča matters not just for its position but also for what happened there - situated along the Drina passage and paths leading to Montenegro, it emerged as a place defined by methods of dominance that included captivity, expulsion, and organized violence. During 1992, the

town's condition during conflict was frequently described through accounts showing how seizure of power rapidly reshaped routine existence: access to homes, freedom to move, and safety for those outside the Serb population now depended entirely on decisions made by military and political forces in charge.

A series of observed events in human rights inquiries shows control shifting at the local level, after which detentions began. Following those arrests came confinement sites established under duress. Then, environments emerged designed to drive non-Serb residents away. Fear played a role, though so did threats and physical harm. Many personal stories were recorded some time afterward. Still, witnesses broadly agreed on what took place. Descriptions of locations matched these statements closely. As a result, Foča became known as one example where forced removals, imprisonment, and assault unfolded in tandem. These acts did not appear random or separate. They appeared structured, part of an operating method.

2.5. Summer 1992: Hardening of the Conflict and Intensification of "Ethnic Cleansing" Allegations

2.5.1. The spread of military strategies aimed at territorial consolidation

Summer 1992 brought a shift in how observers saw the fighting in Bosnia and Herzegovina. Diplomats, aid workers, and reporters began describing it less as scattered outbreaks and more as calculated efforts to hold land. Instead of just winning skirmishes, groups used control over roads, river crossings, hills, and town offices to cement power. Territory mattered now - not because of immediate gains but due to long-term influence. Headlines spoke of corridors linking regions, while mayors vanished and supply routes changed hands. What started as chaos took on structure through movement across maps and seizure of buildings. Decisions made miles away shaped who held what bridge at dawn.

A key part of this consolidation strategy involved treating municipalities as centers of power. Controlling a town went beyond placing a flag on a government structure; it required command over local law enforcement, information flow, and everyday regulations - such as movement restrictions, roadblocks, paperwork demands, along with detention powers. Reports at the time consistently noted that when control changed hands, efforts quickly turned toward securing dominance: removing weapons from rivals, weakening competing power bases, altering social structures to prevent organized resistance. One explanation for why locations like Prijedor, Brčko, towns along the Drina, and areas around Sarajevo mattered lies here - they were seen not just as places, but leverage points where gains could trigger wider shifts in population and military advantage.

Looking at priorities back then clarifies why transport paths drew heavy attention during mid-1992 accounts. Instead of just discussing combat zones, analysts focused on efforts to

link regions while keeping access open. Moving across the northern stretch meant relying on the Posavina region along with the Sava waterway - a route seen as vital for lateral transit. Farther east, mention of the Drina passage came up again and again, a zone near boundaries where holding river towns and crossing points allowed quicker troop shifts plus influence over governance changes. Around Sarajevo, fighting followed a different shape - not quite urban warfare, rather a layered blockade setup. High ground mattered, alongside road entries and key sites like the airfield and major streets, giving pressure points over a center that carried distinct symbolic weight.

A clear sign that controlling territory was gaining global attention lies in how the UN Security Council started discussing foreign interference and troop arrangements within Bosnia. By May 1992, responding to worsening conditions, the Council called for an end to external meddling in Bosnia-Herzegovina - specifically naming Yugoslav People's Army units and parts of the Croatian military - and required those forces either withdraw, come under national command, or be disarmed. What stands out here is that observers were beginning to see beyond isolated unrest; instead, they viewed the violence as shaped by structured armies operating across borders, tied closely to who held land and how power moved through space.

What followed stemmed from the same reasoning: a buildup of global diplomatic force. By late May 1992, the Council responded once more to worsening conditions, criticizing Serbia and Montenegro's lack of compliance with past requirements; as a result, it imposed penalties authorized by Chapter VII. At the time, such moves were seen beyond mere retribution - they suggested a shift in perception, where actions within the conflict began being linked directly to decisions made at the state level, shaping how territory changed hands throughout the war.
What made the summer of 1992 stand out was how efforts shifted toward holding ground, not just fighting. One way this showed up was through force - artillery fire, taking elevated positions, setting up checkpoints along roads to limit mobility. Another layer came after, when new forms of local rule appeared quickly, sometimes called crisis committees or shadow administrations, though people living there could see them functioning in real time. These emerging groups took charge of safety and who could move where. Alongside such moves, control over information played a role: radio broadcasts and official announcements helped position these changes as necessary, cast certain communities as dangers, and make strict rules feel routine. Not every town did things the same way. Still, patterns across regions suggest that period marked a turn - not only conquering land, but making it stay conquered.
A striking feature of consolidation efforts emerged through restrictions on aid movement. When accounts of cut-off regions, halted supply trucks, and unreachable civilians grew more frequent, the Council shifted its wording - from vague requests toward clear directives tied to consequences.

By August 1992, it invoked Chapter VII, urging nations and groups to use whatever means required to support, alongside the UN, the flow of relief across Bosnia and Herzegovina - a rare firm stance signaling widespread belief that seized territory was being used to block help. At that time, the Council insisted on free entry for the International Committee of the

Red Cross into camps, jails, and holding sites - phrased as reactions to ongoing allegations, not final judgments - indicating how tightening authority in various zones began linking, within global commentary, to systems of confinement and pressure as tools of power.

2.5.2. Allegations of systematic violence against civilians (forced displacement, mass attacks)

In mid-1992, global accounts of conflict in Bosnia moved beyond framing events as isolated clashes, instead highlighting systematic pressure on non-combatant populations aimed at altering regional control and population makeup. Around this time, the phrase “ethnic cleansing” gained traction across diplomatic circles, relief operations, and news coverage, fueled by overlapping sources - statements from displaced people, fieldwork by reporters, aid delivery logs, and official government updates - that described similar tactics emerging repeatedly: threats and forced displacement of specific ethnic groups; confinement and mistreatment tied to efforts pushing them out; assaults on towns and city areas too broad to justify solely through military necessity. By August, these concerns reached a peak when the United Nations Security Council voiced deep unease over persistent evidence of serious breaches of humanitarian rules, naming actions such as mass expulsions of residents, unlawful holding sites where physical harm occurred, intentional strikes on unprotected individuals and medical infrastructure, deliberate blocking of food and medicine shipments, along with extensive damage inflicted upon homes and buildings

A key claim emerging here involved forced removal as a deliberate means of dominance, not just a consequence of shifting battle lines. Reports at the time often framed uprooting people as part of seizing local authority, enforced compliance, along with targeted threats. On 28 August 1992, in his initial submission, UN investigator Tadeusz Mazowiecki noted widespread, coordinated abuses and positioned “ethnic cleansing” as a primary explanation, pointing out that evidence gathered revealed repeated patterns aimed at fulfilling specific objectives. These narratives suggested pressure went beyond battlefield risks; instead, fear was methodically built through exclusion - local leaders sidelined, hostility focused on non-Serb communities, attacks after dark, burning homes, detentions, assaults, demolition of sacred buildings, and limits on travel, all narrowing options until leaving seemed inevitable. He also documented statements suggesting relocations were managed locally under duress, such as instances where individuals signed papers giving up their right to come back, leaving ownership unresolved - a detail which, should it hold, points to evacuation shaped by bureaucracy rather than chaos from gunfire

Shifting patterns of conflict brought more than just forced movement. In cities, bombardments and targeted shootings influenced how people lived day to day - their routes, routines, even decisions to flee. Though some forces claimed strikes aimed only at combat

zones, accounts from aid workers and envoys stressed harm to residents as central, not incidental, especially when homes, clinics, or safe passage routes came under fire. A statement by the Security Council in mid-1992 pointed clearly: it denounced intentional assaults on civilians, health infrastructure, emergency vehicles, along with blockades preventing essential aid. This framing signaled growing concern - not over war alone, but over systematic threats to protected lives and support systems. Later findings echoed such claims; one observer detailed Sarajevo's reliance on air-dropped goods, underscoring vulnerability. Attacks reached facilities meant to sustain life - UN sites, airstrips, supply hubs - which reinforced images of trapped populations enduring deliberate deprivation

Another set of accusations focused on holding people and mistreating them to pressure compliance, commonly seen during mid-1992 as tied closely to forced movement and shifts in population makeup. That year, the Security Council highlighted documented cases of "imprisonment and abuse of civilians in detention centres." Mazowiecki expanded on this idea by noting evidence that individuals were held specifically so they would abandon their houses, aligning with efforts toward ethnic removal. By October, Amnesty International had gathered material through conversations, press reports, and early field observations showing instances where freedom depended on agreeing to exit occupied zones, sometimes involving signed declarations promising relocation from areas under Serbian authority. At the time, verifying these reports was difficult due to limited entry, dependence on personal testimony, and possible influence of biased narratives; still, they gained weight by supporting a consistent pattern: confinement, fear tactics, and bureaucratic pressure used together to drive populations away while strengthening dominance.

That summer, by 1992, claims of large-scale killings grew harder to ignore. Reports on deaths began appearing through media inquiries, later supported by excavations once control shifted. In Mostar, according to Amnesty International's notes from June, Croatian troops regained territory near month's end. Two Reuters dispatches, early September and late August, referenced city officials stating that 150 corpses turned up in shared burial pits. Close-range gunfire from machine-type arms was said to have killed many. Still, Amnesty held back firm conclusions - citing thin witness accounts and work still underway to confirm facts. Even so, those figures spreading across global press wires started shaping how observers pictured what organized brutality could look like there

By mid-1992, reports of widespread civilian suffering began aligning closely with evidence of deliberate attacks on non-combatants. Around that time, research tracking population movements showed close to two million people uprooted inside the territory once known as Yugoslavia - an early sign of chaos taking shape at scale. Though planners at UNHCR thought they could anticipate needs, their internal papers from summer 1992 admitted reality moved far faster than predictions. Numbers alone started telling a story few expected just months before. What looked like scattered unrest turned, almost overnight, into mass dislocation across regions

2.5.3. Detention/camp allegations and a turning point in international public attention

Come summer 1992, stories about Bosnia shifted away from battlefield updates alone. Instead, growing attention turned to networks of camps running parallel to military advances - sometimes seen as helping them. It wasn't just claims of people locked up that stood out. More striking was how these sites were portrayed: daily pressure, mistreatment, threats built into their operation. Even more telling, detainee experiences tied directly to mass displacements across regions. Officials and aid workers spoke carefully back then - "unconfirmed," "witness statements," "reports still emerging." Yet by midyear, so many similar testimonies piled up that perception changed. The world started seeing the conflict differently - not only as land grabs - but as a pattern placing civilians at risk through organized confinement.

A shift began in early August 1992, when reporters reached certain detention locations in northwestern Bosnia, allowed entry only under watchful eyes. By then, visual details and personal accounts started reaching global readers through raw on-site observations. On 7 August that year, The Guardian printed a firsthand description from Omarska, close to Prijedor, showing gaunt prisoners, rigid routines, scarce meals, open fear, along with tight limits on visitor movement. At that moment, one detail stood out: groups like the ICRC or UN had not yet set foot inside Omarska despite growing unease over reported conditions. Reports of harsh treatment combined with absence of official oversight gave weight to the narrative. That mix turned these places into symbols not just of possible cruelty, but of zones closed off from outside confirmation.

One reporting period highlighted not just isolated sites but the broader system of confinement, where lines between transit zones, processing centres, and long-term detention faded. A Guardian report portrayed Trnopolje as an enclosed space built around an old school, packed with individuals held behind fences and armed guards, their legal standing unclear, release terms unknown. People inside rejected official labels, arguing whether it functioned as shelter or jail. Crucially for how stories unfold, that article reflected confusion in real time: some recounted killings they said occurred nearby or glimpsed indirectly, others mentioned violence without physical proof, while key sections remained off-limits to observers. These elements gave the account both intensity and ambiguity, making it difficult to treat as mere hearsay despite incomplete verification.

Soon after gaining public attention, official bodies responded - not by confirming truths, but by reacting to what had been reported. On 13 August 1992, the UN Security Council passed Resolution 771, expressing deep concern over ongoing accounts of large-scale abuses - and importantly - insisting the ICRC receive prompt, uninterrupted entry to camps, jails, and holding sites. What stands out is this: the Council avoided claiming its own findings; rather, it acted based on how frequent and aligned the reports were, justifying immediate access for a neutral aid group. Beyond access, the resolution urged countries and global agencies to gather

evidence of misconduct and share it openly, while assigning the Secretary-General the role of compiling these materials - a shift turning scattered claims into structured record-keeping.

At the same time, United Nations reports on human rights during those months pointed to detention claims as elements within a larger pattern of pressure on non-combatants. The initial account by Special Rapporteur Tadeusz Mazowiecki, dated 28 August 1992, set a clear tone: it noted frequent accusations, underlined how "ethnic cleansing" tied closely to grave abuses, while framing confinement and ill-treatment as persistent traits amid turmoil. Documents issued by the UN in early 1993 still cited suspicions about camps, along with reactions to images of detainees shown the previous August - once more showing reliance on reported accounts due to limited entry, instead of confirmed findings

Something shifted, clearly - why did global awareness pivot here? For one thing, claims about the camps created exposure different from sieges or assaults on villages, grim as those were; these locations had names, images, details that fit into stories more easily. Reporters could identify exact spots, outline daily life inside, show individual people, making empathy spread faster across borders, pushing governments to respond. Another factor mattered just as much: the idea of an organized camp network gave a clear reason for why so many fled. Though displacement often appeared disorderly amid conflict, evidence from detention centers pointed to deliberate patterns: people held, mistreated, after which they were let go or moved - circumstances that, per numerous testimonies, nudged them into leaving. While the exact reasoning behind such actions stayed unclear, the growing body of reports lent credibility - to some extent, at least - to claims that imprisonment served broader pressure tactics.

What made this change in focus significant was how it pushed efforts toward organised ways of collecting evidence. By October 1992, the Security Council passed Resolution 780, asking the Secretary-General to form a neutral panel to review and assess reports on serious violations. The order of events tells you something useful: even though media coverage and public outcry had not confirmed what happened, they played a role in launching systems meant to convert claims into verified records. That summer, then, didn’t just raise alarm - instead, it shifted global reactions toward opening access, gathering proof, and building frameworks for responsibility, placing accusations around camps and detentions at its core.

2.5.4. Bosnia and Herzegovina’s search for an international legal framework: the emergence of “state responsibility” as a central frame

Come late 1992, leaders in Bosnia and Herzegovina wrestled with a crisis rooted as much in law as in politics. Reports at the time began framing the conflict less as isolated events, more as recurring actions - cities under siege, forced removals, camps, mass flight. Responses from

abroad lacked cohesion. Aid brought some relief yet did nothing to halt efforts aimed at reshaping borders by force. Attempts to secure ceasefires kept collapsing. Blame - who was accountable, whether local militias, emerging governing bodies, or officials across nearby borders - stayed mired in debate. Amid such uncertainty, Bosnian authorities turned toward a legal approach capable of turning repeated violence into grounds for claims between states: the doctrine of state responsibility. This meant a country might be held liable not just for actions carried out by its own institutions, but also for those it endorsed, enabled, controlled, or failed to block when required by binding agreements.

A major factor behind the growing acceptance of this perspective lay in how UN statements throughout 1992 shifted focus away from internal chaos, highlighting cross-border actions and international duties. Security Council Resolution 752, adopted on 15 May 1992, went further than urging a halt to fighting - it required an end to “all forms of interference from outside Bosnia and Herzegovina,” naming forces such as those from the Yugoslav People’s Army (JNA) and parts of the Croatian military, while tying adherence directly to upholding Bosnia's independence and borders. Such wording carried political weight since it opened space for viewing accountability as extending beyond fighters within the country; rather, it implied that decisions made by powers outside Bosnia played a role in shaping the course of violence. Similarly, Resolution 757, passed on 30 May 1992, criticized leaders of the Federal Republic of Yugoslavia (Serbia and Montenegro) for failing to enforce earlier demands and introduced sanctions authorized under Chapter VII. Without making legal rulings, these documents reshaped diplomatic conditions so that Bosnia could assert the situation involved not just urgent human suffering, but also breaches of state-level commitments.

Meanwhile, global discourse began shifting in ways that quietly steered conversations into the realm of treaty-bound accountability. Around late 1992, "ethnic cleansing" started appearing regularly in news coverage - not just as a description, but as a concept implying deliberate redesign of land and population, not mere chaos. A telling moment came with UN General Assembly Resolution 47/121 on December 18th; its opening lines cited escalating attacks aimed at seizing territory through coercion. It pointed to widespread, methodical breaches of basic rights, forced displacements on large scales, alongside reports of makeshift prisons and holding sites scattered across zones of conflict. Most notably, from a legal standpoint, it declared ethnic cleansing equivalent to genocide. Though not a court ruling, this wording carried weight - it tied emerging labels used to describe atrocities directly to an established international crime rooted in binding agreements among nations.

At the same time, United Nations bodies began assembling a framework of documentation - once more, without asserting definitive truths - that viewed the volume of accusations as reason enough to start gathering data systematically. Because concerns about broad abuses kept rising, Security Council Resolution 771, adopted on 13 August 1992, insisted on access for the International Committee of the Red Cross to facilities where people were held; meanwhile, it urged countries and global agencies to gather violation reports and share them openly, directing the Secretary-General to compile those submissions. Following that step, Resolution 780, passed on 6 October 1992, instructed the Secretary-General to form rapidly

an unbiased panel of experts tasked with reviewing and interpreting the accumulated material, aiming to assess signs of serious breaches and additional infractions. What mattered most for Bosnia's approach under law was less any conclusive validation from these moves, yet more how they turned scattered alerts into organised archives - enabling a nation, theoretically, to anchor its arguments in verified records built through multilateral effort instead of fragmented news stories.

2.6. Institutionalisation of International Response (1992)

In 1992, global efforts around Bosnia and Herzegovina shifted toward more organised forms - not due to clarity on events, but because repeated accounts of sieges, forced movement, imprisonment, and blocked aid pushed the UN toward coordinated responses. At first, actions focused largely on humanitarian needs: opening corridors, moving supplies, ensuring safety for non-combatants - steps taken while diplomatic talks repeatedly failed to secure lasting truces. Over time, another strand developed alongside: gathering evidence and tracking abuses, as parts of the UN started setting up systems to record incidents, evaluate claims, prepare for future legal processes, even though assigning blame remained off the table.

2.6.1. The UN's humanitarian-centred approach and debates over protection capacity

In 1992, the United Nations focused on averting large-scale human suffering instead of enforcing military solutions. Relief organisations and official updates highlighted delivery routes, entry permissions, and supply movements - suggesting that keeping people alive stood as the only realistic shared goal. Still, discussions at the time questioned if aid-focused strategies offered real protection once fighters began halting trucks, tightening blockades, or redirecting displaced populations. Records from UNHCR show how fast initial plans became outdated, as worsening conflict and shrinking access forced constant shifts in assistance efforts.

2.6.2. UN Security Council measures: sanctions, humanitarian access, and the articulation of violations

Step by step, the Security Council moved through different levels of response in 1992. Measures targeting national conduct were put in place, shaped largely by prior failures to follow international requests. Alongside these, wording focused on delivering aid began appearing more often in official texts. A sharper way of describing illegal acts also emerged during this time. In one case, Resolution 757 brought restrictions against the Federal Republic of Yugoslavia due to ignored obligations. Later that year, Resolution 770 used powers from Chapter VII to urge countries to ensure relief efforts could proceed without

obstruction. By August, Resolution 771 reacted strongly to ongoing accounts of large-scale abuses like forced removals and mistreatment in custody. It required the International Committee of the Red Cross be allowed into holding sites and places where people were held. Each decision drew its urgency from accumulating testimonies rather than confirmed legal findings.

2.6.3. The expansion of UNPROFOR's role and operational constraints on the ground

In 1992, UNPROFOR began taking on more duties after relief efforts gained importance during regional turmoil. Although originally centred on Croatia, its role shifted as Resolution 758 approved broader responsibilities and troop increases based on advice from the Secretary-General. Humanitarian access emerged as a key concern under Resolution 776, which cleared the way for additional deployments. Despite these changes, real-world challenges persisted because established military guidelines allowed force only when defending personnel. Units with minimal gear had to navigate unstable zones where local approval could vanish without warning. Historical records from the mission itself highlight how traditional peacekeeping limits affected what UNPROFOR was able to achieve amid shifting front lines.

2.6.4. Diplomatic platforms: the London Conference and the opening of negotiation channels

Despite ongoing hostilities, diplomacy moved parallel to United Nations actions, aiming to turn shifting military conditions into structured talks. Initiated in August 1992, the London Conference set up a cooperative format centred on halting fire, limiting disruptive actors, and establishing negotiation norms. This was less about ending conflict immediately, more about aligning different sides under one procedural umbrella. Although enforcement lagged, the resulting "Statement of Principles" tried anchoring dialogue through mutual pledges - such as refraining from attacks and observing truces - as foundational anchors within an unstable environment.

2.6.5. Documentation of violations and the strengthening of the "international adjudication" agenda

In 1992, near year's end, the United Nations shifted toward clearer systems for recording events. Rather than leaving evidence fragmented, Resolution 780 directed the Secretary-General to form a neutral panel focused on reviewing claims of serious violations. This group assessed data gathered under prior mandates, linking early expressions of concern to later efforts at building coherent records. Although it did not assign blame, its work helped

lay groundwork for possible legal proceedings down the line. Over time, internal documents acknowledged how this body evaluated material collected through previous actions. Structured analysis replaced disjointed accounts, creating pathways where facts might inform justice after crises passed.

UNITED NATIONS

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Security Council

Distr.
GENERAL

S/RES/780 (1992)
6 October 1992

RESOLUTION 780 (1992)

Adopted by the Security Council at its 3119th meeting, on 6 October 1992

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Recalling paragraph 10 of its resolution 764 (1992) of 13 July 1992, in which it reaffirmed that all parties are bound to comply with the obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, 1/ and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches,

Recalling also its resolution 771 (1992) of 13 August 1992, in which, inter alia, it demanded that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, immediately cease and desist from all breaches of international humanitarian law,

Expressing once again its grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia and especially in Bosnia and Herzegovina, including reports of mass killings and the continuance of the practice of "ethnic cleansing",

1. Reaffirms its call, in paragraph 5 of resolution 771 (1992), upon States and, as appropriate, international humanitarian organizations to collate substantiated information in their possession or submitted to them relating to the violations of humanitarian law, including grave breaches of the Geneva Conventions being committed in the territory of the former

1/ United Nations Treaty Series, vol. 75, Nos. 970-973.

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Yugoslavia, and requests States, relevant United Nations bodies, and relevant organizations to make this information available within thirty days of the adoption of the present resolution and as appropriate thereafter, and to provide other appropriate assistance to the Commission of Experts referred to in paragraph 2 below;

2. Requests the Secretary-General to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse the information submitted pursuant to resolution 771 (1992) and the present resolution, together with such further information as the Commission of Experts may obtain through its own investigations or efforts, of other persons or bodies pursuant to resolution 771 (1992), with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia;

3. Also requests the Secretary-General to report to the Council on the establishment of the Commission of Experts;

4. Further requests the Secretary-General to report to the Council on the conclusions of the Commission of Experts and to take account of these conclusions in any recommendations for further appropriate steps called for by resolution 771 (1992);

5. Decides to remain actively seized of the matter.

2.7. Late 1992–Early 1993: Conflict Expansion, Peace Efforts, and the "Legal Threshold"

Toward the end of 1992, media coverage portrayed the fighting in Bosnia and Herzegovina less as a brief spasm after Yugoslavia's collapse and more as a worsening crisis testing global response capacities. Between October 1992 and March 1993, patterns emerged showing how events progressed along three overlapping tracks. Violence across regions kept spreading while becoming more systematic. At the same time, diplomatic efforts took on a structured shape, resembling an evolving framework for peace talks. Meanwhile, another shift appeared - the moment when actions by world actors started shifting from aid delivery and negotiations toward setting up systems to record abuses and assign responsibility. This phase marked a turning point in how such conflicts would later be addressed legally.

Something changed in October 1992. That month, the Security Council took notice of growing problems in how operations were running. Instead of reacting now and then with urgent pleas, it began treating the crisis as something persistent - needing steady oversight. A decision came on 9 October: military aircraft would no longer be allowed over Bosnia and Herzegovina. This rule gave UNPROFOR the job of watching whether others followed it, though flights for aid or UN missions could still pass. The restriction alone didn't alter the direction of fighting. Still, it pointed to a new approach - one based on practical rules meant to hold firm, expecting breaches before they happened, demanding observation instead of talks.

Earlier that same month, the Council took clear steps to build evidence-based structures. On 6 October 1992, through Resolution 780, authority was given to the Secretary-General to form a Commission of Experts tasked with reviewing data on grave breaches. States and global bodies were asked to gather and forward pertinent documents. Fact-finding was not its goal; rather, it signalled recognition that waves of reports - on executions, detentions, forced removals, among other acts - needed coordination beyond scattered claims. Looking back, this moment began steering events toward responsibility. At the time, though, it served mainly as passage from urgent appeals to careful examination.

In late 1992, the Council turned up the pressure using wider enforcement tools. On 16 November, Resolution 787 strengthened sanctions while clearly stating that gaining land through violence - especially via acts labeled "ethnic cleansing" - could not be tolerated. What mattered most then was less about settling disputed facts, more about how steadily the crisis came to reflect deep breaches of core principles: state autonomy, borders, civilian safety. At the same time, concerns over aid delivery and people held in custody kept surfacing across UN bodies, pushed forward by growing unease over ongoing accounts, not legal rulings.

Early in January, a clear shift emerged in how political bodies framed their statements through legal language. Came mid-December 1992 when the General Assembly passed

Resolution 47/121, rejecting the practice known as “ethnic cleansing,” labelling it “a form of genocide,” while calling for adherence to prior Security Council decisions. Though no court ruling, its wording carried political weight; still, it played a role by making common use of terms tying widespread reports of forced removals, imprisonment, and killings to obligations under the Genocide Convention. That move slowly reshaped thinking: instead of seeing the situation only as aid-related or tied to maintaining order, more began viewing it through duties defined by law. By then, expectations had grown stronger - how states responded needed grounding in binding rules, not just goodwill.

Even as talks gained structure, efforts to shape a path toward truce took clearer form. What stood out most by early 1993 was the Vance–Owen proposal, tied to discussions in Geneva and officially noted on January 30 that year within United Nations conflict resolution files. Regardless of whether it might have worked, the significance of the deal lay in its institutional meaning: trying to turn a deepening conflict into a fixed political map just when evidence showed populations shifting due to force. While envoys met more frequently, actual fighting kept moving faster than any agreement could catch up. One challenge shaped the start of 1993 - diplomacy built charts and lines others ignored amid ongoing bloodshed.

In early 1993, clarity around legal action sharpened noticeably. The Security Council passed Resolution 808 on 22 February that year, stating clearly: a court of international standing must form to handle prosecutions for grave breaches of humanitarian law in the former Yugoslavia, dating back to 1991. This move marked something distinct - not just a shift toward halting bloodshed or organizing relief efforts, but a turn toward justice through courts, structured institutions, and careful record-keeping. Behind this resolution stood layers of groundwork, built slowly by ongoing fact-finding missions, especially those set in motion when Resolution 780 launched its expert panel

By March 1993, the idea of crossing a line played out in two separate arenas - daily operations and legal standing. In practice, what began as a monitored restriction on flying transformed into something more rigid; on the last day of that month, Resolution 816 broadened prior limits, allowing forces to take whatever actions were needed to uphold the rules, though flights linked to the United Nations or aid efforts remained exempt. Such moves fit within a broader trend where warnings gave way to binding orders under Chapter VII, suggesting officials no longer believed appeals alone could hold back repeated breaches amid ongoing violence.

Back then, legal moves shaped new understandings of duty between nations. In early 1993, Bosnia brought a case to the World Court targeting Yugoslavia - specifically Serbia and Montenegro - citing the Genocide Treaty's ninth clause as grounds for hearing it. Whether the argument would finally hold weight mattered less than the gesture of starting it, particularly during those months when perceptions began shifting abroad. Instead of seeing violence just through isolated offenses, Bosnia pushed to redefine events globally - as matters tied to national duties around preventing mass atrocities. This approach ran parallel to changes in diplomatic talk by late 1992, where accusations like "ethnic cleansing" started connecting more clearly to rules meant to block genocidal actions.

A pivot emerges when viewing late 1992 into early 1993. Reports of widening war - blockades, forced movements, claims of unlawful imprisonment, along with intensified efforts to claim land - unfolded alongside complex diplomatic moves meant to bring calm, though these relied on conditions that kept changing. During those same months, global reaction shifted past a legal line: first via setting up organised ways to collect evidence (the Commission of Experts), then by agreeing officially to form a judicial body, followed by Bosnia launching a case between states under the Genocide Convention. Seen in sequence, this marks where outside involvement stopped resembling mere emergency control and started forming something closer to international legal process - shaped not by rulings made then, yet built instead upon growing documentation deemed far too serious, persistent, and impactful for silence. That weight forced institutions forward.

2.8. Debates and implementation efforts regarding security measures (including no-fly zone discussions)

Toward the end of 1992, media coverage portrayed the fighting in Bosnia and Herzegovina less as a brief spasm after Yugoslavia's collapse and more as a worsening crisis testing global response capacities. Between October 1992 and March 1993, patterns emerged showing how events progressed along three overlapping tracks. Violence across regions kept spreading while becoming more systematic. At the same time, diplomatic efforts took on a structured shape, resembling an evolving framework for peace talks. Meanwhile, another shift appeared - the moment when actions by world actors started shifting from aid delivery and negotiations toward setting up systems to record abuses and assign responsibility. This phase marked a turning point in how such conflicts would later be addressed legally.

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2.8.1. Peace plans and negotiation drafts (notably the Vance–Owen process)

Even as fighting persisted, diplomacy gained momentum during late 1992 and early 1993, aiming to turn military outcomes into a political agreement on territory and governance. Although overshadowed by ongoing hostilities, negotiations led by Vance and Owen took center stage. Their initiative yielded a peace proposal signed on 30 January 1993 titled "Agreement for Peace in Bosnia and Herzegovina." This document combined ideas about state structure, land division, and enforcement mechanisms within one framework. By mid-year, however, its viability began unraveling under pressure from shifting front lines.

By March 1993, United Nations documents show diplomats racing against time; the co-chairs stayed in New York pushing for consensus on a sweeping peace deal, adjusting its structure while awaiting signatures - though adherence within affected areas still looked shaky. This moment stands out because proposed political frameworks based on territorial divisions and shared authority existed alongside vivid accounts of blockades, forced movement, and intimidation, making genuine agreement and repatriation difficult to achieve. Because of this, the Vance-Owen plan reveals a shift: efforts to stop fighting had evolved into full-scale

state-building designs by early that year, even as ongoing violence kept altering the very grounds those plans depended upon.

2.8.1.1. The factual landscape: siege warfare, forced displacement, and continuity of mass-violation allegations

So in late 1992 to early 1993 the period was described as continuity also entrenchment with siege warfare persisting, population movements speeding up, and allegations of mass violations staying central to international attention, as well as UNHCR and partner agencies described their work as a relief operation conducted under extraordinary obstruction and insecurity, and, a July 1992 UNHCR strategy note stressed that earlier humanitarian planning had been overtaken by events, showing how civilian needs outpaced institutional capacity.

An August 1992 international meeting report stated that UNHCR was providing protection and assistance to "over two , a half million" people affected by the conflict (refugees, displaced persons, in addition to other victiMs across the former Yugoslavia an indicator of the scale that was already being reported before the end of 1992.

So in parallel the Security Council articulated the stakes in language keyed to reported practises rather than adjudicated taking everything into account, Resolution 787 (16 November 1992) reaffirmed that any taking of territory by force in addition to any practise described as ethnic cleansing was unlawful and unacceptable, reflecting an institutional posture that treated reported demographic coercion as a central feature of the crisis.

The result by early 1993 was a factual landscape in international discourse defined by three recurring elements. These were prolonged siege conditions, mass displacement, and the persistent allegation that coercive violence against civilians was being used to consolidate territorial control.

2.8.1.2. Bosnia and Herzegovina's turn toward the "genocide" characterisation: transforming political-military facts into a legal claim

By late 1992, the rhetorical and political framing of the war was increasingly intersecting with **Genocide Convention vocabulary**. The UN General Assembly's Resolution **47/121 (18 December 1992)** condemned the reported policy of "ethnic cleansing" and explicitly stated that it was "a form of genocide"—a political declaration rather than a judicial finding, but one that helped normalise genocide language in official international discourse. 1 This mattered because it enabled Bosnia and Herzegovina (in diplomatic and legal argumentation) to re-describe a set of political-military events—sieges, expulsions, detention allegations, mass violence—as implicating **specific treaty obligations** owed by states.

That shift became concrete in **March 1993**, when Bosnia and Herzegovina **instituted proceedings** against Yugoslavia (Serbia and Montenegro) at the International Court of Justice, grounding jurisdiction in **Article IX of the 1948 Genocide Convention**. Importantly, the strategic move here was not to "wait for" criminal accountability mechanisms alone, but to convert the conflict's reported patterns into an interstate claim about **state responsibility**: obligations to prevent and not to be complicit in genocide-linked conduct. In this sense, the "genocide" characterisation functioned as a bridge from political outrage and humanitarian crisis management to a structured legal claim framed in treaty terms.

2.8.1.3. The deepening controversy over links between Serbia–Montenegro and Bosnian Serb forces (support, direction, and control allegations)

Controversy over Serbia–Montenegro's relationship to Bosnian Serb forces deepened because contemporaneous UN texts repeatedly treated the conflict as involving **cross-border interference and external leverage**, even while the precise factual matrix remained disputed. In May 1992, Security Council Resolution **752** demanded that "all forms of interference from outside Bosnia-Herzegovina," including by **units of the JNA** and elements of the Croatian Army, "cease immediately," and called on neighbours to respect Bosnia's territorial integrity. Later that month, Resolution **757** condemned the failure of the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro), including the JNA, to take effective measures to fulfil Resolution 752's requirements—signalling that, institutionally, the Council was willing to attribute significant responsibility to Belgrade's actions or omissions at least at the level of compliance with UN demands.

Human-rights reporting from the period also captured the controversy in carefully calibrated language. Special Rapporteur Tadeusz Mazowiecki's **First Report (28 August 1992)** recorded that the FRY leadership did not openly endorse "ethnic cleansing," yet stated that the FRY and Serbia exercised "very great influence" over the Bosnian Serb entity and that there was "thus far no evidence" they had taken effective measures to use that influence to stop the practice. Taken together, these sources show how late 1992–early 1993 debate was framed: not only *whether* atrocities were being reported, but *who* could be said to enable, sustain, or restrain the armed structures associated with those reports.

2.9. The Final Steps Toward Seising the ICJ (First Quarter of 1993)

2.9.1. The claim that events approached a "point of irreparable harm" (emphasis on urgency)

In early 1993, Bosnia and Herzegovina increasingly framed the unfolding conflict as nearing a **"point of irreparable harm"**—not simply because violence was severe, but because the *reported* consequences were cumulative and effectively irreversible. The argument was that

prolonged siege conditions, repeated expulsions, and continuing large-scale civilian victimisation were transforming the country's demographic and institutional landscape in ways that could not later be repaired by a ceasefire alone. In this sense, urgency was not rhetorical decoration; it was a claim about time-sensitive injury: once communities were emptied, property and records destroyed, and civilians killed or dispersed, later legal or political settlements would have little practical ability to restore the pre-war status quo.

This framing also served a procedural function. If the harm was truly "irreparable," then delay would not be neutral—it would be consequential. Bosnia's portrayal of urgency thus aimed to justify why an international legal forum had to be seized **immediately**, rather than after negotiations ran their course. The notion of irreparable harm also helped unify diverse reported abuses into a single storyline: separate events (sieges, detention allegations, village attacks, expulsions) could be presented as interconnected parts of a continuing trajectory that was pushing the conflict beyond the point where ordinary diplomacy could prevent permanent damage.

2.9.2. Bosnia and Herzegovina's strategy of protection through international law (diplomacy alongside adjudication)

Bosnia's move toward the ICJ was best understood as a strategy of **protection through international law**, pursued alongside—rather than instead of—diplomacy. In early 1993, negotiation channels and humanitarian initiatives remained active, but Bosnia increasingly treated them as structurally vulnerable: ceasefires were frequently short-lived, humanitarian access depended on compliance by armed actors, and political talks struggled to overcome facts being created on the ground through reported displacement and coercion. Adjudication offered a different kind of instrument: it could translate the conflict's reported patterns into a dispute about binding obligations and, potentially, produce authoritative international engagement not dependent on the shifting incentives of battlefield parties.

This approach also had diplomatic value. Seising a court could increase pressure, shape international messaging, and reinforce Bosnia's claim to be acting through lawful channels rather than reciprocal escalation. In that sense, "protection" was both practical and symbolic: practical because legal proceedings could support urgent measures and international scrutiny; symbolic because it sought to anchor Bosnia's position in a universal legal order at a moment when political bargaining seemed unable to halt the reported harms.

2.9.3. Clarifying the core legal problem: attribution and the duty to prevent, rather than isolated acts alone

A decisive step in early 1993 was the effort to clarify that the central question was not only whether atrocities had occurred, but **how responsibility could attach at the state level**.

Bosnia's framing increasingly emphasised *attribution*—the claim that conduct on the ground could be linked to a state through support, direction, control, or other connecting mechanisms—and the **duty to prevent**, which focuses on whether a state with influence over relevant actors failed to take reasonable steps to stop the gravest harms.

This framing matters because it shifts analysis away from isolated episodes and toward relationships: who supplied, financed, trained, coordinated, or enabled armed structures; who had leverage; who could foresee escalating harm; and whether that leverage was used to restrain or instead to facilitate continued abuse. It also changes the temporal logic: prevention obligations are forward-looking, so the legal core becomes not only what happened yesterday, but what could happen tomorrow if patterns continue. In this way, attribution and prevention served as the legal bridge between the reported reality of violence and a claim that an interstate remedy was both appropriate and urgent.

2.10. Institution of Proceedings

In early 1993, Bosnia and Herzegovina's decision to institute proceedings before the International Court of Justice should be read as a strategic attempt to **reframe the conflict's reported realities into an interstate legal dispute**. Up to that point, international engagement had largely operated through diplomacy, humanitarian relief, and political condemnation, often expressed in the language of "reports" and "allegations." By initiating proceedings, Bosnia sought to move the discussion into a forum designed to address **legal responsibility at the level of states**, rather than only the criminal liability of individuals or the political accountability of parties to negotiations. The significance of this procedural step lies not only in what Bosnia alleged had occurred, but in the choice to treat those allegations as raising a justiciable question about treaty obligations—thereby trying to convert ongoing facts on the ground into a dispute governed by established legal categories and institutional procedures.

2.10.1. The filing of *Bosnia and Herzegovina v. Serbia and Montenegro* — **20 March 1993**

On **20 March 1993**, Bosnia and Herzegovina formally filed an application instituting proceedings against the Federal Republic of Yugoslavia (Serbia and Montenegro). The timing mattered. The first months of 1993 were widely reported as a period of continuing mass displacement, persistent siege conditions in key areas, and ongoing allegations of grave abuses—alongside diplomatic initiatives that had not yet delivered a stable settlement. The filing can therefore be understood as an effort to create an additional layer of international engagement at a moment when Bosnia perceived that political processes alone were insufficient to halt or reverse the reported trajectory of harm. In practical terms, the date anchors a "before and after" structure in your narrative: events and allegations prior to March 1993 form the immediate factual backdrop, while the filing signals Bosnia's shift toward legalisation of the dispute in parallel with continuing diplomacy.

2.10.2. The application's core logic: bringing questions of state responsibility before the ICJ through alleged breaches of the Genocide Convention

The core logic of the application was to present the conflict not merely as a civil war with atrocities, but as a situation in which **a state could bear international responsibility** in connection with conduct described as genocidal in character. Bosnia's approach relied on the Genocide Convention's nature as a treaty that primarily addresses **state obligations**: it is not limited to condemning individual perpetrators, but also imposes duties on states to prevent and punish genocide and regulates complicity-related conduct. By invoking the Convention, Bosnia attempted to convert reported patterns—killing, forced displacement linked to violence, detention abuses, and other alleged mass-violation practices—into claims that another state had breached treaty obligations through its own actions, its support for relevant actors, or its failure to use influence to prevent prohibited conduct.

In short, the application sought to transform contested political-military facts into a structured legal question: whether, given the alleged patterns and alleged cross-border linkages, treaty-based responsibilities of a state had been violated in a way that the ICJ could adjudicate.

3. IN ACCORDENCE WITH INTERNATIONAL LAW OF THE UNILATERAL DECLARATION OF INDEPANDENCE IN RESPECT OF KOSOVO (ADVISORY OPINION - AGENDA ITEM II)

3.1. Introduction to the Advisory Opinion

The Kosovo Advisory Opinion arose from a highly polarised international environment following Kosovo's 2008 **unilateral declaration of independence (UDI)** and the rapid divergence of state responses through recognition and non-recognition. Rather than proceeding through contentious litigation—where jurisdiction would likely have been blocked by the requirement of state consent—the matter was brought to the International Court of Justice via a request for an **advisory opinion**, asking whether the declaration was "in accordance with international law." The advisory route allowed the question to be framed as a legal inquiry capable of guiding United Nations deliberation, while enabling broad participation by states and relevant organisations through written and oral submissions.

The legal architecture of the advisory question is defined by its **scope discipline**. The request did not ask the Court to decide whether Kosovo is a State, whether recognitions were lawful

or required, or what Kosovo's final political status should be. Instead, the focus is the legality of the **act of declaring** independence—whether international law contains a rule that prohibits such a declaration, and whether any special legal framework applicable to Kosovo after 1999 imposed constraints on that act. This distinction mattered because the political controversy surrounding Kosovo often conflated declaration, secession, recognition, and statehood; the advisory framing sought to isolate a narrower legal problem.

A central contextual feature is Kosovo's post-1999 internationalised governance setting, structured by **UN Security Council Resolution 1244 (1999)** and the establishment of **UNMIK**, an interim UN administration. This framework created a complex institutional environment in which local political institutions developed under international supervision while final status remained unresolved. The advisory process therefore raised questions about **authorship and capacity**: who, legally, issued the declaration; whether they acted as organs bound by the interim constitutional framework; and whether the declaration should be analysed as the act of "provisional institutions" or as a different category of political actors. These issues matter because the applicability of constraints may depend on the institutional identity of the authors and the legal regime governing them.

On the substantive plane, the advisory submissions typically revolved around several doctrinal axes: whether there is a general international-law prohibition on declarations of independence; the reach of the principle of **territorial integrity**and whether it constrains non-state actors; the relevance and limits of **self-determination** in non-colonial settings; and how a special UN-created regime interacts with general international law (often framed through lex specialis reasoning). The advisory opinion setting thus provided a structured forum for transforming a divisive political dispute into a set of legally manageable questions about norms, institutional frameworks, and the legal character of a unilateral declaration within an internationally supervised transitional order.

3.2. Orientation and Scope

3.2.1. Purpose of Agenda Item II

Agenda Item II functions as the **gateway** into the Advisory Opinion (the **Opinion**) on Kosovo's unilateral declaration of independence. Its purpose is to set the analytical frame **before** any substantive legal debate begins, ensuring that the discussion remains anchored to the precise mandate and institutional setting of the Court's advisory function. In an advisory proceeding, the Court is not asked to resolve a bilateral dispute between litigating parties in the same manner as contentious cases. Instead, it responds to a **legal question** put to it by a competent UN organ. Agenda Item II therefore serves to clarify why the advisory route was chosen, what kind of legal product the Court is expected to deliver, and what discipline should govern the narrative that precedes the Court's analysis.

This section should also articulate the **pedagogical objective** of the agenda item: it equips the reader (or committee) with the minimum architecture needed to understand how the request

arrived at the Court and how the Court will approach it. That involves distinguishing political controversy from justiciable legal inquiry, identifying the relevant institutional actors (UN General Assembly as the requesting organ; the Court as the advisory body), and clarifying that the Opinion is intended to provide legal guidance within the UN system rather than to compel compliance through direct enforcement.

3.2.2. The Exact Object of Review (legality of the declaration, not recognition)

The Advisory Opinion (the **Opinion**) is confined to a single, carefully delimited inquiry: whether the **unilateral declaration of independence**—as a juridical act—was **in accordance with international law**. The focal point is the *declaration itself*: its issuance, its legal character, and the rules of international law that might govern such an act in the particular context in which it was adopted. This means the analysis is not a referendum on Kosovo's political desirability, nor an endorsement or rejection of any diplomatic position; it is a legal assessment of whether any applicable rule **prohibited** the making of that declaration.

The most important implication of this framing is what the Opinion does **not** decide. First, it does not determine whether Kosovo became a State as a matter of international law. Statehood depends on a broader factual and legal matrix—effective government, territory, population, and the broader international environment—and the Opinion's question is narrower than that inquiry. Second, it does not adjudicate the legality or legality-effects of **recognition**. Recognition is a unilateral act of states, shaped by political judgment and legal considerations, but it is not the object of the advisory question. Whether states were right to recognise Kosovo, whether they had a duty to do so or a duty not to do so, and what recognition implies for third states are questions that may appear in the background as context, but they are not what the Court is asked to resolve.

Third, the object of review is not the general legality of **secession** as a political project. Secession debates often merge three distinct issues—(i) the legality of declaring, (ii) the legality of separating, and (iii) the consequences of being recognised. The Opinion's object lies primarily in the first category. International law does not operate as a comprehensive "domestic constitution" for territorial rearrangements; rather, it supplies certain constraints—most notably those connected to the unlawful use of force, respect for territorial integrity, and, depending on the circumstances, the operation of special regimes created by the United Nations. The assessment therefore asks whether the act of declaring independence violated any such constraints, including any **special legal framework** applicable to Kosovo after 1999.

Accordingly, the correct way to read the Opinion's scope is this: it addresses *the permissibility of issuing the declaration under international law*, and it leaves open—by design—broader disputes about statehood, recognition, and the ultimate political settlement.

3.2.3. Key Terms and Abbreviations (UDI, ICJ, UNMIK, UNSC)

Defining core terms at the outset is not cosmetic; it is essential to avoid analytical drift in an advisory-opinion setting. **UDI (Unilateral Declaration of Independence)** should be defined as the formal instrument (or set of acts) by which Kosovo's representatives purported to declare independence. The key is to treat it as a **legal act** whose character (who authored it, in what capacity, and under what claimed authority) will later matter to legal analysis—especially when assessing whether any legal regime applied to the authors and the act.

ICJ (International Court of Justice) should be defined not only as the UN's principal judicial organ, but specifically in its **advisory capacity**: the Court issues an opinion in response to a request from a UN organ, producing authoritative legal reasoning that informs UN practice and member-state positions. This is different from contentious jurisdiction where parties litigate binding disputes.

UNMIK (United Nations Interim Administration Mission in Kosovo) needs a definition that captures its role as an institutional and normative context. UNMIK denotes the interim international administration established to govern Kosovo after 1999, including its civil administrative authority and its relationship with local provisional institutions. For Agenda Item II, the essential point is that UNMIK signals a **special governance regime**, which may shape what rules were applicable to institutional actors operating within that framework.

UNSC (United Nations Security Council) should be defined in connection with its lawmaking and management role through binding resolutions and mandates—most notably the resolution establishing the post-1999 framework. Even before merits, the UNSC matters because it represents the source of the **special legal context** within which Kosovo's governance operated.

3.2.4. Structure of the Discussion (what will be covered up to the opening)

First, a **minimal factual scaffold**: only the background necessary to understand why a unilateral declaration emerged in Kosovo's context. This should be bounded: a snapshot of Kosovo's status question, the 1998–1999 crisis, and the transition into an international administration framework—enough to make the request intelligible, but not so much that the section becomes a full historical chapter.

Second, the **UN pathway to the request**: how and why the issue was brought to the requesting organ, the institutional logic behind choosing an advisory opinion route, and the significance of the question being posed as a legal inquiry rather than a political motion. Here, the focus is on *process and framing*, not on evaluating the political merits of the move.

Third, the **transmission and seisin mechanics**: how the request reaches the Court and what "opening" means in advisory proceedings—registration, notifications, and the initiation of the written phase. This is where you explain that the Opinion is preceded by an organised record-building stage, designed to gather the views of states and relevant organisations.

Fourth, the **procedural set-up**: invitations for written statements, the timetable for submissions, and the scheduling logic for any oral hearings. This should be described as the procedural environment that shapes what the Court will have before it when it begins analysis.

The end-state of this roadmap is simple: by the time the reader reaches the opening of the Opinion, they should understand **(i) what question is being examined, (ii) why it is before the Court, and (iii) how the Court's advisory process is set in motion**—without yet arguing what the correct answer must be.

3.3. Minimal Historical Context Necessary to Understand the Question

3.3.1. Kosovo within the Yugoslav/Serbian constitutional order (pre-1998 snapshot)

Kosovo's pre-1998 legal position is best understood as a layered constitutional story shaped by late-Yugoslav federalism and its post-1990 reversal. Within socialist Yugoslavia, Kosovo was formally an autonomous province inside the Socialist Republic of Serbia, but the autonomy granted—especially under the 1974 constitutional settlement—was widely regarded as unusually extensive. Kosovo possessed its own institutions and significant competences in areas such as education, culture, policing-related administration, and local governance, and it participated in federal arrangements in ways that gave it a quasi-republican profile in practice, even without formal republic status. This design reflected Yugoslavia's broader attempt to manage pluralism through decentralisation, distributing authority across republics and provinces to reduce the risks of domination by any single centre.

The late 1980s and early 1990s saw a profound constitutional and political shift. Serbia's re-centralising moves sharply reduced Kosovo's autonomy, with the effect that many competences previously exercised locally were brought under tighter Serbian control. In parallel, Kosovo Albanian political mobilisation increasingly framed the autonomy rollback as the collapse of meaningful internal self-government. The resulting rupture produced a dual reality: legally, Kosovo remained a province within Serbia; politically, legitimacy was increasingly contested, and parallel forms of social and political organisation emerged among Kosovo Albanians, including alternative structures for education and public life. By the mid-1990s, Kosovo's constitutional status was therefore embedded in a deep dispute: one side emphasised sovereignty and territorial integrity within the Serbian constitutional order, while the other emphasised the systematic narrowing of autonomy and political representation. This unresolved constitutional tension is the essential pre-1998 baseline for

understanding why later international involvement treated Kosovo as more than an ordinary internal administrative question.

3.3.2. The 1998–1999 conflict as the immediate political-legal backdrop

The 1998–1999 period transformed Kosovo's contested constitutional position into an international crisis with direct legal and diplomatic consequences. By 1998, violence escalated sharply between Serbian security forces and the Kosovo Liberation Army (KLA), while civilians were increasingly caught in the conflict's logic of reprisals, collective punishment allegations, and mass displacement. Reports of widespread human suffering and destabilisation created sustained international diplomatic pressure, including efforts to impose restraints, secure ceasefires, and create monitoring arrangements. The crisis quickly ceased to look like a contained domestic security problem and instead came to be treated as a threat to regional stability, with humanitarian concerns at its centre.

From a political-legal perspective, the conflict generated competing narratives that shaped subsequent governance arrangements. Serbian authorities framed their actions in terms of sovereignty, territorial integrity, and counter-terrorism. Opponents framed events in terms of systemic repression and the denial of effective internal self-determination. International actors increasingly approached the situation as one in which ordinary domestic remedies had become ineffective, requiring external engagement to halt escalation and reduce civilian harm. The breakdown of negotiated compliance and continued fighting culminated in NATO's 1999 air campaign, which intensified the sense that Kosovo's future would be managed through a framework extending beyond Serbia's unilateral constitutional authority.

The immediate outcome of 1998–1999 was thus not simply a change in security conditions, but a structural shift in how Kosovo's status was discussed: the conflict created the conditions for an internationalised settlement architecture, in which the central question became how to stabilise governance and determine status under international supervision rather than through Serbia's internal constitutional processes alone.

3.3.3. International intervention and the shift to an internationalised governance setting

The post-1999 environment marked Kosovo's entry into a distinctive governance setting shaped by international administration and security presence. The pivotal step was the establishment of an interim UN framework through Security Council action, coupled with an international military presence responsible for maintaining a secure environment. In practical terms, authority over key governmental functions—civil administration, institutional rebuilding, and the organisation of political life—was no longer exercised solely through Serbia's ordinary administrative channels. Instead, it was mediated through an international mission structure designed to stabilise the territory after conflict, facilitate public order, and support the gradual development of local institutions.

This internationalisation mattered because it created a multi-layered normative environment. General international law continued to apply, but Kosovo's governance was also shaped by the specific instruments and regulations of the interim administration, the mandates of international organisations, and the evolving relationship between international administrators and local political bodies. The interim regime was not merely a peacekeeping overlay; it was a governance architecture in which international authorities held reserved powers while progressively transferring certain competencies to provisional local institutions. Over time, this produced a complex institutional picture: Kosovo had emerging self-government bodies operating under international supervision, while Serbia retained legal claims tied to sovereignty and territorial integrity.

For the later advisory process, this shift is crucial because the legality question is inseparable from context: a unilateral declaration adopted in a territory under an international interim administration raises different issues than a declaration issued in a purely domestic constitutional setting. Questions of authorship, authority, and the applicability of special UN-created frameworks become central precisely because intervention transformed the legal-operational landscape in which political acts were taken.

3.3.4. The post-1999 "status question" as an unresolved background issue

After 1999, Kosovo's governance was stabilised through international administration, but its final political-legal status remained deliberately unresolved. The interim framework created space for institution-building and day-to-day governance while postponing the decisive question: whether Kosovo would return to a fully integrated status within Serbia, acquire a different constitutional arrangement, or move toward independence. This prolonged indeterminacy became a defining feature of the post-1999 period. Local institutions matured, elections and administrative systems developed, and international supervision gradually adjusted—but the endpoint of the process was not agreed, and competing narratives hardened rather than converged.

For Serbia, the post-1999 arrangement was often framed as a temporary, internationally managed deviation within a continuing sovereign title. For Kosovo Albanian leaders, the interim period increasingly appeared as a transitional stage toward a status that would reflect political separation in fact, if not yet in formal law. Multiple diplomatic initiatives sought to address the status question through negotiations and internationally brokered proposals, but the process repeatedly encountered a structural obstacle: status outcomes were inherently zero-sum in political perception, and compromise proved elusive. As time passed, the gap between governance realities on the ground and the absence of a final status settlement widened.

This unresolved background issue is essential for understanding why the question was later put to the ICJ in advisory form. The unilateral declaration of independence did not occur in a vacuum; it emerged at the end of a prolonged period in which interim international governance coexisted with persistent disagreement over sovereignty, self-determination, and

the authority to settle status. The advisory request can therefore be seen as an attempt to obtain legal clarification in an environment where political negotiation had not produced a universally accepted endpoint, and where the legal character of a unilateral act became a focal point for the international system's response.

3.4. The UN Legal-Political Framework After 1999

3.4.1. Security Council Resolution 1244 as the foundational instrument

Security Council Resolution 1244 (1999) constitutes the foundational legal-political instrument for Kosovo's post-1999 order because it simultaneously (i) authorised an international security presence and (ii) established an international civil administration, while (iii) embedding these arrangements within a broader set of UN Charter commitments and principles. The resolution created a framework designed to stabilise Kosovo after armed conflict by shifting core governing functions to international mechanisms. In practice, it set the terms under which governance would be exercised, institutions rebuilt, and political processes re-initiated, making it the central reference point for any later analysis of the legality of acts taken within Kosovo's post-1999 environment.

Crucially, the resolution operated as a bridging device between two narratives that were, and remained, in tension: on the one hand, it was understood as providing the legal basis for international administration and for a future political process concerning Kosovo's status; on the other hand, it was frequently read as preserving a framework compatible with continued sovereign claims, insofar as it situated Kosovo within a UN-managed settlement architecture rather than explicitly endorsing statehood change. This duality—international governance combined with an unresolved final status question—made 1244 both stabilising and contested. It stabilised by providing a legally articulated interim order; it remained contested because it left space for competing interpretations about what the interim arrangement ultimately implied for sovereignty and territorial settlement.

As a result, Resolution 1244 became the primary "constitutional" reference point of the internationalised period: not a constitution in the domestic sense, but the key instrument through which authority was allocated, responsibilities were defined, and the transitional nature of governance was justified. Any evaluation of subsequent political acts—particularly the unilateral declaration of independence—cannot be properly contextualised without treating 1244 as the legal backdrop that structured institutional roles, bounded local authority, and maintained the status question as an open political problem within a UN-mandated interim regime.

United Nations

S/RES/1244 (1999)
10 June 1999

RESOLUTION 1244 (1999)

Adopted by the Security Council at its 4011th meeting, on 10 June 1999

The Security Council,

Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Recalling its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998 and 1239 (1999) of 14 May 1999,

Regretting that there has not been full compliance with the requirements of these resolutions,

Determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes,

Condemning all acts of violence against the Kosovo population as well as all terrorist acts by any party,

Recalling the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo,

Reaffirming the right of all refugees and displaced persons to return to their homes in safety,

Recalling the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia,

Welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the

paper presented in Belgrade on 2 June 1999 (S/1999/649, annex 2 to this resolution), and the Federal Republic of Yugoslavia's agreement to that paper,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2,

Reaffirming the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo,

Determining that the situation in the region continues to constitute a threat to international peace and security,

Determined to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and acting for these purposes under Chapter VII of the Charter of the United Nations,

1. Decides that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;

2. Welcomes the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and demands the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation;

3. Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized;

4. Confirms that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2;

5. Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences;

6. Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;

7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;

8. Affirms the need for the rapid early deployment of effective international civil and security presences to Kosovo, and demands that the parties cooperate fully in their deployment;

9. Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:

(a) Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;

(b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;

(c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;

(d) Ensuring public safety and order until the international civil presence can take responsibility for this task;

(e) Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;

(f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;

(g) Conducting border monitoring duties as required;

(h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;

10. Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;

11. Decides that the main responsibilities of the international civil presence will include:

(a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);

(b) Performing basic civilian administrative functions where and as long as required;

(c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;

(d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;

(e) Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);

(f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;

(g) Supporting the reconstruction of key infrastructure and other economic reconstruction;

(h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;

(i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;

(j) Protecting and promoting human rights;

(k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;

12. Emphasizes the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanitarian aid organizations and to cooperate with such organizations so as to ensure the fast and effective delivery of international aid;

13. Encourages all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international

donors' conference, particularly for the purposes set out in paragraph 11 (g) above, at the earliest possible date;

14. Demands full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia;

15. Demands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General;

16. Decides that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to arms and related matériel for the use of the international civil and security presences;

17. Welcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation;

18. Demands that all States in the region cooperate fully in the implementation of all aspects of this resolution;

19. Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;

20. Requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;

21. Decides to remain actively seized of the matter.

Annex 1
Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersberg Centre on 6 May 1999

The G-8 Foreign Ministers adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police and paramilitary forces;
- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;
- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA;
- Comprehensive approach to the economic development and stabilization of the crisis region.

Annex 2

Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

1. An immediate and verifiable end of violence and repression in Kosovo.

2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.

3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.

4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.

5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within

the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.

6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:

- Liaison with the international civil mission and the international security presence;
- Marking/clearing minefields;
- Maintaining a presence at Serb patrimonial sites;
- Maintaining a presence at key border crossings.

7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.

8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.

9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.

10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below.[1] A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo:

Withdrawal

- Procedures for withdrawals, including the phased, detailed schedule and delineation of a buffer area in Serbia beyond which forces will be withdrawn;

Returning personnel

- Equipment associated with returning personnel;
- Terms of reference for their functional responsibilities;

- Timetable for their return;
- Delineation of their geographical areas of operation;
- Rules governing their relationship to the international security presence and the international civil mission.

Notes

[1] Other required elements:

- A rapid and precise timetable for withdrawals, meaning, e.g., seven days to complete withdrawal and air defence weapons withdrawn outside a 25 kilometre mutual safety zone within 48 hours;
- Return of personnel for the four functions specified above will be under the supervision of the international security presence and will be limited to a small agreed number (hundreds, not thousands);
- Suspension of military activity will occur after the beginning of verifiable withdrawals;
- The discussion and achievement of a military-technical agreement shall not extend the previously determined time for completion of withdrawals.

3.4.2. Establishment of UNMIK and the logic of interim administration

The establishment of UNMIK introduced a governance model grounded in the logic of interim administration: when a territory emerges from conflict and domestic authority is contested or unable to provide stable governance, international administration can serve as a temporary substitute designed to restore public order, rebuild institutions, and facilitate a political process. UNMIK's purpose was therefore not merely to "assist" an existing government, but to exercise and coordinate governing authority in Kosovo during a transitional period. This made UNMIK a central actor in shaping Kosovo's legal and institutional environment, including the creation of administrative regulations, the organisation of provisional self-government, and the management of core public functions while local institutions were reconstructed.

Interim administration is inherently dual-purpose. It aims, first, to provide immediate governance capacity—security coordination, administration of justice and police functions, civil registration, and basic public services—so that civilian life can proceed without collapse. Second, it aims to create conditions for political settlement by developing local institutions and political practices that can eventually sustain governance with reduced international supervision. UNMIK thus combined direct administrative authority with a gradual strategy of institution-building and transfer of competencies to local bodies, generating a layered political system in which authority was shared, reserved, or delegated depending on the subject matter.

This logic also produced structural ambiguity. Because the arrangement was explicitly "interim," it avoided final-status determination and instead prioritised stability and process. Yet the very act of building institutions and enabling political representation could be interpreted as either (i) preparing a self-governing entity within an existing sovereign framework, or (ii) constructing the scaffolding of separate statehood. UNMIK's role therefore became central to later legal debates: not because it decided Kosovo's status, but because it created the institutional setting in which political authority was exercised and in which a unilateral declaration could later be issued in a context fundamentally shaped by international administrative governance.

3.4.3. Relationship between interim administration and territorial integrity narratives

The post-1999 interim administration framework sits at the intersection of two powerful narratives in international law: the principle of territorial integrity and the practice of internationally mandated transitional governance. Territorial integrity is often invoked to underscore the stability of borders and the protection of existing states against external interference. An interim administration, by contrast, is a mechanism through which international actors temporarily exercise authority within a territory, typically justified by exceptional circumstances—conflict, humanitarian breakdown, or the inability of domestic authority to function effectively.

In Kosovo, this interaction generated persistent interpretive tension. One narrative treated interim administration as compatible with territorial integrity: international governance was framed as a temporary stabilisation measure that did not, in itself, determine final status or authorise border change. Under this view, the interim regime should be read as an emergency governance arrangement nested within a broader international commitment to stability and negotiated settlement, leaving sovereignty questions open. Another narrative, however, treated the interim administration as evidence that Kosovo had been placed into a distinct internationalised status, weakening the claim that it remained subject to ordinary domestic constitutional control and enabling the argument that the political relationship had been fundamentally transformed.

This tension matters for understanding later developments because territorial integrity debates often depend on identifying the addressee of the rule (states) and the type of conduct it constrains (use of force, external coercion, or unlawful intervention). Interim administration complicates the picture by inserting the UN as an institutional manager of territory, with authority derived from Security Council action rather than from secessionist unilateralism alone. Thus, the territorial integrity narrative in Kosovo was not a simple "Serbia vs separatists" question; it was filtered through an internationally authorised transitional regime that both preserved the language of stability and created a governance reality in which local political agency developed under international oversight. The later unilateral declaration can only be understood against this background: it emerged from a context where territorial integrity was asserted as principle, but governance had been reconstituted through an interim international framework.

3.4.4. The institutional role of international presence (civil + security dimensions)

International presence in Kosovo after 1999 operated through a dual institutional structure: a **civil administration** responsible for governance and institution-building, and a **security presence** responsible for maintaining a safe environment. This duality reflects a broader post-conflict logic: civilian reconstruction and political process cannot function without security; conversely, security operations require a legitimate administrative framework to prevent governance vacuums. The result was an integrated international architecture in which the civil mission shaped law, administration, and political development, while the security mission provided the operational conditions for those activities to occur.

On the civil side, international administration entailed regulatory authority, public service coordination, and the design of transitional political institutions. It also involved managing the gradual emergence of local self-government under international supervision. This created an environment where legal norms were produced not only by domestic legislation but also by mission regulations and international administrative decisions. On the security side, the international presence assumed responsibility for stabilisation, demilitarisation dynamics, and the deterrence of renewed violence, providing the external guarantee that political transitions could proceed without immediate collapse into conflict.

Institutionally, this arrangement altered how political authority was experienced. Local actors operated within a framework where key competencies were reserved to international authorities, yet political representation and self-government structures were increasingly developed. This produced a hybrid political space: local institutions gained capacity and legitimacy over time, but the ultimate parameters of authority remained connected to the international mandate and to the unresolved status process.

For an advisory-opinion narrative, this dual presence is essential because it explains why Kosovo's post-1999 environment cannot be reduced to an ordinary domestic constitutional setting. The civil and security dimensions jointly constituted a transitional order that structured political agency, constrained institutional choices, and shaped the context in which any unilateral declaration would later be issued—an act occurring not in institutional isolation, but in a territory governed through an internationally authorised, multi-layered administrative and security regime.

3.5. The Internal Governance Architecture Under UN Administration

3.5.1. The interim constitutional framework and local self-government arrangements

Under UN administration, Kosovo's internal governance was organised through an interim constitutional architecture designed to provide functional self-government without predetermining final status. The international civil mission established a framework that allocated powers between international authorities (retaining reserved competencies) and emerging local institutions (exercising delegated responsibilities). This arrangement enabled the gradual re-establishment of public administration, local service delivery, and political representation through elections and municipal structures, while maintaining supervisory authority to ensure stability and compliance with the interim regime's objectives. Local self-government became a practical mechanism for rebuilding legitimacy at the community level—organising education, health-related administration, and municipal services—yet it operated within a bounded legal environment shaped by international regulations and oversight. The interim framework therefore created a hybrid system: local institutions gained increasing operational capacity and political visibility, but ultimate authority remained conditioned by the international mandate and the unresolved status question.

3.5.2. The role of Kosovo's provisional institutions and their political legitimacy

Kosovo's provisional institutions functioned as the primary channels through which political agency was exercised during the interim period, but their legitimacy was structurally complex. Internally, these bodies derived political legitimacy from participation and electoral processes, presenting themselves as representatives of the population and as vehicles for

self-government. Externally, however, their authority was derivative and conditional: they operated under the legal umbrella of the UN administration, with important powers reserved to international authorities and with final status explicitly left open. This dual character created a persistent tension. For Kosovo Albanian leaders, provisional institutions were steps toward normal democratic governance and, ultimately, self-determination. For Serbia and many states sympathetic to territorial integrity claims, these institutions were administrative arrangements within an interim regime, not organs empowered to decide sovereignty. The provisional institutions thus became both instruments of governance and symbols in a wider contest over authority and representation.

3.5.3. The "status process" track and why it remained contested

The status process was intended to channel Kosovo's future into a negotiated political outcome, but it remained contested because it involved irreconcilable starting positions. Serbia viewed any outcome short of continued sovereign title (even with enhanced autonomy) as unacceptable, while Kosovo's predominant political leadership increasingly regarded independence as the only viable endpoint after years of conflict and international administration. The interim regime's deliberate ambiguity—stabilising governance while postponing final status—helped prevent immediate collapse, yet over time it entrenched opposing narratives rather than bridging them. International mediation efforts faced a structural dilemma: compromise formulas often failed to satisfy either side's core red lines, and delays amplified frustration, encouraging the belief that negotiations were either permanently stalled or strategically manipulated. As a result, the status track became less a path to convergence and more a prolonged arena in which competing claims were rehearsed, international supporters were mobilised, and legitimacy arguments were sharpened.

3.5.4. The lead-up dynamics immediately preceding the declaration

Immediately before the declaration, Kosovo's internal political dynamics reflected a convergence of institutional maturation and strategic impatience. Provisional institutions had developed operational capacity and political confidence under the interim framework, while many Kosovo leaders interpreted the extended transition as proof that status could not be resolved through indefinite administration and inconclusive negotiation. At the same time, the internationalised governance environment shaped the timing and form of political action: any move toward independence would be calibrated against anticipated international reactions, the continuing presence of international security structures, and the legal symbolism of acting within—or outside—the interim framework's institutional channels. The lead-up period thus combined domestic political consolidation with diplomatic positioning. Kosovo's leadership sought to present the declaration as a controlled, institutional act rather than an impulsive rupture, while opponents framed it as an unlawful bypass of an existing international settlement framework. This tension between institutional confidence and

contested authority set the stage for the declaration's issuance and the subsequent resort to an advisory opinion.

3.6. The 2008 Unilateral Declaration of Independence as the Triggering Act

3.6.1. The declaration as a legal act: form, authorship, and claimed authority

The 2008 Unilateral Declaration of Independence (UDI) operated as a **formal juridical act** intended to change Kosovo's claimed legal status by proclamation rather than by negotiated amendment of an existing constitutional order. Its "form" was that of a written declaration adopted in a parliamentary setting, drafted in the language of public authority and addressed to multiple audiences at once: the population of Kosovo, Serbia, international organisations, and third states. The "authorship" question was central from the outset because Kosovo was operating within an internationally supervised governance environment. Accordingly, the declaration's legal character depended on whether its authors were acting as ordinary organs of provisional self-government under an interim framework, or as political representatives purporting to speak in a different capacity. The UDI also asserted a **claimed authority** rooted in a combination of democratic representation, the experience of prolonged interim administration, and a narrative of exceptional circumstances following conflict. In that sense, the UDI's legal significance was not only what it said, but what it implied: that the issuing actors considered the prior status framework exhausted or incapable of delivering a final settlement, and therefore treated unilateral proclamation as the legally meaningful step.

3.6.2. Competing narratives at the time (self-determination vs territorial integrity)

At the time of the declaration, the dominant legal-political narratives clustered around two opposing principles: **self-determination** and **territorial integrity**. Supporters of the UDI emphasised self-determination as a framework for legitimising separation, arguing that Kosovo's people were entitled to decide their political future, particularly after conflict, displacement, and years of international administration in which normal domestic constitutional politics had been suspended or fundamentally altered. They tended to portray the declaration as the culmination of a long transition and an effort to stabilise governance through a definitive status outcome.

Opponents grounded their case in territorial integrity and sovereign equality, portraying the UDI as an unlawful attempt to alter internationally recognised borders without the consent of the parent state. In this narrative, self-determination was framed primarily as an internal entitlement—compatible with autonomy or meaningful self-government—while external

separation was treated as exceptional and not automatically available. The clash was therefore not only factual but conceptual: whether Kosovo's situation belonged to a normal rule of territorial stability, or to an exceptional category where self-determination could plausibly justify a unilateral status claim.

3.6.3. Immediate international reactions (recognitions/non-recognitions as political context)

The UDI produced a rapid and highly visible split in international responses, with some states extending **recognition**while others withheld it or explicitly rejected the declaration. This divergence matters as political context because it illustrates that the declaration was not treated as a purely internal event; it immediately became an issue of international ordering, alliance politics, and precedent sensitivity. Recognitions were typically presented as political acts informed by legal reasoning—emphasising stability, governance capability, and the distinctive post-1999 administration environment—while non-recognitions often stressed the risks of undermining territorial integrity and creating a permissive precedent for secession elsewhere.

International organisations and regional bodies also became arenas where these divisions were expressed indirectly, through debates about membership, representation, and the practical handling of Kosovo-related documents and participation. The significance for an advisory-opinion narrative is that the recognition divide did not itself answer the legality question, but it sharpened it: the international community's lack of consensus signalled that authoritative legal clarification could serve a stabilising function, even if it could not dissolve the underlying political disagreement

3.6.4. Why the declaration generated a "legal question" suitable for the ICJ

The declaration generated a question suitable for the ICJ because it posed an issue that could be framed as **narrowly legal**while remaining politically explosive: whether issuing a unilateral declaration of independence, in Kosovo's specific circumstances, was contrary to international law. Unlike questions about recognition (a discretionary state practice) or statehood (a broader factual-legal status inquiry), the permissibility of the declaration could be presented as a determinate legal inquiry: does any applicable rule prohibit the act of declaring?

Kosovo's post-1999 environment made that inquiry especially "justiciable" because it involved a **special international governance framework** layered on top of general international law. This allowed the legal question to be articulated in structured terms: the relationship between the declaration and the UN-created interim regime, the scope of authority of Kosovo's institutions under that regime, and the reach of principles such as territorial integrity in this setting. An advisory opinion was institutionally attractive because it

offered a way to obtain legal guidance without requiring state consent to contentious jurisdiction, while providing the UN system with a clarified legal frame for managing an ongoing and divisive political situation.

3.7. Moving the Question to the United Nations

3.7.1. The diplomatic choice to seek an advisory opinion rather than contentious litigation

Moving the issue to the United Nations reflected a deliberate diplomatic calculation: an **advisory opinion** could deliver authoritative legal clarification without the procedural barriers of contentious litigation. A contentious case before the ICJ requires the respondent state's consent to jurisdiction or a clear jurisdictional hook accepted in advance—conditions unlikely to exist in a politically charged status dispute. An advisory opinion, by contrast, can be requested by a competent UN organ and allows the Court to pronounce on a legal question without positioning the process as a bilateral lawsuit over sovereignty. Diplomatically, this route offered a "lower-friction" mechanism: it could clarify the legality of the declaration while enabling states to participate through written and oral statements, thus internationalising legal debate in a structured forum. It also served a stabilising function within the UN system by channelling disagreement into legal argumentation rather than purely political escalation.

3.7.2. The requesting UN organ and its competence to ask the Court

The advisory pathway depends on a threshold institutional condition: the request must come from a UN organ empowered to seek advisory opinions. In the Kosovo context, the requesting body was the **UN General Assembly**, which has competence to request an advisory opinion on a legal question within the scope of its activities. This institutional choice matters because the Assembly is the UN's most representative political organ; it provides a forum in which a wide range of states—including recognisers and non-recognisers—can shape the framing of the legal question. The competence point is not merely formal: it anchors the request in the UN's constitutional structure and signals that the opinion is sought to guide UN deliberation and practice, not simply to vindicate one side's political position.

3.7.3. Adoption of the request: political setting and framing of the question

The adoption of the request occurred in a politically polarised environment where recognition decisions had already divided states into opposing camps. The process of adopting the request

therefore involved careful **framing discipline**: the question had to be formulated in a way that could attract sufficient support while remaining legally intelligible. States favouring the declaration sought a framing that would isolate the act of declaring from broader sovereignty disputes; states opposing it sought a framing that would preserve the relevance of territorial integrity and the post-1999 UN framework. The resulting request emerged as a compromise in institutional form—brought through a multilateral organ, packaged as a legal question, and designed to solicit the Court's guidance without requiring the UN to settle Kosovo's status itself.

3.7.4. The exact question transmitted to the ICJ (scope implications)

The question transmitted to the ICJ was deliberately narrow in legal terms: whether Kosovo's unilateral declaration of independence was **in accordance with international law**. The scope implications are significant. The wording directs the Court to evaluate the permissibility of the **declaration as an act**, rather than to decide Kosovo's statehood, the legality of recognitions, or the ultimate status settlement. At the same time, the phrasing is broad enough to allow the Court to consider any relevant layer of international law—general rules and any special UN-created framework applicable to Kosovo—because "in accordance with international law" is not confined to one source. The question thus functions as a gate: it narrows the object (the declaration) while leaving open which norms may be relevant in assessing its legality.

3.8. The Opening of the Advisory Opinion: What the Court Must Settle First

3.8.1. Threshold framing: what the Court understands the question to be

At the opening of the Advisory Opinion, the Court's first task is to **stabilise the meaning of the question** it has been asked. Even when the wording appears simple—"in accordance with international law"—the Court must clarify what, precisely, is being evaluated: the *act of declaring* independence, the identity and capacity of the authors, and the legal environment in which the declaration was adopted. This threshold framing functions as an interpretive gatekeeper. The Court typically identifies the object of review with care, explains why the question is "legal" rather than purely political, and delineates the interpretive route it will follow so that participants' submissions can be assessed against a consistent understanding of the inquiry. In a Kosovo-type setting, this includes clarifying whether the question is about a general rule on declarations of independence or about legality within a special post-conflict governance regime. The Court's framing at this stage is decisive because it determines what arguments are relevant and what issues are treated as peripheral context.

3.8.2. Procedural housekeeping: who participates and how the record is formed

The advisory process begins by building a **structured evidentiary and argumentative record**. The Court must confirm which states and international organisations may participate, how written statements are received, and how oral proceedings (if held) will operate. Procedural housekeeping covers the mechanics of notice, deadlines, and the organisation of submissions, but it also has deeper consequences: it shapes whose legal positions become part of the official record and how the Court can characterise the range of views before it. Because advisory opinions invite broad participation, the Court typically faces a diverse set of submissions reflecting different recognition policies and different readings of UN arrangements. The opening stage therefore has an ordering function: it ensures that the record is formed in a coherent way, that each participant's arguments are properly placed, and that the Court can later reference "positions taken" without conflating political statements with legal claims.

3.8.3. Managing scope: separating legality of the declaration from statehood/recognition

A central opening move is strict **scope management**. In Kosovo, surrounding controversies—statehood, recognition, borders, political legitimacy—are legally adjacent but not identical to the question posed. The Court therefore needs to articulate a separation: it is not deciding whether Kosovo is a state, whether recognitions are lawful or required, or whether secession is generally permitted; it is addressing whether the *declaration* violated international law. This separation protects the advisory function from being treated as a proxy referendum on status, and it prevents the Court from being pulled into issues that would require broader factual determinations or would exceed what the requesting organ asked. Scope management also disciplines argumentation: submissions about recognition practices or political outcomes may be acknowledged as context, but the Court signals that they are not the legal target of the inquiry unless they bear directly on whether a prohibitory rule applied to the act of declaring.

3.8.4. Comparative Approach to Statehood, Recognition and UDI

After framing and procedure, the Court must transition toward merits by indicating—without yet deciding—what **legal framework** will structure analysis. This typically involves identifying the relevant bodies of law to be examined (general international law principles, UN Charter context, and any special regime created by Security Council action), and previewing the methodological approach (textual interpretation of the question, identification

of applicable norms, and assessment of whether those norms prohibit the declaration). In a Kosovo setting, the Court's transition often signals two analytical tracks: first, whether general international law contains any rule forbidding declarations of independence; and second, whether the post-1999 UN governance framework created a specific legal constraint applicable to the declaration's authors. By outlining this roadmap early, the Court tells participants and readers what kinds of arguments will be treated as legally central and how it will move from a contested political landscape to a structured legal evaluation.

3.8.4.1. Conceptual Separation: Statehood, Recognition, and the UDI

A UDI is a **unilateral political–legal act** intended to signal a claimed change of status. It does not, by itself, "create" statehood as a matter of international law. Three concepts must be kept separate:

- **Statehood (international legal personality):** whether the entity is a State in international law.
- **Recognition:** a unilateral act of other States, often politically motivated, that may facilitate international relations but does not automatically determine statehood.
- **Secession:** a broader process of territorial and governmental separation; a UDI is typically one step within that process.

This separation is central in advisory proceedings because a court may be asked about the *legality of the declaration as an act* without deciding statehood or the legality of recognitions.

3.8.4.2. Constitutional Law: Domestic "Validity" of an Independence Claim

Competence and procedure: who can declare independence?

In constitutional law, the first question is **institutional competence**: which organ, if any, has authority to decide on separation. Many constitutional systems treat secession as an existential constitutional change and therefore subject it to heightened procedures (constitutional amendment rules, supermajorities, mandatory referenda, or central-state participation). Where domestic law requires such procedures, a unilateral act by a sub-state legislature or executive is typically **ultra vires** domestically.

Unity/territorial integrity clauses as constitutional constraints

Many constitutions contain entrenched clauses on the **unity and indivisibility** of the state. Such provisions tend to render unilateral separation *domestically unlawful*. A commonly cited example is the Spanish Constitution, **Article 2**, which affirms the "indissoluble unity" of the

Spanish nation. In systems of this kind, a UDI may be treated as void (or constitutionally impossible) within the domestic order—regardless of political support.

Rare constitutional permissions: explicit secession clauses

A small number of constitutions explicitly regulate a right to secede. Ethiopia's Constitution, **Article 39**, is a well-known example recognising a right of "nations, nationalities and peoples" to self-determination, including secession, subject to specified procedures. Where such clauses exist, a declaration can operate as the final step of a constitutional process rather than an extra-constitutional rupture.

Effectiveness and "revolutionary legality"

Domestic constitutional theory sometimes confronts the reality that an unconstitutional act may become legally effective if a new constitutional order consolidates and persists (often discussed through "revolutionary legality" or effectiveness-based accounts). This does not *legally validate* the original act within the prior constitution; rather, it explains how a new normative order may eventually displace the old. Importantly, domestic effectiveness does not automatically translate into international statehood, though it can support the "government/capacity" aspects of international personality.

3.8.4.3. International Law: Statehood and the International-Law Status of a UDI

Statehood criteria: Montevideo's baseline

A standard starting point is the Montevideo Convention's formulation of statehood criteria in **Article 1**: (1) permanent population, (2) defined territory, (3) government, and (4) capacity to enter relations with other States. These criteria are not a mechanical checklist; "government" and "capacity" are frequently contested in conflict situations. Still, they provide the classic framework for assessing international legal personality.

Recognition: declaratory vs. constitutive roles in practice

While recognition can be politically decisive for diplomatic, economic, and institutional participation, mainstream doctrine treats recognition as generally **declaratory** rather than constitutive: it tends to confirm and facilitate a status that depends primarily on objective criteria. Nevertheless, patterns of recognition may influence perceptions of capacity and stability, and they affect access to organisations and bilateral relations.

Is there a general international-law prohibition on UDIs?

International law does not operate as a global constitution that centrally authorises or forbids all declarations of independence. Consequently, it is difficult to sustain the claim that there is a **general, categorical prohibition** on the *act of issuing* a declaration of independence. Critically, domestic unconstitutionality does not automatically make a UDI an internationally wrongful act. International wrongfulness must be grounded in a relevant international rule that prohibits the conduct.

That said, international law may render a declaration (or the resulting status claim) unlawful where it is inseparably connected to prohibited conduct, such as:

- **The prohibition on the threat or use of force** under the UN Charter, **Article 2(4)** (especially where a situation is produced through external armed force or unlawful territorial acquisition).
- Serious violations of peremptory norms (jus cogens) that taint territorial outcomes, depending on the facts.
- **Special UN Security Council regimes** that establish binding frameworks for governance or status-related processes; in such cases, the relevant question becomes whether the UDI conflicts with that specific legal framework.

Self-determination and the disputed "remedial secession" thesis

Self-determination is articulated in the UN Charter, **Articles 1(2)** and **55**, and in treaty form in the ICCPR and ICESCR (common **Article 1**). In orthodox accounts, external self-determination (leading to independence) is firmly established in decolonisation contexts, while in non-colonial settings the emphasis is usually on **internal self-determination**(meaningful political participation, autonomy, and rights protection). The notion of "remedial secession" (a last-resort entitlement to secede in cases of grave and systematic oppression) remains contested in doctrine and practice; it is often invoked as argument, but it is not universally accepted as a settled positive rule.

3.8.4.4. Comparative Synthesis: Domestic "Validity" vs. International "Permissibility"

A useful way to express the relationship between the two legal orders is through four stylised scenarios:

Domestically valid + not prohibited internationally: negotiated or constitutionally authorised separation without links to prohibited conduct.

Domestically invalid + not prohibited internationally: a common pattern—unconstitutional domestically, yet not automatically illegal internationally absent an applicable prohibitory rule.

Domestically valid + internationally problematic: domestic authorisation cannot cure violations of international law (e.g., unlawful force).

Invalid in both orders: unconstitutional domestically and also implicated in conduct prohibited by international law.

The central takeaway is doctrinal: **domestic illegality does not automatically equal international illegality**, and international legality of the declaration does not necessarily entail domestic constitutional validity.

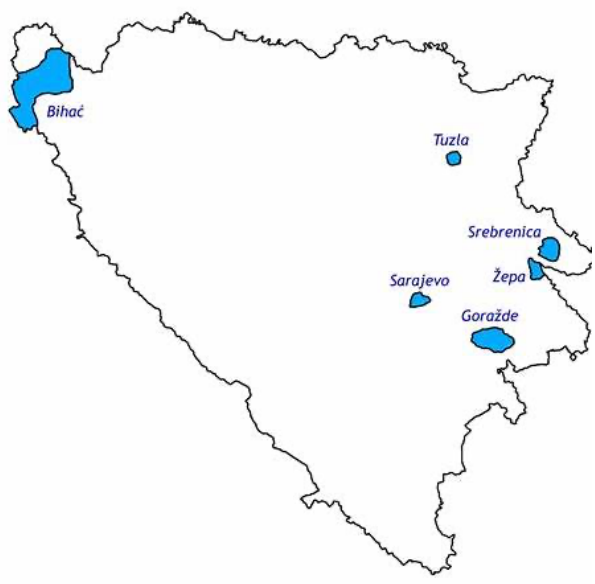
3.8.4.5. Why This Comparison Fits an Advisory-Opinion Setting

Advisory-opinion questions are often narrowly phrased (e.g., legality of the declaration), but they typically require disciplined separation of: (i) the **object of review** (the act of declaring), (ii) the **layers of applicable international law**(general rules, UN Charter obligations, special Security Council frameworks), and (iii) the role of **domestic constitutional constraints** (relevant as context, not automatically decisive as international law). This comparative structure allows the analysis to remain legally precise while still explaining why constitutional "invalidity" and international "non-prohibition" can coexist.

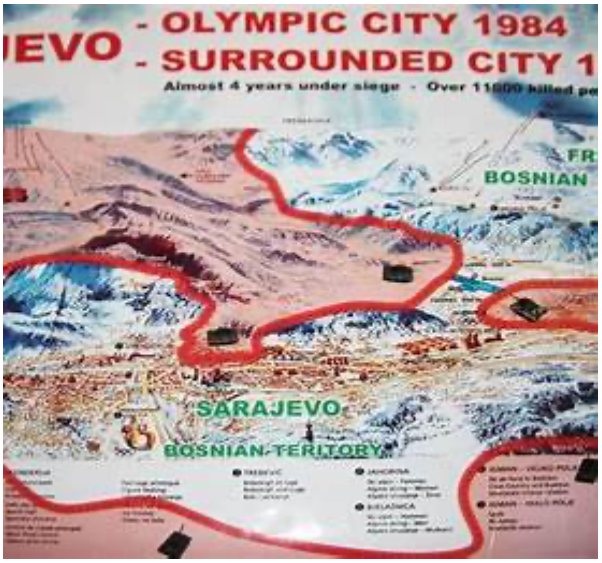
If you want, I can adapt this into a Kosovo-focused version that (a) keeps the scope on the declaration as an act, and (b) explicitly integrates the logic of special UN governance frameworks—without turning it into a discussion about recognition or final status.

4. RELEVANT MATERIALS

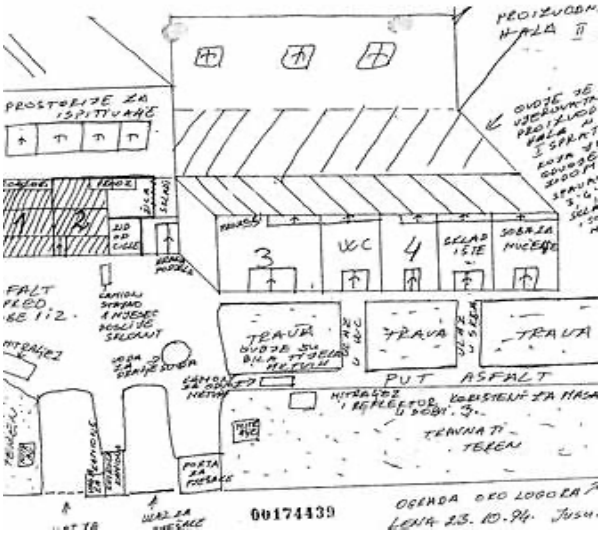
- **Territorial control / "zones" snapshot (c. 1993–1995)**
- A control-and-zones style map is one of the fastest ways to establish the **spatial logic of the conflict**: where frontlines tended to harden, which corridors were treated as strategically decisive, and why certain municipalities recur in contemporaneous reporting. It helps you transition from "general collapse" to "patterned violence in specific localities" without sounding like you are importing later judicial findings.



- **UN “safe areas” map (1993–1995)** A “safe areas” map is useful because it visualises the **international presence as a territorial concept**—not just an institutional one. It clarifies why places like **Srebrenica, Žepa, Goražde, Sarajevo, Tuzla, and Bihać** became persistent reference points in diplomatic reporting and humanitarian documentation, and why access corridors and protection capacity were constantly debated.



- **Siege of Sarajevo map (city-scale geometry)** A Sarajevo siege map is the best single image for explaining siege warfare as a **durational pattern**: encirclement logic, constrained movement, and the city’s symbolic-political centrality. Used carefully, it supports a narrative about how the conflict was experienced as an urban “pressure system” over time, rather than a single battle.



- **Keraterm camp sketch / layout (Prijedor, summer 1992)**A witness-style sketch or layout diagram is a strong visual for the “detention/camp allegations” theme because it shows how contemporaneous accounts described **spaces of confinement** (rooms, positions, lines of sight, guarding points). Framed as “reported layout” rather than as a judicially settled fact, it can anchor a section on what was being alleged and documented in mid–late 1992.

5. LEGAL BASIS OF THE PARTIES

5.1. Legal Basis of the Republic of Bosnia and Herzegovina (Former Yugoslavia)

The legal basis of the Republic of Bosnia and Herzegovina as a subject capable of instituting a contentious case before the International Court of Justice rests, first, on its status as a constituent republic of the former Socialist Federal Republic of Yugoslavia (SFRY), and, second, on its emergence—through a combination of internal constitutional acts and external acceptance—as an independent State with international legal personality. Bosnia and Herzegovina was not a mere administrative district; it was one of the SFRY's republics, with constitutionally organised republican institutions and a territorially defined unit within the federal structure. When the federal order disintegrated and central authority became unable to function coherently, the republic framework supplied the institutional platform from which Bosnia claimed independence and, crucially, supplied the territorial frame that later underpinned its international boundary claim. In dissolution contexts, the international system tends to treat pre-existing republican borders as the presumptive international borders, a stabilising logic that supports Bosnia's claim to a defined territory even where armed conflict later disrupted effective control.

Externally, Bosnia's legal personality was consolidated through recognition practice and, most decisively, through admission to universal institutional life as a UN Member State. In practical terms, this confirmed Bosnia's capacity to enter into international relations, to assume treaty obligations, and to invoke international responsibility. That capacity is what makes Bosnia's institution of proceedings more than a political gesture: a contentious case presupposes that the applicant is a State, able to hold rights and bear obligations under international law, and able to appear before the Court in accordance with the Court's Statute.

In the Genocide Convention case (Bosnia and Herzegovina v. Serbia and Montenegro), Bosnia's central jurisdictional pathway was the compromissory clause in Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, which provides for disputes between contracting parties relating to the interpretation, application, or fulfilment of the Convention—including disputes relating to State responsibility—to be submitted to the ICJ. Bosnia's legal theory was that genocide is not only an individual crime but also a framework of State obligations: states must not commit genocide, must not be complicit, must prevent and punish, and must not fail to act where they have the capacity to influence relevant actors. By framing the dispute as one concerning the Convention's application and fulfilment, Bosnia sought to bring questions of State responsibility—attribution, complicity, prevention, and punishment—within the Court's jurisdiction.

Against that structure, the Respondent's defences in a contentious setting typically unfold in two layers: threshold objections to the Court's jurisdiction/admissibility, and merits-oriented denials of attribution and genocidal intent even if the Court were to proceed.

A principal line of defence attacked jurisdiction ratione personae by challenging whether the Respondent was, at the critical time, a State bound by the Genocide Convention and entitled (or subject) to appear before the Court under the ICJ Statute. The Respondent argued that it could not be treated as automatically continuing the treaty relations and UN/ICJ status of the former SFRY simply by claiming continuity, and that its relationship to the UN and to multilateral treaties during the early 1990s was legally disputed. On that view, even if Bosnia was a contracting party, the compromissory clause could not operate against a respondent that was not properly bound by the Convention or not properly within the Court's jurisdictional system at the date the application was filed. This argument sought to transform the case into a preliminary question of institutional standing: before one debates genocide, one must establish that the Court can exercise authority over the respondent as a party to the Convention and as a state capable of being sued before the ICJ.

Closely related was a defence based on temporal scope. The Respondent contended that Bosnia's application ranged over events and patterns of conduct that pre-dated any clear moment at which the Respondent could be said to have assumed obligations under the Convention (or to have existed in the relevant legal form). In this frame, Bosnia was said to be attempting to litigate an entire historical trajectory of violence through a treaty mechanism that could not retroactively attach responsibility. The practical effect of such an argument is to narrow the case: even if the Court had jurisdiction, large parts of Bosnia's narrative would be characterised as outside the Court's temporal competence.

A further threshold defence targeted subject-matter scope. The Respondent argued that Bosnia's factual allegations, even if grave, often sounded in categories—war crimes, crimes against humanity, unlawful use of force—that were not identical to genocide as defined in the Convention. Because the Court's jurisdiction in this case was tied to the Genocide Convention compromissory clause, the Respondent's approach was to insist that the Court must resist being drawn into adjudicating the broader legality of the conflict. Put differently, the defence strategy was to separate "mass violence" from "genocide in the Convention sense," arguing that the applicant's presentation blurred legal categories and asked the Court to pronounce upon matters for which it had no treaty-based jurisdiction in these proceedings.

On admissibility, the Respondent also had an incentive to argue that the case, as framed, improperly required adjudication of the rights or responsibilities of entities not before the Court. Because many underlying acts were attributed by Bosnia to Bosnian Serb forces and structures inside Bosnia and Herzegovina, the Respondent could claim that Bosnia was effectively asking the Court to determine the legal responsibility of third actors or quasi-state entities that were not parties to the proceedings. Even where the case formally targeted a state, the defence could characterise Bosnia's narrative as depending on findings about the conduct and legal character of actors outside the Court's contentious jurisdiction in this particular proceeding. The aim of this line is not necessarily to deny that violence occurred, but to argue that Bosnia's chosen procedural route was structurally defective for attributing that violence to the respondent state.

If the case moved beyond threshold objections, the most central merits defence concerned attribution. The Respondent's position was typically that even if atrocities occurred, they were committed by local forces not acting as organs of the respondent state, and that the legal test for attribution in state responsibility is demanding: general political alignment, ideological affinity, or even substantial support does not automatically transform a non-state (or separate) armed actor into a state organ for the purposes of attributing specific internationally wrongful acts. This defence thus pushed the Court toward a granular inquiry: to establish state responsibility for genocide, Bosnia would need to show that the respondent directed, controlled, or otherwise legally owned the specific conduct, not merely that it had influence, sympathy, or strategic interest.

Alongside attribution, the Respondent would deny the required mental element for genocide at the state level. Genocide, as a legal category, turns on the special intent to destroy, in whole or in part, a protected group as such. A typical defence is to argue that the applicant's evidence demonstrates—at most—forced displacement, population transfer, persecution, or other forms of mass violence aimed at territorial or political objectives, rather than an intent to destroy a group. This argument is often paired with the claim that "ethnic cleansing" allegations, while morally and legally serious, are not automatically equivalent to genocide without proof of the Convention's intent element. In state responsibility terms, the defence insists not only that the physical acts are contested or multifaceted, but that the specific genocidal purpose cannot be inferred from wartime objectives such as territorial consolidation or coercive demographic change unless the evidentiary threshold for intent is met.

Finally, even on the prevention and punishment obligations, the Respondent could argue that the Convention does not impose strict liability for atrocities committed by others, but obligations conditioned by capacity and knowledge—what a state could reasonably do in the circumstances. The defence therefore would stress limits on effective leverage, contest the claim that the respondent had decisive control over relevant forces, and argue that any failure-to-prevent theory presupposes a demonstrable ability to prevent coupled with a failure to take feasible measures. The objective is to narrow state responsibility to what is demonstrably within a state's power, while maintaining that the applicant is attempting to convert a complex wartime environment into a presumption of state culpability.

Taken together, these defences are designed to defeat Bosnia's case at the earliest stage (jurisdiction/admissibility) or, failing that, to collapse the merits by severing the link between reported atrocities and the respondent state through demanding standards of attribution and intent, while simultaneously insisting that the ICJ's role in a treaty-based contentious case is confined to genocide in the Convention's strict legal sense rather than the broader illegality of the conflict.

5.2. Legal Basis of the Socialist Federal Republic of Serbia and Montenegro

The legal basis of the entity commonly referred to in this contentious case as **Serbia and Montenegro** must be explained through the state-identity transition that followed the breakup

of the Socialist Federal Republic of Yugoslavia (SFRY). Strictly speaking, the internationally recognised socialist federation was the **SFRY**; after its disintegration, the entity formed by the two remaining republics—Serbia and Montenegro—proclaimed a new federal state in 1992, widely known at the time as the **Federal Republic of Yugoslavia (FRY)**, and later reconstituted under the name **Serbia and Montenegro**. In the Bosnia proceedings, the "legal basis" question is therefore not a matter of domestic constitutional form alone; it is primarily about **international legal personality, continuity versus succession, and treaty/Statute relations** relevant to standing before the ICJ and obligations under the Genocide Convention.

From an internal-constitutional perspective, the FRY grounded its existence in the constituent authority of Serbia and Montenegro to form a federal state and to maintain the international personality of Yugoslavia after other republics departed. This was presented as a continuity claim: the argument was that the state known as Yugoslavia had not ceased to exist, but had merely been reduced in territorial and demographic scope to the republics that remained. Under that narrative, the FRY viewed itself as the legal continuation of the SFRY and therefore entitled to inherit its treaty relations, membership position, and representation in international organisations. The continuity thesis served a practical purpose: it sought to avoid the legal and political consequences of being treated as a "new state," such as having to reapply for UN membership and renegotiate treaty participation.

The decisive difficulty for this legal basis, however, lay in the fact that continuity is not established by unilateral proclamation alone; it depends on broader international acceptance and institutional practice. The early 1990s saw vigorous contestation over whether the SFRY had dissolved into multiple successor states or whether one state continued and others seceded. The prevailing external treatment largely moved toward a **dissolution model**: the SFRY was widely treated as having ceased to function as a single state, with multiple successor states emerging. In that setting, the FRY's claim to automatically occupy the SFRY's international "seat" was politically and institutionally disputed, and its position in the UN system during the 1992–2000 period became a central axis of controversy. This matters for the contentious case because access to the ICJ—especially as a respondent—turns on whether the entity is a state capable of being subject to proceedings, and more technically on whether it is within the Court's jurisdictional architecture through the ICJ Statute and any relevant compromissory clauses.

For the purposes of Bosnia's Genocide Convention claim, the FRY's legal basis is therefore best articulated as a bundle of interrelated propositions—some asserted by the FRY, some contested by others. First, the FRY asserted that it was a state (not merely a domestic federation) and that it possessed full international legal personality from its proclamation. In general international law, that claim relies on the ordinary indicia of statehood: a permanent population, defined territory, effective government, and capacity to enter into international relations. The FRY could point to functioning federal institutions, control over core governmental structures within Serbia and Montenegro, and engagement in foreign relations to support the proposition that it was a state in fact and in law. This baseline point is

significant even for opponents of continuity: even if the FRY was not the continuation of the SFRY, it could still be a new state with legal personality.

Second, and more controversially, the FRY's continuity position was used to argue that it remained bound by, and entitled to invoke, the SFRY's treaty relations—including the **Genocide Convention**—without any need for a fresh act of accession. In practical treaty law terms, a state can attempt to maintain continuity by notifying depositaries of its view that treaty relations continue unchanged. But in a dissolution setting, other states may reject that view and treat the entity as needing to succeed or accede anew. Thus, Bosnia's ability to sue under the Genocide Convention's compromissory clause interacted directly with this controversy: if the FRY was already a party bound by Article IX at the time proceedings were instituted, the jurisdictional pathway appears straightforward; if its treaty status was unsettled or denied, jurisdiction becomes a threshold battleground.

Third, the FRY's legal basis in relation to the **ICJ** depends on whether it was, at the relevant times, inside the Court's procedural universe: the ICJ Statute is annexed to the UN Charter, and UN membership is the usual route to being automatically a party to the Statute. Non-UN members can also become parties to the Statute through separate arrangements, but that requires specific steps. The contested question was therefore whether the FRY, by claiming continuity with the SFRY, could treat itself as remaining within the UN/Statute framework, or whether it should be regarded as outside that framework until regularised through admission and/or formal acceptance procedures. In a contentious case, this is not a mere formality: it governs whether the Court can exercise authority over the respondent at all, and whether procedural acts (like seisin and service) rest on a solid legal foundation.

Fourth, the FRY's legal basis must be placed against the background of international measures taken during the conflict years, including sanctions regimes and intensified scrutiny of cross-border involvement allegations. These measures did not themselves resolve the legal identity issue, but they shaped the diplomatic environment in which the FRY's claim to continuity was assessed. They also influenced how states described the FRY's responsibilities: whether it was being treated as the continuing legal successor of Yugoslavia with inherited obligations, or as a distinct entity whose obligations depended on specific treaty participation and conduct. In the Bosnia case, this context mattered because Bosnia's pleadings aimed to treat the FRY as a state capable of bearing responsibility for genocide-related obligations, while the respondent had incentives to use the contested nature of its international position to narrow or defeat the Court's jurisdiction.

Fifth, once the FRY is treated as a state for responsibility purposes, the legal basis relevant to the Genocide Convention dispute shifts from identity to **obligation structure**. The respondent's potential responsibility under the Convention depends on whether it was bound by the Convention at the relevant times and, substantively, on how international law links state responsibility to acts committed on the ground by forces not formally integrated into the respondent's state apparatus. The FRY's defensive position naturally emphasised that even if grave acts occurred, the legal tests for state responsibility are not satisfied by political affinity or general influence; rather, they require a legally meaningful connection between the state

and the acts (attribution) or a demonstrable failure to discharge prevention duties conditioned by knowledge and capacity. Here, the "legal basis" is the respondent's status as a treaty-bound state and the doctrinal structure of attribution/prevention—because Bosnia's claim was not simply that violence occurred, but that the respondent state bore legal responsibility under a treaty designed to regulate state conduct and state duties.

Sixth, the FRY's later institutional "regularisation" (its eventual acceptance into UN membership channels and subsequent constitutional renaming/restructuring into "Serbia and Montenegro") is part of the same legal basis story, because it underscores how the international system ultimately treated the continuity claim: contested at the time, later stabilised through institutional acts that resembled the treatment of a successor or new member rather than an uninterrupted continuation. For the contentious case, the relevance is methodological: it demonstrates why the respondent could plausibly argue that its earlier status was legally uncertain, and why the applicant could argue that, regardless of that uncertainty, the respondent functioned as a state and was treated as such in key respects—making it capable of being bound by peremptory norms and, depending on treaty status, by conventional obligations as well.

In sum, the legal basis of "Serbia and Montenegro" in the Bosnia contentious proceedings is built on a complex sequence: (i) the internal constitutional creation of a federal state by Serbia and Montenegro, (ii) a contested international claim of continuity with the SFRY, (iii) disputed but practically consequential positioning within the UN/ICJ Statute framework during the 1990s, and (iv) the respondent's asserted (and contested) relationship to the Genocide Convention as the jurisdictional and substantive anchor of the case. The entire dispute over jurisdiction and responsibility is inseparable from that legal basis: Bosnia needed the respondent to be a state bound by the Convention and amenable to the Court's authority; the respondent had strong incentives to portray its treaty and institutional status at the critical time as legally unsettled, and—if the case proceeded—to insist that the law of state responsibility imposes demanding thresholds for attributing acts and proving genocidal intent rather than allowing liability to flow from association or political alignment alone.

6. APPLICABLE LAW

6.1. CHARTER OF THE UNITED NATIONS

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. *All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.*
2. *A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.*

Article 94

1. *Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.*
2. *If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.*

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. *The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.*
2. *Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.*

6.2. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

Article 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.
2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.
3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.
4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of

the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.
6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

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. *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 bond, if the parties agree thereto.*

Article 40

1. *Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.*
2. *The Registrar shall forthwith communicate the application to all concerned.*
3. *He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.*

Article 41

1. *The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.*
2. *Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.*

Article 42

1. *The parties shall be represented by agents.*
2. *They may have the assistance of counsel or advocates before the Court.*
3. *The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.*

Article 43

1. *The procedure shall consist of two parts: written and oral.*
2. *The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.*

Article 53

1. *Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favor of its claim.*
2. *The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.*

Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60

The judgment is final and without appeal. *In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.*

Article 65

1. *The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.*
2. *Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question*

upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 66

1. *The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.*
2. *The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.*

Article 67

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.

Article 68

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

7. MERITS OF THE CASE

7.1. Bosnia and Herzegovina v. Serbia and Montenegro — Merits Questions (10)

1. Do the reported patterns of killings, serious bodily/mental harm, forced displacement, and detention practices amount to **acts under Article II of the Genocide Convention**, and how should each alleged pattern be legally characterised?

2. Can **genocidal intent (dolus specialis)** be inferred from a campaign of territorial consolidation/“ethnic cleansing”-type conduct, and what indicators would be sufficient to distinguish genocide from other mass-atrocity patterns?

3. To what extent are acts committed by Bosnian Serb forces **attributable to Serbia/Montenegro** under the law of state responsibility (e.g., de jure organs, de facto organs, or direction/control frameworks)?

4. What is the legal threshold for establishing **state responsibility for genocide** (as opposed to individual criminal responsibility), and how does that affect the evidentiary burden and the assessment of intent?

5. Under what conditions could Serbia/Montenegro incur responsibility for **complicity in genocide** (Genocide Convention Article III(e)) based on alleged support (logistical, financial, political, military) to perpetrators?

6. What is the content of the **duty to prevent genocide** under the Convention: is it an obligation of conduct (due diligence), and how is "capacity to influence" assessed in practice?

7. At what point would Serbia/Montenegro be considered to have had **knowledge or constructive knowledge** of a serious risk of genocide triggering the prevention obligation, based on contemporaneous reports and warnings?

8. What are the legal requirements and scope of the duty to **punish genocide** (including cooperation with investigations/prosecutions), and how do those obligations interact with a conflict environment?

9. How should the Court assess **patterns of conduct across multiple municipalities/regions** in determining whether there was a "systematic" campaign with genocidal intent, rather than isolated or locally driven violence?

10. If responsibility were established (for commission, complicity, or failure to prevent), what are the appropriate **remedies and forms of reparation** under international law (declaration of breach, guarantees of non-repetition, compensation, etc.)?

7.2. Accordance with International Law of the UDI in Respect of Kosovo (ICJ Advisory Opinion) — Merits Questions (10)

1. Does **general international law** contain any rule that **prohibits** unilateral declarations of independence as such, and if so, what is the rule's scope and rationale?

2. How should the principle of **territorial integrity** be understood in this context: is it primarily addressed to **states**, and does it regulate the conduct of internal actors issuing a declaration?

3. Who were the **authors** of the declaration for legal purposes (in what capacity were they acting), and why does authorship matter for determining which legal constraints apply?

4. What legal significance attaches to **UN Security Council Resolution 1244 (1999)** for Kosovo's status framework, and does it impose constraints relevant to the declaration?

5. How does the existence of **UNMIK's interim administration** affect the legality analysis: were Kosovo's institutions bound by a specific constitutional framework that limited status-related acts?

6. Is the legality inquiry limited to whether the declaration violates **explicit prohibitions**, or can it include broader systemic principles (e.g., UN Charter purposes, stability, non-use of force implications)?

7. To what extent, if at all, does **self-determination** provide legal support for a unilateral declaration in a non-colonial context, and what is the legal status of "remedial secession" arguments?

8. Should the legality of the declaration be assessed in light of any alleged links to **unlawful force** or other prohibited conduct, and what would count as a legally relevant connection?

9. How should the Court distinguish between the **legality of the declaration** and the legality of subsequent **recognition** decisions or the factual question of **statehood**?

10. What interpretive approach best resolves the interaction between **general international law** and a **special UN-created regime** (lex specialis logic), and how does that interaction shape the final legality assessment?

8. FURTHER INFORMATIONS

Why did Yugoslavia Collapse?

- https://www.youtube.com/watch?v=C199Zt9pqKo

The Bosnian Genocide: Europe's Only Genocide Since WWII

- https://www.youtube.com/watch?v=dqnfU4w23R4

The Bosnian War: The Brutal Forgotten War | Documentary

- https://www.youtube.com/watch?v=PV9D02kkbPo

Bosnia and Herzegovina v. Serbia and Montenegro Case Brief Summary | Law Case Explained

- https://www.youtube.com/watch?v=qM-KOWK4gzM

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- https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf
- https://www.un.org/en/about-us/un-charter/statute-of-the-international-court-of-justice
- https://www.icj-cij.org/basic-documents
- https://www.icj-cij.org/history
- https://www.icj-cij.org/court
- https://www.icj-cij.org/members
- https://pca-cpa.org/en/about/introduction/history/
- https://en.wikipedia.org/wiki/International_Court_of_Justice

- https://www.britannica.com/topic/International-Court-of-Justice
- https://www.congress.gov/crs-product/R48004
- https://diplomatmagazine.eu/2022/09/24/an-information-session-for-diplomats-by-the-international-court-of-justice-and-the-permanent-court-of-arbitration/
- ICJ – *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Case page): https://www.icj-cij.org/case/91
- ICJ – *Bosnia and Herzegovina v. Serbia and Montenegro* (Judgments / procedural history): https://www.icj-cij.org/case/91/judgments
- ICJ – *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Case page): https://www.icj-cij.org/case/141
- UN Digital Library – UN Security Council Resolution 1244 (1999) (record): https://digitallibrary.un.org/record/274488?ln=en
- United Nations – Genocide Convention (PDF text): https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf
- UN Treaty Collection – Genocide Convention (status/parties): https://treaties.un.org/pages/ViewDetails.aspx?chapter=4&mtdsg_no=IV-1&src=TREATY
- United Nations – Charter of the United Nations (full text): https://www.un.org/en/about-us/un-charter/full-text
- UN Treaty Collection – UN Charter (PDF): https://treaties.un.org/doc/publication/ctc/uncharter.pdf
- OHCHR – International Covenant on Civil and Political Rights (ICCPR) (PDF): https://www.ohchr.org/sites/default/files/ccpr.pdf
- OHCHR – International Covenant on Economic, Social and Cultural Rights (ICESCR) (PDF): https://www.ohchr.org/sites/default/files/cescr.pdf
- UN Treaty Collection – Montevideo Convention (registration/details): https://treaties.un.org/pages/showdetails.aspx?objid=0800000280166aef
- Yale Avalon Project – Montevideo Convention (full text reproduction): https://avalon.law.yale.edu/20th_century/intam03.asp
- Spain – Constitución Española (BOE consolidated PDF): https://www.boe.es/buscar/pdf/1978/BOE-A-1978-40001-consolidado.pdf
- Ethiopia – Constitution of the Federal Democratic Republic of Ethiopia (PDF): https://constitutionnet.org/sites/default/files/Ethiopia_Constitution.pdf

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