

Forum: SASMUN VIII

Committee: International Court of Justice (ICJ)

Topic: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (2007)

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Introduction

Note to Judges and Advocates: The case cut off date is February 25th, 2007: one day before the issue of judgement by the ICJ. The official judgement and all case proceedings cannot be taken into consideration in evidence or adjudication.

On March 20th, 1993, the Republic of Bosnia and Herzegovina instituted legal proceedings against the Federal Republic of Yugoslavia (Serbia and Montenegro), accusing it of violating 1948 Genocide Convention, an international treaty that namely criminalises genocide.

Until the early 1990s, the Socialist Federal Republic of Yugoslavia consisted of six republics, with three declaring independence; Bosnia and Herzegovina being one. This post-independence period was characterised by the Bosnian War, a three year violent armed conflict fought between Bosnian Serb forces and joint Bosniak (predominantly Sunni Muslim) and Bosnian Croat forces. Backed by then Serbian President Slobodan Milošević, and led by politicians Radovan Karadžić and Ratko Mladić, Bosnian Serb leadership aimed to create an ‘ethnically pure’ Serb territory. In doing so, they carried out systematic ethnic cleansing (including killing, rape, torture, mass displacement and concentration camps) en masse, particularly against Bosniak civilians.

The most prominent marker of genocide during the Bosnian War was the 1995 Srebrenica massacre. Srebrenica, a designated United Nations (U.N.) Safe Area established in 1993, was overrun by the Bosnian Serb Army/Army of Republika Srpska (VRS) in July 1995, leading to the organised execution of over 8,000 Bosniak men and boys. Though a U.N. protection force of 370 Dutch soldiers were present, their mandate prevented them from engaging militarily with the VRS, and they

were only lightly armed—a stark contrast from the infrastructurally superior VRS that stormed Srebrenica. Their defences were proven futile, something for which the U.N. shouldered blame years later. However, the massacre was not an isolated incident (many more, like the Siege of Sarajevo, occurred); it was just the most brutal and notable.

Bosnia and Herzegovina's prayer for relief, or requested remedies from the Court, was to declare that Yugoslavia had violated its obligations under the aforementioned Genocide Convention; declare Yugoslavia's responsibility in sponsoring ethnic cleansing and genocidal operations; order an immediate cessation of genocidal acts; compel the state to punish perpetrators through handing them over to international tribunals; award reparations to Bosnia, and order a guarantee of non-repetition on Yugoslavia's part.

Despite the proceedings being filed in 1993, the final judgment was issued only in 2007. A timeline of the case's events is as follows: submission (March 1993); emergency orders to cease genocide (April 1993); memorial submission by both parties (1994-1995); preliminary objections raised by the Respondent, Serbia (1995); oral hearing on objections, which concluded that the case could be adjudicated (July 1996); submission then withdrawal of counter-claims by Serbia (1997-2001); full merits/written, oral arguments by both parties (1996-2006), and final judgement issued (2007).

The conference theme of SASMUN VIII—*Cooperation Through Conflict, Forging the Future*—could not be better exemplified in the resolution of this case: in today's world (or rather the world of the late 20th century), conflict is inevitable. However, if we (not only as nations but as people) are diplomatic and introspective, collaboration and peace are not only achievable, but certain.

Definition of Key Terms

Genocide

Any act intended to destroy, in whole or in part, a national, ethnic, racial or religious group—killing members, causing serious harm, creating deadly living conditions, preventing births or forcibly moving children.

United Nations Safe Area

A region declared by the UN Security Council where civilians are supposed to be protected from attack during armed conflict.

Genocide Convention

The 1948 UN treaty (UNGA Res. 260 A (III)) that makes genocide an international crime and requires countries to stop and punish it.

UN Protection Force (UNPROFOR)

The UN peacekeeping mission set up in February 1992 (S/RES 743) to monitor cease-fires, escort aid convoys and guard Safe Areas in the former Yugoslavia.

International Criminal Tribunal for the Former Yugoslavia (ICTY)

A special court created in May 1993 (S/RES 827) in The Hague to try people accused of serious war crimes in the Balkans since 1991.

Ethnic Cleansing

The forced removal, displacement or killing of an ethnic or religious group to make a region more uniform.`

International Court of Justice (ICJ)

The UN's top court, founded in 1945, that settles disputes between countries and gives advisory opinions.

State Sovereignty

The principle that a country has full control over its territory and domestic affairs without outside interference.

State Responsibility

The idea that a country must stop wrongful acts and make reparations if it breaks international law.

Command Responsibility

The rule that military or civilian leaders can be held liable for crimes their subordinates commit if they knew—or should have known—and failed to act.

Crimes Against Humanity

Widespread or systematic attacks on civilians—murder, torture, rape, deportation—carried out as part of a policy.

Background Information

The Breakup of Yugoslavia

The Socialist Federal Republic of Yugoslavia was founded in 1945 in the aftermath of the Second World War, as a federation made up of six socialist republics. Josip Broz Tito, the former President of Yugoslavia, died in 1980, and was succeeded by Slobodan Milošević—a Serbian ultranationalist who sought to centralise power in the Republic, minimising regional autonomy. This exacerbated existing conflicts within the nation and ended up being the catalyst for various countries' voting for independence. Slovenia and Croatia did so first, on June 25, 1991. This prompted the Ten Day War and the Croatian War of Independence, both disputes between the Yugoslav People's Army (JNA) and local Slovene/Croatian forces. Though they varied in duration, both conflicts resulted in declarations of independence. In the meantime, Macedonia declared its independence peacefully. Following a referendum in which the majority voted to leave, Bosnia and Herzegovina voted to leave on March 1st, 1992.



Figure 1: A map of the former Socialist Federal Republic of Yugoslavia, as of 1991 (University of Central Arkansas/ICTY)

The Bosnian War and its Associated Ethnic Tensions

Bosnia and Herzegovina's separation from Yugoslavia was against the will of Bosnian Serbs, a major ethnic group. In the onset of the Bosnian War and in preparation for the outcome of the referendum, Bosnian Serbs formed the independent 'Republic of the Serb people of Bosnia and Herzegovina,' or Republika Srpska. It was the Bosnian Serb Army/Army of Republika Srpska (VRS) that launched a campaign against Bosnia and Herzegovina's independence, particularly toward the Bosniak ethnic Muslims (who voted in favour of separation). The President of Republika Srpska at the time was Radovan Karadžić, and the leader of the VRS was Ratko Mladić. The VRS was directly supported by Yugoslav/Serbian leadership, such as Milošević and the JNA, providing them with the critical resources that were used strategically in the nearly four years that followed during the Bosnian War. In this period, the VRS clashed with Bosnian Croats and especially Bosniaks, leading to deliberate targeting, ethnic cleansing, rape, and genocide.

Serbia's Involvement and Support of the VRS

Though Yugoslavia (Serbia) claimed it had no official part in committing genocide against the Bosniak people, their involvement with and support of the VRS justify Bosnia and Herzegovina's bringing forth this case to the ICJ. Much of this was uncovered at the ICTY trial against Milošević, where an expert testified that between August and September 1992 alone, an estimated 445 tons of ammunition were distributed to the VRS under an organised arms transfer programme. Additionally, VRS officers received their salaries and benefits from the JNA, even after Serbia publicly claimed it had severed ties with Bosnian Serb forces. The ICJ official judgement recognised that Serbia's role was not passive and that the VRS was almost entirely dependent on Serbia for arms, fuel, training, and logistical support. That said, it acquitted Serbia of actually committing genocide. On the whole, it's difficult to quantify the scale of tangible involvement by Yugoslavia (Serbia), making the details of the case more opaque and nuanced. **Details on the judgment are included for reference, though they must not be included/taken into consideration in evidence or adjudication.**

The 1995 Srebrenica Massacre

Inarguably, the most severe genocidal act by the VRS during the Bosnian War was the Srebrenica massacre that started on July 11, 1995. As aforementioned in the introduction, the event saw the overrunning of a U.N. Safe Area, Srebrenica, where the posted Dutch soldiers failed to adequately protect the mountain town. This led to the execution of over 8,000 Bosniak Muslim men and boys. This incident is widely regarded as the most brutal atrocity and first legally recognised genocide in Europe since the Second World War.



Figure 2: Srebrenica massacre/genocide memorial (Mike Norton/Flickr, 2018)

The 1995 Dayton Accords

The end of the Bosnian War was marked by the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina, commonly referred to as the Dayton Accords. It was signed on December 14th, 1995, in Paris (France), though negotiations occurred at the Wright-Patterson Air Force Base in Dayton (Ohio, U.S.)—hence the naming. The agreement officially ended the war through preserving Bosnia and Herzegovina as a single, independent state, but with two separate entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. Today, the Presidency in the state is unique; featuring three leaders from each ethnic group, with one Chairperson of the Presidency. Currently, this is Serb Željka Cvijanović, though this changes every eight months. Additionally, the President of Republika Srpska is Milorad Dodik, who has challenged the centralised government on numerous occasions. All this to say that tensions have not been fully resolved in the state.



Figure 3: The Presidents of Serbia (L), Bosnia and Herzegovina (C), and Croatia (R) convening to sign the Dayton Accords in Paris (Eric Miller/Renters, 1995)

UN Involvement, Relevant Resolutions, Treaties and Events

The United Nations played an important role during the Bosnian War, and continued to be a key player through the proceedings of the case against Yugoslavia. The U.N. politically recognised Bosnia and Herzegovina in 1992, deployed peacekeeping operations (UNPROFOR) whose limited effectiveness failed to prevent the Srebrenica massacre, and established the ICTY; trying various individuals involved in the war (Milošević, Karadžić, and Mladić). Being a principle organ of the U.N., the ICJ's processing and adjudication of the case was critical in quantifying the responsibility of Serbia for the genocidal atrocities that it seemed to support, albeit without directly partaking in them.

- **U.N. Security Council Resolution, September 25th, 1991, ([S_RES_713](#))**. This resolution mandated a Chapter VII arms embargo on Yugoslavia, in an attempt to minimise conflict amidst the country's disintegration. As the ruling applied to successor states (like Bosnia), it had an adverse effect in that it left Bosnian Croats and Bosniaks effectively defenseless against the well funded and resourced Bosnian Serbs.
- **U.N. General Assembly Admission of Bosnia and Herzegovina, July 20th, 1992, ([A_RES_46_237](#))**
- **U.N. Security Council Resolution, April 16th, 1993, ([S_RES_819](#))**. This resolution condemned violence in Bosnia and Herzegovina following its separation from Yugoslavia,

and declared Srebrenica a 'Safe Area'—essentially a zone free of any hostile activity. Local Bosniak forces were urged to surrender their weapons to the U.N. Protection Force (UNPROFOR), which was heavily underdeployed. A small contingent of Dutch peacekeepers was sent with a limited mandate and little authority, leading to the events of the massacre two years later.

- **U.N. Security Council Resolution, June 4th, 1993, ([S_RES_836](#))**. This resolution was significant because it authorised UNPROFOR to use force to protect U.N. Safe Areas, like Srebrenica. Specifically, it permitted any measures necessary in response to attacks and bombardments. That said, operational Rules of Engagement (ROE) policy did not change enough to make a difference in practice.
- **U.N. General Assembly Report of the Secretary-General Pursuant to the Fall of Srebrenica, November 15th, 1999 ([A_54_549](#))**. This report by the U.N. Sec-Gen at the time, Kofi Annan, analysed the events of the Srebrenica massacre and acknowledged major failures on the part of the U.N.; admitting passive responsibility for failing to protect the 8,000 perished Bosniaks.
- **ICTY Trial Proceedings on Krstić, Radislav ([IT-98-33](#))**. This source features all documents related to the trial proceedings against Radislav Krstić, a senior officer in the VRS responsible for many of the atrocities seen during the Bosnian War. He became the first person to be convicted of genocide at the ICTY, and was sentenced to 46 (later downgraded to 35) years imprisonment.
- **ICTY Trial Proceedings on Milošević, Slobodan ([IT-02-54](#))**. This source features all documents related to the trial proceedings against Milošević, some of which were used as evidence in the ICJ case. It includes forensic analysis and testimonies alleging Yugoslavia's extreme involvement in the Bosnian War. The trial did not proceed as the accused died in 2006.
- **ICJ Bosnia and Herzegovina v. Serbia and Montenegro Case Judgement, February 26th, 2007 ([Final Verdict](#))**. The ICJ found Yugoslavia (Serbia) guilty of failing to prevent genocide at Srebrenica and to punish those responsible through cooperation with the ICTY. However, they did not find sufficient evidence linking Serbia to the planning/execution of genocide. **Details on the judgment are included for reference, though they must not be included/taken into consideration in evidence or adjudication.**

Timeline of Events

Date	Event
June 25, 1991	Slovenia and Croatia declare independence from Yugoslavia, triggering regional instability.
March 1, 1992	Bosnia and Herzegovina hold an independence referendum (boycotted by the Serbs); 99.7% vote to secede.
April 6, 1992	Bosnia and Herzegovina officially leave Yugoslavia, prompting attacks from the Bosnian Serb VRS. This is the start of the Bosnian War.
April-December, 1992	Systematic ethnic cleansing against Bosniaks begins in towns like Prijedor, Foča, and Višegrad. Camps in these areas become infamous for atrocities.
August-September, 1992	Yugoslavia (Serbia) allegedly transfers 445 tons of ammunition to the VRS under the <i>Ispror</i> plan.
May 25, 1993	The U.N. establishes the ICTY for prosecution of war crimes in relation to Yugoslav conflicts.
July 11-16, 1995	The Srebrenica massacre occurs in a U.N. Safe Area.
December 14, 1995	The Dayton Accords are signed.
March 20, 1993	Bosnia and Herzegovina file an ICJ case against Yugoslavia (Serbia and Montenegro) on grounds that it has violated the Genocide Convention.
July 11, 1996	Despite Serbian objections, the ICJ rules it has jurisdiction to hear the case.
February-May, 2006	ICJ oral hearings are held in which Bosnia and Herzegovina presents evidence including documents and ICTY testimonies.
February 26, 2007	Final judgement states that Serbia did not commit genocide, but failed to prevent the Srebrenica massacre. Details on the judgment are included for reference, though they must not be included/taken into consideration in evidence or adjudication.

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