

Concurrent opinion:

We,
Justices Birach, Davis, Essenberg, Rahmani

On November 21, 2004

Decleare that we agree with the majority on the conclusion that reparations are owed to the Croatian Peoples, but we disagree with their reasoning.

We do not believe that the actions of the Serbia and Montenegro fall under the definition of genocide as defined in the Covent on the Prevention and Punishment of Crime of Genocide. Rather, we believe the actions constitute ethnic cleansing. Within the scope of the UN genocide is the gravest crime against humanity; as such it has a very specific definition and set of conditions. The hinging factor in genocide is intent; we consider the intent to be the intended final ends. In the case of genocide the ends are to exterminate and eliminate a group or part there of. In the case of ethnic cleansing the ends are to eliminate a group's presence from a particular area. In both cases extremes cruelty and force are used as a means, and both crimes are to be considered crimes against humanity on the highest order. In this case the desire to eliminate non-Serbs from the territory in question is undeniable and it is clear that the government of Serbia and Montenegro was knowingly funding and supporting the rebel action. What is not clear enough is the intent of Serbia and Montenegro; their actions indicate their desire to create a pure Serbian territory. What is not clear is whether the intent of Serbia and Montenegro was to rid the world of the non-Serbs. Based on these facts we can not agree with the majority on that matter of genocide.

What we want to make crystal clear is that this lack of consensus is based on definition and not about the severity of the actions. Based on the actions we completely agree with the majority on the matter of owed reparations.