



Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)

ARGUED: 21 November 2015

DECIDED: 22 November 2015

1 The consensus opinion was signed by and agreed to by Justice Taylor Ackerman, Justice Calvin Bell, Justice
2 Conor Burns, Justice Steven Cyhaniuk, Justice Miriam Housewright, Justice Duncan Justice, Justice Amelia Kimbro,
3 Justice Sidney Larsen, Justice Alexandra Klein, Justice Dylan McCloskey, Justice Patrick Mudd, Justice Chris
4 Rudolph, Justice Bonnie Thornton, Justice Benjamin Wade, and Justice Colin Weeks.

5 With the issue of jurisdiction, the Court has determined it has the ability to rule regarding the alleged
6 genocides that occurred in Croatia and Serbia, including the initial claim and counter claim. Under Article 36 Section
7 2 of the Statute on the International Court of Justice the Court has the ability to rule on: A. the interpretation of
8 treaties; B. any questions of any international law; C. the existence of any fact which, if established, would constitute
9 a breach of international obligation; and D. the nature or extent of the reparation to be made of an international
10 obligation. Both claims filed on behalf of the Republic of Croatia and the Republic of Serbia draw into question
11 the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and the
12 potential reparation of parties. Article 9 of the Genocide Convention, of which both the Applicant and Respondent
13 are parties, states that disputes between the Contracting Parties relating to the interpretation, application, or
14 fulfillment of the [Genocide] Convention, including those relating to the responsibility of a state for genocide... shall
15 be submitted to the International Court of Justice at the request of any of the parties to the dispute. Additionally,
16 both parties recognize the Courts jurisdiction based on Article 37, Paragraph 1, of the Statute of the Court, which
17 provides that the Courts jurisdiction comprises all cases which the parties refer to it and all matters specially provided
18 for in the Charter of the United Nations or in treaties and conventions in force. As the Court previously ruled in
19 *Bosnia and Herzegovina v. Serbia and Montenegro*, the Court still retains its claim to jurisdiction for events prior
20 to 1992 because the events are relevant to existing legal matters between states.

21 The Court was asked to examine the Application of the Convention on the Prevention and Punishment of
22 the Crime of Genocide. The petitioner and the respondent have demonstrated conclusive evidence that the issues
23 surrounding the crime of genocide are complex and have been the source of conflict between the states. The Court
24 finds that there was enough relevant arguments to decide the Croatia and Serbia are both responsible for the crime
25 of genocide. The opinion and explanation of reasons of the Court is as follows: With the issue of state succession of
26 the Former Federal Republic of Yugoslavia, the Court finds the State of Serbia is the successor state. Under Article
27 34 of the Vienna Convention on Succession of States in respect of Treaties, succession states, of the entire territory,
28 are required to respect existing treaties and international obligations of the predecessor state. Additionally, under
29 Article 5 of the Agreement on Normalization of Relations between the Federal Republic of Yugoslavia (FRY) and the
30 Republic of Croatia, the Court recognizes the historical fact that Serbia and Montenegro existed as independent States
31 before the creation of Yugoslavia and therefore retains their international legal personality as their independence
32 progressed. This establishes Serbias obligation to fulfill Yugoslavias commitments to the international community as
33 the state retained territory of the predecessor. Secondly, in a note from the ambassador for the Permanent Mission of
34 Yugoslavia to the President of the UN Security Council dated 27 April 1992, the Federal Republic of Yugoslavia will
35 continue the international legal and political personality of the Socialist Federal Republic of Yugoslavia (SFRY) and
36 shall strictly abide by all the outstanding questions negotiated on within the Conference on Yugoslavia have been
37 settled. This confirms Serbias responsibility of its international commitments as the successor state of the SFRY,
38 even during the dissolution between ruling governments.

39 Genocide is defined by the Genocide Convention in Article II as any of the following acts committed with
40 intent to destroy in whole or in part a national, ethnical, racial, or religious group as such;

41 a) Killing members of the group

42 b) Causing serious bodily or mental harm to members of the group

43 c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in
44 whole or in part

45 d) Imposing measures intended to prevent births within the group

46 e) Forcibly transferring children to another group.”

47 Article III dictates that ”The following acts shall be punishable:

48 a) Genocide;

49 b) Conspiracy to commit genocide;

50 c) Direct and public incitement to commit genocide;

51 d) Attempt to commit genocide;

52 e) Complicity in genocide.

53 The ethnic Serbs moved into the Krajina border region, which had been inhabited by both ethnic Serbs
54 and ethnic Croats. Ethnic Serbs forced the ethnic Croats out of this territory. Based on this information the Court
55 determined that the ethnic Croats experienced the following violations of Article II at the hands of ethnic Serbs: A.
56 killing members of the group; B. causing serious bodily or mental harm to members of the group; C. deliberately
57 inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

58 After the ethnic Croats were forced out of the Krajina area the Republic of Croatia commenced Operation
59 Storm in the Krajina border region in August of 1995. The Court has determined that this operation included the
60 following violations under Article II at the hands of ethnic Croats: A. Killing members of the group B. Causing
61 serious bodily or mental harm to members of the group C. Deliberately inflicting on the group conditions of life
62 calculated to bring about its physical destruction in whole or in part.

63 Concerning the state responsibility of Serbia, the Court finds Serbia in violation of Article III (E) of the
64 Genocide Convention. This violation is due to Serbias complicity of genocide against ethnic Croats in 1991-1992
65 committed by the Yugoslav Peoples Army (JNA) in Krajina. While there may have been some form of communication
66 between the Pro-Serbian Rebels and the Serbian government, the Court did not find sufficient evidence to recognize
67 the involvement of the Serbian government in directing or conspiring to commit genocide. However, the Court did
68 find that the Serbian government was aware of the genocide in Krajina, and the failure to condemn and intercede
69 the actions of the Pro-Serbian Rebels constitutes the violation of Article III (E) of the Genocide Convention. The
70 Court finds the Serbian government is in violation of Article III.

71 Concerning the state responsibility of Croatia, the Court finds Croatia in violation of Article III (A, B, C,
72 D) of the Genocide Convention. This violation is due to the Croatian Governments planning and implementation
73 of Operation Storm. On July 31, 1995 Croatian military and political officials met to plan Operation Storm. Proof
74 of Croatias direct involvement in the genocide can be found in the meeting minutes, when President Tudman stated
75 the Croats intended to inflict such blows that the Serbs will [for] all practical purposes disappear. The participants
76 then detailed a plan to systematically eliminate the Serbian population in Krajina. There is additional evidence of
77 acts of genocide, including witness testimonies, evaluated by the Court. The Court finds the Croatian government
78 is in violation of Article III.

79 Therefore, the Court orders the following:

80 The Serbian government recognizes their role in complicity of the genocide committed against ethnic Croats
81 by the Pro-Serbian Rebels in Krajina.

82 The Croatian government recognizes their direct role in the genocide committed against ethnic Serbs by the
83 Croatian military during Operation Storm.

84 Should a party choose to want JNA, Serbian, or Croatian officials held personally accountable, the Court
85 would like to remind the states they have ability to continue working with the International Criminal Tribunal of
86 the Former Yugoslavia.

Signed By

Justice Ackerman

Justice Bell

Justice Burns

Justice Cyhaniuk

Justice Housewright

Justice Justice

Justice Kimbro

Justice Klein

Justice Larsen

Justice McCloskey

Justice Mudd

Justice Rudolph

Justice Thornton

Justice Wade

Justice Weeks