

IN THE INTERNATIONAL COURT OF JUSTICE

**THE REPUBLIC OF CROATIA,
APPLICANT**

VS.

**THE REPUBLIC OF SERBIA,
RESPONDENT**

MEMORIAL OF THE REPUBLIC OF SERBIA

COMES NOW the Republic of Serbia and for their Memorial to the Court states the following:

STATEMENT OF LAW

1. In the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948, Article II defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - a) Killing members of the group;
 - b) Causing serious bodily or mental harm to members of the group;
 - c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - d) Imposing measures intended to prevent births within the group;
 - e) Forcibly transferring children of the group to another group.”
2. The International Law Commission, in its Draft Code of Crimes against the Peace and Security of Mankind, acknowledges State Responsibility in Article 10, para 2 as “The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law.”

STATEMENT OF FACT

On March 31, 1991, war broke out in what had previously been the Yugoslav Socialist Republic of Croatia, with the republic’s nationalist leadership seeking independence from the Federal Republic of Yugoslavia and the Republic of Serbian Krajina seeking to break away from this newly declared state. Both Serb and Croatian paramilitaries committed widespread atrocities in this conflict. The Republic of Serbia considers it pertinent to note that President Franjo Tudjman’s government adopted a revisionist stance towards the Independent State of Croatia in the Second World War, minimizing the scale of its atrocities while reviving rhetoric from the era that dehumanized Serbs.

In August 1995, the armed forces of the Republic of Croatia launched Operation Storm and succeeded in establishing control of the Krajina (border) region. During this military campaign Croatian forces committed systematic atrocities against Serb civilians which constituted a violation of the Convention on the Prevention and Punishment of the Crime of Genocide. Consistent statements by ICTY witnesses recount indiscriminate shelling by Croatian forces, targeting the cities of Knin and Benkovac and numerous small villages in which no military targets were located; 1,192 Serb civilians were killed in the shelling of non-military targets and in extrajudicial executions. Croatia has admitted in its Memorial submitted in 2009 that over 300,000 Serbs fled “in fear of reprisals,” because the intent of Croatian armed forces, demonstrated by widespread targeting of noncombatants, was to collectively punish the Serb population.

In the aftermath of Operation Storm, the Republic of Croatia continued to take legal action to prevent the return of Serb refugees, and encouraged the movement of ethnic Croats into the Krajina to permanently alter the region's demographics. These policies confirm that that ethnic cleansing was the intended goal of Operation Storm.

STATEMENT OF JURISDICTION

1. The application is brought pursuant to Article 37, Paragraph 1, of the Statute of the court, which provides that the Court's jurisdiction 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. Article 9 of the Genocide Convention, of which both the Applicant and Respondent are parties of states that "disputes between the Contracting Parties relating to the interpretation, application, or fulfilment of the... Convention, including those relating to the responsibility of a state for genocide... shall be submitted to the International Court of Justice at the request of any of the parties to the dispute" A dispute over Articles I, II (a), II (b), II (c), II (d), III (a), III (b), III (c), III (d), III (e), IV and V of the Genocide Convention therefore falls within the compulsory jurisdiction of the court.
3. The Genocide Convention entered into force on August 29, 1950 signed by the Social Federalist Republic of Yugoslavia, of which both the Applicant and Respondent are successor States. It remains in force by the general principles and rules of international law, which states that successor States continue to be bound by former states' treaty obligations.

ARGUMENTS

1. The Republic of Serbia contends that it cannot be held legally responsible for crimes committed by Serb paramilitary forces in the Croatian war of Independence, since these forces were independent actors uncontrolled by the Federal Republic of Yugoslavia (FRY).
2. Contrary to Croatia's assertion, Article 10, paragraph 2 of the ILC Article on State Responsibility does not establish the FRY's responsibility for actions committed by Serb paramilitaries in the Croatian war of independence.
3. The Republic of Serbia contends that during Operation Storm, the Armed Forces of Croatia took deliberate, systematic actions designed to either kill or expel the Serb population of the Krajina region; that Croatian forces targeted Serb civilians solely because of their ethnicity, and that these actions were planned and approved in advance by the Croatian government and military.

SUMMARY AND REQUESTS

During the Croatian War of Independence, the FRY had no effective control over the paramilitary formations in the RSK; thus neither the FRY nor its successor state, the Republic of Serbia, can be prosecuted for actions by RSK forces. In contrast, in its 1995 Operation Storm, the Republic of Croatia committed deliberate, systematic violations of the UN Convention on the Prevention and Punishment of the Crime of Genocide by targeting the ethnic Serb population as a whole. These violations were orchestrated and condoned by the highest authorities within the Croatian government, making the Republic of Croatia directly responsible.

The Republic of Serbia requests that Croatia's inaccurate allegations be dismissed by the Court. It further requests that the Court acknowledge the genocide perpetrated by Croatian forces against the Serb minority in the Krajina region, and urge the ICTY to prosecute individual generals and commanders involved in Operation Storm.