

**Application of the Convention on the Prevention and Punishment of the Crime of Genocide**  
***(Croatia vs. Serbia) February 2015.***

**Key Facts (4T 4COM)**

On the 25th of June 1991, Croatia declared independence against Yugoslav rule. At this time the Federal Republic of Yugoslavia was crumbling, one by one states were declaring independence. Prior to this time Croatia and Serbia were both part of the Federal Republic of Yugoslavia. Croatia's declaration of independence commenced a conflict between Croatia and the Serb-dominated Yugoslav army. Croats wanted to cleanse Croatia of ethnic Serbs who refused to recognize the newly proclaimed Croatian State. Serbian troops entered Croatia to assist the ethnic-Serbs living in Croatia. Thus began a war that lasted from 1991-1995, often referred to as the Croatian War of Independence or the War of Yugoslav Succession ("Art 1", 27). During this time, there were approximately 20,000 casualties, the majority of which were Croats. Throughout the beginning of the conflict in 1991, tens of thousands of Croats were displaced, as well as roughly 260 Croat men were detained and killed in Vukovar while it was occupied by Serbs ("Art 1", 5). During the war the FRY gained control of one third of Croatia's territory ("Art 2", 2). This part of the territory was temporarily named Republic of Serbian Krajina. Later on in 1995, Operation Storm and Operation Flash implemented by Croatia's Military, forced around 200,000 people from their homes in Krajina, the majority ethnic-Serb area ("Art 1", 6). Both Operations were successful in Croatia reclaiming their land and displacing ethnic Serbs. Succeeding the war, Croatia and Serbia became independent nations ("Art 2", 2). The events during the war occurred despite the fact that the UN monitored a ceasefire that was declared in 1992, three years prior to the end of the official conflict ("Art 4", 6).

As a result in 1999, Croatia put forward an application with the ICJ against Serbia, alleging violations of the Convention on Genocide that occurred over the course of 1991-1995 ("Art 2", 2). Croatia sought compensation for damages "to persons and properties as well as to the Croatian economy and environment" ("Art 2", 16). This claim was rejected by the ICJ by 15 votes to 2, in 2008 ("Art 3", 1). On December 20th 2010, Serbia responded with a counterclaim stating that Operation Storm expelled ethnic Serbs, in other words, Operation Storm imposed ethnic cleansing against Serbs in Croatia ("Art 5", 18). The ICJ dismissed Serbia's counterclaims with a vote of 17 to 0 ("Art 3", 1).

**Legal Issues (2T)**

- (1) A crucial question that must be answered in the proceedings of this case is how much damage must be done to a country and how many casualties are substantial enough to be considered a genocide with regards to the UN 1948 Genocide Convention.
- (2) Did the claims of either Croatia or Serbia constitute both *actus reus* (physical element) and *dolus specialis* (intent) of the crime of genocide.
- (3) Should either country have to compensate for the damages done during the conflict?
- (4) Were Operation Storm and Flash a proportionate amount of force in response to the atrocities committed by Serbia?
- (5) At the time of the conflict, could Serbia have been subject to international law? Given they did not declare independence until 2006.

**Key Arguments of Each State / Side (4KU 4T)**

*Croatia's Claim:*

Croatia came forward with their case in 1999 alleging that Serbia violated the UN 1948 Genocide Convention between the year 1991 and 1995. There is evidence that ethnic Croats were victims of acts of killing, causing mental and bodily harm perpetrated by Serbian troops. The indicated crimes constitute as the *actus reus* of the crime of genocide, under Article 2(a) and (b) of the Genocide Convention. In spite of the evidence of physical acts of genocide, proof of genocidal intent could not be proven under the Genocide Convention. The unsubstantial amount of evidence could only confirm that Serbian Troops intended to forcibly displace ethnic Croats, as opposed to wiping out the entire population of ethnic Croats in the area. There were no policies demonstrating *dolus specialis*, which is the main reason for the ICJ rejecting the claim. ("Art 2").

*Serbia's Counterclaim:*

In response to Croatia's claim, Serbia filed a counterclaim alleging that during Operation Storm (1995) and Operation Flash (May 1995), Croatian military violated Art.2 (a)(b) of the Genocide Convention. Both operations were successful in regaining authority over territory that was originally within the borders of Croatia (Art. 2). In the course of forcing Serbian officials and civilians out of

what had been temporarily self-declared proto-state Republic of Serbian Krajina, there were numerous casualties in addition to thousands of civilians displaced. As per in the judging of Croatia's claim, specific intent of genocide was not established (**Art. 5**). Croatia and Serbia both infringed Art 2(4) of the UN Charter. Force was used when Serbs took control of Croatian territory, moreover, was used in Croatia's retaliation. Serbia argued the responsibility to protect their citizens living in Croatia when independence was first declared. Therefore permitting Serb troops to intervene in the conflict. Near the end of 1995, during Operation Storm, Croatia argued that they had a right to intervene out of self defence.

### **Decision and Reasons for Judgment (1COM 1KU)**

The court dismissed the cases of both Croatia's claim as well as Serbia's counter-claim ("**Art 2**", **1**). On the 18th of November 2008 Croatia's claim from 1999 alleging acts perpetrated by Serbia caused an infringement of the UN 1948 Genocide Convention was rejected. It was rejected due to the lack of evidence in regard to the physical element of genocide. The ICJ recognises that acts of genocide were committed and atrocities did take place, although the "intent to destroy in whole or part national, ethnical, racial or religious groups" was not substantial enough ("**Art 1** "). Subsequently, Serbia filed their counterclaim. Serbia's allegations against Croatia were identical to those of Croatia's against Serbia, despite the fact that the occurrences they referred to occurred during Operation Storm. The ICJ responded to Serbia's counterclaim in a similar manner. Not enough documentation was present to solidify intents of genocide.

### **Ratio (10 APP)**

The conflict between Croatia and Serbia violates the doctrine of state sovereignty. In the act of invading and occupying Croatia's territory, Serbia was not respecting the legitimacy nor the authority of the newly proclaimed Croatian state ("**Art 4**", **5**). Serbia disregarded their territorial integrity as well as their political independence, weakening Croatian sovereignty. The Serb-dominated Yugoslav military, gained power over one third of Croatia's territory very soon after Croatia's independence was declared. Croatia's declaration of independence clarified Art. 1 of the Montevideo Convention. Croatia had a clear government and territorial boundaries in addition to a permanent population. Apart from the Federal Republic of Yugoslavia, Croatia's independence had been accepted by other states. In the summer of 1995, Croatia's military Operation Storm and Flash committed acts that fall under Article 2 Section (a) and (b) of the UN 1948 Genocide Convention ("**Art 5**", **11**). Operation Storm and flash intended to regain Croatian territory which would result in strengthening their states sovereignty. The Serb-dominated Yugoslav army initially committed these same acts during the period that they occupied one third of Croatia's territory, prior to the spring and summer of 1995.

The approach the International Court of Justice took in processing the claims of Serbia and Croatia, solidified and clarified the doctrine of consent reciprocity. The conclusion of each claim led to rejection in their entirety (**Art 5**). Both states agreed to be subject to international law and were treated equally in their judging.

As per the doctrine of non intervention, Serbia and Croatia both advocated that they were permitted to intervene. Government officials from both countries were sent to intervene at different points during the war. Serbia was the first to intervene in the conflict in 1991, immediately after Croatia declared independence from the FRY. Claiming that Serbian officials had the responsibility to protect their civilians living in Croatia, under the R2P doctrine. Conflicting with Art. 2(4) of the UN Charter "No Use of Force". With regard to intervention on behalf of the Croatian military, they argue it was necessary to intervene with the use of force under Art. 51 of the UN Charter, allowing the exception of self-defense. Due to the numerous casualties and damage done to infrastructure, Croatia argues that they had a right to intervention and used proportionate measures. Serbia counterclaim states that Croatia committed the crime of genocide which is never a proportionate amount of force, but the ICJ's ruling was not that of the crime of genocide, but that of acts of genocide were committed. Thus the amount of force used by Croatia in forcibly removing ethnic Serbs from Krajina (territory taken over by Serbian officials) could be considered proportionate to the atrocities perpetrated by Serbia prior to these events.

Although a clear legal path seems to have been followed, Serbia had not yet declared independence from the FRY. Therefore complicating Serbian troops' legal personality. It was confirmed that the troops who intervened in the beginning of the war in Croatia were ethnic Serbs representing the FRY. Complicating the allegations in each claim, if Serbia was not an individual state at the time, that would imply that Serbia could not be involved in international cases prior to June 6th 2006, when they became an independent nation. Following this logic, Serbia could not be subject to any international law, both claims become moot. As a result of this the seemingly clear legal path following the doctrine of non-intervention becomes complicated, thus weakened.

## **Works Cited**

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### **Art 3**

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### **Art 5**

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