

Application of the Convention on Genocide (Croatia vs Serbia 2015)

KEY FACTS

The Socialist Federal Republic of Yugoslavia (SFRY) was a former Eastern European state that consisted of the current European republics of Bosnia-Herzegovina, Croatia, Serbia, Montenegro, Macedonia, and Slovenia ([BBC](#)). It was formed in 1946 after World War II and fell in the early 1990s when Croatia, Bosnia-Herzegovina, Serbia, and Macedonia all declared independence from the state ([Britannica](#)). Post-SFRY, the republics of Serbia and Montenegro allied to form the Federal Republic of Yugoslavia (FRY) ([Office of the Historian](#)), and on 27 April 1992 ([Britannica](#)), they became the successor to SFRY.

The dissolution of SFRY sparked conflict with the Serb-dominated Yugoslavian army ([BBC](#)) and with civilians who were resistant to living within ethnically mixed settings ([Yale](#)). Thus began the Croatian War of Independence. The sizable ethnic Serb minority in Croatia openly rejected the authority of the new Croatian government, and with help from Serbia, rebelled ([ICTY Conflicts](#)). They declared a third of Croatian-owned territory to be an independent Serb state and began the ethnic cleansing of the area, displacing Croats and other non-Serbs ([ICTY Conflicts](#)). In late 1991, fighting from both the Serb-dominated Yugoslavian and Croatian armies led to the shelling of the Croatian city of Dubrovnik and the siege and destruction of Vukovar, Croatia ([ICTY Conflicts](#)). In 1995, near the end of the war, Croatian forces undertook a plan to regain territory, which led to the mass exodus of tens of thousands of Serbs ([ICTY Conflicts](#)).

After the end of the war, Croatia filed its initial case against the FRY in 1999 to the International Court of Justice (ICJ), under Article IX for violations of the Convention of the Prevention and Punishment of the Crime of Genocide ([ICJ Overview](#)). Croatia claimed that the violations of the Convention occurred between 1991 and 1995 when Croatia declared independence ([Library of Congress](#)). In 2002, the FRY provided counterclaims to Croatia's case to the ICJ, which were decided upon in 2008. However, in 2010, Serbia (the legal successor of FRY) filed a secondary countersuit against Croatia.

LEGAL ISSUES IN THE CASE

- 1) Is either claim of genocide validated by the international legal definition of the word, as described in Article II of the Genocide Convention? If not, what truly constitutes the crime of genocide in international law?
- 2) As the FRY, and therefore Serbia, was not privy to the Convention before its formation on 27 April 1992, should they be punished for their actions? All alleged events occurred in 1991 prior to the formation of the FRY, so should they be accountable for a historical event that happened before they agreed to the terms of the international law in question?

KEY ARGUMENTS

Croatia

Croatia's main argument involved the *actus reus* of genocide ([Library of Congress](#)). The *actus reus* of genocide is constituted as the physical element of genocide ([ICJ Case Summary](#)). The country argued that it had found evidence of Serbian troops killing members and causing serious bodily and mental harm to ethnic Croats ([Library of Congress](#)). Article II (a)(b)(c) of the Convention of Prevention and Punishment of the Crime of Genocide provides backing for these claims, indicating that the international court's definition of genocide "means any of the following acts committed...to destroy...a national, ethnical, racial or religious group as such: (a) Killing members of the group (b) Causing serious bodily or mental harm to members (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or part" ([Convention on Genocide](#)). Although the alleged events of genocide occur before the FRY was formed, Croatia insists the obligation of the Convention is to prevent and punish genocide not limited to acts that occur when the Convention enters into force in a specific state ([ICJ Case Summary](#)).

Serbia

Serbia tried to argue that acts that genocide was also committed by Croatia ([Library of Congress](#)). It referred to events that occurred in the summer of 1995 against ethnic Serbians, when both the FRY and Croatia had been privy to the Convention for years ([ICJ Case Summary](#)). As well, Serbia tried to dispute the admissibility of

Croatia's claim related to the timing of the alleged acts of genocide. The country argued that because it only officially became a state on 27 April 1992 ([Britannica](#)), it should not be held accountable for its actions based on the Convention ([ICJ Case Summary](#)). The FRY was not officially bound to the Convention at the time of the alleged events occurred ([ICJ Case Summary](#)), as it was not a solidified union, nor was it the legal successor to SFRY.

DECISIONS AND REASONS FOR JUDGEMENT

Croatia

The ICJ agreed with Croatia's argument that the *actus reus* of the Convention had been violated by Serbia ([Library of Congress](#)). However, they failed to see the *dolus specialis* of the acts ([Library of Congress](#)), which is the specific intent to destroy in whole or in part a national, ethnical, racial or religious group ([ICJ Case Summary](#)). The Court pointed out that for genocide to be established, *dolus specialis* must be present, as well as specific intent identifiable for every act committed ([ICJ Case Summary](#)). The ICJ claimed that the goal of the Serbians was not meant to destroy the group in its entirety, but to displace them ([Library of Congress](#)). Without the evidence required to prove the genocidal intent of the actions, the ICJ dismissed the Croatian claims in their entirety ([Overview ICJ](#)).

Serbia

The allegations made by Serbia failed to convince the ICJ of genocidal intent, concerning both *actus reus* and *dolus specialis* ([Library of Congress](#)). The Court found that there was no specific intent to destroy the group of ethnic Croatian-Serbs (*dolus specialis*) and that the acts committed against said group were not to the scale where the only explanation for them was genocidal intent (*actus reus*) ([Overview ICJ](#)). The ICJ dismissed Serbia's counter-claim in its entirety ([Overview ICJ](#)).

On the admissibility of Croatia's argument on the timing of the events, however, the ICJ ruled in Serbia's favour. The Court claimed that "there [was] no indication that the Convention was intended to require states to enact retroactive legislation" ([ICJ Case Summary](#)).

RATIO

The case on the Application of the Convention of the Punishment and Prevention of the Crime of Genocide (Croatia vs Serbia) serves to clarify the international legal definition of genocide. It separates the *actus reus* and *dolus specialis* of genocide and indicates that both must be present in order for genocide to be established ([ICJ Case Summary](#)). As defined in Article II of the Genocide Convention, genocide must include intent to destroy in its acts ([UN](#)). Therefore, this case clarifies that the commitment of acts such as those described in Convention Article II(a) to (e) must have *dolus specialis* in order to constitute genocide ([Overview ICJ](#)) and cannot solely consist of the *actus reus*.

As well, this case strongly supports the CORE 4 Theory of the Doctrine of Consent and Reciprocity (DCR) by ruling in Serbia's favour on the timing of the alleged events of genocide. As the FRY was not an official union until 27 April 1992 ([ICJ Case Summary](#)), nor were they considered the legal successor to SFRY, they had not consented to the Genocide Convention. Therefore, FRY should not be privy to the Convention for events alleged to have happened before the country consented to the Convention. This case strengthens the importance of DCR in international law.

The other CORE 4 Theory that is involved in this case is the Doctrine of Non-Intervention, specifically relating to Serbia's role in the rebellion of the ethnic Serb minority in 1991 ([ICTY Conflicts](#)). Contributing to the rebellion violates UN Charter Article 2(4) of absolute prohibition on armed attack. While Article 51 of the UN Charter indicates that states have the "inherent right of individual or collective self-defence" ([UN Charter](#)), Croatia did not provoke a Serbian counterattack or commit severe human rights violations for Serbia to argue for intervention based on defence of nationals. Therefore, Serbia interfered in an internal conflict within the country of Croatia with no legal argument to do so.

Overall, the ICJ's judgement serves to absolve both parties alleged acts of genocide, and end the lengthy criminal trial that has hurt the relationship between Serbia and Croatia for decades. As Marko Sjekavica, legal advisor and war crimes trial monitor at the Civic Committee for Human Rights in Zagreb explains, "facing the crimes of the past is the only way to quality relations in the future" ([Balkan Insight](#)). Therefore, by clarifying that neither country violated the Genocide Convention, both countries are able to move forward from this conflict by providing reparations for those affected by the events and form new international agreements with each other.

Works Cited

- “The Conflicts.” *International Criminal Tribunal for the former Yugoslavia*,
<https://www.icty.org/en/about/what-former-yugoslavia/conflicts>. Accessed 6 April 2022.
- “Convention on the Prevention and Punishment of the Crime of Genocide.pdf.” *the United Nations*,
<https://www.un.org/en/about-us/un-charter/full-text>. Accessed 7 April 2022.
- “Convention on the Prevention and Punishment of the Crime of Genocide.pdf.” *the United Nations*,
https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf. Accessed 11 April 2022.
- “Croatia; International Court of Justice; Serbia: Judgment in a Case on the Application of the Convention on Genocide.” *Library of Congress*, 6 February 2015,
<https://www.loc.gov/item/global-legal-monitor/2015-02-06/croatia-international-court-of-justice-serbia-judgment-in-a-case-on-the-application-of-the-convention-on-genocide/>. Accessed 4 April 2022.
- “Croatia-Serbia Genocide Lawsuits Expected to Fail.” *Balkan Insight*, 28 February 2014,
<https://balkaninsight.com/2014/02/28/serbia-croatia-genocide-lawsuits-expected-to-fail/>. Accessed 19 April 2022.
- “ICJ Case Summary.” *CrY Summary of the Judgment of 3 February 2015*, 3 February 2015,
<https://www.icj-cij.org/public/files/case-related/118/18450.pdf>. Accessed 3 April 2022.
- “ICJ Case Summary.” *CrY Summary of the Judgment of 3 February 2015*, 3 February 2015,
<https://www.icj-cij.org/public/files/case-related/118/18450.pdf>. Accessed 04 April 2022.
- “Milestones: 1989–1992.” *Milestones: 1989–1992 - Office of the Historian*,
<https://history.state.gov/milestones/1989-1992/breakup-yugoslavia>. Accessed 4 April 2022.
- “Overview ICJ.” *Latest developments | Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia) | International Court of Justice*, <https://www.icj-cij.org/en/case/118>. Accessed 11 April 2022.
- “UN court dismisses Croatia and Serbia genocide claims.” *BBC*, 3 February 2015,
<https://www.bbc.com/news/world-europe-31104973>. Accessed 2 April 2022.

“United Nations Charter (full text) | United Nations.” *the United Nations*,

<https://www.un.org/en/about-us/un-charter/full-text>. Accessed 11 April 2022.

“Yugoslavia (Former) | Genocide Studies Program.” *Genocide Studies Program*,

<https://gsp.yale.edu/case-studies/yugoslavia-former>. Accessed 5 April 2022.

“Yugoslavia - The third Yugoslavia | Britannica.” *Encyclopedia Britannica*,

<https://www.britannica.com/place/Yugoslavia-former-federated-nation-1929-2003/The-third-Yugoslavia>.

Accessed 3 April 2022.