

## **ANALYSIS: A Criminal Entity**

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Two key court cases being heard in The Hague may rule that Republika Srpska was founded for the purposes of genocide.

The fresh indictment against Slobodan Milosevic for war crimes in Bosnia and Herzegovina accuses the former Yugoslav president of forming para-state institutions with the intention of committing genocide. As such, it brings charges not just against Milosevic but against Republika Srpska itself. If the accusations are upheld, they could provide a legal basis for challenging the Dayton Peace Agreement which established the Serbian entity - the argument being that it is a political unit specifically created with criminal purpose and through criminal means.

The process of bringing international law to bear on the crimes of genocide in Bosnia began at two Hague courts at around the same time.. In March 1993, Bosnia brought charges against the Federal Republic of Yugoslavia, FRY, before the International Court of Justice for violating the Genocide Convention. Two months later, the UN Security Council established the International Criminal Tribunal for the former Yugoslavia. The claims in the charges filed by Bosnia more than eight years ago are the same as those made by chief prosecutor Carla Del Ponte in her indictment against Milosevic.

The allegations in the charges filed by Bosnia are supported by considerable material evidence. This evidence testifies that the plans of the former Belgrade regime to preserve Yugoslavia as a "Greater Serbia" included preparing, planning, organising and implementing genocide over the non-Serb population on the territories expected to join such a state.

At every turn before the Court of Justice, Yugoslavia has sought to avoid confronting its responsibility for these acts. It refused to implement the court order to cease violations of the Genocide Convention. It then proceeded to dispute the international legal standing of Bosnia and Herzegovina, and the legality of it bringing a case, as well as the jurisdiction of the court.

By July 1996, the court had dismissed all its objections, prompting Yugoslavia to bring counter-charges against Bosnia, claiming that the Sarajevo government was carrying out genocide against the Serb population in Bosnia. Until 2000, Belgrade conditioned the establishment of diplomatic relations on Bosnia dropping the charges. Through the Republika Srpska authorities and Serb representatives in Bosnian institutions, Yugoslavia attempted to block the adoption of decisions necessary to conduct the case before the Court of Justice.

After this, too, failed, the new authorities in Yugoslavia resorted to fresh procedural posturing. Under President Vojislav Kostunica, the government now asserted that the country was not a member of the UN from 1992 until 2000, and thus not a party to the Genocide Convention. As such, Belgrade questioned the court's jurisdiction over Yugoslavia in this time, and urged it to annul its decision of 1996.

Bosnia countered that there is no basis for revising the 1996 ruling. The court will hear an oral debate on these arguments in spring 2002. Should it decline to review the 1996 decision, the case will then move to a presentation of the evidence on the merits, namely whether Yugoslav authorities were responsible for genocide in 1992-95.

Throughout the period covered by the Court of Justice case, the dominant personality in Yugoslavia, with specific control over the army and police, was Slobodan Milosevic. The war crimes tribunal aims to establish his personal responsibility for planning and implementing genocide in Bosnia.

A sizeable political, military and quasi-state structure is necessary to realise such a large criminal project. Tribunal prosecutors will attempt to prove that the Serbian Democratic Party, SDS, in Bosnia was used to achieve all the institutional and other conditions necessary for this goal. Along with steps to forge local "Serb autonomous regions" and other mono-ethnic political institutions, in early 1992, it formed Serbian para-state structures within Bosnia, including an executive, legislature and judiciary, as well as police and military. With the full support of the Yugoslav Army, this creation exercised de facto authority over a large part of Bosnian territory.

Numerous documents confirm the authority of the relevant Yugoslav institutions, headed by Milosevic, over the SDS and other structures in Bosnia.

In two rulings, the war crimes tribunal has already established that an international conflict took place in Bosnia, and that Yugoslavia and Croatia were involved. This refuted arguments, put forward mainly by the neighbouring countries, that the conflict in Bosnia was a civil war between ethnic and religious groups. In the sentence handed down to General Radislav Krstic, the court held that at Srebrenica the crime of genocide had been carried out against Bosniaks.

The case against Milosevic is expected to last at least two years. A ruling by the International Court of Justice, which could result in Yugoslavia's being ordered to pay compensation to the victims, could come, after presentation of evidence and argument, in around one year.

While these verdicts are awaited, the time has long past for Republika Srpska (and the Bosnian Federation, too) to bring its constitution, legal order and the performance of its public institutions into line with the Bosnian constitution - and with international standards of human rights and democracy. By continuing to oppose the return of refugees, the establishment of joint state institutions, and cooperation with the war crimes tribunal, the Republika Srpska authorities are trying to preserve the results of the war. As such, Banja Luka remains the country's largest - although not its only - obstacle to participation in Euro-Atlantic integration.

Findings of genocide in either of these cases in The Hague - and particularly, confirmation in the Milosevic case that the structures of Republika Srpska were established in order to perpetrate war crimes - would provide a heavy legal blow against the constitutional order of Bosnia under the Dayton agreement.

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**Location:** Balkans  
Serbia  
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