

Belgrade Sets Out its Stall in ICJ Case

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Serbia argues that the court has no jurisdiction in the genocide case brought by Bosnia. In their defence against landmark genocide charges brought by Bosnia and Hercegovina at the International Court of Justice, Belgrade's representatives made it clear this week that they would be arguing long and hard that the court had no jurisdiction over the matter because Serbia had not been a member of the UN at the time.

The lawyers also sought to clothe themselves and their arguments in the colours of the new "democratic Serbia" - describing the way that politics and the Serbian state had radically shifted following the overthrow of former president Slobodan Milosevic in 2000.

Through these arguments, the lawyers were distancing themselves from the evidence of killings, rapes and torture committed by Serbs in Bosnia - allegedly under the control of the Milosevic regime - which had been presented to the court over the previous seven days.

Nevertheless, the Serb side also began to chisel away at some of the Bosnian allegations, arguing that because their sources were not always reliable, the court would have to test each allegation.

In his opening arguments, Professor Radoslav Stojanovic, a legal representative for Serbia, told the court that the Serbian side would, in the first part of their case, expand on the issue of the court's own legitimacy in hearing the case - despite the fact that this will be the third time the Serbian side is raising arguments about jurisdiction - and that only later would they counter the substance of the Bosnian case.

He suggested that they would argue that the Bosnian side had not only failed to establish what had taken place during the wars in the former Yugoslavia in the early Nineties, but that they had failed to show that any of the crimes that had taken place could be attributed to Serbia and Montenegro.

Stojanovic presented himself to the court as a representative of what he described as the new democratic Serbia, explaining that "I find myself in a paradox - I must defend a regime to which I am opposed".

He called for dialogue and reconciliation, between the parties, rather than a court case, although he emphasised that "reconciliation doesn't mean forgetting everything". And he stressed the fact that both sides were taking the "self-same path" towards acceptance by the European Union.

Stojanovic also expressed his concern that any decision - either for or against Serbia - by the ICJ would have a negative impact in the region, arguing that it would "result in an increase of political extremism".

In his follow-up arguments on the issue of jurisdiction, another Serbian legal representative, Professor Tibor Varadi, argued that they were not raising "mere technicalities". He had represented Serbia at a previous ICJ case concerning claims against several NATO states - which resulted in an ICJ ruling in 2004 that Serbia's status as a member of the UN between 1992 and 2000 had "remained ambiguous", and therefore it had no standing to bring a trial to the ICJ.

The stakes in this case were “daunting”, he said, because, if the court ruled against the Serbs, “the balance sheet of the twentieth century would show Serbia and Montenegro [to be] the one and only state convicted for genocide”.

Yes, there had been crimes, he said, but they were the responsibility of individuals, and relatively straightforward to judge. Things become more complicated, said Varadi, when perceived as issue between states.

He stressed throughout his arguments that the whole conflict during the Nineties was not as simple as had been maintained by the Bosnian side. There were “shifting ethnic confrontations and alliances”.

He did not agree that only Serbs had been the culprits, but rather that “since 1991 a brutal conflict emerged between Muslims, Serbs and Croats”.

Varadi summarised the Bosnian position as follows: that “acts prohibited by Genocide Convention were committed by Bosnian Serbs and that the authorities of the FRY [the predecessor state to Serbia and Montenegro] aided and abetted such acts”.

He pointed out that Republika Srpska, whose federal government of Bosnia and Hercegovina launched the suit, have strongly and consistently opposed it.

Varadi pointed to the irony that the alleged perpetrator – RS – may become the recipient of any claims to reparations if the court found in favour of the Bosnian side, while Kosovo, still legally part of Serbia and Montenegro, whose citizens are not accused of taking part in this conflict, could be a debtor.

Turning to the issue of Serbia’s membership of the UN - on which much of the Serbian arguments about the ICJ jurisdiction turn - Varadi emphasised that this was of “critical importance”.

He pointed out that this court, in a previous ruling, had already determined in 2004 that the Federal Republic of Yugoslavia - predecessor state to Serbia and Montenegro - had not been a member of the UN between 1992 and 2000, and therefore not party to any UN statutes.

Back in 2000, said the lawyer, when the new government of Serbia and Montenegro was “faced with a daunting number of crucially important issues”, they abandoned the arguments advanced by the previous regime and submitted an application to join the UN.

Varady was followed by Serbian legal representatives

Vladimir Djerić and Andreas Zimmermann who argued in detail about Serbia and Montenegro’s non-membership of the UN, and how the state was therefore not bound by the Genocide Convention and Article IX of that convention which deals with state responsibility.

Before they had embarked on the detail of the jurisdiction issues, another member of the Serbian legal team, Sasa Obradovic, made a number of challenges to the Bosnian lawsuit, especially to the elements which had been presented as part of their written case.

Obradovic told the judges that there had been “clear examples of false and inaccurate allegations”. He picked out a few, including allegations that around 2,500 people had been killed in an attack on Zvornik in April 1992. In the Milosevic indictment at the tribunal, he pointed out, 15 people were alleged to have been killed in that attack.

He also challenged the use by the Bosnian side of tribunal indictments to support their case, saying that many of the allegations contained in them had not yet been confirmed.

And on plea agreements, Obradovic said that they themselves, or the facts stated in them, were not used as evidence at the tribunal unless supported by oral testimony by the person who had pled guilty.

He pointed out that the statement of facts by Biljana Plavsic, who pleaded guilty to crimes against humanity, had not been accepted as evidence before any other trial. Yet the Bosnian side had cited it at length as indicative of the connections between the leadership of RS and Belgrade.

The Serb side has the same number of sessions as the Bosnians in which to present their arguments, before closing on March 16, after which each side will bring witnesses and experts.

Journalists have been requested not to report on the testimony of the witnesses until they have all completed their evidence, by March 28.

After the witnesses there will be another round of arguments from both sides in April, before the hearings finish on May 9.

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