

Courtside: Yugoslavia vs Bosnia

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By Daniela Valenta at the International Court of Justice (TU No. 288, 4 - 8 November, 2002)

In 1993 Bosnia, less than a year after joining the UN, filed a motion to the ICJ, the UN's court, accusing Yugoslavia of genocide for its alleged support of Bosnian Serb separatists.

By 1996 the ICJ, which exists to adjudicate complaints by one member against another, ruled that it did have jurisdiction in the case.

But four years later, and while it was still mulling the alleged crime, Yugoslavia launched a legal challenge.

ICJ rules contain no appeals procedure, so instead Belgrade has grabbed at the only available straw - making a claim to the court that, because Yugoslavia was suspended from the UN at the time of the alleged genocide, the ICJ has no jurisdiction to hold a trial.

Belgrade's legal representative, Tibor Varady, recently told 13 judges gathered in the splendour of The Hague's Peace Palace, three blocks from the war crimes court, that they had no power to judge the case.

When former Yugoslavia dissolved into independent states in the early Nineties, Serbia and Montenegro declared themselves its heirs.

The new federation was not universally accepted as the successor state, however, and the UN refused to give it a seat at the General Assembly.

But Yugoslavia continued to have a mission at the UN in New York, and it even paid its dues to the body.

The problem for the Yugoslav lawyers is that, although refused a seat at the UN, the state in 1992 voluntarily agreed to abide by its rules.

But Varady says that since the federation was never accorded membership of the UN, the body has no right to judge it.

This is the second time Belgrade has challenged the court's jurisdiction; in 1996, the court dismissed Yugoslav objections and upheld its right to judge the case.

Varady said Yugoslavia was ready at any moment to negotiate an out-of-court settlement, but the Bosnian response so far has been negative. Sarajevo insists Yugoslavia is still bound by UN rules.

French lawyer on the Bosnian team, Allain Pellet, said that although Yugoslav membership of the UN may not have been typical, Belgrade's decision to abide by its rules in 1992 was "a statement of policy".

Varady also appealed to the judges to drop the case, arguing it would damage the already fragile relations between Yugoslavia and Bosnia, which established diplomatic relations two years ago.

Bosnian representative Sakib Softic countered that this case was the only way of clearing up the ghosts of the past.

"It will only be a burden for those who fear being told the real story of war," he said. "The Federal Republic of Yugoslavia did not want to accept Bosnia and Hercegovina as a multi-ethnic state. She wanted to incorporate the greater part to bring about a Greater Serbia.

"Genocide was one of the means of achieving this goal. The Greater Serbia project cost 200,000 lives and left hundreds of thousands dispossessed persons who live to this day across the globe from Alaska to New Zealand."

He said it was important to distinguish this case, against the Yugoslav government, from war crimes trials at the war crimes tribunal, which deals with the crimes of individuals. The ICJ judges are likely to give their verdict on the case early next year.

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