

Genocide Suit Ratchets Up Tensions

Author: IWPR

With the clash between Bosnia and Serbia over alleged wartime genocide well under way in The Hague, predictions that it would stir up ill-feeling in the Balkans are being borne out.

As Bosnian lawyers wrapped up seven days of opening arguments in their genocide case against Belgrade at the world's highest civil court this week, tensions rose between supporters of the opposing sides in the argument in the Balkans.

Sarajevo hopes to convince judges at the International Court of Justice, ICJ, that Serbia and Montenegro, as the successor state to Yugoslavia, is responsible for genocide against non-Serbs during the 1992-95 war in Bosnia.

It is the first time that a state-level genocide suit has made it past preliminary hearings.

As the case unfolds in the courtroom, an initial atmosphere of euphoria in Bosnia has given way to cautious optimism, with many observers speculating that political considerations could yet derail the process.

So far, the Bosnian team has been keen to emphasise that far from seeking to demonise the Serb people as a whole, their aim is simply to address the injustices of the Nineties by apportioning blame to those who deserve it, and securing financial recompense.

But in Serbia, and in Bosnia's Serb entity, a growing sense that Sarajevo's bid might actually succeed meant that initial scepticism has been displaced by a swell of emotions spanning anger, indignation and self-pity.

During the first seven days of hearings, which came to an end on March 7, lawyers and experts representing Bosnia outlined their formidably complex case. Despite the volume of documents and other evidence at their disposal, it quickly became clear how difficult it will be to handle such thorny concepts as state responsibility and to show that the intention to commit genocide existed at state level in Belgrade.

Australian lawyer Magda Karagiannakis devoted much time in court on March 6 outlining how irregular forces – including “so-called volunteer units, units of the ministry of interior of Serbia and other Serbian paramilitary units” – took part in targeting non-Serbs in Bosnia. Belgrade, she argued, had a key role in “controlling, directing and/or supporting” these units.

Karagiannakis said that forces under “de facto and de jure control” of the Serbian interior ministry – including the infamous Red Berets and men loyal to the paramilitary commander Zeljko “Arkan” Rznatovic – created an atmosphere of terror among Bosnia's non-Serb inhabitants during the war. Their methods, she said, included “rape, murder, plunder and the destruction of property”.

Norwegian financial expert Morten Torkildsen also told the court how Belgrade financed the Bosnian Serb Army, VRS, which is implicated in ethnic cleansing across Bosnia and in the extrajudicial killing of thousands of prisoners from the town of Srebrenica. The latter episode has been defined as genocide by judges at the International Criminal Tribunal for the Former Yugoslavia, ICTY.

Torkildsen, who previously lent his services to prosecutors trying former Yugoslav president Slobodan Milosevic at the ICTY, said Yugoslavia was effectively part of a single economic entity which also included the self-declared Serb republics in Bosnia and Croatia. This whole structure, he said, was controlled by Belgrade.

Observers to whom IWPR spoke in Sarajevo appeared satisfied with the way the case has been handled in court so far.

“I think the Bosnian team had a very good initial presentation,” said television journalist Boris Grubestic, who reported on the first week of hearings. The Bosnian team, he said, marshalled the evidence at their disposal “in a very effective way” and left him with the impression that Sarajevo had “a good chance of winning this case”.

Edina Becirevic, a senior lecturer in security studies at Sarajevo University, said she couldn't see any weak points in the way that the Bosnian lawyers have built their arguments.

But both observers added a note of caution.

“There is always a possibility that some international political lobbies will decide that a judgment in Bosnia's favour would not be good for stability in the whole region,” said Becirevic. “It's quite possible that the ICJ judges will adjust their final opinion on this case in line with that of their respective governments.”

Grubestic suggested that the international community might even, “for the sake of peace in the region and the future of European integration”, insist on the matter being settled out of court.

Sead Numanovic, a reporter with the Sarajevo daily Avaz, echoed these observations. “Pronouncing Serbia and Montenegro guilty of genocide does not fit into the plans the international community has for Serbia at this moment,” he told IWPR, “If the judges are led by this line of reasoning, I'm sure they'll find a way to avoid such a verdict.”

Not all observers are enamoured with the Bosnian lawyers' approach to date.

Mirsad Tokaca, director of the Sarajevo-based Research and Documentation Centre, said he was surprised that the team had decided to call only three experts to back their case. The hearing of experts and witnesses is due to begin on March 17.

Francis Boyle, the University of Illinois law professor who initiated the legal proceedings on behalf of Bosnia in 1993 but is no longer on the case, has been reported in local media as saying this is a clear sign that the Bosnian team has succumbed to international pressure and is preparing to settle out of court.

Eric Gordy, an associate professor of sociology at Clark University in the United States, disagrees. “Bosnia need not use that many witnesses because they do not have to show a lot in terms of facts,” he told IWPR. “They must demonstrate that the forces that were in Bosnia were under Belgrade's control, but everything else is a point of law.”

Since launching the case on February 27, the Bosnian team have insisted on drawing a distinction between assigning responsibility for genocide to a state and attributing it to that state's entire population.

"To hold the respondent responsible for genocide is not to assert that the people of Serbia and Montenegro all share the guilt of this genocide," insisted Professor Thomas Franck, a US member of the team.

"But their state deliberately led, helped, trained, armed, clothed, paid and inspired those who did commit genocide," he added. "While many of them do not share the perpetrators' guilt, they all share the citizens' responsibility to admit the enormity of what was done in their name and to help make amends."

But it seems that Franck and his colleagues have had little luck convincing Serbs across the Balkans of this argument. In the Bosnian Serb entity, the Republika Srpska, RS, the prevailing opinion still appears to be that this is a lawsuit not against a state but against the entire Serb nation.

Short shrift has been made of the arguments of the Bosnian Muslim and Croat politicians who say a victory in the suit would entitle the whole of Bosnia, including its Serb population, to financial reparations.

Speaking on a Banja Luka television station on March 5, Bosnia's foreign minister Mladen Ivanic - who is a Serb - reiterated charges that the lawsuit is illegitimate because a significant proportion of the country's population does not back it.

"The final effect of that lawsuit will not be good for the overall political situation in Bosnia," he said.

The Serb Caucus in the RS Council of Peoples has asked all institutions in the entity to "strongly oppose" the suit and do everything possible to obstruct it. They have also repeated accusations that the ultimate aim of the case is to bring about the abolition of the RS.

The prime minister of RS, Milorad Dodik, has argued that the lawsuit could lead to "new political instability" in Bosnia.

A source close to the Bosnian government summed up what many are thinking when he told IWPR, "If Serbia and Montenegro is found guilty of genocide, it will leave a permanent moral stain on all Serbs, including those in Republika Srpska."

Politicians from Serbia and Montenegro have also attacked the lawsuit.

As the case got underway in late February, Serbia's deputy prime minister Miroljub Labus told the Tanjug news agency that if the ICJ didn't reject the suit, the consequences for the whole region would be "dramatic".

He went further, adding, "I don't think Bosnia will be able to remain a unified state after that."

For the people of Serbia and Montenegro, one of the key issues is that of reparations.

The Sarajevo team has so far declined to specify the amount it might seek from Belgrade in the event that the court rules in favour of financial compensation. But unconfirmed rumours put the figure at around 100 billion US dollars.

In a recent debate on the website of the Belgrade-based B92 radio station – frequented by urbanites with moderate political views – most participants said they saw no reason why they should have to pay for damages caused by the Milosevic regime, which they never supported anyway.

While they condemned the crimes in Bosnia – occasionally even describing them as genocide – contributors said variously that “Bosnian Serbs were to blame”, that most people in Serbia “had nothing to do with it”, and that paying reparations would “ruin Serbia financially”.

“I don’t feel responsible for what Milosevic and the Serbian government did. On the contrary, I am a victim, too,” said one participant, adding, “I won’t give a dime for the reparations, because I don’t have a dime.”

“The most tragic thing is that I, who always fought against Milosevic’s regime, will also have to pay for reparations,” said another.

Some observers hope the case will play a role in changing the prevalent attitudes to the conflicts of the Nineties.

“People in Serbia and Montenegro and the RS are not yet ready to face the truth, but this process which started at the ICJ forces them to do that,” argued Mirela Hukovic, a reporter for Bosnian Radio 1, who covered the first week of hearings.

Hukovic added that Bosnian Serbs in particular are being manipulated by their leaders, who are seeking to exploit fears of the lawsuit to score points in the run-up to the general election scheduled for the end of this year.

Yet even in Serbia, opposition to the case is not universal.

“We were here, we were of legal age and yet we didn’t do enough to stop the war and the crimes,” one professor from Belgrade wrote on the B92 website.

“If only we could imagine the pain of other peoples in the former Yugoslavia caused by this injustice, then our own distress would be a foundation for compassion, not anger.”

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Location: Balkans

Macedonia
Albania
Serbia

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