

Serbia in the dock

By Gabriel Partos
BBC South-East Europe analyst

The International Court of Justice (ICJ) has begun two months of hearings in The Hague on a landmark case for genocide brought by Bosnia-Herzegovina against Serbia and Montenegro.

The hearings are the culmination of 13 years of legal wrangling, claims and counter-claims. It is the first case before the ICJ to involve the charge of genocide against a sovereign state.

When Bosnia took what was then Yugoslavia before the ICJ in March 1993, the war in Bosnia was still raging with no end in sight. Sarajevo's intention in going to the United Nations court, which deals with disputes between states, was two-fold.

First, Bosnia wanted the ICJ - also known as the World Court - to declare that Yugoslavia was involved, through its agents and surrogates, in a campaign of ethnic cleansing in Bosnia, and to order Belgrade to stop that practice immediately.

Second, Bosnia asked for the payment by Yugoslavia of reparations for the killings, torture and material damage caused in the war.

Within weeks the ICJ issued an interim judgement which ordered Yugoslavia to do all within its power to prevent the commission of genocide in Bosnia. And it also called on the two sides not to take any action that might aggravate the conflict.

Marathon legal battle

But the court's ruling, like many UN Security Council resolutions, was ignored; and the fighting continued for another two and a half years.

In the meantime, the two sides entered an extraordinary legal duel.

Initially, Yugoslavia wanted to have the case dismissed on the grounds that the ICJ had no jurisdiction in the case. But the court ruled in 1996 that the case could, indeed, go ahead.

But why has the case taken so long to come before the judges?

Edgar Chen, an international law expert with the US-based Coalition for International Justice, says the ICJ's procedures are complex and time-consuming.

"I think the average time for a case from the filing of an application to the judgement is about eight or so years," he said.

A lot of the evidence so critical to proving genocide only emerged during the proceedings of the International Criminal Tribunal for the former Yugoslavia (ICTY), he added.

Counter-claim

Further delays in getting the case before the judges have been caused by prolonged legal wrangling.

In 1997 Yugoslavia filed a counter-claim against Bosnia, charging it with the commission of genocide against Serbs in Bosnia.

But four years later - following the fall of Yugoslav President Slobodan Milosevic's authoritarian regime - Yugoslavia withdrew its counter-claim.

Bosnia ignored suggestions from Belgrade that it should settle out of court, and in 2003 the ICJ gave it the final go-ahead to present its case.

However, when the hearings open on Monday, Belgrade may launch yet another procedural challenge.

This is likely to be based on a judgement the ICJ handed down two years ago in a separate genocide case that Yugoslavia had brought against eight Nato countries in relation to the Kosovo conflict.

The case was dismissed - partly on the grounds that at the time of the events in question Yugoslavia was not fully recognised as a member of the UN.

But perhaps Yugoslavia's successor, Serbia and Montenegro, can now use the same argument to dismiss this case?

Professor Vojin Dimitrijevic, director of the Belgrade Centre for Human Rights, says "this will certainly be the first procedural argument of the Serb and Montenegrin side".

Belgrade's defence

Once the arguments on the merits of the case get under way, Belgrade is likely to offer two lines of defence.

First, it is expected to argue that whatever the nature of the terrible crimes committed in Bosnia, they did not amount to genocide in the internationally-accepted definition of the term under the 1948 Geneva Convention.

The Convention defines genocide as "the intent to destroy, in whole or in part, a national, ethnical, racial or religious group".

Such intent is difficult to prove. Indeed, the only two genocide convictions reached so far by the war crimes tribunal for the former Yugoslavia both relate to defendants who were not judged to have had such intent.

Instead, General Radislav Krstic and Colonel Vidoje Blagojevic were found guilty of complicity in genocide. In other words, they were judged to have helped others who had a genocidal intent, to carry out the killing of nearly 8,000 Muslims after the fall of Srebrenica in July 1995.

How the ICJ's judges interpret the judgements of the war crimes Tribunal just a few streets away in The Hague remains to be seen.

They are under no obligation to use any such rulings as setting a precedent. In any case, if they accept that genocide did take place in Bosnia, Belgrade is likely to come up with another argument, according to Vojin Dimitrijevic.

"The second line of defence would be to prove that somebody committed these terrible crimes in Bosnia but they had no support, no contact, no approval from Belgrade."

The Bosnian side will almost certainly counter such claims by other evidence that has emerged from the war crimes tribunal's caseload in relation to Srebrenica.

In the trial of Slobodan Milosevic the prosecution has been seeking to prove a connection with Belgrade by using as evidence a video film that shows a group of paramilitaries allegedly linked to Serbia, known as the Scorpions, killing six captured Bosnian Muslims.

Other information that has emerged indicates that General Ratko Mladic - charged with being the chief culprit in the Srebrenica massacre - was, like other Bosnian Serb officers, on the payroll of the Yugoslav army.

Delayed ruling

However, Bosnia may find it hard to obtain some of the documentary evidence to back this up, because it was released by Belgrade to the war crimes tribunal on the understanding that it would not be made available to third parties.

The two sides will have just a few weeks - until early May - to set out their case. Thereafter the judges will retire to reach their verdict, which will take several months. A ruling is likely to be delivered towards the end of the year or early next year.

If the ICJ rules in favour of Bosnia, it could either order Serbia and Montenegro to pay compensation or to make a formal apology. It could also require a combination of the two.

Perhaps no other country will be following the proceedings with as much attention as Croatia, which has submitted its own genocide case against Serbia and Montenegro.

Unlike Bosnia, which has not formally specified how much it will demand in reparations, Croatia has attached the hefty price tag of \$29bn to its claim.

Bosnia, which suffered much more from war, may be seeking over three times as much.

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