

**REPUBLIC OF SERBIA MEMORANDUM
TO INTERNATIONAL COURT OF
JUSTICE ON:**

***APPLICATION OF THE CONVENTION ON
THE PREVENTION AND PUNISHMENT
OF THE CRIME OF GENOCIDE
(CROATIA v. SERBIA)***

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TIMELINE OF EVENTS

1918 - Kingdom of Serbs, Croats and Slovenes (later renamed Kingdom of Yugoslavia) formed in the wake of WWI as a state for all Southern Slavs. The Kingdom of Yugoslavia was fraught with tensions, in particular from Croatian secessionists who denied the authority of parliament and participated in acts of terrorism

1941 - After the invasion of Yugoslavia by the Axis, the Kingdom of Yugoslavia was dissolved. Serbia was ruled by a German SS puppet government, whilst a Croat puppet state was ruled by the fascist former independence movement, Ustaše, who pursued a program of genocide against Serbs, with up to 390,000 Serb civilians in Croatia dead by the end of the war.

1945 - Communist Yugoslav partisans led by Marshall Tito, with the aid of the Red Army, expelled Axis from Yugoslavia and forced Ustaše members and sympathisers into hiding and exile. A new Federal People's Republic of Yugoslavia was set up, later renamed the Socialist Federal Republic of Yugoslavia (SFRY)

1974 - After the "Croatian spring" saw leading Croatians demand a greater weighting of power towards Croatia, the SFRY remade its constitution to give the federal government less control over its 8 subsidiaries

1980 - After Josef Tito's death, ethnic tensions in the SFRY began to grow, whilst Croatians and Slovenes again called for more autonomy and stoking fears of Serb dominance of the SFRY.

1989 - The new leader of Serbia, Slobodan Milošević, airs Serb complaints about the division and weakening of the Serbia people into 4 separate republics. With the support of the Croatian government, Albanian miners in Kosovo struck, demanding that Kosovo, with a large Serbian population, become a separate republic.

1990 - Slovenian and Croatian delegates left the Yugoslav communist party and in the first truly multi-party elections in the SFRY's history, nationalists came to power in both Croatia and Slovenia pledging to stand up to Serbians.

1991 - After independence referendums the previous year, Croatia and Slovenia both declared their independence from the SFRY, which the SFRY Prime Minister, himself a Croat, declares illegal. Serbians in Croatia declare their intention to form their own state, the Republic of Serbian Krajina (RSK), and take Serbian-dominated areas of Croatia, with the support of the SFRY's armed forces (JNA). This initial offensive by the JNA and the RSK constitute the majority of the genocide claims.

1992 - Most fighting halts after a ceasefire in January, during which the JNA mostly withdraws from RSK held areas. In April, the SFRY is disbanded, and a new Federal Republic of Yugoslavia (FRY) forms exclusively in Serbia and Montenegro, as a state primarily of Serbs. Bosnia's independence triggers Serbs and Croats in Bosnia to form their own substates, engulfing Bosnia in a multi-party civil war.

1993 - Fighting in Croatia is limited as the Bosnia conflict intensifies. There was fighting between all three parties, with the Croatian government supporting Croatian groups, and the FRY supporting Serbs. In the UN, the International Criminal Tribunal for Yugoslavia (ICTY) is set up to find evidence of war crimes and genocide in the Yugoslav wars.

1994 - NATO began military involvement in Yugoslavia, brokering a peace between Bosnia and Croatia, and providing air support to anti-Serbian forces.

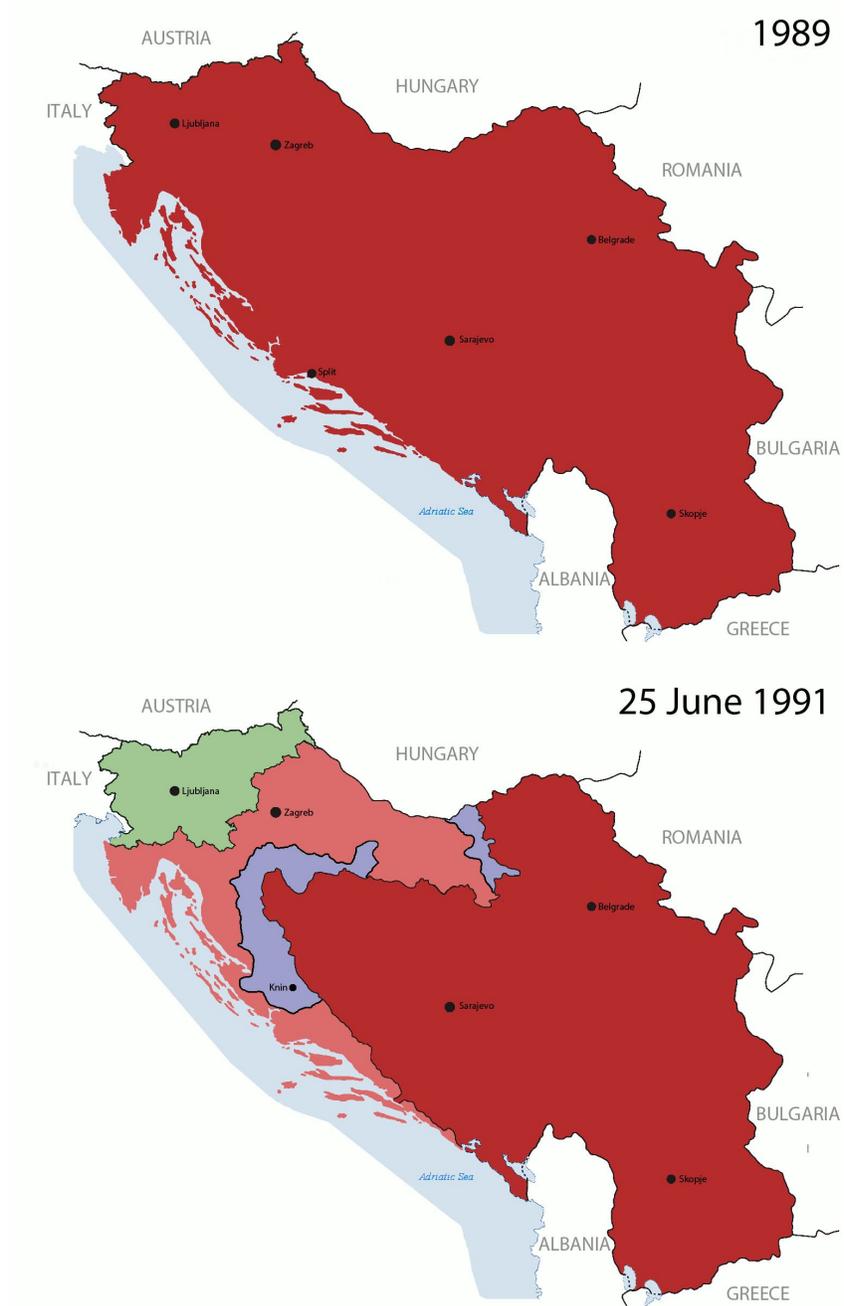
1995 - The FRY retracts its support of the RSK, which subsequently takes significant losses in Operation Flash and Operation Storm, with significant casualties to Serbian civilian. After pressure from the FRY, the RSK sign a peace agreement, permanently ending the war in Croatia.

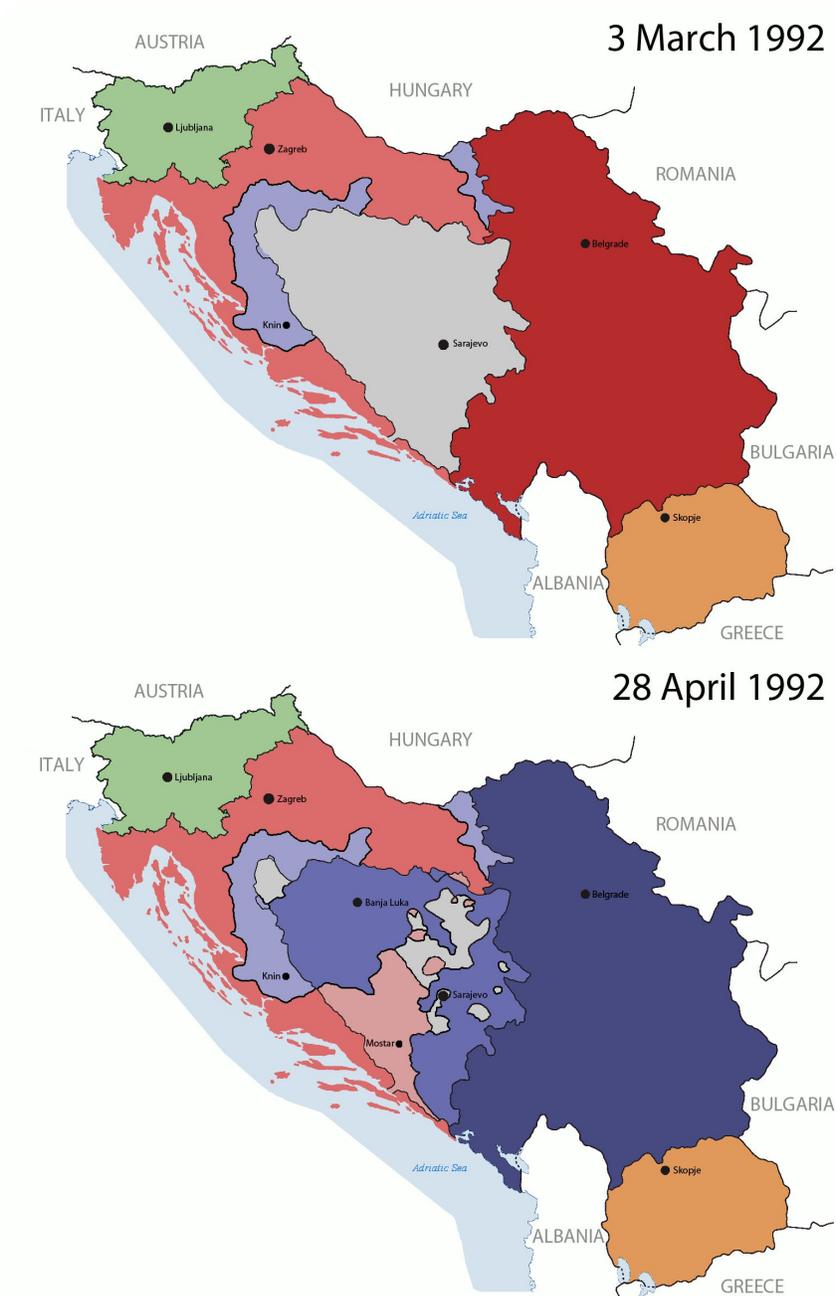
1999 - Croatia files proceedings against the FRY in the ICJ for violations of the Genocide Convention

MAPS

The Breakup of Yugoslavia, 1989 - April 28th 1992

(Source: https://commons.wikimedia.org/wiki/File:Breakup_of_Yugoslavia.gif)

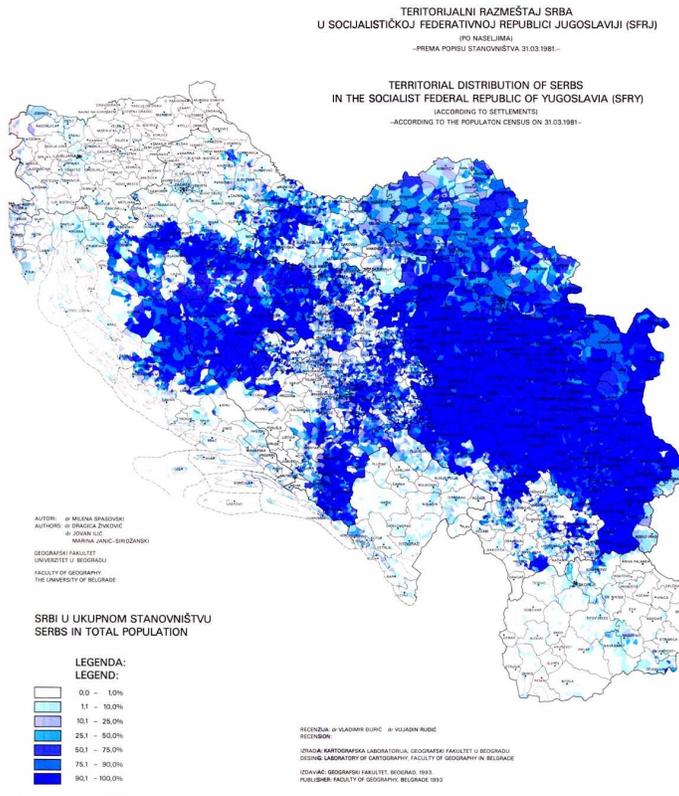
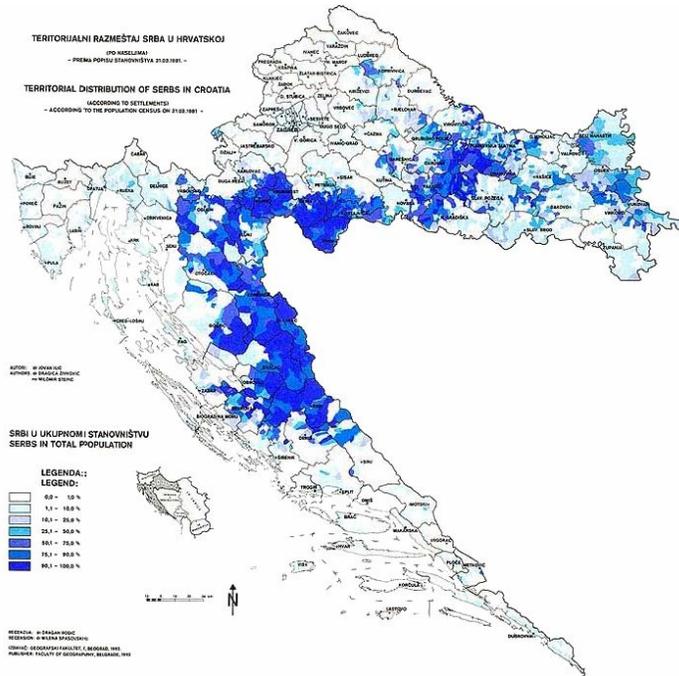




- Dark Red..... Socialist Federal Republic of Yugoslavia (SFRY)
- Light Green.... Slovenia
- Light Red..... Croatia
- Light Blue..... Republic of Serbian Krajina (RSK)
- Grey..... Bosnia and Herzegovina
- Yellow..... Former Yugoslav Republic of Macedonia
- Blue..... Republic of Srpska
- Light Red..... Croatian Republic of Herzeg-Bosnia
- Navy..... Federal Republic of Yugoslavia (FRY)

Demographics of Serbians in Croatia and Yugoslavia

(Source: <https://www.rastko.rs/istorija/srbi-balkan/spasovski-kicosev-zivkovic-sfry.html>)



Bluer areas indicate a higher percentage of self-identifying Serbs

LEGAL OVERVIEW

Basis in International Law

This case is heard according to Article 38(1) of the Statute of the International Court of Justice:

“The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*
- b. international custom, as evidence of a general practice accepted as law;*
- c. the general principles of law recognized by civilized nations;*
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”*

Article 38(1) importantly allows this case to be heard, as a dispute between signatories to the Genocide convention, and enables the court to bear in mind international practice, existing domestic legal principles, legal scholarship, and its own jurisprudence in coming to a decision as well as the specifics of a convention or treaty itself.

The current case invokes Article 9 of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) which stipulates:

“Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

Article 9 refers to Article 3 which lays out the violations of the treaty the court may rule on, the violations which Croatia alleges have been committed by Serbia:

“The following acts shall be punishable:

- a. Genocide*
- b. Conspiracy to commit genocide*
- c. Direct and public incitement to commit genocide*
- d. Attempt to commit genocide*
- e. Complicity in genocide”*

Relevant Law

The Convention on Genocide lays out what genocide means in Article 2:

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. Killing members of the group;*
- b. Causing serious bodily or mental harm to members of the group;*
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*
- d. Imposing measures intended to prevent births within the group;*
- e. Forcibly transferring children of the group to another group.”*

Specifically, the convention identifies two aspects, the *mens rea*, or mental aspect, that, the “intent to destroy”, and the *actus rea*, or physical aspect enumerated in 5 parts. Serbia will argue that the burdens of proof should be high, and when Serbia actually sees the evidence against it, will respond in turn to the allegations made.

On Jurisprudence, a key piece of established law is Article 28 of Vienna Convention on the Law of Treaties, which stipulates:

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Serbia takes this to mean the jurisprudence of the court should be limited to events after the FRY came into existence on April 27th, 1992, as it will argue. Rather than under the FRY government, the majority of the offensives against Croatia were led by the SFRY, a state which Serbia, and indeed, Croatia’s actions hold is different to the FRY, and as such Serbia believes Croatia’s case is weak at best.

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History

A brief history of Yugoslavia from 1918-2003

http://www.bbc.co.uk/history/worldwars/wwone/yugoslavia_01.shtml

A brief history of the Yugoslav wars from 1991

<https://www.bbc.com/news/world-europe-17632399>

A Wikipedia timeline of the Croatian War

https://en.wikipedia.org/wiki/Timeline_of_the_Croatian_War_of_Independence

Maps

A series of a maps showing the breakup of Yugoslavia

https://commons.wikimedia.org/wiki/File:Breakup_of_Yugoslavia.gif

Ethnic maps of Yugoslavia

<https://www.rastko.rs/istorija/srbi-balkan/spasovski-kicosev-zivkovic-sfry.html>

Map of Serbs in Croatia

https://fi.wikipedia.org/wiki/Krajinan_kapina#/media/File:CroatianSerbs.jpg

Relevant Conventions

Statue of the International Court of Justice

<https://www.icj-cij.org/en/statute>

Convention on the Prevention and Punishment of Genocide

<http://www.hrweb.org/legal/genocide.html>

Vienna Convention on the Law of Treaties

<https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>

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30/8/2018

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