

The significance of the World Court ruling on genocide in Bosnia

By Paul Mitchell
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The World Court has found no evidence directly linking Serbia and its former president Slobodan Milosevic to genocide against Muslims in the 1992-1995 war in Bosnia-Herzegovina. The United Nations International Court of Justice (ICJ) ruled on February 26 that there was no proof that Serbia or its leaders planned to wipe out the non-Serbian peoples of the Balkans, or that a chain of command existed linking them to the atrocities committed in Bosnia.

There is no doubt that Milosevic bore substantial responsibility for the political developments that facilitated the break-up of Yugoslavia. However, the ICJ ruling flies in the face of the claim of Western governments and the media that he was the all-powerful figure who “directed what went on in the Balkans” or single-handedly “destroyed the delicate balance of ... Yugoslavia.” Such assertions provided the pretext for Western military intervention. And if Milosevic was no more culpable for the ethnic conflict than his counterparts Franjo Tudjman in Croatia and Alija Izetbegovic in Bosnia, this objectively poses the question as to the real reasons for the imperialist intervention in the Balkans that led to the bombing of Serbia.

The politically motivated singling out of Milosevic by the West is underscored by the fact that just as the ICJ delivered its ruling, Ramush Haradinaj left Kosovo to appear before the International Criminal Tribunal for the former Yugoslavia (ICTY). Haradinaj is a former leader of the Kosovo Liberation Army (KLA) and currently leader of the Alliance for the Future of Kosovo, part of the province’s governing coalition. The KLA functioned as a key ally and military proxy for the United States in the Kosovo conflict, and was hailed by Washington as a national liberation movement. Haradjani faces charges of involvement in the murder, rape and torture of Serbs and gypsies.

The origins of the Bosnian conflict lie in the break-up of the former Yugoslavia under the impact of policies dictated by the Western powers and imposed through International Monetary Fund and World Bank structural adjustment programmes. The aim of the West was to dismantle the state-run economy and restore the economic domination of international capital over Yugoslavia and the entire Balkan region.

Pressure from the West contributed to soaring inflation and huge job losses in the late 1980s, which sparked strikes and other mass protests by the Yugoslav working class. Seeking to divert the class struggle, Milosevic, Tudjman and Izetbegovic promoted nationalist sentiments, while vying for support from Western governments.

Germany, following its reunification in 1991 after the collapse of the Soviet Union, decided its interests in the Balkans lay in promoting the secession of relatively prosperous Slovenia and then Croatia from Yugoslavia.

It was inevitable that the piecemeal break-up of the Yugoslav

federation would lead to civil war. The secession of Croatia and Bosnia suddenly deprived ethnic minorities within these regions of the constitutional protections they had enjoyed under the federation.

The US, initially opposed to the break-up of Yugoslavia, changed course and quickly became the chief Western protagonist of Bosnian independence. Washington concluded that the Serbian ruling elite had the greatest interest in preserving a unitary state in which it played the dominant role and jettisoned its former ally Milosevic. Hence the selective demonisation of the crimes of Serbia and Milosevic whilst actively supporting Croatia, Bosnia and the Kosovo Albanians when they pursued identical aims through the same bloody methods.

The ICJ ruling came 14 years after Bosnia, encouraged by the Western powers, charged the Federal Republic of Yugoslavia (FRY, as Serbia and Montenegro was known at the time) and Milosevic with carrying out genocide through systematic expulsions, rape and ethnic cleansing of non-Serbs. It claimed the Decision on Strategic Goals issued in May 1992 by Momcilo Krajisnik, president of the National Assembly of Republika Srpska, which had split from Bosnia in January 1992, amounted to an official plan of genocide.

In its deliberations the court invoked the 1948 Genocide Convention, which defines genocide as “a crime under international law” involving well defined “acts” towards “members of a group.” The “acts” include killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about physical destruction, imposing measures intended to prevent births or forcibly removing children.

The court declared that these acts constitute genocide if they “are carried out with the necessary specific intent (*dolus specialis*), that is to say with a view to the destruction of the group, as distinct from its removal from the region.”

The court examined a vast array of material, including reports and resolutions by various United Nations bodies, governments, non-governmental organisations and the ICTY, which had tried Milosevic until his death in March 2006, accusing him of genocide and war crimes in Croatia (1991-1995), Bosnia (1992-1995) and Kosovo (1998-1999). During the trial, the prosecution was unable to produce any “smoking gun” insider who could testify to a plan or orders for genocide and was forced to rely on unproved assertions of a chain of command existing between Milosevic and various Serbian nationalist irregular forces. Milosevic’s death prevented a ruling being given by the ICTY on Milosevic’s guilt or innocence, but that verdict has in effect been passed by the ICJ.

In their ruling, the ICJ judges found that “Serbia has not committed, conspired to commit, been complicit in or incited others to commit genocide” and that “the existence of a concerted plan directed against

non-Serbian Bosnians could not be proved.”

Although the court concluded that the acts committed at Srebrenica, when over 7,000 Bosnian Muslim men were killed following the takeover of the United Nations “safe area” in July 1995, were acts of genocide, the president of the court, Judge Rosalyn Higgins, said, “The court finds that the acts of genocide at Srebrenica cannot be attributed to the respondent’s state organs [Serbia].”

The ICJ said the decision to carry out the atrocity was taken by members of the Republika Srpska Army Main Staff, including General Ratko Mladic, who were not officers of the FRY army, or under its control. There was no evidence to suggest that the FRY army or political leaders including Milosevic “had a hand in preparing, planning or in any way carrying out the massacres” or were responsible for the acts of the paramilitary militia known as the “Scorpions” in the Srebrenica area.

The court did criticise them, however, “in view of their undeniable influence” because they did not make “the best efforts within their power to try and prevent the tragic events then taking shape, whose scale, though it could not have been foreseen with certainty, might at least have been surmised.”

Even so the court then admitted that it “clearly cannot conclude from the case as a whole and with a sufficient degree of certainty that the genocide at Srebrenica would in fact have been averted if Serbia had acted in compliance with its legal obligations.”

The ICJ concluded by rejecting Bosnia’s claims for compensation and ordered the Serbian authorities to arrest Mladic, who has evaded capture for 12 years, and hand him over to the ICTY.

US State Department spokesperson Sean McCormack ignored the legal implications of the ruling regarding the justifications used to sanction NATO’s bombardment of Belgrade, stating, “We hope that the peoples in the region will see yesterday’s judgment as an opportunity to reconcile with the past and do its best to make reconciliation indeed possible.”

The European Union’s foreign policy chief, Javier Solana, also sought to draw a veil over its role in the break-up of Yugoslavia and the war against Serbia, stating, “It is good that, in the end, the highest tribunal in the world has closed that page and I hope this will help the final reconciliation of the peoples of the Balkans.”

Such statements are nonsensical. In fact Milorad Dodik, the prime minister of Bosnia’s Serbs, criticised the ruling saying, “It was a heinous crime in Srebrenica and not genocide,” whilst the Bosnian Muslim member of the tripartite presidency, Haris Silajdzic, declared, “I am sorry that Serbia and Montenegro were not convicted of genocide and that they were not convicted of conspiracy in genocide.” Zeljko Komsic, the Croat member of the presidency, said, “I don’t know the reason for such a decision,” adding, “We must respect the ruling, but I will know what to teach my children.”

Moreover, the ruling has implications that will please the Western powers.

Writing for the Washington-funded Radio Free Europe/Radio Liberty (RFE/RL) web site, Jeremy Bransten noted that Serbia had argued that the Genocide Convention did not provide for the responsibility of states for acts of genocide, but “on this key point, the ICJ ruled against Belgrade.”

He quotes Philip Grant, the head of the Swiss-based human rights group Track Impunity Always (TRIAL), that this “is the first time that an international court has said it. It’s the first time in legal history that you have a ruling saying a state can commit genocide.”

Regarding the determination that genocide did occur at Srebrenica,

Grant adds, “It doesn’t mean that Serbia was not complicit to genocide. It just says it wasn’t proven that Serbia was complicit to genocide.”

Bransten then stresses, “The ICJ decision in no way affects the ability of other courts such as the International Criminal Tribunal for the former Yugoslavia (ICTY) or the International Criminal Court (ICC) to convict individuals for acts of genocide.”

In short, the verdict leaves the way open for military intervention by the US and other Western powers to engineer regime change on supposedly human rights grounds. And its verdict on Serbia’s role in Kosovo is considered sufficiently ambiguous for Washington to continue to assert the legitimacy of NATO’s war in 1999.

The verdict will be used by some Western powers in their efforts to normalise relations with the Serbian regime that was placed in power after Milosevic’s downfall in the US-backed “Bulldozer Revolution” in September 2000. Serbia has been unable to form a government since last January’s election that saw the extreme nationalist Serbian Radical Party obtain the largest vote—80 seats in parliament—but not enough to form a majority government.

But normalising relations is no easy matter, given the historic legacy of Western involvement in the dismemberment of Yugoslavia, and still meets with political opposition.

The March 6 edition of the *New York Times* said the ICJ ruling “complicates Serbia’s diplomatic rehabilitation” and backed the call by Carla Del Ponte, the chief prosecutor of the ICTY, for the arrest of Mladic and other fugitives. The newspaper complained that the European Union had previously refused to start talks about EU membership with Serbia until it handed over the fugitives but that some countries, including Britain, Italy and Spain, now favoured talks, saying they would support pro-Western Serbian politicians and the resolution of the future status of Kosovo province.

In addition the Western powers are pushing ahead with proposals for a form of “conditional” independence for Kosovo, which United Nations Special Envoy Martti Ahtisaari is due to present to the UN Security Council later this month. Forming a government that assumed responsibility for Kosovar independence would be tantamount to political suicide in Serbia. In Kosovo itself, ethnic Albanians have mounted violent protests over the independence plan, which leaves the Serb minority with some measure of autonomy.

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