

The crime of genocide in the light of a judgment of the ICJ

This diploma thesis addresses the influence of the International Court of Justice (ICJ) decision¹ on the crime of genocide. On 22nd March 1993 Bosnia and Herzegovina brought an action against the former Federal Republic of Yugoslavia (FRJ) before the ICJ. FRJ was charged with the breach of the Convention on the Prevention and Punishment of the Crime of Genocide (Convention). After 14 years, the ICJ held decision on 26th February 2007. In the beginning, the Court had to solve procedural issue concerning the position of the Respondent in the dispute and after its positive answer, it could proceed to consider the merits of the case.

The important part of the Decision is dedicated to the responsibility of a state for the genocide. Although the Convention did not explicitly anchor it, the Court deduced it by interpretation of the Article I. The prohibition on the genocide is then recognized not only under the customary law, but also in the Convention. Consequently “*the Court observes that the obligations in question in this case (...) and the responsibilities of the States (...) are obligations and responsibilities under international law. They are not of a criminal nature.*”² Therefore, the standard of proof is not as high as beyond reasonable doubts (typical for individual criminal responsibility), but the Court still required “fully conclusive evidence” which reflected a proper degree of certainty for serious accusation such as genocide. In addition, the Court decided that the responsibility is fully independent on the criminal responsibility of individuals and the absence of these convictions is no legal bar for the Court to find that the genocide was committed. After answering these preliminary questions, the Court closely analysed every entity whose conduct could be attributable to the state and it concluded that the Respondent had not committed the genocide and it is not responsible for genocide in Bosnia and Herzegovina. Even though the Court did not hold Serbia responsible for genocide, it clearly established what conditions must be fulfilled to hold a state responsible for genocide in future.

On the other hand, the Court established that Respondent breached its obligation to prevent and to punish. Respondent “*was in a position of influence over the Bosnian Serbs (...) unlike that of any of the other States parties to the Genocide Convention owing to the*

¹Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26. February 2007, ICJ.

²Bosnia and Herzegovina v. Serbia and Montenegro, Judgment, ICJ , para 170.

strength of the political, military and financial links. “³ Respondent was therefore obligated to use every possible means to protect civil population in Srebrenica. „*They could hardly have been unaware of the serious risk of it once the VRS forces had decided to occupy the Srebrenica enclave.*“⁴ The Court decided that a state has an obligation to prevent from the genocide which is not committed on its territory or under its jurisdiction. This obligation is territory unlimited and if the state has any influence on perpetrators on the territory of other state, it is bound to intervene to prevent atrocities.

The Court also concluded that Respondent breached its duty to punish. Whereas it did not arrest the main offender of the events in Srebrenica, General Ratko Mladić, it failed in his obligation to co-operate with ICTY under the Dayton Agreement and consequently its obligation to punish based on the Article VI of the Convention.

It seems that the Decision of the Court tended to be balanced and politically correct, because even though the Court held Serbia responsible for breaching the Convention, it established that the declaration of breaching itself in conjunction with remaining obligation to co-operate with ICTY is an adequate form of reparation and any other financial compensation is not appropriate.

From the stated above it is clear that the contribution of the Judgment for International Law is undeniable. It is right that the ICJ concerned the issues and sorted them out. It determined that the commission of genocide will not be tolerated regardless the perpetrator is an individual or a state. There is no choice but to believe that this interpretation will secure that states take preventive and, at the same time, effective steps and by that it will help to stop committing genocide.

³Bosnia and Herzegovina v. Serbia and Montenegro, Judgment, ICJ , para 434.

⁴Bosnia and Herzegovina v. Serbia and Montenegro, Judgment, ICJ , para 436.