

SREBRENICA IN FOCUS: THE LEGAL AFTERMATH

by Chan Braithwaite, Nelson Berardinelli and Anne-Charlotte Fauvel, YUCOM's interns

"Srebrenica in focus: The legal aftermath", Chan Braithwaite, Nelson Berardinelli and Anne-Charlotte Fauvel. This work is written during the Internship in Belgrade (June-August 2008) and represents their contribution in exchanging the human rights experiences of U.S.A., France and Serbia. The opinions expressed in the paper reflect the authors' views.

Introduction

The arrest of Radovan Karadzic on 21 July 2008 is a turning point for Serbia's cooperation with The Hague, however it also serves as a reminder of the legal proceedings launched against the perpetrators of the Srebrenica Massacre that remain unresolved. Karadzic, acting as the President of Republika Srpska within the borders of Bosnia and Herzegovina in the 1990s, is charged with genocide in Srebrenica, among other accusations. Although many war criminals have been tried for their involvement in Srebrenica, thirteen years later, two responsible Serbs¹ are still fugitives. Legal proceedings prove to be necessary for both sides, to fully understand the situation, and also serve the needs of the victims and their families to see that the accused are tried for their actions. The proceedings are also necessary to make Serbs aware of the atrocities committed during this

period of their history. Memories of the events in the mid-90s have levels of misunderstandings based on which perception of Srebrenica you take, Bosniak or Serb. The genocide that occurred at Srebrenica begets legal issues as well as political and socio-cultural ones. The debate evokes strong emotions, as it involves many important issues: memory, historical denial, responsibility, war crimes and international justice.

Srebrenica massacre

The genocide at Srebrenica took place in the Bosnian Republika Srpska amidst the 1992-1995 war between Bosnia and Herzegovina and Serbia and Montenegro (FRY). In 1993, Srebrenica was a Bosnian enclave surrounded by Serbian forces. Bosnians were gathering by the thousands in Srebrenica, thinking they were safe under the UN protection of 600 Dutch soldiers. Conditions in the enclave grew worse day to day as the inhabitants were deprived of fresh food since May because humanitarian missions were

¹ Ratko Mladic, General of the Bosnian Serb Army (VRS), and Goran Hadzic, former President of the Serbian Republic of Krajina.

regularly intercepted by Serbian forces and the enclave was severely overcrowded.

The UN mission ended as a total failure since it did not prevent the Army of Republika Srpska (VRS), lead by General Ratko Mladic, and paramilitary units such as the Scorpions, from invading the enclave on 6 July 1995. On July 11th, 20,000 refugees, mostly women, children, elderly and disabled people, began to flee Srebrenica to find shelter in nearby Potocari near UN bases. On the 12th, almost 25,000 women were deported by bus to the Bosnian territory, separated from their husbands, brothers and sons (aged between 12 and 77), who were forced to remain in Potocari. Bosnian Serbs wanted to keep them in Srebrenica for so-called “interrogation for suspected war crimes.” The first killings of Bosnian Muslims took place in a warehouse in the nearby village of Kravica. In the five days after Bosnian Serb forces overran Srebrenica, between 7,000 and 8,000 Muslim men are thought to have been killed.

The international community became aware of the largest mass murder in Europe since the Second World War through witnesses of the brutality at Srebrenica as well through later trials of the International Criminal Tribunal for the Former Yugoslavia (ICTY). Many of the war criminals responsible for Srebrenica have already been tried and convicted. These legal proceedings will be analyzed later in this report.

Who is responsible?

1- State of Serbia. It was July 2007 when the ICJ ruled that Serbia was not responsible for the genocide that

occurred during the Srebrenica Massacre.² Even if Slobodan Milosevic was the leader at that time, he did not have enough control of the Army of Republika Srpska to control what happened in Srebrenica. Thus, the State of Serbia did not have to give compensation to the victims’ families (according to the ICJ).

2- Republika Srpska. In July 2000, the Prime Minister of RS, Milorad Dedik, acknowledged that what happened in Srebrenica was a major crime. In 2004, the government of Banja-Luka apologized to victims’ families for the first time for the their actions; their forces were led by Karadzic.

3- United Nations. 600 UN Dutch soldiers were sent to protect the Bosnian civilians in Srebrenica. The soldiers failed because of communication and logistical obstacles and their numbers diminished as the operations heated. The attitude of UN soldiers remains very controversial, even 15 years after the massacre. In June 2007,³ victims’ families, through the organization “Mothers of Srebrenica,” filed a complaint before The Hague District Court against both the UN and the Dutch state. In July 2008 the Court delivered its judgment related to its lack of jurisdiction to hear a claim against the UN, and rejecting the request of the respondents to withdraw the UN’s immunity. Although the Court declared itself incompetent to judge the case against the UN, they decided to

² <http://www.icj-cij.org/docket/index.php?p1=3&p2=2&k=f4&case=91&code=bhy&p3=4&PHPSESSID=c5a36aee412da899c40baed5f6dd2b39>

³ Find more explanations at: <http://news.bbc.co.uk/2/hi/europe/7461310.stm>

proceed with the case against the Dutch state in September 2008.⁴ The Mother's of Srebrenica plan to file a complaint before the European Court of Human Rights in a final attempt to hold the UN responsible.

Serbia and Srebrenica: accepting responsibility

The genocide in Srebrenica is a dark page of Serbia's history. Accepting and dealing with the consequences of war crimes takes time.⁵ The topic of genocide at Srebrenica remains the object of disagreements between Serbia and Bosnia to such an extent that some analysts talk of a "culture of denial."⁶ Nationalist politicians embody this denial. These politicians express their doubts concerning the number of victims as well as the guilt of war criminals before the ICTY. Two versions of the Srebrenica story exist.

The number of victims likely remains as the most controversial issue. There is no official number. Sources find a consensus around 7,000-8,000 victims. Most of the Serbian population tries to soften the importance of the genocide, saying that there were no more than 2,000 men killed, and therefore, does not meet the qualification for mass murder. Indeed, Diane F. Orentlicher notices in her

study, *Shrinking the Space for Denial: the Impact of the ICTY in Serbia*,⁷ that "for a long time, nationalist figures claimed that the number of the people killed in Srebrenica in July 1995 was much lower than the real figure while blaming many of the killings on intra-Muslim violence." She adds that 71% of the respondents in a survey of Serbian citizens taken in December 2006 reported that they had heard that a large number of Muslims had been massacred in Srebrenica; only half reported that they believed these reports.⁸

Political figures also draw attention to crimes committed by Bosnians they feel are forgotten by the international community whose crimes, they feel, are just as bad as those committed by Serbs. The most frequently used "reference" is Christmas night on 7 January 1993. Some Serb sources allege that Bosniak forces attacked the village of Kravica killing 353 inhabitants. Alternatively, the ICTY Prosecutor's Office's investigation of casualties in Kravica and the surrounding villages found that 43 people were killed, of whom 13 were obviously civilians. Nevertheless, the event continues to be cited by Serb sources as the key example of heinous crimes committed by Bosniak forces around Srebrenica. By drawing attention to Bosniak crimes, Serbs want to give more legitimacy to their own crimes.

Moreover, for most Serbians Srebrenica embodies their demonization by the international community. Srebrenica is a recurrent issue, giving some the impression that Serbs are the only ones to blame. This feeling was strengthened after Naser Oric's recent

⁴ See

<http://www.iht.com/articles/reuters/2008/06/16/europe/OUKWD-UK-DUTCH-SREBRENICA.php>

⁵ Bear in mind the long and difficult acknowledgment of French state responsibility in the Holocaust. It was recognized by the President Jacques Chirac in 1995, fifty years after the end of WWII.

⁶ "Culture of denial" is an expression used by Diane F. Orentlicher in *Shrinking the Space for Denial: the Impact of the ICTY in Serbia*, quoted from an interview with Jadranka Jelencic. (p.24).

⁷ *Idem* p.103

⁸ *Idem* p.97

acquittal by the ICTY.⁹ Oric was charged with committing crimes against Serbs in villages near Srebrenica. The lack of confidence of much of the Serbian population in the legitimacy of the ICTY prevents them from acknowledging the genocide that occurred at Srebrenica. According to Orentlicher's work,¹⁰ "although many Serbians polled in recent years say they know little about the ICTY, roughly two-thirds perceive it as biased against Serbs."

Even if the "culture of denial" remains persistent in Serbia, some efforts may be able to "shrink the space for denial." With the recent arrest of Karadzic, hope is renewed for the possible arrest of Mladic and Hadzic. Trials are necessary to stir up memories, the acceptance of the past and reconciliation. Nevertheless, the media still has an important role to play. For instance, their broadcast in 2005 of the Scorpions video on Serbian channels made a lasting effect. This kind of evidence is useful to become aware of the atrocities committed. But still, an event like the annual commemoration of the Srebrenica Massacre is not treated by the media the way it could be. The media still lacks the necessary objectivity to tackle this thorny subject. However, Serbia is on the right track as the journalist Ljiljana Smajlovic said, "The public now accepts that Serbs committed enormous crimes"¹¹ including the Srebrenica Massacre.

Legal proceedings

The trials concerning Srebrenica have so far been treated by five different Courts: the International Criminal Tribunal for the Former Yugoslavia (ICTY); the International Court of Justice (ICJ); the domestic Serbian court, the Serbian War Crimes Court (WCC); the National Court of Bosnia and Herzegovina (BiH) and the National Court of the Netherlands. Radislav Krstic, a Bosnian Serb General, was the first to be tried and convicted of genocide in connection with his involvement in Srebrenica. His trial began in 2001 before the ICTY.

The ICJ handed down a historic judgment in Bosnia and Herzegovina v. Serbia on 26 February 2007. In that case, the UN's highest court ruled that genocide occurred in Srebrenica. This recognition was very important for the families of victims of the Srebrenica Massacre; it also echoes the ICTY Trial Chamber's position taken in their 2001 judgment against Krstic, where he was convicted of genocide. Although Krstic's conviction for committing genocide was overturned in 2004 by the Appeals Chamber,¹² his conviction for aiding and abetting genocide was upheld. Therefore, the ruling that genocide did indeed occur at Srebrenica became definitive.

Many proceedings still must be completed, and two fugitives are still at large: Ratko Mladic and Goran Hadzic.

⁹ Summary of Oric's acquittal:
<http://bosnianews.blogspot.com/2008/07/un-appeals-court-acquits-bosnian-hero.html>

¹⁰ *Idem* p.23

¹¹ Quoted by Orentlicher p. XXX

¹² Press release judgment of the Trial Chamber given August 2001.

<http://www.un.org/icty/pressreal/p609-e.htm>

Press release judgment of the Appeals Chamber given April 2004.

<http://www.un.org/icty/pressreal/2004/p839-e.htm>

The aftermath of legal proceedings connected to Srebrenica have span over several years and several jurisdictions. The following paragraphs are summaries of those cases grouped by the court they stood in front of:

Trbić case in front of Bosnia and Herzegovina's National Court, initially before the ICTY

Milorad Trbić was initially indicted in 2005 before the ICTY, charged under Article 7(1) (individual responsibility) with: 1) genocide (Article 4); 2) conspiracy to commit genocide (Article 4); 3) extermination, murder, persecutions and forcible transfer (Article 5); and murder (Article 3). He pled not guilty to all counts. Later in 2005, Trbić's case was joined with several others to form the Popović et al. case.

In 2006, Trbić's case was severed from the Popović et al. case. Trbić's case was transferred to Bosnia and Herzegovina on 11 June 2007.

Trbić was charged with Genocide pursuant to Article 171 of the Criminal Code of Bosnia and Herzegovina (CC BiH). He is alleged to have killed and caused serious bodily injury to members of a group, deliberately imposing conditions intended to destroy the group, and preventing births within the group.

Trbić failed to appear due to a hunger strike and the Court therefore entered a plea of not guilty on his behalf on 9 August 2007. His trial began on 8 November 2007.

Miloš Stupar and Others case in front of the BiH Court

The Miloš Stupar and Others case¹³ is taking place in the Court of Bosnia and Herzegovina. It should be noted that the cases against the following two individuals named in the most recent indictment in Miloš Stupar and Others have been recently (in May 2008) been severed from the case: 1) Petar Mitrović is being tried separately in X-KR-05/24-1, and 2) Miladin Stevanović is being tried separately in X-KR-05/24-2. However, there are no separate indictments or filings in those two separate cases at this time, so for clarity they will all be included together with the other 9 indictees in this report even though they will be tried separately.

This case deals with two Commanders of the Repulika Srpska army, as well as various lower level officers. The two superior officers charged are Miloš Stupar (Commander of the 2nd Special Police Sekovici Detachment) and Milenko Trifunović (Commander of the 3rd Skelani Platoon). The rest of the accused are either lower level Officers within these platoons or VRS Soldiers. The names of the remaining accused are: Petar Mitrović, Aleksandar Radovanović, Slobodan Jakovljević, Miladin Stevanović, Velibor Maksimović, Dragisa Živanović, Branislav Medan, Milovan Matić, Brano Džinić.

Accusations

Miloš Stupar, Commander of the 2nd Special Police Sekovici Detachment,

¹³ X-KR-05/24

and Milenko Trifunović, Commander of the 3rd Skelani Platoon, are both liable under Article 180(1) (in conjunction with Article 21) because they were present during the mass execution of prisoners and because they failed to prevent the executions from occurring. They are also alleged to have assisted and supported those who perpetrated the executions by their presence during the executions, which tacitly encouraged the perpetrators.

As superior officers, Stupar and Trifunović are also responsible under Article 180 (2) for the acts of their subordinates (the perpetrators) because they knew or had reason to know of their crimes and failed to prevent them from occurring. In addition, Miloš Stupar failed to punish those responsible.

All 11 indictees allegedly participated in a joint criminal enterprise (JCE). The aim of the JCE was 1) to transfer women and children out of the Srebrenica enclave; 2) to kill thousands of Bosnian Muslim men and boys; and 3) to bury and then re-bury those who were executed. The implementation of the JCE resulted in the executions of over 7,000 Bosnian Muslims from the Srebrenica enclave.

Pursuant to Article 180 of the Criminal Code of Bosnia and Herzegovina (BiH CC) the indictees are alleged to have committed Genocide in violation of 171 of the BiH CC.

Mothers of Srebrenica v. UN in front of the Dutch National Court

The Mother's of Srebrenica (MOS), a group of 6,000 relatives of the victims of the Srebrenica massacre, filed suit on 4 June 2007 in the national court of the Netherlands against both the

government of the Netherlands and the United Nations (UN). MOS claims Dutch UN troops were negligent in allowing genocide to occur in a UN "safe haven" during the Srebrenica Massacre.

The main issue at stake in the only preliminary proceedings so far has been whether the Dutch court had jurisdiction to hear the case against the UN, which has absolute immunity from suit written into its Charter (Article 105, subsection 1 of the UN Charter). MOS claims the UN's immunity should not be read as absolute, and that the extraordinary case of genocide, which is prohibited by international law, should trump the UN's immunity. In addition, MOS argues article 6 of the European Court of Human Rights (ECHR) requires there to be an avenue of legal recourse available for all human rights violations and Article 14 of International Covenant on Civil and Political Rights (ICCPR) which similarly requires a trial before an impartial court.

The Dutch Court dismissed the section of MOS's suit that stated claims against the UN on 10 July, 2008. The Court claimed UN immunity was absolute, even in cases where genocide occurred; therefore, the Court ruled it did not have jurisdiction to hear claims against the UN. The Court made no ruling regarding the part of the suit against the Dutch government. MOS's next step is likely to take the case before the ECHR, alleging a violation of article 6.

MOS cannot appeal the Court's ruling until after the case, which is now entirely made up of claims against the Dutch government, has been completed.

Nuhanović v. the Netherlands and Mustafić v. the Netherlands in the Dutch National Court

In July of 2007, Hasan Nuhanović and the family of Rizo Mustafić filed suit against the Dutch government in Dutch Court for the alleged gross negligence of UN Dutch troops during the Srebrenica massacre.

At the time of the massacre, Nuhanović was working as a translator for the UN. His family was ordered to leave the UN base where they were staying, despite the fact that Bosnian Muslims were being slaughtered outside of the base. Nuhanović was allowed to stay on the base because he was working for the UN.

Rizo Mustafić suffered a similar fate as Nuhanović's family despite being employed by the UN as an electrician. He was also ordered off the base around the same time as Nuhanović's family. He has been missing ever since and is presumed dead.

The plaintiffs argue the Dutch troops were negligent for failing to protect Bosnian Muslims in Srebrenica, despite the designation of the area as a "safe haven." In addition, they allege the Dutch government is responsible for refusing to provide air support for the Dutch troops. The Dutch contend it is the UN who is responsible for refusing requests for air support.

The Judge who had been working on the case for over 3 years was abruptly removed from the case a few days before the oral argument stage of the case was scheduled to begin on 16 June 2008, angering Nuhanović and Mustafić's family.

The case is currently pending.

Bosnia v. Serbia in front of the International Court of Justice (ICJ)

The International Court of Justice (ICJ) recently handed down a judgment in the Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro). The case arose when Bosnia and Herzegovina sued Serbia, claiming Serbia was responsible for the genocidal actions of Bosnian Serbs at Srebrenica.

In its judgment entered on 26 February 2007 the ICJ stated its findings as follows: 1) Serbia has not committed genocide at Srebrenica;¹⁴ 2) Serbia violated its obligation to prevent genocide at Srebrenica;¹⁵ 3) Serbia failed to cooperate with the ICTY in handing over war criminals¹⁶ (for instance, Ratko Mladić). In addition, the ICJ stated Serbia is required to punish individuals responsible for genocide and send them to the ICTY if required.¹⁷

Many, including some of the ICJ judges, took issue with the Court's refusal to either: 1) require Serbia to hand over secret documents that may have provided direct evidence of a link between Serbia and the atrocities committed by the Bosnian Serbs at Srebrenica; or, alternatively, 2) draw liberal inferences from Serbia's failure to provide these documents to the Court. The Court cited the fact that there were plenty of other documents available to Bosnia in order to justify their failure to require Serbia to provide the documents. The Court's reasoning has

¹⁴ Paragraph 471 (2), (3), and (4) of the Judgment

¹⁵ Paragraph 471 (5) and (7) of the Judgment

¹⁶ Paragraph 471 (6) of the Judgment

¹⁷ Paragraph 471 (8) of the Judgment

been harshly criticized; for instance, the following is from the dissent of ICJ Vice President Al-Khasawneh: “The reasoning given by the Court in paragraph 206 of the Judgment, [o]n this matter, the Court observes that the Applicant has extensive documentation and other evidence available to it, especially from the readily accessible ICTY records . . .’, is worse than its failure to act.”¹⁸

The reasons for the Court’s failure to either require the relevant documents from Serbia or make liberal inferences from their absence is not entirely clear, but many claim the ICJ did not want to risk embarrassment to, and a hit to the reputation of, the ICJ if Serbia refused the request. Another theory is the ICJ did not want to appear to be interfering with Serbia’s sovereignty.

Blagojević and Jokić case in front of the ICTY

Indictments against Vidoje Blagojević and Dragan Jokić in the International Criminal Tribunal for the Former Yugoslavia (ICTY) were joined on 15 January 2002. The joinder indictment¹⁹ also included Dragan Obrenović and later Momir Nikolić.²⁰ In May 2003 both Nikolić and Obrenović were assigned separate case numbers²¹ following guilty pleas that consisted of commitments to testify in the trial against Blagojević and Jokić.

While serving as the Commander for the Bratunac Brigade of the Army of the Republika Srpska (VRS) in July

1995, Vidoje Blagojević allegedly participated in the capture of the Srebrenica “safe area” and led a battalion in the VRS operation of killing thousands of Bosnian Muslims. He was charged with one count of complicity to commit genocide,²² four counts of crimes against humanity,²³ including extermination, murder, persecution on political, racial and religious grounds and inhumane acts (forcible transfer), and one count of murder as a violation of the laws or customs of war.²⁴ The Trial Chamber found Blagojević not guilty as a superior²⁵ but guilty for his individual criminal responsibility²⁶ on all counts except for extermination, one of the counts of crimes against humanity, and sentenced him to 18 years imprisonment on 17 January 2005.

Dragan Jokić, a Major in the VRS and Chief of Engineering for the Zvornik Brigade, advised his Brigade Commander on issues related to engineering, including mining activities, road and defensive construction and excavation projects. His brigade, and the engineering company he directed, participated in the reburial operation of the numerous dead. Jokić also acted as Duty Officer during a critical 24-hour time period, 14-15 July 1995, and assisted in coordinating instructions to transport, detain, execute and bury Srebrenica Muslims as well as other official business for the Zvornik Brigade zone. He was charged with three counts of crimes against humanity,²⁷ including extermination, murder and persecution on political, racial and

¹⁸ Paragraph 35 of Judge Al Khasawneh’s dissent

¹⁹ Case Number IT-02-53.

²⁰ Assigned as new Case Number IT-02-60.

²¹ IT-02-60/1 and IT-02-60/2 respectively.

²² Article 4(3)(e)

²³ Article 5

²⁴ Article 3

²⁵ Under Article 7(3)

²⁶ Under Article 7(1)

²⁷ Article 5

religious grounds, and one count of murder as a violation of the laws or customs of war.²⁸ The Trial Chamber found him guilty for his individual criminal responsibility of extermination as a crime against humanity, murder as a violation of the laws or customs of war, persecutions as a crime against humanity and not guilty of murder as a crime against humanity. Jokić was sentenced to 9 years imprisonment on 17 January 2005.

Erdemović case in front of the ICTY

Drazen Erdemović was the first person to be convicted over the Srebrenica killings by the International Criminal Tribunal for the Former Yugoslavia (ICTY). Erdemović was directly involved with the executions of Bosnian Muslim civilian men from Srebrenica as a soldier in the 10th Sabotage Detachment of the Army of the Republika Srpska (VRS). He was stationed at one of the sites where Bosnian Muslims were taken in buses and executed in large numbers, a farm near Pilica, in the Zvornik Municipality. Erdemović surrendered to FRY authorities on 2 March 1996, and was soon transferred to the Hague. In his initial appearance before the Tribunal, Erdemović pled guilty to the count of murder as a crime against humanity²⁹ but added that he would have been killed if he had refused to participate in the murders. The Trial Chamber accepted the guilty plea and dismissed the alternate count of murder as a violation of the laws or customs of war.³⁰ The Chamber also considered

Erdemović's subordinate role, duress as an extreme necessity and other mitigating factors before sentencing him to 10 years imprisonment on 29 November 1996.

Erdemović appealed the sentencing judgment³¹ asking for the Appeals Chamber to consider excusing him from serving the sentence for the offences he committed while under duress in extreme necessity, or to significantly reduce the sentence based on the mitigating details. The Appeals Chamber ruled on 7 October 1997 rejecting duress as a complete defense, but remitted the case to a new Trial Chamber for Erdemović to re-plead. Erdemović subsequently changed his plea from one of guilty of a crime against humanity to guilty of the alternate count of murder as a violation of the laws or customs of war.³² The Trial Chamber, again, considered the mitigating factors in their judgment and sentenced Erdemović to 5 years imprisonment on 5 March 1998. Drazen Erdemović completed his prison term in the year 2000.

Karadžić and Mladić case in front of the ICTY

KARADŽIĆ

Radovan Karad and Ratko Mladić were indicted³³ before the ICTY in 2000 and 2002, respectively. Karadžić was a member of the Supreme command of the armed forces of the Serbian Republic (from 30 November 1992) and the sole President of Republika Srpska

²⁸ Article 3

²⁹ Article 5

³⁰ Article 3

³¹ On 23 December 1996

³² The Prosecutor then withdrew the charge of murder as a crime against humanity.

³³ IT-95-5-I

and Supreme Commander of the armed forces (from 17 December 1992). He was a superior to General Mladić, who directly supervised the VRS during the Srebrenica Massacre. Karadžić was aware of the VRS's actions, however he failed to prevent them and failed to punish the perpetrators.

Karadžić was indicted for the following crimes, with the amended indictment confirmed in 2000, through both individual criminal responsibility³⁴ and superior responsibility³⁵: 1) genocide, complicity in genocide, extermination, murder, willful killing;³⁶ 2) persecutions, deportation, inhumane acts, unlawfully inflicting terror upon civilians, taking of hostages.³⁷

Karadžić was responsible for seizing and securing control of areas of Bosnia and Herzegovina that had been proclaimed a part of "Republika Srpska." This seizure and control was implemented through brutal means, including deportation and mass executions of all non-Serb individuals, including Bosnian Muslims and Croats

Karadžić was arrested in Serbia on 21 July 2008. He will likely be transferred to the Hague to face the ICTY at some future date.

MLADIĆ

Ratko Mladić was the Commander of the Main Staff of the VRS. His only superior was Karadžić. The Bosnian Muslims who were captured and killed during the Srebrenica Massacre were killed by Bosnian Serb forces under the direct control of General Mladić. These forces

also were responsible for attempting to hide their crimes by reburying the victims in remote locations. Mladić was therefore personally responsible for the actions of the VRS during the Srebrenica Massacre.

Mladić is alleged to have known of all the crimes of his subordinates, but failed to prevent these acts or punish those responsible. Mladić was indicted for the following, with the amended indictment confirmed in 2002, through both individual criminal responsibility³⁸ and superior responsibility³⁹: 1) genocide, complicity in genocide;⁴⁰ and 2) persecutions, extermination and murder, deportation, inhumane acts and taking of hostages.⁴¹

Mladić remains a fugitive. He is currently at the top of the ICTY's most wanted list.

Krstić case in front of the ICTY

Radislav Krstić was a General in the Bosnian Serbian Army, taking lead of a unit called the Drina Corps during the time the Srebrenica massacre occurred. Krstić was indicted by the ICTY on 1 November 1998. He was charged with genocide and other crimes related (primarily) to the 1995 massacre at Srebrenica.

Krstić became the first person in the world convicted of genocide when the Tribunal's Trial Chamber handed down their judgment in the case of *The Prosecutor v. Radislav Krstić*⁴² on 2 August 2001. The Tribunal convicted

³⁴ Article 7(1)

³⁵ Article 7(3)

³⁶ Violation of Articles 2-5

³⁷ Violation of Articles 3 and 5

³⁸ Article 7(1)

³⁹ Article 7(3)

⁴⁰ Article 4

⁴¹ Articles 3 and 5

⁴² IT-98-33-A

Krstić of murder, persecutions and genocide. He was sentenced to 46 years in prison.

The Trial Chamber ruled Krstić, who was in charge of deporting Bosnian Muslims, instructed his subordinates not to harm those who were being transported on buses out of the area. In addition, Krstić was elsewhere preparing for military operations when the mass executions occurred. The Trial Chamber ruled Krstić nevertheless must have been aware of the atrocities that were occurring, and because he failed to either prevent their occurrence or punish his subordinates who were involved, he was therefore responsible for the genocide that occurred.

On 19 April 2004 the Appeals Chamber overturned Krstić's conviction for genocide. The Appeals Chamber found insufficient evidence of Krstić's genocidal intent, however they upheld his conviction for aiding and abetting the genocide at Srebrenica. His sentence was reduced to 37 years. The Appeals Chamber ruled there was insufficient evidence that Krstić's Drina Corps took part in the mass executions. However, they held there was sufficient evidence that Krstić allowed these crimes to occur without stopping them beforehand or subsequently punishing the perpetrators, therefore the Appeals Chamber upheld Krstić's conviction for aiding and abetting those who committed genocide.

Krstić was transferred in 2004 to the United Kingdom to serve his sentence.

Momir Nikolić case in front of the ICTY

Momir Nikolić, the Assistant Chief of Security and Intelligence for the

Bratunac Brigade of the Army of the Republika Srpska (VRS) at the time of the operations in Srebrenica, was jointly charged and tried before the International Criminal Tribunal for the Former Yugoslavia (ICTY) under an amended joinder indictment,⁴³ which also involved Vidoje Blagojević, Dragan Obrenović and Dragan Jokić filed in May 2002. Charges against Nikolić were subsequently separated from the others' after he entered and accepted a plea agreement.

Nikolić was charged with one count of genocide,⁴⁴ including genocide or complicity to commit genocide, four counts of crimes against humanity,⁴⁵ including extermination, murder, persecutions on political, racial and religious grounds, inhumane acts (forcible transfer), and one count of murder as a violation of the laws or customs of war.⁴⁶ The Prosecution withdrew all but one count of crimes against humanity (persecutions on political, racial and religious grounds) following Nikolić's decision to plead guilty. In addition to the mitigated charges, Nikolić agreed to testify in other Tribunal proceedings related to Srebrenica, which he did in September 2003 in the trial of Blagojević and Jokić.

On 2 December 2003, the Trial Chamber sentenced Nikolić to 27 years imprisonment, but the Appeals Chamber reduced his sentence to 20 years on 8 March 2006. The Nikolić case is significant for the substantial insight to the events and operations in Srebrenica

⁴³ Joined pursuant to a written order of Trial Chamber II dated 17 May 2002 as case number IT-02-60.

⁴⁴ Article 4

⁴⁵ Article 5

⁴⁶ Article 3

Nikolić provided after deciding to enter a plea agreement.

Obrenović case in front of the ICTY

The Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY) initially indicted Dragan Obrenović on 16 March 2001 on charges of complicity in genocide,⁴⁷ extermination, murder as a crime against humanity⁴⁸ and murder as a violation of the laws or customs of war⁴⁹ based on individual criminal responsibility⁵⁰ and his superior responsibility.⁵¹

Obrenović served as the Deputy Commander of the Zvornik Brigade of the Army of the Republika Srpska (VRS) in 1995. On July 12th of that year, his Gucovo Group intercepted communications regarding a large column of Muslims, made of Bosnian military personnel and refugees, heading North from Srebrenica toward Bosnian-held land. When a small percentage of the column broke through multiple VRS blockades, Obrenović was instructed to do all that was necessary to protect Serb strongholds and villages surrounding Zvornik. After two ambushes, column prisoners were detained and executed, in large part, by the Zvornik Brigade. The Trial Chamber found that Obrenović was not present at execution sites while the killing operation was carried out, but he aided and abetted them by releasing his men from their regular duties and ordered them to follow orders from higher up in the chain of command.

Obrenović accepted criminal responsibility for his part in the criminal acts to execute and bury thousands of Muslim prisoners. The Trial Chamber, swayed heavily by mitigating evidence, accepted a plea agreement and found Obrenović guilty of one count of persecution, a crime against humanity, and sentenced him to 17 years imprisonment on 10 December 2003.

Orić case in front of the ICTY

The indictment against Naser Orić before the International Criminal Tribunal for the Former Yugoslavia (ICTY) arises out of actions in 1992 and 1993, before Bosnian Serb military commander Ratko Mladić initiated a full-scale incursion on Srebrenica and long before the mass killings of Bosnian Muslims in July 1995. Orić was indicted for crimes he committed as Commander of the Srebrenica Municipal Territorial Defence (TO) Staff.⁵² He was also appointed as the Commander of the Joint Armed Forces of the sub-region Srebrenica in November 1992, which included Srebrenica, Bratunac, Vlasenica and Zvornik municipalities. In 1992 to 1993, members of the military police detained and abused⁵³ Serb prisoners in the Srebrenica Municipal Building. Additionally, during these years, Orić may have known or had reason to know that his armed units engaged in military operations against the Bosnian Serb Army (VRS) and destroyed Serb villages in their path, forcing thousands to flee. Orić made his Initial Appearance before the Tribunal on 15 April 2003. The Prosecution charged Orić, on the basis of

⁴⁷ Article 4(3)(e)

⁴⁸ Article 5

⁴⁹ Article 3

⁵⁰ Article 7(1)

⁵¹ Article 7(3)

⁵² Later renamed the Srebrenica Armed forces.

⁵³ Sometimes to death

individual⁵⁴ and superior responsibility,⁵⁵ with wanton destruction of cities, towns or villages, not justified by military necessity and, based solely on his criminal responsibility as a superior, murder and cruel treatment⁵⁶ as violations of the laws or customs of war.

Trial Chamber II of the ICTY ruled⁵⁷ that there was sufficient evidence to satisfy the requirements of the charges against Orić, but entered a judgment of acquittal for charges that did not meet the requirement that violations must be serious.⁵⁸ The Chamber allowed four of the counts against Orić to proceed, but one count of murder,⁵⁹ one count of cruel treatment⁶⁰ and two counts of wanton destruction⁶¹ were removed for lack of evidence. The Prosecution amended the indictment and filed it on 30 June 2005. On 30 June 2006, Orić was convicted of preventing the murder and cruel treatment of a number of Serb prisoners in Srebrenica and sentenced to 2 years imprisonment.

On appeal, the Appeals Chamber agreed with Orić's allegations that the Trial Chamber failed to make adverse findings against his only identifiable subordinate⁶² as well as against his knowledge of his subordinate's crimes. The Appeals Chamber did not address Orić's other challenges and dismissed the Prosecution's appeals. Naser Orić's

convictions were reversed⁶³ on 3 July 2008.

Popović et al. case in front of the ICTY

In 2005, all cases against the following nine accused were joined into the Popović et al.⁶⁴ case before the ICTY: Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, and Vinko Pandurević, Zdravko Tolimir, Radivoje Miletić, Milan Gvero, and Milorad Trbić.

In 2006, the cases against Tolimir and Trbić were severed into two separate cases. Tolimir's case is currently pending before the ICTY, while Trbić's case has since been transferred to Court of Bosnia and Herzegovina. The case against the remaining 7 indictees is discussed below and is called the Popović et al. case.

The chain of command for the crimes alleged in the indictment consisted first of Tolimir supervising Beara. Beara was instructed to carry out the execution, detention, transportation and burial of the Muslim victims at Srebrenica. Beara was assisted in this task by various Officers, including: Popović, Momir Nikolić and Drago Nikolić. These Officers got their orders and resources to carry out the crimes from the following Commanders: Ratko Mladić, Radislav Krstić, Pandurević, Borovčanin, Miletić, Gvero and Vidoje Blagojević, among others.

Some brief background information about the 7 indictees in Popović et al.: Vujadin Popović was a Lieutenant Colonel and Assistant Commander of Security in the Drina Corps; Ljubiša Beara was a Colonel and the Chief of Security of the VRS Main

⁵⁴ Article 7(1)

⁵⁵ Article 7(3)

⁵⁶ Article 3

⁵⁷ Under Rule 98bis

⁵⁸ i.e. plundering "cattle, furniture and television sets." – Article 1

⁵⁹ The alleged murder of Bogdan Zivanovic.

⁶⁰ The alleged cruel treatment of Miloje Obradovic.

⁶¹ In the villages of Radijevici and Bozic.

⁶² Atif Krdzic

⁶³ Under Article 7(3)

⁶⁴ IT-05-88

Staff; Drago Nikolić was a 2nd Lieutenant serving as the Chief of Security for the Zvornik Brigade of the VRS, reporting to Commander Vinko Pandurević (see also the case of Milorad Trbić, one of Nikolić's subordinates); Ljubomir Borovčanin was the Deputy Commander of the Republika Srpska (RS) MUP Special Police Brigade (SPB) and was under the command of General Krstić from 11 July to 18 July 1995; Vinko Pandurević was a Lt. Colonel responsible for commanding the Zvornik Brigade of the Drina Corps of the VRS; Radivoje Miletić was a General and Chief of Operations and Training who also stood in for the Chief of Staff of the Main Staff of the VRS during the Srebrenica Massacre, keeping President Karadzic up to date on the Srebrenica Massacre as it occurred; Milan Gvero, a General and Assistant Commander for Morale, Legal and Religious Affairs of the Main Staff of the VRS, acted as an intermediary for General Ratko Mladić (Commander of the Main Staff) during the Srebrenica Massacre.

The following were indicted before the ICTY in 2002 and pled not guilty to all charges in 2006: Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, and Vinko Pandurević. Beara, Popović, and Nikolić were charged under the doctrine of individual criminal responsibility⁶⁵ with 1) genocide;⁶⁶ 2) conspiracy to commit genocide;⁶⁷ 3) extermination, murder, persecutions, forcible transfer and deportation;⁶⁸ and 4) murder.⁶⁹ Pandurević and Borovčanin were

charged under both the doctrine of individual criminal responsibility⁷⁰ as well as superior responsibility⁷¹ with: 1) genocide;⁷² 2) conspiracy to commit genocide;⁷³ 3) extermination, murder, persecutions, forcible transfer and deportation;⁷⁴ and 4) murder.⁷⁵

Zdravko Tolimir, Radivoje Miletić, and Milan Gvero were indicted in 2005. Miletić and Gvero pled not guilty later in 2005, however Tolimir did not enter a plea because he was still at large. In July of 2006 the ICTY ordered Tolimir's case to be severed from the cases of the other 7. Trbić's indictment was also removed around the same time.

Miletić and Gvero were charged in 2005 under the doctrine of individual criminal responsibility⁷⁶ with 1) extermination, murder, persecutions, forcible transfer and deportation;⁷⁷ and 2) murder.⁷⁸ Each also pled not guilty to all charges in 2005.

Tolimir was arrested on 31 May 2007. See the discussion of the Tolimir case in this report for more information.

The Prosecution's case in Popović et al. closed in February 2008. In March 2008 the ICTY Trial Chamber rejected all defense motions for acquittal before judgment. The defense case commenced in June of 2008.

Tolimir case in front of the ICTY

Zdravko Tolimir was initially indicted⁷⁹ by prosecutors at the ICTY in

⁶⁵ Article 7(1)

⁶⁶ Article 4

⁶⁷ Article 4

⁶⁸ Article 5

⁶⁹ Article 3

⁷⁰ Article 7(1)

⁷¹ Article 7(3)

⁷² Article 4

⁷³ Article 4

⁷⁴ Article 5

⁷⁵ Article 3

⁷⁶ Article 7(1)

⁷⁷ Article 5

⁷⁸ Article 3

⁷⁹ IT-05-88/2

2005. Tolimir was the Assistant Commander for Intelligence and Security of the Main Staff of VRS. Tolimir reported directly to General Mladić. Tolimir supervised a subordinate who, individually and with the help of many others, carried out the execution, detention and transportation of Bosnian Muslims during and after 11 July 1995 (the subordinate was Ljubiša Beara, see the Popović et al. case for more information).

Tolimir was charged under the doctrine of individual criminal responsibility⁸⁰ with: 1) genocide;⁸¹ 2) conspiracy to commit genocide;⁸² 3) extermination, murder, persecutions, forcible transfer and deportation;⁸³ and 4) murder.⁸⁴

Tolimir was first indicted along with Radivoje Miletić and Milan Gvero in 2005, when Tolimir was still a fugitive. Later in 2005, these 3 indictees' case was joined with cases against 6 others in the Popović et al. indictment. In 2006 Tolimir's case was severed from the Popović et al. case. The Prosecution filed their new indictment in Tolimir's case later in 2006.

Tolimir was arrested on 31 May 2007. Tolimir did not enter a plea during initial proceedings later in 2007, so a plea of not guilty was entered on his behalf. His case is currently pending before the Tribunal.

Scorpions case in front of the Serbia War Crimes Court

The Scorpions Case involves five former Scorpion paramilitary⁸⁵ soldiers: Slobodan Medić, Pero Petrašević, Aleksandar Medić, Aleksandar Vukov and Branislav Medić. A video shows the paramilitaries marching Bosnian Muslim youth into the woods and taunting them before their execution as part of the Srebrenica Massacre in July 1995. This case marked the first, and most substantial, case in the Serbia War Crimes Court to deal with the approximately 8,000 killings in Srebrenica.⁸⁶ The trial lasted fifteen months,⁸⁷ after which the former commander, Slobodan Medić, and Branislav Medić were each sentenced to 20 years imprisonment for the murders. Pero Petrašević was sentenced to 13 years imprisonment because of his confession, cooperation and demonstration of remorse. Aleksandar Medić was given five years and Aleksandar Vukov, the former deputy commander, was acquitted. Serbian authorities are still searching for fellow Scorpion member, Milorad Momic, for the same crime while a Croatian court has already sentenced former Scorpion Slobodan Davidovic in 2005 to 15 years in prison.

The video of the Scorpions⁸⁸ was broadcast at the trial of Slobodan Milosevic as evidence of genocide. The graphic events in the video shocked both the international community as well as those in Serbia who had previously refused to believe any executions had occurred at Srebrenica.

⁸⁰ Article 7(1)

⁸¹ Article 4

⁸² Article 4

⁸³ Article 5

⁸⁴ Article 3

⁸⁵ Formed in 1991 by Republic of Serbian Krajina (RSK) separatists within Croatia.

⁸⁶ A significant step for Serbia to take.

⁸⁷ Until April 2007.

⁸⁸ Which can be seen, in part, here: <http://video.google.com/videoplay?docid=-2310134752359900509&q=srebrenica+scorpion&ei=S6qJSMiJMJe2AKp-aGDCw>

Conclusion

On July 11th of each year, a commemoration takes place in Potocari for the victims of the Srebrenica massacre. Every year more victims are identified from mass gravesites and reburied in the cemetery. Until now, about 4,000 of the 8,000 victims have been identified and reburied. In September 2003, the Srebrenica-Potocari Memorial and Cemetery to Genocide Victims was created. It was opened by former US President Bill Clinton. Even though Serbs may be reluctant to attend this annual event, the current Serbian President, Boris Tadić, attended Srebrenica's 10th anniversary commemoration in 2005. It was an important political symbol even though some Bosnians perceive his presence as a way to get favors from the international community.