

## Judicial bullying pays off in Karadzic's Bosnian genocide trial

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### **A survivor of the genocidal assault on the newly independent Bosnia by Serbian nationalist forces condemns a recent ruling by ICTY judges that effectively limits the accusation of genocide to Srebrenica**

Twelve years ago, the amended indictment against Radovan Karadzic and Ratko Mladic charged the two key orchestrators of the 'ethnic cleansing' campaign with genocide, crimes against humanity, and other war crimes committed in at least 40 municipalities in Bosnia-Herzegovina. The prosecutors alleged that in 18 of these municipalities, the 'destruction, in whole or in part' reached the scale of genocide.(1)

Over time, the judges of the International Criminal Tribunal (ICTY) exerted pressure upon prosecutors to reduce the charges against the accused. The notional aim was to achieve a fair and expeditious trial, even at the expense of justice for the victims. Eventually, judicial bullying paid off and the subsequent indictments were reduced to a mere 21 municipalities, with just 8 municipalities designated as places where 'persecutions included or escalated to include conduct that manifested an intent to destroy in part the national, ethnical and/or religious groups of Bosnian Muslims and/or Bosnian Croats'.(2)

The culmination of this gradual process of judicial attrition nevertheless came as a complete surprise. Unexpectedly on 28 June 2012, in response to a defence 'Rule 98bis motion' to acquit the accused of all charges, the panel of judges trying Karadzic dismissed one count of genocide against him, relating to 7 municipalities. Only in relation to the second count of genocide, in Srebrenica, did the Chamber find that there was evidence... that this 'was carried out by Bosnian Serb forces' in 1995.(3) They blamed a lack of evidence produced by the prosecutors that any genocidal events had taken place in seven municipalities outside of Srebrenica in 1992. The judges made no reference to their own role in shaping the framework of the charges against Karadzic, or the Court's previous findings on the evidence concerning acts of genocide in other cases previously heard before it.

In the trial of Slobodan Milosevic, the Tribunal reached a quite different conclusion. There, at the same stage of proceedings, when the Trial Chamber heard Milosevic's 98bis application for acquittal, the judges declared that they were satisfied that a joint criminal enterprise had existed, that it included members of the Bosnian Serb leadership, that its aim and intention was to destroy a part of the Bosnian Muslims as a group. Now, in a completely unexplained U-turn, the judges appear to be saying that the prosecution has been incapable of producing evidence of genocide anywhere in Bosnia except at Srebrenica.

Ironically, the judges rendered their decision to partially acquit Karadzic on *Vidovdan*, the Serbian Orthodox St. Vitus's Day. In 1992, Serb forces in Visegrad celebrated *Vidovdan* by burning alive at least 60 Bosniak men, women and children in a slaughter described by the presiding judge in the *Lukic* case as exemplifying 'the worst acts of inhumanity that a person may inflict upon others'.(4) The same day marks the assassination by the Bosnian Serb Gavrilo Princip of Crown Prince Franz Ferdinand in Sarajevo in 1914, an event that eventually triggered the First World War; it also marks Slobodan Milosevic's controversial speech in 1989 on the 600th anniversary of the Battle of Kosovo Polje, regarded by many as demonstrating his willingness to use force to advance Serbian interests.(5)

Although Karadzic has not been, and never will be, acquitted of the charge of genocide at Srebrenica, the decision on his Rule 98bis motion signals the position the judges appear to have taken with respect to their final ruling. The Court will likely confirm that the conduct of Serb forces in Bosnia-Herzegovina constituted crimes against humanity which culminated in the first genocide on European soil since the end of World War II. But to say that genocide took place 'only' in Srebrenica in July 1995 flies in the face of earlier judicial rulings. Four international judgments in the especially well-argued cases of *Nikola Jorgic*, *Novislav Djajic*, *Djuradj Kusljic*, and *Maksim Sokolovic* clearly confirm that genocide took place in several municipalities outside of Srebrenica in 1992. All four trials were conducted in Germany — at the request of the International Criminal Tribunal for the Former Yugoslavia (ICTY) — to ease the caseload of ongoing trials at The Hague. All the relevant appeals have long been exhausted, so that judgments in these cases are final and binding.

We also know that in the Milosevic case the Hague Tribunal ruled -- before the accused's death enabled him to escape his final judgment -- that the fact of genocide had been confirmed in three of the municipalities (Prijedor, Sanski Most and Kljuc) in which the judges in the Karadzic case have now considered 'insufficient evidence' to be grounds for Karadzic's acquittal. In Milosevic's '*Decision on Motion for Judgment of Acquittal*', the judges ruled on 16 June 2004 that: 'On the basis of the inference that may be drawn from this evidence, a Trial Chamber could be satisfied beyond reasonable doubt that there existed a joint criminal enterprise, which included members of the Bosnian Serb leadership, whose aim and intention was to destroy a part of the Bosnian Muslim population, and that genocide was in fact committed in Brcko, Prijedor, Sanski Most, Srebrenica, Bijeljina, Kljuc and Bosanski Novi. The genocidal intent of the Bosnian Serb leadership can be inferred from all the evidence, including the evidence set out in paragraphs 238 -245. The scale and pattern of the attacks, their intensity, the substantial number of Muslims killed in the seven municipalities, the detention of Muslims, their brutal treatment in detention centres and elsewhere, and the targeting of persons essential to the survival of the Muslims as a group are all factors that point to genocide.'(6)

It is hard to see the evidence available in Karadzic's case concerning the other four municipalities as so deficient as to be dismissed without more scrupulous examination. In Bratunac, for example, a meeting was held at the Hotel Fontana on 17 April 1992, at the very start of the Bosnian war, between Bosniak and Serb representatives of the Srebrenica and Bratunac municipalities. It was at this meeting that the newly self-appointed Serb authorities issued a public threat of genocide to the population of 49,000 Bosniaks in the two adjoining municipalities. In the words of Miroslav Deronjic, the senior Serb nationalist leader, Bosniaks had two options: 'To leave Srebrenica quietly or to be killed. There is no third option.' He warned that 'Bratunac, Skelani, Milici, Rogatica and Visegrad are already in Serb hands.' Bosniaks were 'to surrender weapons and legal authority to Bosnian Serbs. Otherwise they were to suffer destruction at the hands of the thousands of soldiers who were massed across the Drina River in Serbia.'(7)

What followed was a gruesome mass murder of at least 3,166 Bosniak men, women, children and elderly in Srebrenica and the adjoining pre-war municipalities of Bratunac, Vlasenica, Rogatica and Visegrad between April and June 1992 (i.e. more than three years before the Srebrenica genocide).(8) In the words of Sakib Ahmetovic, President of the Association of Bratunac Detainees: 'They [the judges] can call war crimes in Bratunac by whatever name they wish, but we will never accept not to call what happened in Bratunac - genocide. Genocide occurred in Bratunac and certainly it occurred in neighbouring municipalities'.(9)

I had an opportunity to interview one of the survivors of a brutal massacre, which occurred in a small village belonging to the pre-war municipality of Vlasenica, adjacent to Srebrenica. On 16 May 1992, armed Serbs entered the village of Zaklopaca demanding that the civilian residents hand over their weapons. Apart from a few legally-owned hunting rifles, the residents had no weapons, either to attack anyone or to defend themselves with. When the Serbs learned that the residents of the village were effectively unarmed, they blocked all the exits to the village and massacred at least 63 Bosniak men, women and children. Here is how a survivor, Nihada Hodzic, described the aftermath of the killings: 'We dared to step out again, to witness that inferno, the death and destruction of this inevitable storm which plundered our town and raped it of its virtues and good life. We saw dead bodies everywhere. The smell of death permeated the entire town. Dead children, women, men. Bodies everywhere. We were in shock...We saw my eldest uncle [Becir Hodzic] again – in a kneeling position with a cigarette still burning in between his index and middle fingers, his head bowed to the ground, and a puddle of blood next to him – he was dead too. We saw small children with their mothers lying side by side on the ground, motionless, very still – in an eternal sleep. We were told that my father was among the dead too.'<sup>(10)</sup>

To see Karadzic not being prosecuted for the Zaklopaca massacre and a host of other ghastly massacres that were an integral part of the Bosnian genocide, and then to watch him smile as the judges acquitted him of genocide in municipalities outside of Srebrenica, undermines the credibility of the Hague Tribunal. As a Bosniak survivor of the war myself, who experienced the full brunt of the racially charged Serbian ethnic cleansing campaign, I am appalled by the decision of ICTY to turn its back upon its responsibility for prosecuting the crime of genocide that was the very reason the Tribunal was set up, and upon evidence that it has already heard, for reasons of its own convenience.

The judges appear to point the finger of responsibility for Karadzic's acquittal firmly at the prosecution, without considering it necessary to explain their own apparent disregard for established findings of the Tribunal. However, if the decision is not simply an arbitrary, non-transparent change of mind on the part of the judges, and if there has indeed been a failure to present evidence adequately, it is difficult to avoid the conclusion that this is the inevitable consequence of indecent pressure on the part of the Court to abandon the painstaking effort to prosecute serious and substantiated charges and hasten the hearing of a rushed selection, in order to speed up the trial and complete the Tribunal's outstanding business.

The descent of the International Tribunal into this chaotic state of terminal confusion - leaving in its wake survivors humiliated and betrayed by the judicial process, and cosseted indictees with lavishly funded defence teams watching in gratified amazement as their crimes are consigned to judicial oblivion - is destroying the last vestiges of any faith and hope that I and the other survivors have of ever seeing justice done for the victims of genocide in Bosnia.

Footnotes:

1. The Prosecutor v. Radovan Karadzic. Amended Indictment, para. 17. (28 April 2000). The International Criminal Tribunal (ICTY) at the Hague, <http://www.icty.org/case/karadzic/4>
2. Prosecution's marked-up indictment, para. 36-47. (19 October 2009). The International Criminal Tribunal (ICTY) at the Hague, <http://www.icty.org/case/karadzic/4>

3. ICTY Press Release: 'Tribunal dismisses Karadžić motion for acquittal on 10 of 11 counts of the indictment'. (28. June 2012). <http://www.icty.org/sid/10994/en>
4. ICTY Press Release: 'Milan Lukic and Sredoje Lukic Convicted of War Crimes in Visegrad'. (20 July 2009). <http://www.icty.org/sid/10188>
5. *"Six centuries later, now, we are being again engaged in battles and are facing battles. They are not armed battles, although such things cannot be excluded yet."* Slobodan Milosevic, Gazimestan speech. (28 June 1989).
6. The Prosecutor v. Slobodan Milosevic. 'Decision on Motion for Judgment of Acquittal.' para, 246. The International Criminal Tribunal at the Hague. (16 June 2004).  
[http://www.icty.org/x/cases/slobodan\\_milosevic/tdec/en/040616.pdf](http://www.icty.org/x/cases/slobodan_milosevic/tdec/en/040616.pdf)
7. 'Prelude to the Srebrenica Genocide: Mass murder and ethnic cleansing of Bosniaks in the Srebrenica region during the first three months of the Bosnian War (April-June 1992)' by Daniel Toljaga. The Bosnian Institute, UK. (18 November 2010).  
[http://www.bosnia.org.uk/news/news\\_body.cfm?newsid=2771](http://www.bosnia.org.uk/news/news_body.cfm?newsid=2771)
8. Research and Documentation Centre, Sarajevo. Human Losses in Bosnia-Herzegovina 1991-95. (For a breakdown of losses in each municipality, see *ibid*: Prelude to the Srebrenica Genocide')
9. 'RS: Hag porucio da Srbi nisu agresori u BiH.' Aljazeera Balkans. (28. juna 2012).  
<http://balkans.aljazeera.net/makale/zrtve-zatecene-odlukom-haga-o-karadzicu>
10. 'Interview with Nihada Hodzic, Survivor of the Zaklopaca Massacre' by Daniel Toljaga. The Institute for the Research of Genocide, Canada. (12 February 2010). <http://www.instituteforgenocide.org>