

SCL Lecture: ‘The Mladić Trial - An Insider's View’ – Jonas Nilsson, former Senior Legal Officer, ICTY

On 31 January 2018, Jonas Nilsson provided the lecture ‘[The Mladić Trial - An Insider's View](#)’ in the context of the [Supranational Criminal Law \(SCL\) Lectures Series](#) hosted by the [T.M.C. Asser Instituut](#). The SCL lectures, which relate to topical issues of international criminal law, have been organised since 2003 by the Asser Institute, in cooperation with the Coalition for the ICC and the Grotius Centre for International Legal Studies of Leiden University. Dr. Christophe Paulussen, Senior Researcher and coordinator of the Asser research strand ‘Human Dignity and Human Security in International and European Law’, began the lecture with opening remarks on the final trial of the International Criminal Tribunal for the former Yugoslavia (ICTY): *Prosecutor v. Ratko Mladić*. On 22 November 2017, and after more than five years of trial, the ICTY rendered its last trial judgment and sentenced Mr. Mladić to life imprisonment. He was found guilty on one count of genocide, five counts of crimes against humanity, and four counts of violations of the laws and customs of war (war crimes).

Jonas Nilsson, who has worked at the ICTY between 2005 and 2017, was in the last years team leader of the *Mladić* case in Trial Chamber I. He has previously worked on human rights and refugee law at Amnesty International and the Swedish Helsinki Committee. Between 2001 and 2003, he lived in Kosovo and worked at the Ombudsperson Institution in Kosovo as the Director of Investigations. Jonas Nilsson first drew attention to the length and complexity of the judgment in the *Mladić* case. He then summarised the case, and presented the legal innovations of the judgment for the international criminal law field.

Ratko Mladić was an officer in the Yugoslav army since the 1960s. After rising in the military hierarchy, Mladić was appointed Commander of the Bosnian-Serb Army (VRS) from 1992 to 1996. He was indicted on 24 July and 14 November 1995, and arrested on 26 May 2011. The trial started a year later, on 16 May 2012, and the case is currently on appeal. The scope of this case is extensive: 592 witnesses have participated in the proceedings, and there were about 10,000 exhibits included in the trial. The case covered the conflict in the former Yugoslavia from 1992 to 1995 and was separated in four parts.

Part I concerned the crimes of genocide, murder, extermination, deportation, forcible transfer and persecution as crimes against humanity as well as murder as a war crime in 15 municipalities in Bosnia-Herzegovina in 1992. The treatment of the civilian population in the early stages of the conflict had been characterised as ethnic cleansing. Part II scrutinised the war crimes of murder, attack against civilians, and acts of terror in Sarajevo from mid-May 1992 until November 1995. The VRS deliberately conducted shelling and sniping operations on the civilian population of Sarajevo. As regards the third component of the case, the Chamber turned to the campaign by the VRS of arresting and detaining unarmed UN observers in 1995 as constituting the war crime of taking hostages. Finally, part IV, the last part of the case, examined the commission of the crimes of genocide; the murder, extermination, deportation, forcible transfer, and persecution as crimes against humanity; as well as the war crime of murder in Srebrenica in 1995. The Trial Chamber found that the prosecution had proven the case and found that Mladić had participated, under the heading of commander of the VRS, in four joint criminal enterprises (JCE) corresponding to the four parts of the case.

Mladić was convicted on all counts except on count 1. There were two charges for the crime of genocide in the indictment: count 1 on genocide committed in the municipalities, and count 2 on genocide committed in Srebrenica. Jonas Nilsson explained how the Chamber reached such a decision on count 1. The Chamber first looked at whether the crime happened, and then on whether the accused could be held responsible for it. The Bosnian Muslims were

considered by the court as a protected group on the grounds of both nationality and religion. The Trial Chamber found, with a dissenting opinion by Presiding Judge Orić, that the perpetrators of the killings in some of the municipalities had the genocidal intent to destroy. Judge Orić, however, believed that the perpetrators had the intent to displace the Bosnian Muslims but not the intent to destroy the group. The Trial Chamber then considered the requirement under Article 4(2) of the [ICTY Statute](#) regarding the intent to destroy the group “in whole or in part”. According to jurisprudence, the intent must be directed towards a substantial part of the group. The Chamber found that the number of Bosnian Muslims in the municipalities was low and that there were no additional indicators in the attacks against the municipalities. Consequently, it ruled that the requirement of the intent to destroy a *substantial part* of the group was not met. Conversely, as regards Srebrenica, the Chamber found that additional indicators, such as the symbolic impact of targeting a UN designated safe-area and the strategic importance of the target, were sufficient to satisfy the requirement of a substantial part of the group.

During the Q&A several interesting questions were asked regarding the comparison between the *Mladić* and the *Karadžić* case, the case of the defence, and the use of adjudicated facts. Jonas Nilsson stated that in his view, the most important value of the case from a legal point of view was the discussion surrounding the definition of genocide and the use of JCE. In addition, he shared an “insider view” by explaining the writing process of the judgment and the practical realities of working in the Trial Chamber. Dr. Paulussen thanked the speaker and the audience and concluded the event by drawing attention to [other lectures](#) organised by the Asser Institute, as well as its International Crimes Database.

The video of this lecture can be viewed [here](#), on the International Crimes Database.