

Srebrenica in summary 07 Aug 2008

An overview of the legal proceedings relating to the 1995 genocide

Following the commemoration of the 13th anniversary of the genocide at Srebrenica, the Hague Justice Portal reviews and summarises the numerous legal proceedings relating to the tragic events of July 1995.

The Srebrenica massacre was the worst atrocity of the Bosnian War (1992-1995) and the largest massacre committed in Europe since the Second World War. On 16 November 1995, four months after the horrific events took place, the International Criminal Tribunal for the former Yugoslavia (ICTY) confirmed the indictment against recently captured Bosnian Serb leader Radovan Karadžić and General Ratko Mladić. In expressing the magnitude of the crimes committed at Srebrenica, Judge Riad stated:



The evidence tendered to the prosecutor describes scenes of unimaginable savagery, thousands of men executed and buried in mass graves, hundreds of men buried alive, mutilated and slaughtered... These are truly scenes from Hell, written on the darkest pages of human history.

While the ICTY was established in 1993 by the UN Security Council specifically to deal with the ongoing atrocities committed in the region, proceedings relating to the events in Srebrenica have also taken place before several other courts. In 2007, the International Court of Justice delivered its decision in the historic *Genocide Case*, which addressed the issue of whether the Serbian state could be held responsible for the Srebrenica genocide under international law. The special War Crimes Chambers set up in Sarajevo and Belgrade have also dealt with crimes committed in Srebrenica and recently – here in the Netherlands – representatives of the victims have attempted to bring the Dutch State (and the United Nations itself) to account for the fateful events at Srebrenica.

1. Srebrenica: the road to genocide

The notorious massacre in July 1995—now universally referred to simply as ‘Srebrenica’—took place in the Srebrenica region in eastern Bosnia and Herzegovina. The municipality of Srebrenica, which is merely a few kilometers from Bosnia’s border with Serbia, consisted of approximately 35,000 people in 1991 – more than two-thirds of whom were Bosnian Muslims.



Following the Republic of Bosnia and Herzegovina's declaration of independence from Yugoslavia in October 1991, war ravaged in the eastern parts of the Republic—predominantly between the Bosnian Serbs and Bosniaks (Bosnian Muslims)—in order to gain control of territory in the fledgling State.

[Map of Bosnia and Herzegovina](#)

The atrocities which took place in Srebrenica were part of a plan to create an ethnically homogenous region in Bosnia. Bosnian Serb forces took part in killings, deportation and rapes of Bosnian Muslims as part of a process of 'ethnic cleansing'. The Srebrenica enclave was of strategic importance in order to consolidate a single geographical entity over which they could maintain political control. Control of the region was seen as important in securing the territorial integrity of the political entity of *Republika Srpska* – the self-proclaimed Serbian republic in Bosnia.

[Map of Bosnia \(Republika Srpska and Fed. of BiH\)](#)

On 16 April 1993, the UN Security Council “[c]oncerned by the pattern of hostilities by Bosnian Serb paramilitary units against towns and villages in eastern Bosnia” and by the practice of so-called “ethnic-cleansing” in the region, “demanded” that Srebrenica and its surroundings be treated by all parties to the conflict as a ‘safe area’.¹

Some 600 lightly-armed Dutch peacekeepers were deployed on an ill-fated mission to the enclave to ensure that it remained free from armed attack. Nestled in the far east of the country, the township increasingly became a refuge for Bosniak civilians from nearby areas as Bosnian Serb forces obtained greater control over surrounding townships. By early 1993, the population of the Srebrenica municipality had swelled to approximately 60,000.

From 6 to 8 July 1995, Bosnian Serb forces laid siege to the Srebrenica enclave. As the army units – under the command of General Mladić – began shelling the township, the Dutch Commander Colonel Karremans called the UN Headquarters in Sarajevo for “close air support”. This was initially denied. Although a subsequent request for NATO air-support was granted, owing to a bureaucratic error resulting in delays, none was forthcoming. On 11 July, Bosnian Serb troops entered Srebrenica – opposed neither from the air nor by the hapless ‘Dutchbat’ forces on the ground.²



Bosnian Serb paramilitaries proceeded to separate all Bosnian Muslim ‘military aged’ males from the women. Buses were arranged to transport the women and small children of Srebrenica to Bosnian Muslim territory in the east of Bosnia. The men were horded onto separate buses, purportedly to be taken to away for “interrogation for suspected war crimes”. On 13 July 1995 and the days following, some 8,000 Bosnian Muslim males between 12 and 77 were killed by the Army of Republika Srpska (VRS), under the command of General Ratko Mladić, as well as by Bosnian Serb paramilitaries. As the President of the self-proclaimed Bosnian Serb Republic,

Radovan Karadžić was the Supreme Commander of the armed forces at the time.

The failure to protect what was supposedly an internationally protected ‘safe haven’ haunts the United Nations and the Dutchbat forces that were sent to protect the enclave to this day.

2. International Criminal Tribunal for the former Yugoslavia

Under Resolution 827 (1993) the UN Security Council established the ICTY to try those responsible for violations of international humanitarian law, including genocide, on the territory of the former Yugoslavia. Radovan Karadžić and Ratko Mladić are two of several high-level indictees who have been accused of atrocities associated with the 1995 massacre before the ICTY in The Hague. Other notable cases before the Tribunal which have dealt with the crimes carried out during the Srebrenica massacre in July 1995 are listed below:

Drazen Erdemović: Humble beginnings

The case of Drazen Erdemović was the first to deal with the atrocities carried out in the Srebrenica region. A Croat by birth, Erdemović was serving military service when war broke out in the former Yugoslavia. His unit became an effective killing machine, ordered to kill in excess of 1,000 Bosnian Muslim civilians on the outskirts of Srebrenica on 16 July 1995 alone. Erdemović—put in a seemingly impossible ‘kill or be killed’ position, not only threatened with his own life but faced with the prospect of having his family targeted as well if he attempted to escape—individually executed approximately 100 Muslims from Srebrenica. On 29 November 1996, Trial Chamber I sentenced Dražen Erdemović to 10 years’ imprisonment. After the Defence appealed, the case was remitted to a new Trial Chamber and Erdemović ultimately received a five year sentence.



Erdemović’s case, taking into account his junior rank, his free admission of guilt and profound remorse, was unique. The evidence that Erdemović provided to the Tribunal was crucial in the future prosecution of the leaders of the Srebrenica massacre.

Dragan Obrenović

As a Chief-of-Staff and Deputy Commander within the Bosnian Serb Army, Dragan Obrenović was initially charged with complicity in genocide, extermination, murder and persecutions by the ICTY for his role in the mistreatment and murder of thousands of Bosnian Muslims after the takeover of Srebrenica in July 1995.

‘Plea agreement’

The Tribunal’s Rules of Procedure and Evidence allow for the Defence and the Prosecution to make plea agreements if the accused enters a guilty plea to one or more counts in the indictment. In this case, Obrenović pleaded guilty to the count of persecutions as a crime against humanity and the Prosecution subsequently withdrew the remaining counts. Although the Trial Chamber is

not obliged to accept such Plea Agreements, in this case it accepted the deal and granted the joint motion.

Noting Obrenović's "unqualified acceptance of his responsibility and guilt" – as well as his substantial cooperation with the Prosecution – as a mitigating circumstance, the Trial Chamber sentenced the accused to 17 years' imprisonment.

Radislav Krstić

As the Deputy and then Commander of the Bosnian Serb Army Drina Corps, which had authority over the area of eastern Bosnia, General Radislav Krstić led the assault on Srebrenica along with General Mladić. Krstić was charged with numerous crimes including genocide, war crimes and crimes against humanity, predominantly in relation to the massacre at Srebrenica. On 2 August 2001, Krstić became the first (and so far only) accused before the Tribunal to be found guilty of genocide. He was sentenced to 46 years' imprisonment. In 2004, ICTY Appeals Chamber affirmed the finding that the Srebrenica massacre was an act of genocide under international law. However, it overruled the Trial Chamber's earlier conviction of Krstić for genocide concluding that there was a "demonstrable failure by the Trial Chamber to supply adequate proof that Radislav Krstić possessed the genocidal intent."³ Instead, it convicted Krstić of *aiding and abetting* genocide, murder, extermination and persecutions. His sentence was consequently reduced to 35 years' imprisonment.



Vidoje Blagojević and Dragan Jokić

On 17 January 2005, the Trial Chamber handed down sentences in the case of Vidoje Blagojević and Dragan Jokić.

Vidoje Blagojević, a Commander in the VRS, was sentenced to 18 years' imprisonment for complicity to commit genocide, murder, persecutions and inhumane acts. It was alleged that by virtue of his position as Commander, Colonel Blagojević participated in the forcible transfer of women and children from the Srebrenica enclave to Kladanj in July 1995. On 9 May 2007, the Appeals Chamber acquitted him of complicity to commit genocide and consequently reduced his sentence to 15 years.

Dragan Jokić, a Chief of Engineering in the Bosnian Serb Army who assisted in the planning and carrying out of the burial operation in Srebrenica, was found guilty of aiding and abetting extermination, persecutions and murder and sentenced him to 9 years' imprisonment. The sentence was confirmed on appeal.

Naser Orić

Naser Orić was the senior commander of the Bosnian Muslim forces in municipalities in eastern Bosnia and Herzegovina, including Srebrenica, from 1992 until the fall of the Srebrenica enclave in 1995. Vilified by the



Bosnian Serbs but seen as a hero to many Bosniaks, Orić was indicted by the Tribunal in March 2003 on the basis both of his individual and superior criminal responsibility. Orić was charged with violations of the laws or customs of war including wanton destruction of towns or villages, murder and cruel treatment. On 30 May 2006, the Trial Chamber found Naser Orić guilty of failure to discharge his duty as a superior to prevent the murder and cruel treatment of Serb prisoners in Srebrenica. He was sentenced to two years' imprisonment.

On 3 July 2008, the Appeals Chamber acquitted Orić of all crimes committed against the Serb detainees pointing to a lack of evidence.

Momir Nikolić

Momir Nikolić was the Assistant Commander for Security and Intelligence in the VRS. On 8 March 2006, the Appeals Chamber sentenced Nikolić to 20 years' imprisonment for persecutions on political, racial and religious grounds. (In December 2003, the Trial Chamber had originally sentenced him to 27 years in prison.) Nikolić supervised the forced deportation of Muslim civilians from the Srebrenica enclave and was involved in the execution of thousands of Muslim men and boys.

As with Obrenović, Momir Nikolić entered into a Plea Agreement with the Prosecution. Nikolić pleaded guilty to persecutions as a crime against humanity and agreed to testify in other Srebrenica trials; the Prosecution dropped the remaining charges (including genocide, extermination and murder).

Upcoming judgements before the ICTY concerning Srebrenica

Popović et al.

The ongoing trial of *Popović et al.* (known as the 'Srebrenica Seven') consists of commanders and high-level officials allegedly responsible—to varying degrees—for the massacre at Srebrenica. The ICTY has indicted Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin and Vinko Pandurević for genocide in Srebrenica together with several counts of crimes against humanity and violations of the laws or customs of war. Milan Gvero and Radivoje Miletić have been indicted for murder, persecutions, forcible transfer and deportation, again in relation to the events at Srebrenica between July and November 1995.

The indictment against the five detainees accused of genocide stipulates that they held the requisite intent to destroy a part of the Bosnian Muslim people through “planned and opportunistic summary executions” in the Srebrenica region in July 1995.

All seven of the accused have been charged on the basis of their individual criminal responsibility, while Pandurević and Borovčanin have also been charged on the basis of their superior criminal responsibility at the time of the massacre.



The *Popović et al.* trial commenced on 14 July 2006 and is expected to run well into 2009.

Zdravko Tolimir

On 31 May 2007, Zdravko Tolimir was arrested in the border region between Republika Srpska (in BiH) and Serbia. Tolimir was an officer in the VRS who reported to General Ratko Mladić. He is charged with “intent to destroy a part of the Bosnian Muslim people” for his role in the killing of the populations of Srebrenica and Žepa in 1995. Tolimir has exercised his right to represent himself before the Tribunal.

Momčilo Perišić

After numerous delays, on 1 October 2008, the trial of Momčilo Perišić is scheduled to commence at the ICTY. While the case has not attracted nearly as much attention as that of Karadžić or the fugitive Ratko Mladić, as the former Chief of the General Staff of the Yugoslav Army, Perišić in fact held a more senior position than Mladić at the time of the Srebrenica massacre.



The indictment against Perišić states that he knew an attack was planned against Srebrenica in July 1995. It states that as the former Chief of the General Staff he knew that some of the members of the Bosnian Serb Army (VRS) would engage in criminal conduct against the Bosnian Muslim civilian population of Srebrenica; and, following the massacre, that he had reason to know that his subordinates had participated in the perpetration of crimes in Srebrenica and failed to investigate and punish those crimes.

Momčilo Perišić is charged on the basis of both his individual and superior criminal responsibility for the alleged crimes.

Joint Criminal Enterprise (‘JCE’)

According to the indictments against Karadžić and Mladić, the events committed in Srebrenica were part of a ‘joint criminal enterprise’ developed by Ratko Mladić and others to kill Bosnian Muslims. The complex legal concept of ‘joint criminal enterprise’ has been developed in the case law of the ICTY, and is particularly applicable to wide-scale atrocities such as those committed in Srebrenica.⁴ The doctrine holds members of a group criminally liable for crimes committed by those who share a common purpose to commit crimes and further the aims of the common purpose. This can either be done through active measures or by omission (e.g. not punishing the perpetrators of the atrocities themselves).

The indictment against Radovan Karadžić and Ratko Mladić alleges that these commanders were criminally liable as co-perpetrators in a joint criminal enterprise for the removal or elimination of Bosnian Muslims from Srebrenica and its surrounds and other non-Serb inhabitants in Bosnia and Herzegovina.

4. International Court of Justice: The ‘Genocide Case’

On 26 February 2007, the ICJ affirmed the ICTY’s earlier finding that the Srebrenica massacre was an act of genocide under international law. In the case brought by Bosnia and Herzegovina, the ICJ found Serbia to be in violation of its international obligation under the 1948 Genocide Convention for failing to prevent the genocide. Additionally, the Court ruled that Serbia failed in its duty to punish the perpetrators by not cooperating fully with the ICTY. However, the Court held that the events that took place in Srebrenica could not be attributed to the state of Serbia under the international law of state responsibility. Although the rump state of the Federal Republic of Yugoslavia (FRY), under the Presidency of Slobodan Milošević, was providing substantial support – particularly financial backing – to *Republika Srpska*, the Court held that the FRY did not have *de facto* or *de jure* control over the VRS and paramilitaries. Accordingly, the Court held that acts of genocide could not be attributed to Serbia.



5. Bosnian and Serbian national courts

As part of the ICTY’s completion strategy,⁵ some mid-level cases concerning ‘Srebrenica’ have been transferred for trial to a special War Crimes Chamber of the State Court of Bosnia and Herzegovina (BiH). On 11 June 2007, Milorad Trbić, who is charged with genocide and war crimes in relation to the Srebrenica massacre, was transferred from the ICTY for trial in Sarajevo.

The case of *Božić et al.* is currently underway before the War Crimes Chamber in Sarajevo. Božić and his co-defendants are charged with crimes against humanity for their alleged involvement in the attack on the Bosnian Muslim civilian population in the Srebrenica enclave.

In the “Kravice” case, the eleven defendants in *Stupar, Miloš et al.* were the first accused to be charged with genocide in relation to the Srebrenica massacre before the Court of BiH. The former Bosnian Serb police officers and soldiers were alleged to have been involved in the forced transfer of women and children from Srebrenica and the organised and systematic capture and killing of Bosnian Muslim men by summary executions. On 29 July 2008, the War Crimes Chamber convicted seven of the accused of genocide for their role in the massacre at Srebrenica. The convicted men received prison sentences ranging from 38 to 42 years for the systematic murder of more than 1,000 Bosnian Muslim on one day in July 1995.

In April 2007, a Serbian War Crimes Court in Belgrade sentenced four members of the notorious ‘Scorpions’ paramilitary group to a total of 58 years’ imprisonment. They were convicted of executing six Muslims in the village of Trnovo after the Srebrenica enclave had been overrun by Serb forces.

6. Domestic courts in the Netherlands

The events surrounding the 1995 massacre have also been the subject of recent civil lawsuits within the Dutch legal system. Representatives of



victims of the Srebrenica massacre and their relatives have initiated two separate civil proceedings against both the United Nations and the Dutch Government for failing to prevent the 1995 massacre. In 2002, the Dutch Government of Prime Minister Wim Kok resigned after a report blamed the Government for sending the Dutch UN troops on an ‘impossible mission’ in Srebrenica.

In July 2008, the District Court of The Hague ruled that it had no jurisdiction to hear a civil case brought against the United Nations by an association of citizens known as the ‘Mothers of Srebrenica’ and ten individual plaintiffs. Lawyers acting on behalf of the plaintiffs have indicated that they will appeal the decision. The case could ultimately end up before the European Court of Human Rights.

On Monday 16 June 2008, the District Court of The Hague also heard a civil case against the Dutch state relating to the 1995 Srebrenica massacre. The case was filed by Hasan Nuhanović, a UN interpreter, and by the family of Rizo Mustafić who worked as an electrician for the Dutch UN Battalion at Srebrenica in 1995. The judgement is expected on 10 September 2008.

7. More legal proceedings to come

Following the transfer of Radovan Karadžić to the ICTY and his initial appearance before the Tribunal on 31 July 2008, the former Bosnian Serb leader will face charges of genocide, crimes against humanity and war crimes relating to the Srebrenica massacre. Meanwhile the capture of the last remaining fugitive charged with crimes concerning Srebrenica, the illusive Ratko Mladić, is still awaited both by the surviving victims of the atrocities and the international community at large. Whether the former General will ever face justice before the ICTY for the crimes carried out under his command remains uncertain despite promising developments in Serbia in recent weeks. Regardless of Mladić’s fate, the 1995 massacre at Srebrenica will continue to be the subject of legal proceedings both in international and domestic courts for years to come.



This summary was compiled by the Hague Justice Portal editorial team.

¹ On 6 May 1993, the UNSC in [Resolution 824](#) declared that Sarajevo “and other such threatened areas, in particular the towns of Tuzla, Zepa, Gorazde, Bihac” join Srebrenica as “safe areas”.

² Only one air raid took place; it had no impact on the developments which followed.

³ *Prosecutor v. R. Krstić*, Appeals Judgement, ICTY, 14-4-2004, Para. 134.

⁴ See Harmen van der Wilt: '[Halilović on Appeal: The intricate concept of 'effective control'](#)', *Hague Justice Journal - Journal judiciaire de La Haye*, Vol. 2, No. 3, 2007 and references contained within.

⁵ United Nations Security Council [Resolution 1503](#) (2003): ICTY Completion Strategy, 28 August 2003.