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## MPH5255 Assessment Task 3: Research Essay

Topic: Discuss the Response of the International Criminal Tribunal for the Former Yugoslavia (ICTY) to the Srebrenica Genocide

# ICTY and the Srebrenica Genocide

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## Introduction

After the dissolution of Yugoslavia, during the war in Bosnia, in July 1995, at least 8000 Bosnian Muslim men were killed by Bosnian Serb forces with the intent to change the population to create an ethnically homogenous Serb Republic in Bosnia. Set up while the Bosnian war was still in progress, the International Criminal Tribunal for the Former Yugoslavia was established to prosecute those responsible for war crimes, crimes against humanity, and genocide occurring in the lands formerly united as the Socialist Federal Republic of Yugoslavia. The Tribunal brought many to trial, including those responsible for the Srebrenica Genocide. It ceased operating at the end of 2017, however its legacy continues, with cases before the United Nations International Residual Mechanism for Criminal Tribunals as well as domestic courts. The following essay seeks to explore the response of the Tribunal to the Srebrenica Genocide. It begins with a brief outline of the war in Bosnia and the events in and around Srebrenica in July 1995. It then outlines the individuals indicted by the Tribunal for the Srebrenica Genocide – although for many of them, Srebrenica was not the only crime for which they were prosecuted. Finally, it will discuss the response of the Tribunal to the Srebrenica Genocide, touching on the rights of the accused, the inadequacy of justice for the victims, and briefly the response internationally to the Tribunal.

## Background

### Breakup of Yugoslavia and the Bosnian War

Following the death of President Josip Broz Tito in May 1980, the monolith that was the Socialist Federal Republic of Yugoslavia began to disintegrate. (1, 2). Under Tito, the federation of states cooperated in relative harmony, and when he died, ancient ethnic tensions rose to the surface. (2, 3). Slobodan Milošević became president of the Socialist Republic of Serbia in 1989 and garnered popular support by championing the cause of Serbian nationalism, which reverberated throughout Yugoslavia. (3-5). Thorough and detailed analysis of the causes of the breakup of Yugoslavia is beyond the scope of this essay but suffice it to say that republics of Slovenia and Croatia declared independence in June 1991, and war began. (6).

In Bosnia, the situation was compounded by the competing ethnic interests of its Croatian, Serbian and Muslim populations. The Bosnian Serbs were strongly in favour of remaining in Yugoslavia, which by October 1991 only consisted of Montenegro, Serbia, and Serbia's autonomous regions of Vojvodina and Kosovo. (2, 6, 7). The Bosnian Serbs, led by Radovan Karadžić, formed Serbian regions throughout Bosnia. On 3 March 1992, Bosnia and Herzegovina declared its independence from Yugoslavia. The immediate response from Bosnian Serbs was to declare independence for the Bosnian Serb Republic, known more commonly by the Serbo-Croatian name 'Republika Srpska'. (2). Marking the beginning of the Bosnian War, the Bosnian capital of Sarajevo came under siege by the Yugoslav Army and Serbian paramilitary groups in April 1992, and later The Bosnian Serb Army (VRS) of the Republika Srpska, led by General Ratko Mladić. (6, 8). The Bosnian Serbs engaged in campaigns of what was euphemistically termed 'ethnic cleansing' throughout Bosnia (9-11), the legacy of which is still present in Bosnia and Herzegovina today. (12). The Bosnian Serbs deliberately targeted Bosnian Muslims and Croats in order to create ethnically homogenous Serbian areas within Bosnia. (11, 13). The vast displacement of Muslims around Bosnia led many to seek refuge in the town of Srebrenica (11), which was designated a 'safe area' by resolution of the United Nations Security Council on 16 April 1993. (14). Ostensibly, the resolution made the town of Srebrenica and the surrounding areas free from attack, and under the protection of the United Nations Protection Force (UNPROFOR). (11). The failure of Dutch peacekeepers to prevent the ensuing genocide in Srebrenica has met with criticism and led to re-assessment of methods by not only the Dutch government, but by the United Nations itself. (15, 16).

## The Srebrenica Genocide

Before outlining the events in question, which occurred in and around Srebrenica in July 1995, a brief note will be made on terminology. The events in question have variously been referred to as the 'Srebrenica massacre' or the 'Srebrenica genocide'. The latter term is preferred in this essay for several reasons. Firstly, the word 'massacre' would seem inadequate to describe the events in question, which have been described as 'a massacre on a scale unprecedented in Europe since the Second World War'. (17). Secondly, the events were ruled to constitute a genocide in the case of the *Prosecutor v Krstić* by the ICTY in 2001 (18), which was confirmed by the appeals chamber in 2004 (19), and the International Court of Justice (ICJ) in 2007. (20). There should be no equivocation that the events to be described constitute a genocide and should be described in those terms.

Srebrenica was under siege from April 1993, with the intention of decreasing the area around the town, which would make living conditions unbearable, forcing the UN to evacuate the town. (21). On 6 July 1995, the VRS launched Operation Krivaja '95. The operation brought a swift end to the siege. Against the advice of his officers, General Mladić made the decision to capture the town of Srebrenica, in defiance of the UN Security Council Resolution 819. (14, 21). The VRS, under General Mladić, captured the town of Srebrenica on 11 July 1995. (21, 22). The women, children and elderly men fled to the UN base at Potočari (where a battalion of Dutch soldiers were housed), accompanied by some of the men who opted to stay with their families or who trusted Mladić. (21). The majority of the men fled, with a division of the Bosnian Army, however many were convinced to surrender by Serbian soldiers who were impersonating UN peacekeepers. (21, 23). On 12 July, the Bosnian Muslims assembled at the Potočari base were transferred by bus, unhindered by the Dutch soldiers. The men were separated from the women and children, and those who resisted were killed by the Serbian soldiers. (21, 22). The men were taken to various locations, and killings began sporadically that same day, some being killed with blunt weapons and knives, some being shot on the roadside while their arms were tied. (11). From 13 July, killings became more systematic, with men tortured and shot in groups. (11). In the soccer field, men were forced to dig their own graves. A bulldozer arrived later, and finished the burials, some of the victims being still alive. (11, 21, 22). In one location more than one thousand men were packed into a warehouse in Kravica and killed with grenades and machine guns. (21, 22). In another case men were housed in a school building in Orahovac without room to sit or lie down, deprived of food and water for two days, and finally taken from the room in groups and shot. (22). Ultimately, more than eight thousand men were killed in and around Srebrenica by 16 July 1995. (22). When the VRS realised that investigations would be held, bodies from the mass graves were re-buried in more distant locations with less individuals. (17, 24, 25).

## The International Criminal Tribunal for the Former Yugoslavia

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was established in 1993, while the war in Bosnia was still in progress. (26). It officially closed at the end of 2017, with the remaining cases transferred to the International Residual Mechanism for Criminal Tribunals (UNMICT). (27). Cases before the UNMICT include the re-trial of Stanišić and Simatović; Radovan Karadžić's appeal; and the appeal of Ratko Mladić. (28). The main organs of the ICTY were the registry, which was responsible for the administration of the Tribunal; the office of the prosecutor, responsible for investigating allegations, indictments, and bringing cases to trial; and the chambers. (26). There were two trial chambers, and an appeals chamber which would serve as the ultimate authority for legal matters. (26). ICTY had jurisdiction in crimes against humanity, genocide, and war crimes committed in the former Yugoslavia after 1 January 1991. This meant that it could examine events that took place in Kosovo and Macedonia even though those wars had not begun when the Tribunal was created. (26).

The Tribunal tended to focus its efforts on the military and political leaders. The ICTY tended to use the doctrine of 'joint criminal enterprise' (JCE) to prosecute individuals for actions of a group. (29, 30).

#### Vidoje Blagojević & Dragan Jokić

Blagojević & Jokić were convicted of aiding and abetting crimes against humanity and violations of the laws or customs of war in relation to their leadership of brigades of the VRS. (31). Jokić was commander of the engineering brigade which was responsible for the burials, and Blagojević was responsible for assisting in searching for Bosnian Muslims. (31, 32). Blagojević was sentenced to eighteen years imprisonment, reduced to fifteen on appeal. (31, 32). Jokić was sentenced to nine years. (32). Both were released early. (32).

#### Dražen Erdemović

Erdemović was a soldier in the VRS and was personally responsible for killings of men from Srebrenica. He pled guilty to murder and was initially sentenced to ten years imprisonment (33), reduced to five on appeal. (34). The Erdemović case was valuable in providing evidence for the other cases before ICTY. (21).

#### Radovan Karadžić

On 14 November 1995, ICTY indicted Karadžić and Mladić for genocide, crimes against humanity, and violations of the customs of war, relating to their command of Bosnian Serb forces in Srebrenica. (35). Among other things, it was alleged that in his capacity as President of Republika Srpska, Radovan Karadžić was part of a joint criminal enterprise 'to eliminate the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and forcibly removing the women, young children and some elderly men from Srebrenica'. (36). He was found guilty of, among other crimes, genocide, and sentenced to forty years in prison on 24 March 2016. (24, 36). Karadžić's appeal is currently before UNMICT. (37).

#### Radislav Krstić

Radislav Krstić became the first person to be convicted of genocide by the ICTY on 2 August 2001. (38, 39). The trial chamber of ICTY found that he had participated in the Srebrenica JCE through his leadership of the Drina Corps of the VRS during the Krivaja 95 operation, and Krstić was sentenced to forty-six years imprisonment for genocide and other crimes. (17). On appeal, his sentence was reduced to thirty-five years imprisonment, and the genocide conviction was altered to one of aiding and abetting genocide, as the appeal chamber found that although Krstić was aware of the killings and allowed his men to become involved, he was not himself directly involved in the killings or ordering them to take place. (40)

#### Slobodan Milošević

Milošević was indicted for an extensive list of crimes alleged to have been committed in the wars in Croatia, Bosnia, and Kosovo, including the Srebrenica Genocide. He died on 11 March 2006 while the trial was still in progress, and the trial proceedings were subsequently ended. (41).

#### Ratko Mladić

Ratko Mladić was indicted as leader of the Army of Republika Srpska (VRS) for his involvement in the Srebrenica JCE among others. (35). He was found guilty of, among other crimes, the Srebrenica Genocide and sentenced to life imprisonment on 22 November 2017. (42). Mladić has appealed the sentence, which is before UNMICT. (43)

### Momir Nikolić

Nikolić pled guilty to crimes against humanity in relation to the Srebrenica Genocide as a commander in the VRS. He was sentenced to twenty years imprisonment. (44).

### Dragan Obrenović

Obrenović was a commander in Krstić's Drina Corps, and pled guilty to crimes against humanity constituting allowing soldiers to abuse women from Potočari, and abuse and execute men, and, through confiscating and destroying personal effects of prisoners. (45). He was sentenced to seventeen years imprisonment. (46)

### Naser Orić

Unique among the Srebrenica indictees, Naser Orić was a Bosnian Muslim commander defending Srebrenica. He was found not guilty of violations of the laws or customs of war. (47). His case remains controversial, with many Bosnian Muslims objecting that he should never have been indicted in the first place, with some Serbians claiming Orić had had two thousand Serbs killed in Kravica, describing the killing 'as their own Srebrenica'. (48).

### Momčilo Perišić

As Chief of Staff of the Army of Yugoslavia, Perišić was sentenced to twenty-seven years imprisonment for crimes in Srebrenica and Sarajevo, however he was acquitted on appeal. (49).

### Popović et al.

Vujadin Popović and six others were indicted for genocide, crimes against humanity, and violations of the laws or customs of war relating to actions in Srebrenica as leaders in the VRS. (50)

### Jovica Stanišić and Franko Simatović

Jovica Stanišić and Franko Simatović were indicted for crimes against humanity and violations of the laws or customs of war. Stanišić was the head of the Serbian State Security Service (DB), and Simatović was also an employee of the DB. They were alleged to have participated in a JCE to remove non-Serbian residents from parts of Bosnia, and also from Croatia. While the ICTY found that the DB had committed the crimes in question, Stanišić and Simatović were not responsible, and they were acquitted. (51). On appeal it was found that errors in the case made it necessary to retry Stanišić and Simatović, and the case is currently before UNMICT. (52).

### Zdravko Tolimir

Zdravko Tolimir was sentenced to life imprisonment for genocide, conspiracy to commit genocide, crimes against humanity, and violation of the laws or customs of war. Tolimir was found to have been not only aware of the intent to commit genocide, but to have been responsible for coordinating the genocide. He appealed, however the life sentence was upheld. (53).

### Milorad Trbić

Trbić was a captain in the VRS who was alleged to have committed genocide in relation to events in Srebrenica, and other crimes against humanity. ICTY transferred his case to the domestic State Court of Bosnia and Herzegovina which sentenced him to thirty years imprisonment. (54).

## Discussion & Analysis

Response to the operation of the ICTY has been mixed. Among the issues raised by critics, three stand out – firstly, the impartiality of the Tribunal; secondly the degree to which the Tribunal can adequately provide justice for the victims of grave human rights abuses; finally, the response to the Tribunal

internationally, and in particular the degree to which Serbia has engaged with the process. Each of these issues will be discussed in turn.

### A Fair Trial

The right to a fair trial is enshrined under Article 11 of the United Nations Universal Declaration of Human Rights (55), which outlines the presumption of innocence. This is further elaborated in the International Covenant on Civil and Political Rights (56), which outlines that trials should be held and completed as soon as is practicable. While the ICTY was established with safeguards to ensure a fair trial (26), there has been some suggestion that rights of the accused were not adequately upheld, and these criticisms challenge the credibility of the Tribunal. For example, criticism was levelled by one of the judges in the Milošević case that the focus of the ICTY on winding up its work was cause for concern in terms of the rights of those on trial. (26). The ICTY has also been criticised for referral of cases to domestic courts (57), as happened in the case of Milorad Trbić (54). Even the very impartiality of the Tribunal has also been called into question, with the President of the Tribunal calling for political action regarding arrests of some indictees. (58).

A major cause of concern for some writers seems to be in the way that the ICTY has granted self-representation, as the rates of granting self-representation have been higher than comparative international tribunals, and decisions have not been made uniformly. (59). Self-representation is problematic because of the way that it removes the individual's right to trained, competent legal representation. (59). It could be argued that without access to a competent lawyer, the accused persons are clearly disadvantaged, but a greater concern is the way that self-representation can be used to one's advantage, disrupting proceedings or controlling the case. (60). Two cases pertinent to the Srebrenica Genocide are those of Radovan Karadžić and Slobodan Milošević. (59). Karadzic in particular was noted to have caused his trial to proceed longer than might have been otherwise necessary. (60). This delays justice for the victims, who at time of writing are still waiting for the ultimate outcome in Karadžić's case pending appeal. (37). As for Milošević, who died before his lengthy trial was completed, justice will never be rendered.

There is no doubt cause for concern in the way the ICTY has protected the rights of the accused, and one could point to the Krstić trial to demonstrate that a rush to accuse led to a wrongful conviction. However, complicity in genocide is functionally very similar to the act of genocide itself, and it could be argued it is difficult to distinguish between the two – although for Krstić it meant an eleven-year shorter sentence. It is important to keep in perspective the horrific crimes of which the Srebrenica indictees are accused, and of which for some of them, Srebrenica was just one event in a string of war-time atrocities.

### Justice for Genocide

The Srebrenica Genocide entails so much more than the deaths of over eight-thousand men (or over seven-thousand by some estimates – more than one third of all Bosnian Muslim men in Srebrenica (61)). The unsettling truth is that, as far as Srebrenica is concerned, the genocide was effective. The town is today situated within the Republika Srpska – one of the two political entities within Bosnia that were established by the Dayton Agreement, which to some extent legitimised Serbian irredentism. (62). Additionally, the population has shifted from a Bosnian Muslim majority to a Bosnian Serb majority. (63).

Despite the fact that as of 2012, almost 90% of those estimated to be missing since the genocide have been recovered, some survivors are still awaiting closure. (64). For these people, they may never know for certain what happened to their loved ones, or where they are buried. Some may themselves die without ever knowing the outcome. Even for those who have been able to locate their family and



friends, they may not see the perpetrators brought to justice. The ICTY has necessarily focussed its attention on high level commanders of the various armies (specifically the VRS in the Srebrenica case) and the political leaders of the various entities of the former Yugoslavia (the Republika Srpska for instance). Perhaps most indicative of this are the trials of Ratko Mladić, the commander of the VRS, and Radovan Karadžić, a president of the Republika Srpska. While both men were initially indicted by the ICTY for the Srebrenica Genocide in 1995 (35), they both evaded arrest for many years. (48). Karadžić for example was arrested thirteen years after the indictment, in 2008. (48). The trials themselves took several years to complete, and at the time of writing, the ultimate fate of both men remains undecided, as they appealed their sentences. (37, 43). For some survivors of the Srebrenica genocide however, the fact that high level offenders have been apprehended does not bring them any satisfaction, especially when other war criminals remain free – in particular the soldiers that carried out the killings. (48). Others have suggested that the mid-level perpetrators of crimes in the former Yugoslavia have the greater share of the responsibility for the crimes compared to the high-ranking perpetrators such as Mladić or Karadžić. (65) .

Even when the war criminals have been sentenced, however, the sentences have been a cause of concern for the survivors. In particular, the Krstić case has sparked dissent from some of the survivors who feel that the lowered sentence on appeal (reflecting the change from a genocide charge to one of aiding and abetting) is inadequate. (48, 66). These concerns are not necessarily unfounded. As Ohlin demonstrates, the sentences from the ICTY have been noticeably shorter than those of the International Criminal Tribunal for Rwanda (ICTR) which was established around the same time as the ICTY. (65). The ICTY has produced far fewer life sentences than the ICTR. (65). Although there are suggested reasons for this, the question remains – how could any court adequately sentence someone guilty of genocide? Surely the life of one person could not adequately account for the lives of seven to eight thousand, and the lives of their loved ones. The question seems to be impossible to answer, at least within the scope of the present essay and the author's expertise. For the survivors of the genocide, they may never see the justice they expect or deserve.

### Serbian Responses

While the Srebrenica survivors' response to the ICTY has been complicated, so too has been the Serbian response. For some, there has been a mistrust of the tribunal, or a characterisation of it as an institution that is anti-Serbian. (48, 67). There has also been a lacklustre response to the Srebrenica Genocide, with some denying that a genocide occurred, in spite of the ICTY and ICJ rulings. (68). To some, Ratko Mladic – the man who carries the media-given moniker 'the Butcher of Bosnia' (42, 69) – is a hero, a man who has a street named after him in his home town. (70). While the Serbian Parliament issued a formal apology for Srebrenica in 2010, it did so with the aim of facilitating smooth entry into the European Union, and without actually referring to the events as 'genocide'. (71). The Republika Srpska has issued a similar apology, similarly avoiding use of the word 'genocide'. (71). The issue of denial remains contested. (72, 73). Irrespective of the words one chooses to use to define such events, some facts remain clear, and there can never be an adequate response to these kinds of atrocities.

### Conclusion

The killing of seven to eight thousand Bosnian Muslim men in Srebrenica in July of 1995 constituted a genocide, and the impact is still felt today. The tribunal which was established to investigate and prosecute crimes occurring in the former Yugoslavia after 1 January 1991 managed to bring several high-level and mid-level perpetrators to justice. Some remain free, and some are still being tried. For the survivors, there may never be anything approaching justice. Apologies have been inadequate. Sentences have been inadequate. In some places, denialism is rampant. One thing remains certain –



Srebrenica diminishes us all. While the ICTY was an important institution, and it served a valuable purpose, the legacy of which is being continued by UNMICT, such tribunals cannot make us clean – nor can they truly bring about justice for the victims and those who survived.

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