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## **Genocide – Such a Difficult Word**

### **Introduction: Genocide in Srebrenica 1995**

In summer 1995, after three years of what Europe experienced as the most violent armed conflict after the Second World War, the Bosnian Serb Army (VRS) entered the eastern Bosnian town of Srebrenica, a ‘safe heaven’ under protection of the United Nations, and killed more than 8,000 Bosniak men and boys in course of just a few days. Nine years later, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the case against General Radislav Krstic defined this massacre as genocide.<sup>1</sup>

The armed conflicts in former Yugoslavia started in 1991, with the armed conflict in Croatia and Slovenia, following announcements on separation from central government in Belgrade. While the hostilities in Slovenia ended after a few days, Croatia experienced four years of conflict marked with ethnic cleansing and persecution of the Croatian civilian population through 1991-1992 in territories under Croatian Serbs control, and the expulsion of the Serbian population during the “Flash” and “Storm” operations of the Croatian army and police in 1995. The crimes committed in Croatia would be a bloody prelude to the crimes and criminal actions that would be implemented during the war in Bosnia and Herzegovina. Destruction in Bosnia and Herzegovina lasted for almost four years, through 1992 to 1995, with nearly 100,000 killed and disappeared and approximately 2 million refugees and IDPs. However, the bloodshed in former Yugoslavia did not stop in Bosnia and Herzegovina. In course of only a few years, the Milosevic regime turned to the enemies within Serbia; while it was impossible to crush the core political opponents and progressive students, he opened another front in Kosovo, where his regime kept the Albanian majority under a cruel and tight control for a decade. After years of oppression, Kosovo Albanians started an armed rebellion that soon turned into a full scale armed conflict with Serbian forces and NATO alliance’s air campaign against Serbia and Montenegro (then Federal Republic of Yugoslavia). Approximately 13,500 were killed during and in the aftermath of the Kosovo conflict.<sup>2</sup>

Practices that the world expected never to see again on the territory of Europe emerged as the dark reminder of unresolved issues from the past – the historical injustice and vengeance were some of the strongest motives for neighbors to commit horrific atrocities against each other.

Parts of Croatia were ethnically cleansed, people abandoned their homes or were forced to leave, wounded and elderly were targeted, tortured, killed and buried in mass graves. More than 700,000 Kosovo Albanians were forced to leave Kosovo in just a few months, in fear of killings, sexual assaults, and disappearances. Concentration camps were erected all across Bosnia and Herzegovina, men, women and children were captured and kept in most inhumane

conditions in these camps, constantly exposed to cruel treatments, torture and unselective sexual violence. Bosniak women were subjected to rape camps, such as those organized by Bosnian Serb forces in Foča in Eastern Bosnia. Sarajevo, the capital of Bosnia and Herzegovina, was kept under siege for several years, exposed to constant and indiscriminate shelling.

In Eastern Bosnia, in the area bordering with the Republic of Serbia, ethnic cleansing of the Bosnian Muslim population was carried out in order to expulse the Bosnian Muslims, even though they were the majority population in the main municipalities of this area. In towns of Višegrad and Srebrenica, where Bosnian Muslims constituted over 60% of the population before the war, there were almost no Bosnian Muslims after the war in 1997.<sup>3</sup> While this policy left the majority of cities in Eastern Bosnia without any Bosnian Muslims, the events of summer 1995, when the Army of Bosnian Serbs entered the UN protected safe heaven Srebrenica, turned into one of the most tragic crimes in former Yugoslavia, and were defined as “genocide” by the judges of the ICTY.

Plan of the political and military leadership of the Bosnian Serbs was to expulse the Muslim population from Srebrenica, as well as murder all the able-bodied men of Srebrenica.<sup>4</sup> On 10 and 11 July 1995, fleeing from the Bosnian Serb Army between 25,000 and 30,000 Bosnian Muslims, mainly women and children but also men from the enclave, escaped to Potočari near Srebrenica, where the UN Compound was placed, asking for protection from the UN forces. At the same time, deciding they would not put themselves at the mercy of the Bosnian Serb Army, around 15,000 Bosnian Muslim men fled the Srebrenica area, trying to get to the territory under Bosnian Army control. In the following days, the Bosnian Serb Army first separated approximately 1,000 men from the women and children in Potočari, allowing the women and children to leave for Tuzla, and then captured some 6,000 men from the column that was trying to reach the Bosnian Muslim territory. Systematic massive killings of captured Bosnian Muslim men and boys started on July 13, and continued until the end of July 1995. Their bodies were buried in numerous locations all across Eastern Bosnia under the Bosnian Serb Army control. In the following months, in an effort to conceal the traces of crimes, many mass graves were exhumed in order to bury the bodies in different secret locations. For this crime, many military and political leaders of the Bosnian Serbs were prosecuted and sentenced at the ICTY.<sup>5</sup> However, some high ranked military commanders and political leaders from Serbia were also accused for the genocide in Srebrenica; most notably, Slobodan Milošević, former President of Serbia and Yugoslavia and Momčilo Perišić, chief of General Staff of the Yugoslav Army (VJ).<sup>6</sup>

Additionally in 2007, after 14 years of litigation, the International Court of Justice in The Hague acting in the case of Bosnia and Herzegovina against Serbia and Montenegro for attempts to exterminate the Bosnian Muslim population of Bosnia and Herzegovina, found that although Serbia was not directly responsible for the genocide in Srebrenica, nor was it complicit in it, Serbia had failed to prevent the genocide in Srebrenica from occurring and was not cooperating with the ICTY in punishing the perpetrators of the genocide, ruling that Serbia did violate the Convention on the Prevention and Punishment of the Crime of Genocide.

### **Process of Transitional Justice in Serbia**

It can be argued that the transitional justice measures in area of accountability were implemented while violent conflicts were still waging. International Criminal Tribunal for the Former

Yugoslavia was established in 1993 by the United Nations Security Council in order to bring to justice those responsible for the crimes. After some difficulties in the beginning, primarily due to the fact that states were not interested in cooperating with the ICTY and the lack of interest on behalf of the international armed forces to trace and arrest the accused for their crimes, the ICTY gained strength in the beginning of the 2000s with the arrest and transfer of Slobodan Milosevic, former president of Serbia and Yugoslavia. More and more indicted arrived at the ICTY, primarily thanks to the EU pressure on post-Yugoslav countries, which linked the process of European integration with the arrest and transfer of indictees to the ICTY. Finally, in 2008 and 2011, after more than a decade of hiding, the last two fugitives, Bosnian Serb leaders Radovan Karadžić and Ratko Mladić were arrested in Serbia and transferred to the ICTY. ICTY had indicted 161 persons for crimes committed on the territory of former Yugoslavia, and managed to prosecute almost all of them. Shortly after the end of violent conflicts, the countries established on the territory of former Yugoslavia began prosecuting those responsible. While the numbers of domestic prosecutions outnumber those at the ICTY, it is important to stress that mainly in Serbia, but also in Croatia and Kosovo, the judiciary was and remains reluctant in prosecuting mid or high level military or police officers and commanders.

In the area of truth, the progress is far from desirable. While there are numerous facts established by the ICTY and the domestic courts, these facts are either not accepted, or blatantly denied by the Serbian public and/or officials. There has been one unsuccessful exercise of Truth and Reconciliation Commission in the then Federal Republic of Yugoslavia.<sup>7</sup> TRC was established in 2001 by FR of Yugoslavia's president Vojislav Koštunica following the democratic transition. However, immediately upon its establishment, criticism came from almost every side; the civil society was strongly opposing this Commission, while victims from other countries and other ethnic groups did not support this exercise either. There were several reasons for this – the mode of establishment, composition of the Commission and the goals and objectives of the Commission. Firstly, the Commission was established without consultations with relevant parties, i.e. civil society and human rights organizations, victims associations, ICTY, etc. Secondly, the composition of the Commission clearly showed that it was biased; all commissioners were ethnic Serbs, and citizens of Serbia, without any representatives of any other ethnic groups. All religious leaders that were selected to the Commission were representatives of the Serbian Orthodox Church, which was highly problematic due to the nature of ethnic conflicts in former Yugoslavia, but also due to the strong support the Serbian Church expressed for the nationalistic politics of the Serbian regime during the wars. Thirdly, goals and objectives of this Commission were also deeply problematic; this Commission was supposed to investigate not only the violations of humanitarian law that occurred during the conflicts but also to focus primarily on establishing the societal, historical, economical causes of the conflicts in former Yugoslavia.

Reparations to victims and families of the killed and disappeared remain as problematic issues in Serbia; ex-combatants and families of the killed combatants enjoy more benefits than civilians and families of the civilian victims. Furthermore, the right to administrative reparations is granted only to those who suffered severe physical damage, which has to be proven. Additionally, citizens of Serbia who were victimized by the Serbian police or army, such as the Bosniaks from Sandžak the southwestern region of Serbia, are not acknowledged as victims, since their suffering was not caused by actions of enemy forces as defined by the Serbian Law on the rights of civilian victims.<sup>8</sup>

Problems also remain in the area of institutional reform. The law on lustration adopted in 2003, was never implemented and people who were responsible for or supported and aggravated the human rights violations were not removed from office in institutions crucial for the success of the process of transitional justice and reconciliation, such as the judiciary or security forces.

### **Declaration on Srebrenica – Too Little, Too Late?**

In January 2009, the European Parliament adopted a resolution calling on EU institutions to commemorate the anniversary of the Srebrenica genocide by adopting the 11<sup>th</sup> of July as the day of commemoration of the Srebrenica genocide all over the EU, but primarily called on all countries of the Western Balkans to do the same.<sup>9</sup> Following this initiative, in the beginning of 2010, former President of Serbia Boris Tadić proposed to the National Assembly of the Republic of Serbia the adoption of the Declaration on the condemnation of the crime committed in Srebrenica. The Declaration was discussed in the Assembly on March 30, 2010.

It was no surprise that this proposal came at this moment. Serbia's lack of dedication to cooperate with the ICTY and arrest the remaining ICTY fugitives caused a serious setback in the process of European integration for Serbia. Cooperation with the ICTY was of primary importance for the Netherlands, which had earlier prevented the EU integration of Serbia while most wanted fugitives remained at large, especially Ratko Mladić and Radovan Karadžić. Although the Stabilization and Association Agreement (SAA) and Interim Agreement on trade and trade-related issues between the EU and Serbia were signed in Luxembourg in April 2008, the Netherlands froze the trade-related part of the SAA with Serbia because Ratko Mladić was still not arrested. However, the problems of the democratic government in Serbia with the rising nationalism caused the majority of European countries to give Serbia the opportunity to join a visa liberalization scheme with the EU in December 2009. Thereafter, Serbia applied for EU membership candidacy at the end of December 2009, with the ratification of SAA by the EU member states remaining as the upcoming step in the European integration process for Serbia in 2010.

Declaration on the condemnation of the crime committed in Srebrenica was drafted following the International Criminal Court of Justice decision on the genocide committed in Srebrenica in the case of Bosnia and Herzegovina against Serbia dated 2007, and also in line with the obligation of Serbia to comply with the international conventions on human rights that it had ratified. However, the motives for adopting the Declaration were also explained as a moral obligation to future generations of Serbia. As the representative of Boris Tadić's party said: 'By condemning the appalling crime in Srebrenica against the Bosnian population, by honoring the innocent victims, by expressing the deepest compassion for their families, today we take the responsibility of removing off the backs of the future generations the heavy burden legated to us by certain individuals'.<sup>10</sup>

In the Declaration accepted with a minimal majority (out of 250 National Assembly deputies 127 voted "for" its adoption), the National Assembly of the Republic of Serbia "most strongly condemns the crime committed against Bosnian people in Srebrenica as established in the verdict by the International Court of justice", and expresses condolences and apologies to the families of the victims for the failure of Serbia to do everything practicable to prevent such a tragedy.<sup>11</sup> The National Assembly of Serbia also stressed the importance of the arrest of the then Bosnian Serb commander Ratko Mladić and his trial before the ICTY, and expressed its full

support for institutions mandated to prosecute those responsible for the war crimes. Serbian parliamentarians also expressed an expectation that their counterparts in the region would condemn crimes committed against the Serbs, apologize and express their condolences to the families of Serbian victims. Additionally, the Declaration called on all sides of the conflict in Bosnia and Herzegovina and in other post-Yugoslav countries ‘to continue the process of reconciliation and strengthening of the conditions for cohabitation, based on the equality of nations and on full recognition of human and minority rights and freedoms, so that the crimes committed never reoccur.’<sup>12</sup>

While many from the international community rushed to praise Serbia for the Declaration, calling it a milestone for the process of reconciliation in the region and dealing with the past in Serbia, many in the region, primarily the victims of Srebrenica genocide were not satisfied with the text of the Declaration. Munira Subašić, from the association of the victims’ families ‘Mothers of Srebrenica and Žepa’, condemned the lack of will and courage of the Serbian parliamentarians to explicitly use the term ‘genocide’ in the text of the Declaration, replacing it with the term ‘crime’, and declared that this a precondition for the truth, reconciliation and peaceful co-existence in Bosnia.<sup>13</sup>

Additionally, there were groups particularly in Serbia and the Republic of Srpska, entity of Bosnia and Herzegovina, that criticized the Declaration for extracting the genocide in Srebrenica from other crimes, especially those committed against victims of Serb origin, revealing a deeply polarized country, still divided on its difficult wartime past and legacy of crimes committed during the 1990s.

### **Apology, or not?**

There are several important issues to stress while evaluating the Declaration on Srebrenica of the National Assembly of the Republic of Serbia. It can be argued that this is by far the most important step that Serbia has taken in formally acknowledging its responsibility in and apologizing for not preventing the tragedy that happened in the summer of 1995 in Srebrenica; primarily because it was the highest representative institution and bearer of constitutional and legislative power in Serbia that condemned the crime in Srebrenica and expressed its apology to the victims. It was not a step taken by one good-willed person, or one representative of one state institution, as certain individual efforts and acts of apology of the former president of Serbia Boris Tadić could have been perceived.

Nevertheless, there are some serious objections to this Declaration, primarily the deliberate exclusion of the term genocide from the Declaration. The crime in Srebrenica was by far the most serious and massive single crime committed on the territory of former Yugoslavia, with approximately 8,000 men and boys killed in just a few days, and thereby was rightfully qualified as genocide by both ICTY and the International Court of Justice. Despite this, for years, this crime was denied by the ‘Serbian side’ – politicians, academia, intellectuals, and others. While those most radical claimed that the crime in Srebrenica did not happen at all, or that ‘Muslims killed each other’, or that they had provoked Srebrenica by committing crimes against Serbs in Eastern Bosnia, others denied the number of victims, stating that 8,000 was a pure exaggeration. Some denied the status of the victims, claiming that the majority were not captured civilians but on the contrary combatants killed in a combat. Finally, there were those who tried to interpret the events by questioning the qualification of genocide and claiming that it was ‘an

ordinary war crime'. In a society poisoned with refusal to acknowledge the crimes against members of other ethnic groups, with representatives of state institutions deliberately supporting and nurturing this 'state of denial' that the majority of citizens are living in, it was a crucial opportunity to acknowledge the crime in Srebrenica, calling it by its right name.

The Declaration showed that its creators had not adopted this document for those who were and still are in desperate need for acknowledgment, the victims from Srebrenica, but for everybody else such as the public in Serbia still reluctant to honestly discuss the crimes of the past, wallowing in self-victimization; and the international community, slightly tired of the Balkans and somewhat superficial in its understanding of the process of reconciliation. More importantly, it is clear that this Declaration was adopted in order to support the European integration of Serbia, and it served its purpose; in mid June 2010, the Council of Ministers of the European Union decided to start the ratification process of the SAA with Serbia. On the other hand, in their efforts to secure broad political support for the Declaration, the creators of the Declaration in the National Assembly of the Republic of Serbia proved once again how difficult it is for Serbia to take a clear position on the legacy of crimes committed in the territory of former Yugoslavia in the 1990s, and missed a historical opportunity to honestly and bravely look the beast of the past in its very eyes.

1 Prosecutor vs. Radislav Krstic, Judgment. Available at: <http://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf>. Accessed on: 05.04 2013.

2 Information obtained from the Humanitarian Law Centre, 17. 04. 2013.

3 Višegrad general population in 1991 was 17,883, with 11,178 Bosniaks, 5,837 Serbs, and 30 Croats. In 1997, there were 9,241 people living in Višegrad, with 8,861 Serbs, 60 Croats and 3 Bosniaks. There were 29,198 persons living in Srebrenica in 1991. 21,361 of them were Bosniaks, 35 Croats and 7,205 Serbs. In 1997, there were 7,442 persons living in Srebrenica, with 7,169 Serbs, 34 Croats and 7 Bosniaks. Eva Tabeu et al: Report of expert witness in the case against Slobodan Milosevic IT-02-54, 03081733.

4 Available at: [http://www.icty.org/x/cases/popovic/cis/en/cis\\_popovic\\_al\\_en.pdf](http://www.icty.org/x/cases/popovic/cis/en/cis_popovic_al_en.pdf). Accessed on: 19. 04. 2013.

5 Vujadin Popović, Chief of Security of the Drina Corps of the Bosnian Serb Army (VRS), Ljubiša Beara, Colonel and Chief of Security of the VRS Main Staff, Drago Nikolić, Chief of Security for the Zvornik Brigade of the VRS, Ljubomir Borovčanin, Deputy Commander of the Republika Srpska Ministry of Internal Affairs (MUP) Special Police Brigade, Radivoje Miletić, Chief of Operations and Training Administration of the VRS Main Staff, Milan Gvero, Assistant Commander for Morale, Legal and Religious Affairs of the VRS Main Staff, Vinko Pandurević, Lieutenant Colonel and Commander of the Zvornik Brigade of the Drina Corps of the VRS, Momir Nikolić, Assistant Commander for Security and Intelligence of the Bratunac Brigade of the VRS, Dragan Obrenović, Chief of Staff and Deputy Commander of the 1st Zvornik Infantry Brigade of the Drina Corps of the VRS, etc. Currently, the former President of Republic of Srpska, Radovan Karadžić, and former Commander of the Main Staff of the Bosnian Serb Army (VRS) are facing trial at the ICTY for genocide in Srebrenica among other crimes.

6 Slobodan Milošević was accused for participating in a joint criminal enterprise (JCE), which came into existence by August 1, 1991 and continued at least until December 31, 1995, with many political and military leaders of Bosnian Serbs and others with the purpose of forceful and permanent expulsion of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of Bosnia and Herzegovina. Available at: <http://www.icty.org/cases/party/738/4>. Accessed on: 21. 04. 2013. Momčilo Perišić was accused "on basis of individual criminal responsibility for aiding and abetting in the planning, preparation, or execution of murder, inhumane acts, persecutions on political, racial or religious grounds, extermination, and attacks on civilians. He was also charged, in his capacity as a superior officer, for failing to take necessary and reasonable measures to prevent or

punish the commission of crimes by his subordinates”. Mainly, Perišić was accused for providing extensive logistic support to the Bosnian Serb Army (VRS), which included 'vast quantities of infantry and artillery ammunition, fuel, spare parts, training and technical assistance', but also for providing salaries and benefits for officers of the VRS, which were incorporated into the Yugoslav Army and treated as officers of the Republic of Serbia Army. However, Perišić was acquitted by the Appeals Chamber in February 2013.

7 Composed of Serbia and Montenegro.

8 Law on rights of civilian invalids of war, Official Gazette 52/96.

9 European Parliament resolution of January 15, 2009 on Srebrenica. Available on: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0028&language=EN>. Accessed on: 20. 04 2013.

10 The Second and Third Sessions of the First Regular Sitting of the National Assembly of the Republic of Serbia, 25 and 30 March 2010; ISSN 0582-6926, Skupština Srbije, Beograd [The National Assembly of the Republic of Serbia] 2011, p. 102-103. Quoted in: Transitional Justice in Post-Yugoslav Countries: Report for 2010 – 2011, 81. Available at: <http://www.hlc-rdc.org/wp-content/uploads/2013/03/Transitional-Justice-in-Post-Yugoslav-countries-Report-for-2010-2011.pdf>. Accessed on: 22.04. 2013.

11 The text of the Declaration on Srebrenica on the website of the National Assembly of the Republic of Serbia. Available at: <http://www.parlament.gov.rs/narodna-skupstina-.872.html>. Accessed on: 22. 04. 2013.

12 *ibid.*

13 'BIH i RS nezadovoljni Deklaracijom', 31.03 2010, B92 . Available at: [http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=03&dd=31&nav\\_category=64&nav\\_id=421474](http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=03&dd=31&nav_category=64&nav_id=421474). Accessed on: 22.04. 2013.