

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

Case no. IT-95-18-I

BEFORE A JUDGE OF THE TRIAL CHAMBER

Before : Judge Fouad Riad

Registrar : Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of 16 November 1995

THE PROSECUTOR

V.

**RADOVAN KARADZIC
RATKO MLADIC**

REVIEW OF THE INDICTMENT

The Prosecutor : by
Eric Ostberg
Mark Harmon
John Ralston

I, Judge Riad, Judge of the International Criminal Tribunal for the former Yugoslavia,

UPON RECEIVING an indictment from the Prosecutor, pursuant to Articles 18 and 19 of the Statute, and Rule 47 of the Rules of Procedure and Evidence,

AND UPON HEARING the Prosecutor, pursuant to Rule 47(D) of the Rules of Procedure and Evidence,

HEREBY GIVE MY DECISION, as follows:

After Srebrenica fell to besieging Serbian forces in July, 1995, a truly terrible massacre of the Muslim population appears to have taken place. The evidence tendered by the Prosecutor describes scenes of unimaginable savagery: thousands of men executed and buried in mass graves, hundreds of men buried alive, men and women mutilated and slaughtered, children killed before their mothers' eyes, a grandfather forced to eat the liver of his own grandson. These are truly scenes from hell, written on the darkest pages of human history.

The indictment submitted by the Prosecutor accuses Ratko Mladic and Radovan Karadzic of responsibility for these crimes. They are charged with genocide, crimes against humanity and violations of the laws or customs of war.

The charges in the indictment all relate to the fall of Srebrenica on 11 July 1995.

Srebrenica is located in Eastern Bosnia, close to the border with Serbia. After the war begun in the former Yugoslavia, Bosnian Muslim villages in this region were occupied by Bosnian Serb forces. The refugees fled from the destruction of their villages to Gorazde, Zepa, Tuzla and Srebrenica.

On 16 April 1993, Srebrenica was declared a "safe area" by the United Nations Security Council. Pursuant to this, the Bosnian Muslims inside the enclave were disarmed under the auspices of the United Nations Protection Force. Refugees continued to enter the enclave, with the result that, before its fall, the Bosnian Muslim population was approximately 60,000.

The evidence tendered by the Prosecutor will be summarised under three general headings - the massacre in the woods, mass executions at Karakaj, and summary executions at Potocari, which correspond to the arrangement of the counts of the indictment. The evidence presented by the Prosecutor is as follows.

The Bosnian Serb army, under the command and control of the two suspects, began the attack on Srebrenica on or about 6 July 1995. When Serb forces began to enter Srebrenica, the Muslim men, women and children in the enclave took two courses of action. Several thousand women, children and mostly elderly men fled to the UN compound in Potocari, where the Dutch battalion was stationed, within Srebrenica, to seek protection there. Most of the men, on the other hand, gathered at Susnjari in the evening of 11 July 1995 and fled, in a huge column, some 10 kilometers long, through the woods towards the Bosnian government-held territory of Tuzla. This column,

consisted of approximately 15,000 Muslims, mostly unarmed, with women and children among their number.

Massacres in the woods

The fate which befell the column of people who set off to reach Tuzla on the night of 11 July 1995 and the morning of 12 July 1995 was an appalling one. The column was ambushed by Bosnian Serb soldiers on the Bratunac-Milici road, attacking with artillery shells, anti-aircraft guns, automatic weapons and the like. These attacks caused enormous loss of life. Hundreds of Muslims were killed, and many more wounded. Many were driven berserk by the assault and eye-witness accounts describe how tens of people were so horrified that they committed suicide to avoid capture. Many who were captured or surrendered, among them the wounded, were summarily executed. One eye-witness describes how more than a hundred captive Muslim men, women and children were slowly slaughtered by a group of Serbian soldiers using knives. Witnesses also saw hundreds of Muslim men buried in mass graves, some after having been shot, some buried alive.

Mass Executions at Karakaj

Thousands of Muslims from the column then surrendered to Serb military forces under the command and control of Ratko Mladic and Radovan Karadzic, having been assured that they would not be harmed. Some of the Serb soldiers giving assurances were wearing stolen United Nations uniforms. The captive men were then taken to large assembly points, including a football stadium where they were addressed by Ratko Mladic, who gave the same assurances, and thence to an assembly point in a school complex, near Karakaj, where Ratko Mladic was again present. Here too, many were summarily executed.

According to the testimony of the few witnesses who survived, the men were the next day, on or about 14 July 1995, taken in trucks to at least two nearby fields. There, they were taken out in small groups, told to find a spot, and then shot where they stood. The survivors say that the men were shot in their thousands, until the fields were full of bodies. After they were shot, Serbian soldiers walked over the bodies, checking that everyone was dead. If someone was heard to make a sound, or if a body was still warm, another bullet was used to despatch them. According to the survivors, the killing went on all day and all night, with truckloads of men arriving every ten to fifteen minutes. The eye-witnesses survived only by playing dead under the corpses until the soldiers had all left. Ratko Mladic is placed at the scene of the killings by more than one survivor. Hoes and excavators began to bury the dead that night.

Summary Executions at Potocari

Most of the Muslim men, women and children who went to Potocari could not gain access to the UN compound and spent the nights between 11 and 13 July 1995 in nearby factories. During this time, and under the direct supervision of General Mladic, men were separated from the women. Many were apparently summarily executed in the fields and rivers surrounding the compound. Children had their throats slit before their mother's eyes. The witness statements describe a frenzy of terror that led many to take their own lives. There is evidence that women were raped and killed.

Trucks arrived to evacuate the women, who were deported from Srebrenica in their thousands. After an initial policy of allowing some men on the buses, it appears from several statements that when Ratko Mladic arrived, he ordered that no men, nor even boys, be allowed to evacuate.

Most of the men and boys who were left behind were then transported to Bratunac and, from there, to the "killing fields" described above.

As a result of the Bosnian Serb attack on Srebrenica, the Muslim population of the enclave was virtually eliminated.

The two suspects are Ratko Mladic and Radovan Karadzic.

Ratko Mladic

The evidence submitted by the Prosecutor, consisting of more than thirty eye-witness statements, provides reasonable grounds for believing that Ratko Mladic personally supervised the take-over of Srebrenica with great attention to detail. Witnesses describe seeing him in the football stadium where thousands of men were gathered, at the school-complex moments before the men were put in trucks to be taken away for execution, and at one of the execution sites. He was also seen by many in Potocari, where the evidence suggests that, despite assurances of safety, he issued orders that the men should not be evacuated but should be executed instead. He was seen personally separating men from the buses on which their wives and children were being deported.

In addition to the personal aspects of his involvement, Ratko Mladic, was at all relevant times the General of the Bosnian Serb army, with command and control over his troops.

Radovan Karadzic

It appears that the suspect, Radovan Karadzic, also exercised effective military control over the Bosnian Serb forces, as commander and political leader of the Bosnian Serb administration in Pale. He had, apparently, total authority and responsibility for the strategies and actions employed by the Bosnian Serbs in Bosnia-Herzegovina.

In these circumstances, the direct responsibility of the two suspects could arise from planning, instigating, ordering, committing or aiding and abetting the alleged crimes.

It is worth noting that it appears from the witness statements that not only Bosnian Serb soldiers, but also soldiers from the Federal Republic of Yugoslavia (Serbia-Montenegro) were present during the take-over of Srebrenica. These soldiers were easily distinguishable by their clean-cut appearance, distinctive uniforms and use of Serbian dialects. Elements of the Yugoslav People's Army ("JNA"), including the Novi Sad Corps and "Uvice" Corps, as well as irregulars loyal to "Arkan", were seen by a number of witnesses in and around Srebrenica. Either these additional troops

were also under the command of the suspects, or they were under the control of a different commander.

Having considered the evidence as presented by the Prosecutor, I now consider the charges of the indictment.

The charges of the indictment are arranged according to three sets of events and one summary. First, the Prosecutor presents the crimes committed at Potocari under counts 3 and 4, and there under two different legal characterisations: crimes against humanity and violations of the laws or customs of war. Second, the crimes committed during the flight of the column through the woods are presented under fourteen separate counts covering seven separate events. Each of these events is again presented under a double legal characterisation: crimes against humanity and violations of the laws or customs of war. Third, the acts committed in Karakaj are covered by counts 19 and 20, both of which are presented, again, as crimes against humanity and violations of the laws or customs of war. Finally, the criminal acts taken as a whole are the subject of counts 1 and 2, the former characterising those acts as genocide, the latter as extermination, a crime against humanity.

Subject to any later determination which may be made by a Trial Chamber of the Tribunal, I consider, *prima facie*, that the facts of the case disclose, above all, the commission of genocide.

The mass executions described in the indictment were evidently systematic, being organised by the military and political hierarchy of the Serbian administration of Pale, apparently with close support from elements of the army of the Federal Republic of Yugoslavia (Serbia-Montenegro). These executions were committed in the context of a broader policy of "ethnic cleansing" which is directed against the Bosnian Muslim population and which also includes massive deportations. This policy aims at creating new borders by violently changing the national or religious composition of the population. As a result of this policy, the Muslim population of Srebrenica was totally banished from the area.

Thus the evidence also discloses, *prima facie*, the commission of crimes against humanity, and violations of the laws or customs of war.

The policy of "ethnic cleansing" referred to above presents, in its ultimate manifestation, genocidal characteristics. Furthermore, in this case, the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, which is specific to genocide, may clearly be inferred from the gravity of the "ethnic cleansing" practiced in Srebrenica and its surrounding areas, i.e. principally, the mass killings of Muslims which occurred after the fall of Srebrenica in July 1995, which were committed in circumstances manifesting an almost unparalleled cruelty.

Thus the charge of genocide is indeed appropriate.

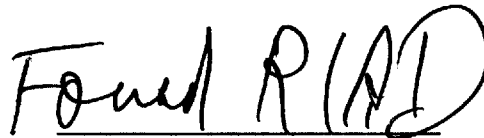
Considering all of the above, it appears that the crime of genocide, and at least that of crimes against humanity, charged in counts 1 and 2 of the indictment, to the extent that they cover all of the events described, are the most comprehensive.

FOR THE FOREGOING REASONS

CONSIDER that there this is sufficient evidence to provide reasonable grounds for believing that Ratko Mladic and Radovan Karadzic committed the crimes charged in the indictment, which fall within the jurisdiction of the Tribunal under Articles 3,4, and 5.

PURSUANT TO Articles 18 and 19 of the Statute, and Rules 28 and 47 of the Rules of Procedure and Evidence,

CONFIRM the indictment submitted by the Prosecutor in respect of each and every count of the indictment



Judge,
Trial Chamber

Dated this 16th day of November, 1995,
At The Hague,
The Netherlands