

June 27, 2014

Theodor Meron
President
The United Nations International Criminal Tribunal for the former Yugoslavia
Churchillplein 12517 JW
The Hague
The Netherlands

Dear President Meron:

I am writing to you to express a grave concern about the ICTY's prosecution of Mr. Radovan Karadžić, particularly regarding the removal of Višegrad and other municipalities from the indictment.

Approximately one year ago, on July 11, 2013, the Appeals Chamber reversed the Trial Chamber's acquittal of Mr. Karadžić for genocide in the municipalities named under Count 1 of the indictment, and reinstated the charges against Mr. Karadžić under Count 1.¹

The Appeals Chamber noted that "statements on the record ... suggest that Karadžić possessed genocidal intent. For example, Mr. Karadžić is alleged to have said that his goal was 'to get rid of the enemies in our house, the Croats and Muslims, and not to be in the same state with them [anymore]' and that if war started in Bosnia, Muslims would disappear and be annihilated."²

Thus, with the reinstatement of the charges under Count 1, it appeared that Mr. Karadžić would be prosecuted for the crime of genocide for atrocities committed in municipalities such as Prijedor and Višegrad, and that, through the legal process, there would be the possibility of a conviction for genocide under Count 1.

Moreover, the reinstatement of Count 1 for genocide was profoundly significant since, as the Appeals Chamber *Judgement Summary* stated, "the case concerns events that occurred between 31 March 1992 and 31 December 1992 in certain municipalities of Bosnia and Herzegovina *claimed as Bosnian Serb territory*..."³ In other words, the area "claimed as Bosnian Serb territory" was nothing other than the territory that is known as "Republika Srpska." Accordingly, in the event that there is a conviction on the charge of genocide under Count 1, there would be confirmation that genocide was not only committed in Srebrenica, but that the genocidal intent of Mr. Karadžić pertained to *the entirety of the territory of Republika Srpska*. The profoundly important implication of this confirmation would be that Republika Srpska was founded upon a genocidal intention and that its territory was secured through genocidal atrocities.⁴

However --and here is the matter of my concern-- according to the October 8, 2009 Trial Chamber decision regarding the reduction of the scope of the Karadžić case, a reduction purportedly designed to insure that the trial would be conducted in "a fair and expeditious manner," "the Prosecution proposed to remove eight municipalities

in their entirety from the presentation of evidence.”⁵ The municipalities that were removed from the indictment included, Bosanski Petrovac, Kalinovik, Kotor Varoš, and Višegrad. The removal of the selected municipalities from the indictment is evidenced by a line that is drawn through, or “struck through” the name of each of the selected municipalities. For example, ~~Višegrad~~ appears as such in the *Prosecution’s Marked-up Indictment*.

In its written decision the Court stated that “the preclusion of evidence pertaining to certain crime sites or incidents is not meant to suggest that the associated charges are of lesser importance than others.”⁶ However, “striking through” ~~Višegrad~~, and removing the municipality from the indictment seems to fly in the face of the Court’s own ruling with respect to the crimes committed therein. In his *Judgement Summary* for Milan Lukić and Sredoje Lukić of 20 July 2009, regarding crimes committed in Višegrad, Judge Robinson stated that:

“The Pionirska street fire [June 14, 1992] and the Bikavac fire [June 27, 1992] exemplify the worst acts of inhumanity that a person may inflict upon others. In the all too long, sad and wretched history of man’s inhumanity to man, the Pionirska street and Bikavac fires must rank high. At the close of the twentieth century, a century marked by war and bloodshed on a colossal scale, these horrific events stand out for the viciousness of the incendiary attack, for the obvious premeditation and calculation that defined it, for the sheer callousness and brutality of herding, trapping and locking the victims in the two houses, thereby rendering them helpless in the ensuing inferno, and for the degree of pain and suffering inflicted on the victims as they were burnt alive. There is a unique cruelty in expunging all traces of the individual victims which must heighten the gravity ascribed to these crimes.”⁷

Having read Judge Robinson's statement, and, having personally witnessed the exhumation of the human remains of victims from Višegrad in August 2010 when I accompanied the Bosnian Missing Persons Institute and the International Commission on Missing Persons in the course of their mission, it would not have occurred to me that it was in the interest of justice to remove Višegrad and the crimes committed therein from the indictment.

In your recent address to the U.N. Security Council, you spoke briefly about a range of expectations and implications of the ICTY’s decisions in relation to justice, peace and reconciliation.⁸ Your thoughtful reflections raise a question about the effect that the Court’s actions (or inactions) may have on certain perceptions. It seems, indeed, in the present context, that the absence of a conviction for genocide in Prijedor and the absence of a charge for genocide in Višegrad may well have emboldened the Bosnian Serb majority in those municipalities in their denials of the atrocities that were committed and in their suppression of the commemoration of the atrocities.

In Prijedor, for example, survivors have been forbidden from using the term “genocide” in public gatherings and have, moreover, been prohibited from installing memorials to the victims. In 2006, the local administration in Prijedor effectively prevented the installation of a memorial in the “White House” building that was part of the Omarska Concentration Camp. On December 1, 2005, ArcelorMittal, the current owner of the Omarska mining complex had actually agreed to allow the memorial to be installed and to provide financial support, but the Prijedor administration resisted the installation.

In Višegrad, the authorities threatened to destroy or remove a memorial to the victims in a private Muslim cemetery. Then, on January 23, 2014, the authorities forcibly entered the cemetery and ground the word “genocide” off the memorial. It could be said that the Bosnian Serb-dominated municipality had effectively “struck through” or had “struck out” the term “genocide” from the memorial in the same way Višegrad had been struck through in the *Prosecution’s Marked-Up Indictment*. If the intention was different, the result was the same.

In the meantime, it should not escape our attention that memorials to the perpetrators have been installed in Trnopolje (Prijedor), and Višegrad, and that only recently a memorial plaque honoring Commander Ratko Mladić, was installed in the hills above Sarajevo.

Hence, in the event that the prosecution of Mr. Karadžić culminates in a conviction for genocide under Count 1 in the named municipalities, it would be imperative, in the interest of justice, that the Court's Judgement include a clear statement to the effect that while the conviction for genocide refers to a set of *selected* municipalities (the municipalities that remained in the indictment), in its essence, and in truth, the conviction for genocide under Count 1 would be a conviction for a genocidal intention that applied to the entirety of the area "claimed as Bosnian Serb territory."

If such a statement can be included in the Court's Judgement, then those municipalities that were arbitrarily removed from the indictment would be inscribed once again in the essential scope of the conviction, an act of inclusion that would respect and respond to the singularity of the suffering that occurred throughout Republika Srpska as a result of the genocidal intention of the overarching joint criminal enterprise of its founding leadership.

Thank you for your consideration.

Sincerely,



David Pettigrew, PhD
Professor of Philosophy, Southern Connecticut State University,
Steering Committee, Yale University Genocide Studies Program,
International Team of Experts Institute for Research of Genocide, Canada,
Board Member, Bosnian American Genocide Institute and Education Center, Chicago, IL, USA

With the endorsement of:

Sanja Seferović-Drnovšek, J.D., M.Ed.,
Chairperson, Bosnian American Genocide Institute and Education Center (BAGI)
Member, Illinois Holocaust and Genocide Commission;

Prof. Emir Ramić, Chairman,
Institute for the Research of Genocide, Canada (IRGC);

Prof. Dr. Rasim Muratović, Director,
Institute for the Research of Crimes Against Humanity and International Law, University of Sarajevo;

Satko Mujagić, Association of Victims and Witnesses of Genocide;

Ajla Delkić, Executive Director,
Advisory Council for Bosnia and Herzegovina;

Hamdija Čustović, President,
Congress of North American Bosniaks (CNAB);

Endorsements (continued)

Bakira Hasečić, President,
Association of Women Victims of War;

Prof. Dr. Senadin Lavić, President,
Bosniak Cultural Association, "Renaissance";

Selena Seferović, Director, Bosnian Library Chicago;

Dr. Hariz Halilovich, Senior Lecturer,
Office of the Vice-Provost (Learning and Teaching),
Monash University, Victoria, Australia;

Anes Džunuzović, Udruženje "Mladi Muslimani" [Young Muslims];

Mr. Sc. Sedad Bešlija, Active Bosniak Network.

Notes

1. *International Criminal Tribunal for the former Yugoslavia, Judgement Summary, Karadžić* (IT-9S-SI18-AR98bis.I), Appeals Chamber, July 11, 2013, accessed June 27, 2014.

http://www.icty.org/x/cases/karadzic/acjug/en/130711_judgement_summary_rule98bis.pdf

2. *Ibid.* *The Judgement Summary* continues: “Evidence on the record also indicates that other senior members of the Bosnian Serb leadership, alleged to have been members of the JCE [Joint Criminal Enterprise], possessed genocidal intent. For example, in discussing Bosnian Muslims and Bosnian Croats, Ratko Mladić (“Mladić”), the Commander of the Army of the Republika Srpska Main Staff, is alleged to have said that “[m]y concern is to have them vanish completely”.

3. *Ibid.*, my emphasis.

4. When referring to the aims of the overarching joint criminal enterprises, in which Mr. Karadžić was a key member, the Prosecution contends, in §6, that “Their objective was the permanent removal of Bosnian Muslims and Bosnian Croats from *Bosnian Serb-claimed territory*.” *International Criminal Tribunal for the former Yugoslavia, Prosecution’s Marked-Up Indictment, Karadžić* (IT-95-5/18-PT), Trial Chamber III, October 19, 2009, http://www.icty.org/x/cases/karadzic/ind/en/markedup_indictment_091019.pdf

5. *International Criminal Tribunal for the former Yugoslavia, Decision on the Application of Rule 73 BIS, Karadžić* (IT-95-5/18-PT), Trial Chamber, October 8, 2009. The municipalities removed in their entirety from the Indictment were Bosanska Krupa, Bosanski Petrovac, Čajniče, Donji Vakuf, Ilijas, Kalinovik, Kotor Varoš, and Višegrad.

<http://www.icty.org/x/cases/karadzic/tdec/en/091008.pdf>

6. *Ibid.*

7. *International Criminal Tribunal for the former Yugoslavia, Judgment Summary, Milan Lukić & Sredoje Lukić* (IT-98-32/1-T) “*Višegrad*”, Trial Chamber III, July 20, 2009, accessed June 27, 2014.

http://www.icty.org/x/cases/milan_lukic_sredoje_lukic/tjug/en/090720_judg_summary_en.pdf

8. *International Criminal Tribunal for the former Yugoslavia* “Address to the U.N. Security Council by Judge Theodor Meron President, International Criminal Tribunal for the former Yugoslavia President, Mechanism for International Criminal Tribunals,” 5 June 2014, accessed June 27, 2014.

http://www.icty.org/x/file/Press/Statements%20and%20Speeches/President/140605_president_meron_un_sc_en.pdf