

Völkerrechtsblog

Der Blog des Arbeitskreises junger Völkerrechtswissenschaftler*innen

≡ Navigation



CURRENT DEVELOPMENTS

The Karadžić Judgment: The ICTY at its Peak

CLAUDIA BÄHR — 18 April, 2016



0



In theater, the peak of a play in which all strings of the story converge and the intrigue is resolved, is called the climax. With its verdict against Radovan Karadžić, the International Criminal Tribunal for the former Yugoslavia (ICTY) has come to *its* climax.

Established in 1993 in order to try those who bear individual responsibility for serious violations of International Humanitarian Law in the course of the break-up of the former Yugoslavia, the Tribunal commenced its work by prosecuting rather low-level perpetrators, like its very first case against Duško Tadić. Now that the Tribunal is supposed to complete its mandate, it has reached the top of the command chain with figures such as the former Chief of the

Bosnian Serb Army, Ratko Mladić, whose case is still on trial, and the President of the Bosnian Serbs at the time, Radovan Karadžić.

The Indictment

The Prosecution charged Karadžić with two counts of genocide (one with regard to acts in several Bosnian municipalities and the other one in regards to Srebrenica), five counts of crimes against humanity (namely persecution, extermination, murder, deportation, and forcible transfer as other inhumane acts), and with four counts of violations of the laws or customs of war (in the form of murder, terror, unlawful attacks on civilians, and taking of hostages). In particular, it was alleged that he was individually criminally responsible for participating in four joint criminal enterprises (JCE) which were the following: First, the 'overarching JCE', a JCE with the objective to permanently remove Bosnian Muslims and Bosnian Croats from Serb-claimed territory in Bosnia and Herzegovina through the commission of the crimes charged. Second, the 'Sarajevo JCE', comprising the establishment and carrying out of a campaign of sniping and shelling against the civilian population of Sarajevo with the primary purpose of spreading terror among the civilian population. Third, the 'Hostages JCE', relating to the hostage-taking of over 200 UN peacekeepers and military observers in order to compel NATO to abstain from conducting air strikes against Bosnian Serb military targets. And fourth, the 'Srebrenica JCE', aiming at the elimination of the Bosnian Muslims in Srebrenica by killing the men and boys of Srebrenica and forcibly removing the women, young children and some elderly men.

Genocide in the Bosnian municipalities

The Trial Chamber found Karadžić guilty on all counts of the indictment except for genocide in the municipalities (count 1). Considering that it had already acquitted him of this charge as a result of a ‘no-case-to-answer’ motion under Rule 98*bis* upon the conclusion of the Prosecution’s case, this was to be expected beforehand though and, therefore, not really a surprise. However, the last word is yet to be spoken. This matter will very likely be raised again in the case of an appeal as the Appeals Chamber reversed the Trial Chamber’s negative finding in this regard. Still it has to be taken into account that the threshold for a conviction, beyond a reasonable doubt, is much higher than that which is required under Rule 98*bis* (for which the Chamber has to assess whether there is evidence – if accepted – upon which a reasonable trier of fact *could* be satisfied beyond reasonable doubt). If the Appeals Chamber were to find that even this high threshold was met with regard to genocide in the municipalities charged, it would certainly be a first for the Tribunal. In all other strings of the play, i.e. all other cases, *only* the atrocities in Srebrenica were classified as genocide.

The sentence

As a consequence, Karadžić was sentenced to 40 years of imprisonment. Since he is currently 70 years old, this *de facto* probably means a life sentence. Indeed, the time that he has already spent in detention so far from his arrest in 2008 will be credited and he could also be eligible for provisional release after having served two thirds of his sentence. But even under these circumstances, he will be imprisoned for almost another two decades.

Effects

The mixed reactions in the region in response to the delivery of the verdict reiterate how divided the societies in the Balkans still are: While many Serbs find the sentence unfair and politically motivated, Bosniaks largely complain that it was too lenient and too late. This begs the question whether international criminal trials can assist with the reconciliation of war-torn societies or whether this could be better accomplished by complementary mechanisms, such as truth commissions. What the ICTY has accomplished through its findings on the individual criminal responsibility of the accused before it, is the assertion that egregious atrocities that qualify as war crimes, crimes against humanity and genocide are intolerable and will entail punishment when proven beyond reasonable doubt in a fair and impartial trial – even in the case that the accused was once a senior leader of a political entity. And this is more than just a play.

Claudia Bähr is currently a legal intern at the ICTY. The views expressed herein are those of the author and do not necessarily reflect the views of the ICTY or the United Nations in general.

ISSN 2510-2567

Tags: *International Criminal Law*



Related

Rescuing
(cosmopolitan) locals
at the International

Judicial means and
political ends:
transitional justice and
political trials

Victor's Justice in
Disguise?
19 December, 2016
In "Discussion"

Criminal Tribunal for
Rwanda
18 March, 2015
In "Allegra -
Transitional Justice"

30 March, 2015
In "Allegra -
Transitional Justice"

PREVIOUS POST

◀ [Fostering Regional Health Governance in West Africa: The Role of the West African Health Organization \(WAHO\)](#)

NEXT POST

[The Human Right to Health in Africa: Great Expectations, but Poor Results](#) ▶

No Comment

Leave a reply

Logged in as [ajv2016](#). [Log out?](#)

SUBMIT COMMENT

Notify me of follow-up comments by email.

Notify me of new posts by email.