

**Prosecuting Genocide:
The ICTY and the Future of International Criminal Justice**

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**Serge Brammertz, Chief Prosecutor
International Criminal Tribunal for the former Yugoslavia**

I would like to thank the Organizing Committee, including the Association of Victims and Witnesses of Genocide and the Mother's Action of the Srebrenica/Žepa Enclave, as well as donors like the European Commission, for organizing this important conference and giving me the opportunity to speak with you today.

This conference is a vital part of the commemoration process for the 20th anniversary of the Srebrenica genocide. Next month tens of thousands will gather in Potočari to pay their respects to the victims. It will be an occasion for solemn reflection. And it will be a moment for all of us to reaffirm our commitment to preventing others from suffering what tens of thousands of men, women, children and elderly experienced in those dark days 20 years ago.

Our topics for today and tomorrow – researching, documenting and prosecuting genocide – are critical if we are to more fully realize our shared promise to safeguard future generations from repeating the horrors of our past.

This is a work in progress even today. There have been successes that should encourage us to keep trying, but also failures that remind us of how much more can be done.

If we look around the world, there are more armed conflicts today than at any time since the end of the Second World War. Unfortunately, genocide continues to be a major concern.

We all remember when the world community was mobilized to bring genocide to a halt in Darfur. Yet the people of Darfur are still without justice, and those accused of

responsibility for the crimes committed remain at large, despite international arrest warrants issued years ago.

After warning signs of genocide were seen in the Central African Republic, UN peacekeepers were deployed to stop the violence and protect civilians. But hundreds of thousands were still displaced, and religiously-motivated attacks against civilians still led to the deaths of thousands.

One of the most disturbing parallels today is the continuing persecution of religious minorities by forces of the so-called Islamic State. When tens of thousands of Yazidis were trapped in the Sinjar Mountains, with IS forces closing in, many of us could see another Srebrenica.

The unfortunate reality then is that genocide continues, and there continues to be a need for justice. This is why conferences like this are essential. To meet today's challenges, we must look honestly, openly and critically at the last 20 years of investigating and prosecuting genocide in Bosnia and Herzegovina.

With that introduction, I would like to use my remarks today to set the stage for later discussions about the ICTY's efforts to bring to justice those responsible.

Over the course of its mandate, the Office of the Prosecutor has charged 24 persons with committing genocide. 20 have been indicted for the Srebrenica genocide. Almost all were convicted under different forms of individual criminal responsibility.

Of crucial importance, we have repeatedly proved beyond reasonable doubt that the Srebrenica genocide was committed in the implementation of a Joint Criminal Enterprise. This was confirmed again this year in the Popović and Tolimir Appeal Judgments.

In simple terms, the judgments of the ICTY have established that there was a common criminal plan to commit the crimes in Srebrenica. A number of senior officials who participated in this common plan did so with genocidal intent – that is, the intent to destroy the Bosnian Muslim community of Eastern Bosnia. Others carried out their role in the plan knowing that genocide was intended.

So the record is clear that the Srebrenica genocide was not spontaneous, nor was it the work of a few vengeful soldiers. Genocide in Srebrenica was the result of a deliberate, pre-conceived plan designed at the very highest leadership levels and then implemented by organized and coordinated action.

One part of that plan involved the mass executions of thousands of men and boys captured after the fall of Srebrenica. These men and boys were rounded up, held in the most appalling conditions, and then systematically executed.

But genocide is not only a question of how many people were killed. Rather, what distinguishes genocide from other crimes is the intent behind the actions. Genocide is when crimes are committed with the intent to destroy a particular group in whole or in part.

It would have been easy for the horror and magnitude of these executions to dominate our investigations and prosecutions. But we learned an important lesson. In situations like Srebrenica, it is essential to address crimes committed against both men and women, to look at the entire situation and not be blinded by pre-conceived notions.

Based on our investigations, we successfully argued that the mass executions had to be understood in combination with the forcible transfer of the women, children and elderly. These victims were not only uprooted from their homes by force. They were terrorized and subjected to unimaginable cruelties in places like Potočari, while also being forced to watch helplessly as their loved ones were prepared for execution.

If we had not pursued the forcible transfer of the women and children as well as the mass executions, we would have missed the picture of genocide in Srebrenica. As our Appeals Chamber confirmed, the combined effect of the forcible transfers and killings was important in concluding that genocide was committed.

Of course, the record of the ICTY is not perfect

But the ICTY has shown that justice can be achieved. I remember when I first met with many of you in 2008. At the time, you had very little hope that Radovan Karadžić and

Ratko Mladić would ever be brought to trial. You told me, “We want to see Karadžić and Mladić arrested, otherwise we cannot start thinking about the future.”

Today, they are both on trial, two of the most important cases in the ICTY’s history. In a few months, Karadžić will hear the Trial Chamber’s judgment, and the presentation of evidence in the Mladić case will hopefully conclude within a year.

These two trials should remind us that justice requires steadfast commitment. The European Union and its conditionality policy deserve particular attention in this regard. It is fair to say that without the pressure exerted by the European Union, Karadžić and Mladić would not have been arrested, and our prosecutions for the Srebrenica genocide would not have been as successful.

The Office of the Prosecutor did not give up its efforts to find Karadžić and Mladić. We have also not given up on our efforts to prove that genocide was committed throughout other municipalities of Bosnia and Herzegovina in 1992.

We have not yet achieved the results that we believe are proved by the evidence. Of course, we have secured numerous convictions for crimes against humanity and war crimes committed in other municipalities of Bosnia and Herzegovina in 1992, including against senior leaders such as Momčilo Krajišnik, Biljana Plavšić, Milomir Stakić and others. But while the Judges have accepted that “ethnic cleansing” was committed, they have not yet agreed that these crimes also constitute genocide.

Nonetheless, we have continued our investigations and continued refining our arguments. In the Karadžić case, we made our most thorough arguments on the issue so far. Next month we will begin presenting our evidence in the Mladić case on the Tomašica mass grave, from Prijedor.

The fact that we have obtained a number of convictions is in large part thanks to the victims, survivors and their families, who agreed to testify in our trials and contribute to the justice process. Since our first trial in 1996, more than four and a half thousand witnesses have testified at the ICTY. 50% of this total came from Bosnia and Herzegovina.

In relation to Srebrenica, our prosecutions heavily relied on the testimonies of those who survived the mass executions. Because of their courage, today we know what happened at the Kravica warehouse, at Orahovac, at Petkovci. We know the horrific conditions in which the victims were held, and how they were cruelly made to suffer. We know how organized and methodical the killings were. We know that those who ordered the crimes tried to hide them. But because of the survivors, we were able to show the truth of what happened.

Because survivors and family members came to testify, we also know the truth of what happened in Potočari and afterwards. We know of the beatings, killings and rapes. We know of boys and men pulled off the busses. We know their fears for the safety of their loved ones, and we know the pain they suffered when they realized the awful truth that their husbands, fathers and sons would not return.

Because of the witnesses, all of these facts are now public knowledge. While our trials are first and foremost about justice, our work has also greatly contributed to truth-telling, and hopefully reconciliation.

We dedicated our maximum efforts to investigating the Srebrenica genocide. But we have been equally committed to taking all possible steps to investigate and prosecute other major crimes, independent of any considerations of ethnicity or religion, and without regard to official status.

While the ICTY will soon close, justice for these crimes has not yet been fully achieved. It is now the responsibility of national judicial authorities to continue our work by prosecuting those who have not yet been held accountable for the crimes in Srebrenica and throughout the region. There have been positive steps so far, such as the joint arrest operations recently conducted by BiH and Serbian authorities. And the OTP will continue to support national authorities by providing access to the evidence we have gathered and building their capacity. But much more remains to be done.

Outside the courtroom, important issues still remain to be addressed. One issue is compensation for victims. While the law provides the possibility to seek redress from perpetrators of crimes, many victims do not have the means to hire lawyers, and court procedures are often too slow and too complicated.

Missing persons remains a pressing issue.

The denial of crimes is another issue. The denial of genocide should never be accepted. Denying that genocide, crimes against humanity and war crimes were committed causes immense suffering to the victims and the survivors. All victims deserve the basic respect of acknowledging the wrongs that were done to them.

In conclusion, we have to recognize that there have been both successes and failures that we can learn from, so that in the future the investigation and prosecution of genocide will be stronger and even more successful. As I mentioned at the beginning of my remarks, that is one reason why conferences like this are important for the future of international criminal justice.

At the same time, it is also important not to lose sight of why this work matters today, here in Bosnia and Herzegovina. When I am asked what has been the most significant moment for me as ICTY Prosecutor, the answer is my first visit to Srebrenica. Walking through the rows of graves at the cemetery, seeing execution sites, speaking with the victims and looking at the pictures of their lost loved ones. This place will be a permanent reminder of the immense pain and suffering that humans can inflict on each other. I later had the same experience learning about crimes in places like Uzdol and Čelebići.

I was in Nuremberg, Germany last week for the opening of the International Nuremberg Principles Academy. More than 70 years ago, the city was the epicenter of Nazi propaganda and hate. Today, it stands as a tribute to the power of reason and justice. A documentation centre reveals how nationalism led to genocide. The historic Courtroom 600 tells the story of the birth of international criminal justice. No matter how uncomfortable it may be, what is remembered in Nuremberg is the truth.

What I have learned in the last seven years is that accepting the truth is the first step to reconciliation. It is not sufficient, but it is a *condicio sine qua non*. As prosecutors, our job has been to shine a light on what has been hidden and establish facts based on the evidence we have gathered. I remain hopeful that this work, while not perfect, can help contribute to reconciliation and a more peaceful future.

Thank you for your attention and your support. I wish you all a successful conference.