

U.N. Tribunal weighs in on atrocity against Bosnian women & the Radovan Karadžić Conviction

(WNN) The Hague, Netherlands – For the last 20 years, former Bosnian Serb army leader Radovan Karadžić cured cancer and performed miraculous metaphysical healings under the name Dragan Dabić. Karadžić did this while living tucked away for decades in the suburbs of Belgrade.

His thick, grizzly beard earned him the nickname “Santa Claus” by local children and his mystical pursuits using a visak, a pendulum that is supposed to identify disturbances in the energy field around sick or troubled patients, made him a star on the Serbian alternative medicine circuit.

Yet on March 24, a stone-faced Karadžić, 71, was convicted of genocide, war crimes and crimes against humanity by the International Criminal Tribunal for the former Yugoslavia (ICTY) and sentenced to 40 years in prison for his role in lethal ethnic cleansing operations, the siege of Sarajevo and the killing of 8,000 Muslim men and boys in Srebrenica in 1995. He was also found guilty of persecution, extermination, deportation, forcible transfer and murder in connection with a campaign to drive Bosnian Muslims and Croats out of villages claimed by Serb forces during the country’s civil war from 1992 to 1995.

Originally Indicted 21 years ago, Karadžić was captured in 2008 after a 13-year manhunt escalated to involve the CIA. His trial began in 2009 and ended in 2014, after 497 days of hearings during which testimony was given by 586 witnesses.

Before 9/11, the pursuit of Balkan war criminals involved deployment of special operations troops including Delta Force, Seal Team 6, and the Special Air Service unit of the British Army. Karadžić was their number-one target and a priority for the CIA, the Defense Intelligence Agency and Secret Intelligence Service.

United Nations human rights chief Zeid Ra’ad al-Hussein lauded the conviction as “a forceful manifestation of the international community’s implacable commitment to accountability.”

Yet supporters of Karadžić say he is being used as an example and that he possibly could not be held responsible for crimes committed by others, particularly his soldiers. In Belgrade, thousands of nationalists praised him, attending a rally to hear fellow indictee Vojislav Seselj condemn the court for the conviction shortly after it occurred. “The criminal Hague, the false court of the Western powers, has condemned Karadžić to 40 years,” Seselj told the crowd at a rally called to commemorate the beginning of the 1999 NATO bombing of Serbia. “They convicted him when he was innocent, only because he led the Serb people in Bosnia during a crucial moment.”

The Bosnian War is regarded as the deadliest conflict since World War II. Former and current proceedings of the tribunal are likened to the Nuremberg trials of former Nazi leaders.

ICTY was established in May 1993 by the United Nations Security Council in accordance with Chapter VII of the UN Charter as reports of human rights violations poured in from Croatia, Bosnia and Herzegovina and Serbia. It currently sits in The Hague, Netherlands and has charged over 160 persons including heads of state, prime ministers, army chiefs-of-staff, interior ministers and many other high- and mid-level political, military and police leaders from various parties to the Yugoslav conflicts. Indictments address crimes committed from 1991 to 2001 against members of various ethnic groups.

WNN editor Jessica Buchleitner discusses the conviction with Nenad Golčevski of the Tribunal and its echo through the international community.

Jessica Buchleitner: Given the criticism the main International Criminal Court has received in regard to the low amounts of convictions and its billion dollar operating costs, how has the Tribunal laid the foundations for what is now the accepted norm for conflict resolution and post-conflict development across the globe with its rate of convictions for war crimes in the former Yugoslavia?

Nenad Golčevski: The ICTY was the first international war crimes tribunal in 50 years and the first to indict a sitting head of state. The Tribunal developed a body of both substantive and procedural law, giving details to the various norms which had been previously stated, for example in the Geneva conventions of 1949 or in the Hague

conventions of 1907. The Tribunal also had to develop various theories of criminal liability that were not clearly developed before the it started working.

In addition, the Tribunal has proved that it is possible to try the most complex of cases, involving allegations of the worst crimes imaginable brought against senior military and political leaders. The ICTY has done so in a fair judicial manner for the 161 persons it indicted. All 161 of these individuals are accounted for, giving the Tribunal an unrivalled 100 percent enforcement rate.

Of those 161 accused, 81 have been convicted and 19 persons acquitted thus far. Cases against 13 accused were transferred to national jurisdiction in the countries of the former Yugoslavia, while for 36 persons the proceedings were terminated. Proceedings against 10 accused are still ongoing, while 2 persons will be retried by the Mechanism for International Criminal Tribunals (Mechanism).

The work of the Tribunal over the past two decades has ushered in a new era of accountability that can be seen in the development of other international and hybrid criminal courts and tribunals. Additionally, the effects of this new era can also be seen in the growing number of cases being brought in national jurisdictions, from the former Yugoslavia to Latin America, involving allegations of crimes committed in times of armed conflict.

JB: In The Prosecutor v. Radovan Karadžić, Radovan Karadžić, the former President of Republika Srpska, was convicted on March 24, 2016 of 10 of 11 counts of crime including war crimes, genocide and crimes against humanity and was sentenced to 40 years imprisonment. What were the key challenges the Tribunal faced in bringing this case to trial given the political climate in the former Yugoslav republics and the international sentiment around the acts he was convicted for?

NG: The main challenge the Tribunal faced was the arrest of Mr Karadžić. The ICTY does not have a police force of its own and had to rely on local police and government agencies to arrest not only Mr Karadžić but all of the accused who were at large. In terms of trial proceedings, The UN Security Council established the ICTY as an independent judicial institution, and no political or other views or sentiments affect its judicial work.

JB: One of the most notorious symbols of the Bosnian War was Karaman's House, a location where women were tortured and raped near Foča. While ICTY has convicted numerous military personnel for their imprisonment and perpetration of sexual violence against women in this region, which of these crimes were included, if any, in Karadžić's trial and conviction?

NG: The judgment for Radovan Karadžić states that "Serb Forces committed rape against Bosnian Muslim and Bosnian Croat women and men in Bijeljina, Brčko, Foča, Novo Sarajevo, Prijedor, Rogatica, Vlasenica, Vogošća, and Zvornik". In relation to Foča, the Trial Chamber confirmed that sexual violence crimes have taken place in the Foča area, namely at Karaman's house, the Worker's Hut at Buk Bijela, the Partizan Sports Hall and Foča High School. Karadžić was found guilty for these crimes based on his responsibility as a member of the Joint Criminal Enterprise.

JB: Does the tribunal suspect Karadžić to appeal and if so, under what grounds?

NG: The appellate proceedings in the Karadžić case (as well as in all other cases in which a notice of appeal against the trial judgement was filed on or after July 1, 2013) will be conducted and completed by the Mechanism for International Criminal Tribunals (Mechanism). The Mechanism was established by the UN Security Council in 2010 to carry out a number of essential functions of the ICTY and ICTR after the completion of their respective mandates, including the remaining appellate proceedings. The Mechanism Chamber assigned to the Karadžić case has granted both the Defence and Prosecution until July 22, 2016 to file an appeal. The grounds of Mr Karadžić's appeal will be known once he files his notice of appeal.

JB: One of the counts of genocide in Karadžić's conviction was related to the Srebrenica massacre that occurred in the former mining town and United Nations "safe haven" of Srebrenica. What did the court find through evidence presented, his involvement to be?

NG: Mr. Karadžić was convicted of genocide for the crimes in Srebrenica.

According to the judgement, the Chamber found that his position as President of the Republika Srpska and Supreme Commander of the Army of Republika Srpska (Vojaska Republike Srpske) placed him as "the sole person within the RS with the power to intervene to prevent the Bosnian Muslim males from being killed". The Chamber

found, however, that not only did Karadžić not intervene in any way to prevent the massacre from taking place, he himself “ordered that the Bosnian Muslim male detainees who were then being held in Bratunac be transferred elsewhere to be killed; they were then taken to Zvornik and killed.”

Furthermore, it was found that Karadžić was fully aware of the ongoing killing operation when he declared a state of war in the Srebrenica–Skelani Municipality on 14 July, which facilitated the ongoing killing operation. Judges also concluded that the evidence showed that he shared the common purpose of, and significantly contributed to, the killing of Bosnian Muslim males in that area. With regard to genocide, the Chamber found that Karadžić shared the intent to kill every able-bodied Bosnian Muslim male from Srebrenica, which amounted to the intent to destroy the Bosnian Muslims in Srebrenica.

The judges also addressed Karadžić’s role in the Joint Criminal Enterprise (JCE) which the Chamber found to have been expanded to include the killing of captured Bosnian Muslim men from Srebrenica.

It is worth noting that the Chamber concluded that, despite knowledge of the outlined plan, Karadžić still did not intervene to stop the killing aspect of the plan that took place between July 13 and 17, 1995. However, the Chamber specified that Karadžić was not found responsible as a member in the JCE for the killings committed before the evening of July 13, 1995. Nevertheless, he was found responsible as a superior for not having punished those crimes pursuant to Article 7(3) of the Statute.

JB: Through the duration of the trial, survivors came forward to report what they endured. How many total testified? Was there any particular story that you remember most?

NG: During the Karadžić trial, 586 Prosecution, Defence and Chamber witnesses provided evidence to the court.

It is difficult to single out a particular story, as all the testimonies provided by the witnesses help to shed light on the case and to establish a full and accurate record. Many of the 586 witnesses came forward to tell stories of survival, loss and suffering, including men who had escaped executions by pretending to be dead and women who lost children or were violently raped. Testifying before the Tribunal gives witnesses the

opportunity to tell the world their stories and the impact it had on their lives, in the hope that such terrible things will never happen again. Their testimonies and more can be found in the ICTY Court Records database as well as in the transcripts and audio-visual recordings of the case.

JB: Were any precautions taken to allow for survivors to testify (anonymity, protection under an international program for witnesses etc..)?

NG: Yes, over 140 witnesses in the Karadžić trial received some form of protective measures while testifying.

Victims and Witnesses Section (VWS) of the Tribunal is in charge of protecting the privacy of witnesses and providing for their safety and security. Special protection measures can be granted if testifying poses a risk to the witness and/or his family, including withholding witnesses' names or other identifying information, altering witnesses' voice or image as they appear on court TV screens, or closing the trial sessions for the public during testimonies. Protection is provided not only during the testimony in court but also from the moment a witness arrives in The Hague, until after the testimony. In case of very serious threats to the life of a witness, the VWS Section can arrange for witnesses and their close family to be relocated to a third country.

JB: What current oppositions are there to Karadžić's conviction from his supporters? How does the Tribunal mitigate the overall sentiments in society and in the media regarding the trial and conviction?

NG: The Tribunal is a judicial institution, and its main task is to establish individual criminal responsibility of the accused through a fair trial process. The ICTY is not mandated with changing the public or society's sentiments regarding any of the trials or convictions. Nevertheless, the Tribunal is making specific and extensive efforts to ensure that the court's findings are not only made public but also explained to a wide audience in the most transparent and understandable way.

The ICTY was the first international tribunal to establish an Outreach Programme, whose main goal is to bring the work of the Tribunal closer to those most affected by it, i.e. the people of the former Yugoslavia. The work of the Outreach Programme is tailored to provide information about the Tribunal's work and to engage in a dialogue with the people and institutions from the affected region, so that their concerns and

critiques can be adequately addressed. These efforts include dialogue with victims' groups, organising conferences and workshops, producing publications and documentaries, working with the youth in the region and similar objectives. Over the past fifteen years, these efforts have reached hundreds of thousands of people in the countries of the former Yugoslavia.

However, only the people of the region themselves, their leaders and their institutions can initiate and implement an authentic process of facing the past. We firmly believe that the work of the ICTY, its findings and judgements can serve as an invaluable tool in this process, but the ownership has to remain on the communities in the region.

While the United Nations maintains his conviction, thousands of supporters have rallied to support Karadžić across Serbia, especially after his arrest. This Associated Press video shows one of the gatherings in Pale in July 2015. Associated Press

JB: From the perspective of the Tribunal, what does Karadžić's conviction mean to the alleged victims of his crimes?

NG: This is a question that only the victims can answer themselves. As the Tribunal's representatives, we can only hope that this and other judgements bring a sense of justice to victims and a strong message to the world that these crimes will not be tolerated – even heads of states can be held accountable for such crimes. We hope our work assists in the restoration of the rule of law, fighting impunity for crimes committed during the conflict, establishing the facts and strengthening efforts to fight denial of the crimes.

JB: While the trial of has been hailed as a triumph of international law, victims have stated openly that his sentencing does not feel like justice due many factors including the presence of the children, now adults, born in rape camps, the amount of offenders who live and work among the civilian population in Bosnia and the current polarization of Bosnia. How, in international law, does this case set a precedent for any future trials through the Tribunal or the International Criminal Court?

NG: The answer to this question can be given in both general and technical terms. The trial judgment in the Karadžić case as well as other ICTY judgements have shown that international justice is possible and feasible, even when it comes to accused who were occupying the highest political or military functions during the conflict. It shows that no one is or can be above the law. Successful completion of such high-level and complex trials, as in the case of Radovan Karadžić, also shows that international justice can overcome obstacles, conduct proceedings and issue judgements that adhere to the highest standard of international law.

In more concrete terms, a trial judgement does not set any legal precedents at the ICTY – only the appeal judgements are binding upon other trial chambers. Also, the ICC does not consider ICTY jurisprudence to constitute precedent. International Criminal Court Chambers can certainly look to ICTY case law for guidance, but it is not bound by any of the ICTY judgements.



The International Criminal Tribunal for the former Yugoslavia's reach and involvement in the enforcement of international law. ICTY/United Nations

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