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International
Criminal Tribunal
for the former
Yugoslavia

Tribunal Pénal
International pour
l'ex-Yougoslavie

The Hague, 24 November 2011

Dear Ms Eva Hamilton,

It has been drawn to the attention of the Outreach Programme of the International Criminal Tribunal for the former Yugoslavia (ICTY) that Swedish state television recently broadcast a documentary 'Srebrenica – A Town Betrayed' made by a Norwegian film maker. Having viewed this documentary, it is clear that much of the content runs counter to rulings made by the ICTY.

The Outreach Programme does not question the right to freedom of expression and editorial choice and it would be beyond my remit to comment on a decision by a state broadcaster to air a particular documentary. However, I would expect an invitation to react to material being broadcast by a state broadcaster which contradicts the Tribunal's rulings and fails to mention the fundamental role the Tribunal has played in uncovering the true horrors of Srebrenica. No such invitation has been forthcoming and as a result, I feel compelled to lay out some of the Tribunal's findings.

The ICTY has established beyond a reasonable doubt crucial facts, once subject to dispute, related to crimes committed in the former Yugoslavia. In doing so, the Tribunal's judges have carefully reviewed testimonies of eyewitnesses, survivors and perpetrators, forensic data and often previously unseen documentary and video evidence. The Tribunal's judgements have contributed to creating a historical record, combating denial and preventing attempts at revisionism and necessarily take a central place in any debate surrounding the conflicts in the former Yugoslavia during the 1990s.

Since 1995, the Tribunal has gathered an overwhelming body of evidence on the Srebrenica crimes dealt with by this documentary. Twenty-one individuals have been indicted - the largest number for any crime area investigated by the Tribunal. The investigations conducted by the Tribunal have been unprecedented in their scope and for the first time, forensic evidence from mass graves was investigated on a large scale and admitted as evidence during an international criminal trial. The historic and definitive judgement that the massacre constituted the crime of genocide came when the Tribunal's Appeals Chamber rendered their landmark Judgement in the trial of Radislav Krstić¹. The Appeals Judgement reads, '[t]he Appeals Chamber (...) calls the massacre at Srebrenica by its proper name: genocide²'.

Further, in the first instance Judgement³ in the trial of Vujadin Popovic and others⁴, the Trial Chamber found that "The scale and nature of the murder operation, with the staggering number of killings, the systematic and organised manner in which it was carried out, the targeting and relentless pursuit of the victims, and the plain intention—apparent from the evidence—to eliminate every Bosnian Muslim male who was captured or surrendered proves beyond reasonable

¹ Former Chief of Staff of the Drina corps of the Bosnian Serb Army

² Krstic Appeals Chamber Judgement, para 37.

³ This first instance judgement is currently under appeal.

⁴ Seven former high-ranking Bosnian Serb military and police officials. Their case is currently pending appeal.

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doubt that this was genocide.”. Failure to refer to these judgements in a documentary on events in Srebrenica in July 1995 is a grave omission that prevents any balanced discussion of this event.

The crime of genocide was described by the Appeals Chamber in the case of Krstić in the following terms: - Perpetrators intend to wipe out entire human groups, seeking to “deprive humanity of the manifold richness its nationalities, races, ethnicities and religions provide. This is a crime against all of humankind, its harm being felt not only by the group targeted for destruction, but by all of humanity.”⁵ The genocide conviction is rarely passed by courts throughout the world. The gravity of the crime is reflected in the stringent requirements which must be satisfied before a conviction is imposed. These requirements – the demanding proof of specific intent and the showing that the group was targeted for destruction in its entirety or in substantial part – ensure that convictions for this crime are not imposed lightly.

The Tribunal’s Statute defines genocide as a series of acts⁶ committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group. This being the case, the genocide ruling contradicts the underlying theme of the documentary which seeks to present events surrounding the fall of Srebrenica as a military consequence of the wider conflicts between Bosnian Serbs and Muslims in the area, and in part as a ‘conventional military operation’⁷, for which ‘Izetbegović is bearing responsibilities’⁸ due to his decision not to defend the town.

Proceedings before the Tribunal have proven beyond reasonable doubt that Srebrenica was a planned killing operation, and not an act of revenge by emotionally agitated Bosnian Serb soldiers. It is impossible to kill 7,000 to 8,000 people in the space of one week without methodical planning and substantial resources. Mobilizing such resources cannot be done at the whim of a few revenge-fuelled soldiers. It needs to be ordered and authorized by commanders at high-levels. In the Krstić case, the Trial Chamber heard a large body of evidence that demonstrated that the Bosnian Serb army mobilized resources between 11 and 19 July 1995 in order to kill Bosnian Muslim prisoners.

The following examples are taken from this body of evidence: -

(a) Dragan Obrenović commander of the VRS Zvornik Brigade at the time and who confessed in the ICTY to his participation in the massacres acknowledged that the Bosnian Serb Army (VRS) had indeed planned to kill the Bosnian Muslim prisoners. In a conversation with ICTY indictee Drago Nikolić, who was Chief of Security of the VRS First Light Infantry Brigade at the time, Obrenović was told that the prisoners were to be brought to Zvornik to be shot, and that the order came from Ratko Mladić, Chief of the VRS General Staff, and that everyone knew about it, including Obrenović’s commanding officer, ICTY indictee Vinko Pandurević.⁹ He also stated the following:

*...I was in Command of the Zvornik Brigade during the absence of my Commander, Vinko Pandurević, until his return at about midday on 15th July. On hearing of this **plan** [emphasis added] to kill the prisoners I, as acting Commander, took responsibility for the plan and supported the implementation of this plan.¹⁰*

⁵ Krstic Appeal Judgement, para 36, 19 April 2007

⁶ ‘killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group’.

⁷ Documentary timecode 52:00

⁸ Documentary timecode 57:51

⁹ Obrenović Judgement, Annex B.

¹⁰ Obrenović Judgement, Annex B.

(b) Evidence from the exhumations that the Trial Chamber reviewed in the Krstić case shows that most of the victims were not killed in combat but in mass executions. In the mass graves exhumed so far, Tribunal investigators found 448 blindfolds on or with the victims' bodies as well as 423 pieces of cloth, string or wire that were used to tie the victims' hands¹¹. People who were blindfolded or had their hands tied behind their backs were obviously not killed in combat.

(c) Momir Nikolić, VRS Deputy Commander for Security and Intelligence, another individual found guilty by the Tribunal, said clearly that the VRS did not treat the prisoners according to the Geneva Conventions:

Do you really think that in an operation where 7, 000 people were set aside, captured, and killed that somebody was adhering to the Geneva Conventions? ... First of all, they were captured, killed, and then buried, exhumed, buried again. Can you conceive of that, that somebody in an operation of that kind adhered to the Geneva Conventions? Nobody ... adhered to the Geneva Conventions or the rules and regulations. Because had they, then the consequences of that particular operation would not have been a total of 7, 000 people dead¹².

(d) Dragan Obrenović, stated clearly that on 13 July 1995 he became aware of the fact that Bosnian Serb forces captured thousands of Bosnian Muslim prisoners and that the prisoners were to be shot¹³.

Testifying about his role in the Branjevo Military Farm executions, Dražen Erdemović stated that that all but one of the prisoners he saw wore civilian clothes. He also testified that some of them were blindfolded and had their hands tied. He stated that, except for one prisoner who tried to escape, none resisted before being shot¹⁴.

(e) Testimony from the few victims who survived the executions also shows that VRS forces were callously killing civilians or prisoners of war, in serious violation of international humanitarian law. One of the survivors of the Branjevo Military Farm executions related the moment when he was confronted by the firing squad:

When they opened fire, I threw myself on the ground.... And one man fell on my head. I think that he was killed on the spot. And I could feel the hot blood pouring over me... I could hear one man crying for help. He was begging them to kill him. And they simply said "Let him suffer. We'll kill him later."¹⁵

(f) Lastly, killing an enemy soldier in combat is not a war crime. If those buried in the mass graves had indeed been soldiers killed in battle, there would have been no need for Bosnian Serb forces to execute a large-scale cover-up campaign¹⁶. And there is much evidence that proves that is exactly what took place in September and October of 1995.

They used bulldozers and other heavy machinery to exhume a number of the gravesites and move the bodies to other locations. The Prosecution conducted forensic analysis of the 21 mass graves that it exhumed and established that 12 of the primary and secondary sites were linked¹⁷. In the Trial Chamber opinion these cover-up attempts show not only that Bosnian Serb forces committed horrible crimes, but also that they were well aware of the illegality of their actions.

¹¹ Krstić Judgement, para. 75.

¹² *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No.: IT-02-60, Testimony of Momir Nikolić on 25 September 2003, T 1959

¹³ Obrenović Judgement, Annex B.

¹⁴ Krstić Judgement, para. 234

¹⁵ Krstić Judgement, para. 235.

¹⁶ Krstić Judgement, para. 78.

¹⁷ Krstić Judgement, para. 78.

It therefore follows that the genocide ruling also contradicts the following explicit and implied points made in the documentary: -

(a) That the Bosnian Muslim attack on Visnjica on 26. June 1995 was a 'marching order'¹⁸ for the Bosnian Serbs, somehow provoking the events that followed the fall of Srebrenica.

Proceedings before the Tribunal have proven beyond a reasonable doubt that Srebrenica was a planned killing operation and not a spontaneous act of revenge.

(b) That arms supplied to Srebrenica¹⁹ were connected to its ultimate fate²⁰ and the implication that the male inhabitants of Srebrenica could have been spared, had they agreed to lay down their arms²¹.

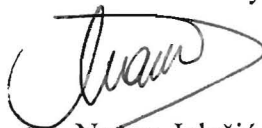
Evidence from the exhumations that the Trial Chamber reviewed in the Krstić case shows that most of the victims were not killed in combat but in mass executions.

(c) That only c.2000 individuals were **executed** in the first 48 hours following the fall of Srebrenica²² and the implication that the remaining numbers killed afterwards were killed as military targets - that those killed were 'company to battalion size groups trying to break through, with civilians with them, to their second core lines around Tuzla²³, who were 'just killed in large numbers by artillery fire, by machine gun fire because the Serbs were able to locate them'²⁴.

*Proceedings before the Tribunal have proven beyond a reasonable doubt that Srebrenica was a planned killing operation and that most of the victims were not killed in combat but in mass executions. In particular, the first instance judgement in the case of Popović and others²⁵, the Trial Chamber found beyond reasonable doubt that 'at least 5,336 individuals were killed in the **executions** [emphasis added] following the fall of Srebrenica. The Trial Chamber also notes that the evidence before it is not all encompassing. Graves continue to be discovered and exhumed to this day, and the number of identified individuals will rise. The Trial Chamber therefore considers that the number could well be as high as 7,826.'*

In conclusion, I would reiterate that I am not questioning any decision as to whether or not to broadcast this documentary. I would, however, ask that should you decide to broadcast any further material which contradicts facts irrefutably established by the ICTY including those related to the Srebrenica genocide, that the ICTY be given the opportunity to present its findings.

Yours sincerely,



Nerma Jelačić
Head of Outreach

International Criminal Tribunal for the former Yugoslavia

¹⁸ Documentary Timecode 41:25

¹⁹ Documentnary Timecode 33:41

²⁰ Documentary Timecode 33:56

²¹ Documentary Timecode 49:57

²² Documentary Timecode 51:28

²³ Documentary Timecode 51:45

²⁴ Documentary Timecode 51:55

²⁵ This first instance Judgement is subject to appeal

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