CRIMES AGAINST SERBS IN THE ČELEBIĆI CAMP

Serbian public opinion frequently accuses the International Criminal Tribunal for the former Yugoslavia (ICTY) of being anti-Serb because of its indictments against Serb accused. What gets little attention in the Serbian media and the statements of Serbian political officials are the ICTY's cases involving Serb victims.

Many do not know that one of the ICTY's first indictments, and the second case to be tried before the Tribunal concerned precisely the suffering of Serb victims. On 10 March 1997, four accused went on trial for crimes they were alleged to have committed against primarily Serb victims in the Čelebići detention camp, located in the Konjic municipality in central Bosnia and Herzegovina, in 1992. The accused were the camp's commander, Zdravko Mucić, his deputy and later the camp commander, Hazim Delić, a guard, Esad Landžo, and Bosnian army commander Zejnil Delalić, who was the coordinator of Bosnian Muslim and Bosnian Croat forces in the Konjic area.

The Tribunal's judges established beyond a reasonable doubt that Serb victims were beaten, tortured, raped and killed at the Čelebići camp, and in their judgement, they describe a number of these incidents. However, the Trial Chamber also stated that the extensive evidence of physical and psychological abuse against the camp's detainees which it reviewed in no way represents the totality of the cruel and oppressive acts committed against them.

Historical Background

In the early 1990s, all ethnicities in the Konjic municipality, located south west of Sarajevo, lived together harmoniously. According to the 1991 census, among the 43,878 people living there, 54.3% were Muslim, 26.2% Croat, 15% Serb, 3% classified themselves as Yugoslav and 1.3% as other. The city of Konjic, in which a third of the municipality's population lived, had a similar ethnic mix. However, as tension and mutual suspicion among ethnic groups increased in Bosnia and Herzegovina in March and April 1992, so it did in Konjic, and the entire country descended into armed conflict.

Serb representatives from Konjic's Municipal Assembly and Executive Council walked out on 17 April 1992 after Bosnia and Herzegovina was recognised as an independent state. Konjic's normal administrative bodies then stopped functioning. In order to continue administering the municipality and ensure its defence, Muslim and Croat officials formed a War Presidency and an interim "Crisis Staff."

By mid-April 1992, Bosnian Serbs had effectively surrounded the town and cut it off from both Sarajevo and Mostar. Having fled their homes, Bosnian Muslims and Croats from the surrounding villages began to arrive in the city of Konjic, while its Serb inhabitants left for Serb-controlled villages.

On 4 May 1992, the first shells landed in the city of Konjic, apparently fired by the Yugoslav National Army (JNA) and other Serb forces from the slopes of the nearby mountains. This shelling, which continued daily for over three years until the war ended, inflicted substantial damage, resulted in the loss of many lives, and made conditions for the surviving population unbearable.

Konjic's defence forces—which at the time consisted of the Territorial Defence (TO), the local Croatian Army (HVO) and the Ministry of the Interior (MUP)—attempted to negotiate with the principal representative of the Serbian people, the Serbian Democratic Party (SDS). After the negotiations failed, Konjic's Defence Forces made plans to launch a military campaign against the

Serb forces. In the course of these military operations, Konjic's Defence Forces detained many members of the Serb population, and a decision was taken to create a facility where they could be housed.

Under an agreement with the JNA, the detainees were held in a former JNA facility located on the outskirts of the village of Čelebići. The Čelebići camp is a relatively large complex of buildings covering an area of about 50,000 square metres, with a railway line running through the middle. It had been used by the JNA for the storage of fuel. Therefore, besides various hangars and assorted buildings, the complex contains underground tunnels and tanks.

Only a small part of the Čelebići camp was used to detain prisoners. The camp consisted of a small reception building and a larger administration building (referred to respectively as "Building A" and "Building B" during the trial); a small building containing water pumps ("Building 22"); a long tunnel ("Tunnel 9") that is 1.5 metres wide, 2.5 metres high and 30 metres long; a fully enclosed large metal building with doors down one side ("Hangar 6"); and a number of manholes. The women who were confined in the camp were housed separately from the other prisoners, at first in Building B and then in Building A.

Although there were some women, the majority of the camp's prisoners were men captured during military operations in the area. It was while they were held there between April and December 1992 that detainees were killed, tortured, sexually assaulted, beaten and otherwise subjected to cruel and inhuman treatment.

From about May until December of 1992, some people and groups of prisoners were released from the camp: some went to another camp, some went for exchange, and others into the protection of the International Committee of the Red Cross. Several also appear to have been released upon the personal intervention of influential persons in Konjic, or through family conditions. The last prisoners were transferred to another camp on 9 December 1992.

All of these events which happened in the Konjic municipality during the war left their effect on the municipality and its people. By 1996, one year after the war in Bosnia and Herzegovina ended, Konjic had lost its harmony and diversity. According to statistics made at the time, 88% of the population was Bosniak, 4% described themselves as Croat, 2% as Serb and 6% as other.

Investigations and Indictment

Investigations into crimes committed in the Konjic Municipality began around November 1994. The first challenge ICTY investigators faced was locating their first witnesses. A number of victims from the Čelebići camp had given statements about what they experienced and witnessed to local non-governmental organisations. ICTY investigators had those statements. However, since they had given their accounts to these organisations, some victims from the Čelebići camp had moved to different places, as far as the United States and Canada. As soon as they located one of their first witnesses who was living abroad, they were able to obtain from them contact information for others, and in this way began piecing together the case.

The second major challenge that ICTY investigators faced was the lack of cooperation from Republika Srpska (RS) and the Federal Republic of Yugoslavia (FRY). A number of the Čelebići camp's victims were residing in these two places, and investigators needed to be able to enter in order to interview them. However, from late 1994 until the first part of 1996, the RS did not allow ICTY investigators access, and they also had problems getting into the FRY.

Despite the difficulty of conducting investigations, the Office of the Prosecutor gathered enough evidence to put together an indictment against four accused for crimes committed in the Čelebići camp from May to November 1992. On 21 March 1996, the Trial Chamber confirmed an indictment against the Čelebići camp commander Zdravko Mucić, his deputy Hazim Delić (who also later served as the camp's commander), a guard Esad Landžo and Bosnian Army commander Zejnil Delalić, who coordinated the Bosnian Muslim and Bosnian Croat forces in the Konjic area.

Esad Landžo and Hazim Delić were primarily charged with individual criminal responsibility, that is, as direct participants in certain of the crimes alleged, including acts of murder, torture and rape (Article 7(1) of the ICTY's Statute). Zdravko Mucić and Zejnil Delalić, on the other hand, were primarily charged as superiors with responsibility for crimes committed by their subordinates (Article 7(3) of the ICTY's Statute), including those that Esad Landžo and Hazim Delić were alleged to have committed. Several counts in the indictment also charged Hazim Delić as a superior with command responsibility.

By mid-June 1996, all four accused were in the Tribunal's custody.

The Trial Chamber Judgement

The Čelebići trial commenced on 10 March 1997 and concluded on 15 October 1998. Many of the persons who testified at the Čelebići trial were victims or others who were also detained at the camp. Each of the victims who testified described witnessing or experiencing acts of violence and cruelty, and living in inhumane conditions without sufficient food, water, medical care, or hygienic and sleeping facilities. After reviewing all the evidence which the Prosecution and the Defence submitted, the Trial Chamber rendered its judgement on 16 November 1998.

Evidence of Inhumane conditions in the Čelebići camp

During the trial, witness testimonies and evidence submitted to the judges showed that detainees in the Čelebići camp were held in inhumane conditions. As soon as the detainees arrived at the camp, they were beaten, and beatings continued throughout their detention on a regular basis. Prisoners were also tortured and murdered, and women were raped (see below for more on individual incidents of these crimes).

The cruel and violent acts committed in the prison-camp, aggravated by their frequent and random nature and threats from the guards put the detainees under immense psychological pressure. The Trial Chamber found that an "atmosphere of terror" prevailed in the camp. Maintaining an atmosphere of terror is one of the elements that constitute the crime of holding people in inhumane conditions.

Insufficient food and inadequate hygienic and sleeping facilities constitute another element of this crime. Hangar 6 had the capacity to hold a large number of prisoners, at one time over 240 people were detained there. The prisoners were assigned places on the floor where they had to remain seated. Very occasionally, they were allowed to leave the room to use the toilet facilities. As the hangar was made entirely of metal, it became extremely hot during the day. The prisoners were allowed no relief: they were not allowed to leave the hangar, there was very little water supplied, and the hygienic conditions in the hangar were horrid.

Tunnel 9 was used to hold at least 80 prisoners, some only for a short time, but others for longer. There was barely any ventilation. The prisoners were not given any blankets, and slept lined up on the concrete floor. The tunnel sloped down towards a steel door before the machine room. It was in

this area that the prisoners urinated and defecated because on many occasions they were not allowed to leave the tunnel for that purpose.

A further element constituting the crime of holding people in inhumane conditions is inadequate medical care. The Trial Chamber heard testimonies from a number of doctors, who said that they could not provide adequate care in the Čelebići camp. The Trial Chamber also heard testimony that when detainees requested medical care, Hazim Delić told them that they would die anyway, with or without such assistance.

On the basis of former detainees' testimonies, the Trial Chamber concluded that, whilst incarcerated in the prison camp, the detainees were deprived of the most basic human needs. The Trial Chamber found Esad Landžo, Hazim Delić and Zdravko Mucić guilty of contributing to the creation and maintenance of inhumane conditions in the Čelebići camp from May to October 1992.

Unlawful Confinement

The ICTY Prosecution also charged Zdravko Mucić and Hazim Delić with unlawfully confining civilians. According to international law, once individuals are detained, prison authorities must have a review process in order to determine whether or not there is a legitimate reason to hold them. As soon as that assessment is made, civilians and children must be released.

During the trial, the judges heard evidence that a Military Investigation Commission was set up in the middle of 1992, in order to establish whether the detainees were responsible for any crimes. Comprising representatives of the police (MUP), the Bosnian Croat Armed forces (HVO) and the Territorial Defence forces (TO), the Military Investigation Commission was to categorise the prisoners according to whether they had been wrongly arrested, whether they were members of the military or not, and whether they should be released.

However, it was made evident during the trial that the Commission had been created as a façade to give the Čelebići camp some semblance of legality. It only worked for one month: its members were so horrified by the conditions the detainees were living in, the injuries they suffered, and the state of terror prevailing in the camp, that they resigned *en masse*.

The Trial Chamber found Zdravko Mucić guilty of unlawfully confining civilians. It found that as he was the Čelebići camp's commander, he had the responsibility to determine whether or not the prisoners were legitimately detained. The Trial Chamber found that he failed to make such a determination, but still kept the prisoners in detention. The Trial Chamber acquitted Zejnil Delalić of this particular count on the basis that he was not in fact the person in command of the camp.

Individual Incidents of Rape, Torture and Murder

In its judgement, the Trial Chamber reviews the evidence for over two dozen incidents of murder, torture, cruel treatment or rape suffered by victims who were mostly Serbian ethnicity. Summarised below are a few of these incidents.

<u>Torture and rape of Grozdana Čečez</u>
Grozdana Čečez, a Serb from a village near the town of Konjic, was taken to the Čelebići camp on 27 May 1992. Upon arrival, Hazim Delić raped her twice in the presence of two other men. Grozdana Čečez expressed the effect that this had on her when she stated: "… he trampled on my pride and I will never be able to be the woman that I was." In the following months, different people raped her on other occasions. Grozdana Čečez lived in constant fear while she was in the prison-camp and once planned on committing suicide. During her testimony, she told the court that

"[p]sychologically and physically I was completely worn out. They kill you psychologically." She was released from the camp on 31 August 1992.

Considering the physical and psychological pain that Grozdana Čečez suffered, the Trial Chamber recognised rape as a form of torture. It found Hazim Delić guilty of torture, and the Appeals Chamber later confirmed this finding. This judgment constituted a landmark decision in the legal protection against sexual violence in armed conflicts.

Cruel treatment of Nedeljko Draganić

Nedeljko Draganić, a Serb from the village of Cerići, was 19 years old when he was arrested and taken to the Čelebići camp on 23 May 1992. He testified that, towards the end of June or beginning of July 1992, Esad Landžo and three other guards tied his hands to a beam in the ceiling and started hitting him with wooden planks and rifle butts, during which he fainted two or three times. Thereafter, he said that Esad Landžo beat him almost every day. On another occasion, Esad Landžo made him sit on the floor and poured gasoline on his trousers and set them alight. "I was never told personally what was the reason for my capture," said Nedeljko Draganic during his testimony, "but [camp commander Hazim] Delić… told us that we were detained because we were Serbs." He was released at the end of August 1992.

The Trial Judges believed the victim's testimony and convicted Esad Landžo for wilfully causing great suffering to Nedeljko Draganić and treating him cruelly.

Inhumane Acts Against Milenko Kuljanin and Novica Đorđić

Hazim Delić was accused of using a device emitting electrical current to inflict pain on detainees, including Milenko Kuljanin, a 24 year-old waiter, and Novica Đorđić, a 23 year-old rail transportation worker, both of whom were from villages near Konjic. On one occasion, Hazim Delić walked into Tunnel 9 and gave Milenko Kuljanin two electric shocks on his chest. On another occasion, he made Novica Đorđić sit on a stone block, naked from the waist up, and applied the device to his chest, despite his pleas for mercy. After the shock, Novica Đorđić fell off the block whereupon Hazim Delić caught him by the leg and kept the device on his chest for a prolonged period of time. The electric shocks caused pains, burns, convulsions, twitching and scarring, and frightened the victims and the other detainees.

The evidence further established that Hazim Delić derived sadistic pleasure from using this device. Novica Đorđić stated that it was like a "toy" for him, while Milenko Kuljanin testified that Hazim Delić laughed when he used the device on him and found it funny. The Trial Chamber found that Hazim Delić intentionally caused serious physical and mental suffering and found him guilty of inhuman and cruel treatment.

Torture and cruel treatment of Mirko Đorđić

Mirko Đorđić, a Bosnian Serb from the village of Bradina in the Konjic municipality who participated in his village's defence, was captured on 28 May 1992 and transferred to the Čelebići camp two days later. Throughout his detention, Esad Landžo subjected Mirko Đorđić to extremely harsh treatment. In June 1992, Landžo took Mirko Đorđić out of Hangar 6 where he was being held, put a piece of metal in his mouth and started hitting him with a baseball bat on his legs and rib cage. When Mirko Đorđić fell down and fainted, Esad Landžo would make him stand up and then beat him more. Landžo regularly forced him to do push ups and then beat him. On another occasion, Landžo forced Mirko Đorđić to open his mouth and placed a pair of heated pincers on his tongue, thereby burning it as well as his mouth and lips. Landžo then put the pincers into Mirko Đorđić's ear.

On the basis of the evidence, the Trial Chamber found Esad Landžo guilty of torture.

Killing of Boško Samouković

Boško Samouković was a Bosnian Serb, also from the village of Bradina. He was 60 years old when he and his two sons were arrested and brought to the Čelebići camp. A few days after an incident in July 1992, when a number of Bosnian military policemen were attacked and killed near his village, Esad Landžo selected Boško Samouković from among the detainees in Hangar 6. Landžo beat him with a wooden plank, which was ordinarily used to secure the door of the hangar. He beat him so mercilessly that Boško Samouković died 15 to 20 minutes later in the camp's makeshift infirmary.

The Trial Chamber came to the conclusion that the only reason Esad Landžo assaulted Boško Samouković was because he was a Serb from Bradina and thus somehow deserving of punishment for the acts of other Serbs from the village who killed several Bosnian police officers. The Trial Chamber found Esad Landžo guilty of wilfully killing Boško Samouković.

The Trial Chamber found the accused guilty of other crimes as well. Among them, the Trial Chamber found that under Zdravko Mucić's command eight detainees died from being beaten by guards, a detainee was shot while trying to escape from a beating, and a number of other detainees were beaten, including with rifle butts, wooden planks and metal objects. It found that Hazim Delić violently raped two women and severely beat a detainee over a period of several days, resulting in his death. The Trial Chamber also found that Esad Landžo beat a detainee between the ages of 60 and 70 and nailed an SDS badge to his forehead, resulting in his death.

The Appeals Judgement

Hazim Delić, Zdravko Mucić, and Esad Landžo appealed the Trial Chamber's judgement, while the Prosecution appealed Zejnil Delalić's acquittal. One of the most important issues on appeal was the responsibility of Zdravko Mucić and Zejnil Delalić, whom the Prosecution alleged as having been the camp's commanders. On 20 Februray 2001, the Appeals Chamber confirmed the Trial Chamber's finding that Zdravko Mucić was the camp's commander, that he was responsible for the inhumane conditions in the camp, the mistreatment of the detainees and other criminal acts, and upheld his conviction.

As regards Zejnil Delalić, the Appeals Chamber found that the Trial Chamber was correct in finding that although Delalić had some involvement with the prison, there was no substantial evidence demonstrating that he had been the supreme military commander over the camp. The Appeals Chamber thus affirmed Zejnil Delalić's acquittal.

The Appeals Chamber upheld Esad Landžo and Hazim Delić's convictions, but acquitted Delić of one of the incidents of wilful killing for which he was convicted. The Appeals Chamber remitted to a new Trial Chamber a number of issues relating to the adjustment of the sentence. On 9 October 2001, the Trial Chamber rendered its second sentencing judgement and sentenced Zdravko Mucić to 9 years' imprisonment, Hazim Delić to 18, and Esad Landžo to 15. The Appeals Chamber later confirmed these sentences.

The future

The Čelebići trial was a milestone in international law: it was the first time that an international criminal court pronounced on the concept of command responsibility since the Nuremburg and Tokyo trials following World War II. It was also the first time that a court found rape to be a form of torture and convicted an accused on this basis. To this day, the Čelebići trial judgement is referenced in other judgements not just before the ICTY, but also before other courts dealing with war crimes cases.

However, the most important achievement of the trial was that it established facts about the suffering of Serb victims in the Čelebići camp beyond a reasonable doubt. As a result of the conclusions by the Trial Chamber and the Appeals Chamber, the crimes that were committed at the Čelebići camp can no longer be denied. It is hoped that this brings some measure of peace to the Čelebići camp's victims, many of whom continue today to suffer from the physical and psychological consequences of the crimes they were subjected to or witnessed.

While the Tribunal brought to justice several of those who perpetrated crimes in the Konjic municipality, it was not able to deal with all of them. For years now, the Tribunal has been working in partnership with local courts in their efforts to continue to hold perpetrators accountable for crimes committed in the former Yugoslavia, and will continue to do so in the years to come. But it is now up to local courts to investigate and try crimes committed in Konjic and the rest of the former Yugoslavia, in order to see justice done, and in order to ensure that such crimes never happen again.