

Lecture 9

4 May 2006

Ethnic conflict
Genocide

International Criminal Court (ICC)

- The International Criminal Court (ICC) is the first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished.
- The Court shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of the Rome Statute.
- The Rome Statute of the International Criminal Court was established on 17 July 1998, when 120 States participating in the "United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court" adopted the Statute. The Statute entered into force on 1 July 2002. Anyone who commits any of the crimes under the Statute after this date will be liable for prosecution by the Court.

ICC

- so far, the Chief Prosecutor has decided to open investigations into three situations:
- 23.06.2004 - The Democratic Republic of the Congo
- 29.07.2004 - The Republic of Uganda
- 06.06.2005 - The Darfur, Sudan

War crimes

- The ICC defines "war crimes" as "Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Wilful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Wilfully causing great suffering, or serious injury to body or health;
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) Unlawful deportation or transfer or unlawful confinement;
 - (viii) Taking of hostages.“

War crimes

- Of relevance is the list of "other serious violations of the laws and customs applicable in international armed conflict," specifically:
- Intentionally directing attacks against the civilian population ... [or] civilian objects
- Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage expected
- Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives
- Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion
- Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices
- Committing outrages upon personal dignity, in particular humiliating and degrading treatment
- Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies ...

Crimes against humanity

- any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ... or other grounds that are universally recognized as impermissible under international law ...;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Genocide

- "Genocide" is perhaps the most extreme crime against humanity; the term refers to destruction of human groups and their members, by murder and possibly other means
- this is using both the U.N. Convention* and the ICC definition of genocide:
- * adopted by the General Assembly in December 1948; entry into force 12 January 1951; being enforced only in the 1990s; 135 states are parties to the Genocide Convention but 52 Nations are NOT, including Indonesia, Japan and Nigeria

Genocide

- The legal definition of genocide, enshrined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the statutes of the new International Criminal Court (ICC), is:
- "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such;
- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group“ (I and II)
- Article III specifically makes “attempt...”, "conspiracy to commit genocide," "incitement to commit genocide," and "*complicity in genocide*" as punishable, regardless of "whether they are [carried out by] constitutionally responsible rulers, public officials or private individuals." (Article IV)

Genocide

- "Genocide is a form of one-sided mass killing in which a state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator" (Frank Chalk and Kurt Jonassohn *The History and Sociology of Genocide* , 1990).
- "Genocide in the generic sense is the mass killing of substantial numbers of human beings, when not in the course of military forces of an avowed enemy, under conditions of the essential defenselessness and helplessness of the victims". (Israel W. Charny in *Genocide: Conceptual and Historical Dimensions* ed. George Andreopoulos, 1994).
- "Genocide is sustained purposeful action by a perpetrator to physically destroy a collectivity directly or indirectly, through interdiction of the biological and social reproduction of group members, sustained regardless of the surrender or lack of threat offered by the victim". (Helen Fein *Genocide: A Sociological Perspective*, 1993/1990).

Genocide

- "genocides and politicides are the promotion and execution of policies by a state or its agents which result in the deaths of a substantial portion of a group. The difference between genocides and politicides is in the characteristics by which members of the group are identified by the state. In genocides the victimized groups are defined primarily in terms of their communal characteristics, i.e., ethnicity, religion or nationality. In politicides the victim groups are defined primarily in terms of their hierarchical position or political opposition to the regime and dominant groups" (Barbara Harff and Ted R. Gurr "Toward empirical theory of genocides and politicides," *International Studies Quarterly* 37, 3 [1988]).
- "the concept of genocide applies *only* when there is an actualized intent, however successfully carried out, to physically destroy an *entire* group (as such a group is defined by the perpetrators)" (Steven T. Katz *The Holocaust in Historical Perspective*, Vol. 1, 1994).

Genocide

- Adam Jones adapts Steven Katz's definition of genocide (with the italicized phrase): "the actualization of the intent, however successfully carried out, to murder *in whole or in substantial part* any national, ethnic, racial, religious, political, social, gender or economic group, as these groups are defined by the perpetrator, by whatever means."

Interahamwe in Rwanda, 1994
 (“those who attack together”)



ICTR

- International Criminal Tribunal for Rwanda
- Established in November 1994 by the UN
- Based in Arusha, Tanzania
- In September 1998 the Tribunal issued its first conviction on charges of genocide
- This marked the first time ever that a suspect was convicted by an international tribunal for the crime of genocide

ICTY

- The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by Security Council resolution 827. This resolution was passed on 25 May 1993 in the face of the serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, and as a response to the threat to international peace and security posed by those serious violations.
- The ICTY is located in The Hague, The Netherlands.

Objectives of the ICTY

- to bring to justice persons allegedly responsible for serious violations of international humanitarian law
- to render justice to the victims
- to deter further crimes
- to contribute to the restoration of peace by holding accountable persons responsible for serious violations of international humanitarian law

Jurisdiction of the ICTY

- The Tribunal's authority is to prosecute and try four clusters of offences:
- Grave breaches of the 1949 Geneva Conventions.
- Violations of the laws or customs of war.
- Genocide.
- Crimes against humanity.

Consequences

- By holding individuals accountable regardless of their position, the ICTY's work has dismantled the tradition of impunity for war crimes and other serious violations of international law, particularly by individuals who held the most senior positions, but also by others who committed especially grave crimes
- Thanks to the ICTY, the question is no longer *whether* leaders should be held accountable, but rather *how* can they be called to account. The effect of criminal prosecutions and proceedings on leaders, be they civilian or military, local or national, is their removal from office permanently if found guilty
- **By trying individuals on the basis of their *personal* responsibility, be it direct or indirect, the ICTY *personalizes* guilt. It accordingly shields entire communities from being labelled as collectively responsible for others' suffering.**
- For the first time in legal history, an indictment was filed, by the ICTY Prosecutor, against an acting Head of State, Slobodan Milosevic, for crimes allegedly committed while he was in office. Other individuals holding the highest political and military office have also been indicted. This paves the way for the reconciliation process within the war-torn societies of the former Yugoslavia.

Consequences

- Admissions of guilt from a number of accused have contributed to the establishment of the facts. In his Plea Agreement, Dragan Obrenovic provided valuable insider military information and cooperated well beyond what was required under the Agreement. Obrenovic made the following statement during his Sentencing Hearing,
- *"In Bosnia, a neighbor means more than a relative. In Bosnia, having coffee with your neighbor is a ritual, and this is what we trampled on and forgot. We lost ourselves in hatred and brutality. And in this vortex of terrible misfortune and horror, the horror of Srebrenica happened. ... I will be happy if my testimony helps the families of the victims, if I can spare them having to testify again and relive the horrors and the pain during their testimony. It is my wish that my testimony should help prevent this ever happening again, not just in Bosnia, but anywhere in the world."*
- The determination beyond reasonable doubt of certain facts is crucial in combating denial and preventing attempts at revisionism. It is now not tenable for anyone to dispute the reality of the crimes that were committed.

Key figures of ICTY cases

- the tribunal has indicted 161 persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia
- 53 accused are currently in custody at the UN ICTY detention unit
- 17 accused are on provisional release
- 43 accused have been found guilty
- 8 persons have been acquitted
- 4 persons have died while in custody of the ICTY (1 committed suicide while at the UN ICTY Detention Unit)
- 6 accused are at large: Radovan Karadzic, Ratko Mladic, Stojan Zupljanin, Vlastimir Djordjevic, Goran Hadzic, Zdravko Tolimir



PERSONS PUBLICLY INDICTED BY THE ICTY FOR WAR CRIMES

Warrants of Arrest are issued on behalf of the
International Criminal Tribunal for the former Yugoslavia



BORĐEVIĆ
Vlastimir (Son of Stojan)
Born: 17.11.48
Kosara, Vukodina Hrs, Serbia & Montenegro
Warrant date: 02.10.03
Alias: Roda



HADŽIĆ
Goran (Son of Branko)
Born: 07.09.55
Vukovci, Croatia
Warrant date: 04.06.04
No known alias



KARADŽIĆ
Radovan (Son of Vuk)
Born: 19.06.45
Petajica, Serbia & Montenegro
Warrant date: 25.07.95
Alias: Rača



MLADIĆ
Ratko (Son of Nedjo)
Born: 12.03.42
Božanovići, Bosnia & Herzegovina
Warrant date: 25.07.95
No known alias



TOLIMIR
Zdravko (Son of Stanko)
Born: 27.11.45
Glamoč, Bosnia & Herzegovina
Warrant date: 10.02.05
No known alias



ŽUPLJANIN
Stojan (Son of Aleksandar)
Born: 22.09.51
Maslovan, Kotor Varoš, Bosnia & Herzegovina
Warrant date: 14.03.99
No known alias

Updated as of

**8 DECEMBER
2005**

Please note that
appearances may have
changed.

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Unit, ICTY/OTP

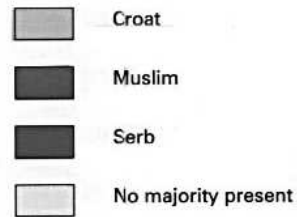
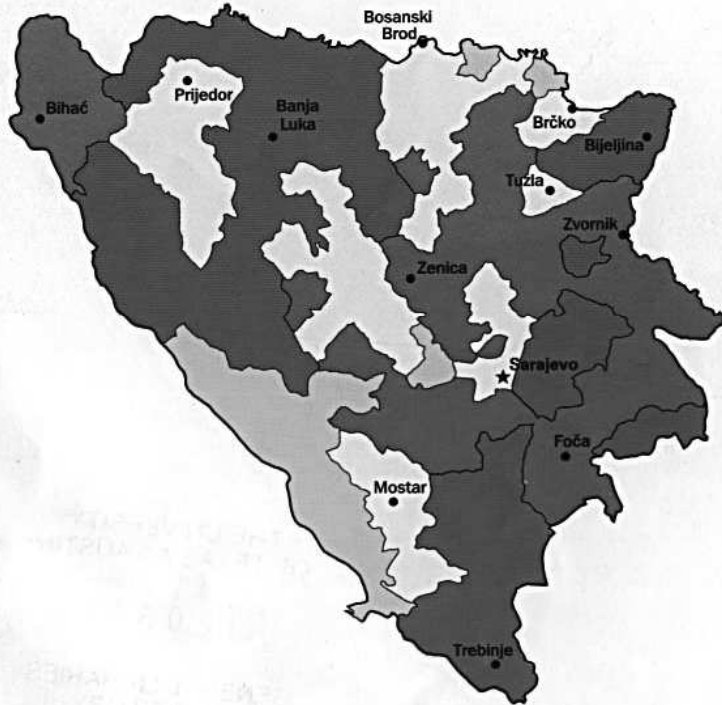
Ethnic cleansing

- Drazen Petrovic (1994) “Ethnic Cleansing - An Attempt at Methodology”
European Journal of International Law:
- "Ethnic cleansing is a literal translation of the expression *etnicko ciscenje* in Serbo-Croatian/Croato-Serbian. The origin of this term ... is difficult to establish. Mass media reports discussed the establishment of 'ethnically clean territories' in Kosovo after 1981. At the time, it related to administrative and non-violent matters and referred mostly to the behaviour of Kosovo Albanians towards the Serbian minority in the autonomous province within the SFRY.
- The term derived its current meaning during the war in Bosnia and Herzegovina... As military officers of the former Yugoslav People's Army had a preponderant role in all these events, the conclusion could be drawn that the expression 'ethnic cleansing' has its origin in military vocabulary. The expression *to clean the territory* is directed against enemies, and it is used mostly in the final phase of combat in order to take total control of the conquered territory.
- It is important to underline ... that the policy of ethnic cleansing fundamentally represents a violation of human rights and international humanitarian law... Only when the means and methods of ethnic cleansing policies can be identified with genocidal acts, and a combination of different elements implies the existence of intent to destroy a group as such, can such actions represent genocide. ... Behind most policies of ethnic cleansing in former Yugoslavia are not historical factors, but very precise strategic interests of the current political leadership.”

Bosnia and Herzegovina



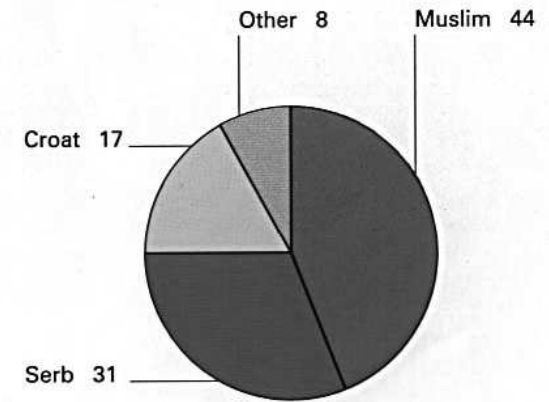
Ethnic Majorities



Based on *opstina* data from preliminary 1991 census.

Population Structure

Percent



Data from preliminary 1991 census.

Useful links for further reference

- Geneva Conventions:
<http://www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions>
- <http://www.yale.edu/lawweb/avalon/lawofwar/geneva03.htm>
- UN Convention on the Prevention and Punishment of the Crime of Genocide:
http://193.194.138.190/html/menu3/b/p_genoci.htm
- <http://www.hrweb.org/legal/genocide.html>
- International Criminal Tribunal for Rwanda:
<http://69.94.11.53/default.htm>
- ICTY:
<http://www.un.org/icty/>
- ICC:
<http://www.icc-cpi.int/home.html&l=en>

Readings for Lecture 10

- If you have not read these texts yet, read:
- From the “*Ethnicity*” Oxford reader (Hutchinson & Smith, 1996):
- Leo Kuper “Genocide and the Plural Society”
- Helen Fein “The Armenian Genocide and the Holocaust”
- Sammy Smooha & Theodor Hanf “Conflict-Regulation in Deeply Divided Societies”
- From the pdf files on the info system, read:
- “National Tolerance in the Former Yugoslavia”