

# **The International Tribunal and Beyond: Pursuing Justice for Atrocities in the Western Balkans**



**DECEMBER 12, 2017**

**Joint Briefing of the  
Commission on Security and Cooperation in Europe  
and the Tom Lantos Human Rights Commission**

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**Commission on Security and Cooperation in Europe**  
**234 Ford House Office Building**  
**Washington, DC 20515**  
**202-225-1901**  
**csce@mail.house.gov**  
**<http://www.csce.gov>**  
**@HelsinkiComm**

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The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys numerous missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <[www.osce.org](http://www.osce.org)>.

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The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

The Commission consists of nine members from the United States Senate, nine members from the House of Representatives, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair rotate between the Senate and House every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <[www.csce.gov](http://www.csce.gov)>.

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**December 12, 2017**

## **Commission on Security and Cooperation in Europe Washington, DC**

The briefing was held at 10:07 a.m. in Room 2255, Rayburn House Office Building, Washington, DC, Robert Hand, Policy Advisor, Commission for Security and Cooperation in Europe, presiding.

*Panelists present:* Hon. Randy Hultgren; Hon. Eliot L. Engel; Robert Hand, Policy Advisor, Commission for Security and Cooperation in Europe; Serge Brammertz, Chief Prosecutor, International Criminal Tribunal for the former Yugoslavia; Nemanja Stjepanović, Humanitarian Law Fund (via videoconference); and Diane Orentlicher, Professor of Law, Washington College of Law, American University.

Mr. HAND. OK, I think it's time for us to begin our briefing this morning. We may be joined in a few minutes by Representative Randy Hultgren of Illinois and also Representative Eliot Engel of New York. My name is Robert Hand. I'm a policy adviser at the Commission on Security and Cooperation in Europe, better known as the U.S. Helsinki Commission, and I'd like to welcome you to this joint briefing of the Tom Lantos Human Rights Commission and the U.S. Helsinki Commission. Both commissions and their members are dedicated to ensuring that human rights and democracy are integrated elements of U.S. foreign policy.

The Tom Lantos Commission is co-chaired by Mr. Hultgren, as well as Representative Jim McGovern of Massachusetts, while the Helsinki Commission is chaired by Senator Roger Wicker of Mississippi and Representative Chris Smith of New Jersey.

Today's briefing has been organized in light of the closing of the International Criminal Tribunal for the former Yugoslavia, better known as ICTY, which has sought to hold individuals accountable for serious violations of international humanitarian law, including war crimes, crimes against humanity, and genocide.

The conclusion of the international tribunal's work, much of it unprecedented since World War II, obviously means time for an assessment. It is also time to take note of the issues regarding justice which remain in the Western Balkans and to shift our focus from the international efforts to the national level or efforts by the countries of the region to deal with the outstanding cases that remain.

As the moderator, I will turn to each of today's panelists to provide that assessment and to describe the shift of focus from their perspectives. Given my own three decades of experience as a policy adviser at the Helsinki Commission following the Western Balkans—before, during and since the Yugoslav conflicts of the 1990s—let me instead just briefly describe some of the challenges as I saw them along the way, from the beginning to today.

While there was widespread concern and even outrage over events in the second half of 1991 and early 1992, that early period was frankly dominated by a lot of wishful thinking about negotiating a quick end to the fighting. It was really not until the summer of 1992, with the revelation of Serb-run camps in northwestern Bosnia, such as Keraterm, Omarska, and Trnopolje, and other, associated atrocities, when policymakers realized that the horrific nature of what would be an ongoing series of Yugoslav conflicts necessitated a response of its own.

It was at that time that efforts leading to the creation of a tribunal began in earnest, with considerable support from government officials, certainly from members of Congress, and also from the broader human-rights community. Once formed in May 1993, the challenge turned to taking the tribunal's goals seriously, especially while the conflict was still taking place. International negotiations with those responsible for criminal acts created concern that impunity would be traded for peace, as numerous other compromises were being made to end conflict.

By the time the conflict erupted in Kosovo in the late 1990s, however, it became increasingly evident that such deals would not lead to the long-term stability the region really needed. Therefore, justice would be pursued.

The next challenge, therefore, was implementation, by which I mean arresting or capturing and transferring to The Hague those individuals indicted by the international tribunal. The initial focus was focused on the need to convince NATO-led peacekeepers, who considered their main task to be to prevent new hostilities, to help capture at-large indictees. Over time they did.

Attention then turned to the responsibility of the governments of the Western Balkan countries themselves to locate, arrest, and transfer. While some did cooperate, others hesitated or resisted. And it was not until 2011, when Serbia apprehended and transferred Ratko Mladić in May and Goran Hadzic in July, that all those indicted by ICTY finally found themselves in The Hague.

Meanwhile, there was the ongoing work of the tribunal itself; 161 indictments, I believe, overall led to more than 10,000 trial days that included more than 4,500 witnesses, all of which needed to be handled properly, according to the rules of procedure. Witnesses to crimes needed to be found and assisted in order to make their testimony possible, which was a tremendous undertaking. Those convicted, which were a majority of those indicted, needed a place to serve their sentences.

And this is just the obvious. To somebody who isn't a lawyer, hasn't worked in a tribunal, I'm sure that underneath that there's a whole host of other things that needed to be done. It was truly a great logistical undertaking.

Finally, as the workload increased, capacity became a challenge, given the numbers of crimes committed. The international tribunal was created in part because the countries of the region lacked the capacity themselves to hold individuals accountable for the egregious crimes we remember today. But the countries still needed to develop a capacity by

forming special chambers of their judicial systems, with international urging and assistance. Doing so would not only help complete the effort, but bring justice closer to where the crimes were actually committed and hopefully have more impact. This, of course, was also easier said than done. But the alternative is no justice in some important cases.

That brings us to today. I point out these past challenges because we often think that we inevitably end up as originally planned, and we fail to consider the incredible commitment and decisive moments that steer events to our current reality and not to some other. We need not only to look at the outcome we reached, but also understand how we reached that outcome in order to move forward from here.

And in short, I think that we cannot take justice for granted today and assume it will be served. And certainly we cannot conclude that ICTY's closing means the pursuit of justice has been completed.

Now, to help provide an assessment of where we are at this turning point in the pursuit of justice, we first have the international tribunal's current chief prosecutor—the fourth, I believe, in the history of the court—Serge Brammertz of Belgium. There is probably nobody right now more qualified to speak on today's topic than he. We are truly honored to have him here with us at this important time.

We will then hear from Nemanja Stjepanović, who is up on the screen to my right, to the audience's left, who is a member of the team of the Humanitarian Law Center in Belgrade. The center, under the early leadership of Natasa Kandic, has done incredible work to document atrocities and report on them in a serious and professional way—and with some risk, I would add—leading to concrete action.

It is very promising to see a new generation of human-rights advocates in Belgrade carrying on this work that is so vital.

Nemanja, we look forward to hearing your views as well.

Finally, we have Diane Orentlicher, a professor of law at the Washington College of Law at American University, who has long studied the work of the tribunal and its impact on the countries in the region. She has participated in hearings and briefings of both the Helsinki Commission and the Tom Lantos Human Rights Commission in the past, and we are glad to have her back today for her assessment.

The biographies of all of our panelists have been made available. So I will turn to each in turn for short remarks, followed by a question-and-answer period. I hope that members of the audience who come to the microphone will identify themselves and ask short, clear questions. And I should mention that the comments of some of our speakers may be officially constrained by other unresolved issues regarding the Western Balkans, such as recognition of Kosovo statehood or the name Macedonia. We're under different constraints, and so we may refer to these things in different ways. Until those issues are resolved, I prefer to acknowledge them here, up front and at the beginning, so that we can have a productive discussion of the central issue of the briefing, with an understanding of differing institutional positions.

So with that, let me turn to Dr. Brammertz for his remarks. If the members of Congress come in, depending on where you are, I may interrupt or I may just wait until you're finished with your remarks before turning to the members.

Dr. Brammertz.

Dr. BRAMMERTZ. Good morning, everyone, excellency; nice to see all of you. Thank you very much for inviting me to give a short briefing on where we are after 24 years

of judicial activities in The Hague, what is the current situation, and what do we think will be the challenges for the future.

We have all seen, over the last two, three weeks, the events in The Hague, with the Mladić judgment being one of the most important in the history of the tribunal; Praljak's judgment, with everything coming with it, as you have seen. The irony was that this case got 100 times more attention in the media than we would have expected, given all the attention to the crimes of those individuals who were convicted for many other thousand victims, which, you know, are perhaps a little bit underreported compared to crimes committed by others.

With last week our closing ceremony at the Security Council last session there, after 24 years of existence, and we, while accepting that of course everything can be better—everything can always be better—we really think that the tribunal had credible results. This was very much the conclusion of almost all members of the Security Council, making it clear that it was very much “mission accomplished.” And when we speak with the member Security Council in the 1990s, when the tribunal was set up, if people back then would have known that at the end of the day 161 individuals would have been indicted, I think they would have even signed more easily.

So I think that the results are critical. You mentioned already 161 indictments, more than 90 convictions, more than 15 acquittals. It's also important that in a court of law it's not automatic that there are convictions; a few acquittals, which we were very unhappy with, others which were the result of witness interference or not sufficient evidence, but that's how it is; no fugitives at large, which I think is a very, very important result in the sense that we are today the only international tribunal with no fugitives at large.

I remember very well, when I had the privilege of being appointed by the Security Council 10 years ago in my current function, there was a lot of pessimism about any chance of having one day Karadžić and Mladić arrested. And meeting with Bosnian victims' organizations 30 times over those 10 years, this has always been the number one request: We want and we need to see Karadžić and Mladić convicted in order to move forward. And today both are convicted, which I think is an important result.

But, of course, it's not only about figures and statistics. We all know that behind all those cases are many victims who lost their lives, and many survivors, who for many they still don't know where their loved ones are. So the issue of missing persons is something we are still trying to put high on the agenda, because for many, many families to move forward, as long as they don't know where their loved ones are, it's very difficult.

I don't have to speak about the crimes. Many of you are from the region. You know all the atrocities which have been committed. The ethnic-cleansing campaigns in Croatia and Kosovo, but of course in Bosnia-Herzegovina, with the shelling and sniping of the city of Sarajevo. And, you know, I have still always on my desk a book I got from the association of parents of killed children during the siege of Sarajevo, pictures of the more than 1,500 children.

And every time I have visitors mentioning that this is a conflict which is 25 years old, it's time to move forward, well, I like feeling—having people feeling a little bit embarrassed by showing these photos; say, look, those are not issues of yesterday. This is still in the center of the life of people today; all this to say that it is very, very much present still in the minds of many, many people.



And what I wanted to do today is, we need to speak about three of our lessons learned, three key reflections. Just three elements which I would say are important in our experience and in terms of lessons learned.

First one, cooperation. You know, having been a prosecutor, prosecutor general in Belgium for 15 years, it's relatively easy to work in a quite secure environment. You have the support by everyone. You work in the national context. Almost 100 percent of your work is conducting investigations abroad. So you really very much rely on cooperation.

Cooperation together mandate, which is something you mentioned already, how important it was that the number of European capitals, but also very much Washington at that time, was pushing very hard to make sure that the Security Council took the political decision to set up a tribunal. We all know that all international accountability mechanisms are always the result of a political decision. And we all know that today it is quite much more difficult than in the 1990s, at the end of the day, to get a consensus at the international level to put accountability mechanism in place.

So the early 1990s, I think, was really, from a political consensus and a political willingness, to fight impunity, I think an extremely important moment where your country and many others played an important role.

But cooperation has been and the support for cooperation has really been in the center of our work for many years, because my predecessors had many difficulties during a number of years to access military archives, to access witnesses, to access documents in general. And the arrest of fugitives, as I mentioned already, has been a big, big challenge since the beginning.

And we got from many administrations—in fact, all administrations since the creation of the tribunal—a lot of support in order to be successful. And we have really learned that all conditionality policies were, at the end of the day, the most efficient tool to nicely but surely force countries in the region to cooperate.

You remember all very well that in relation to the arrest of Milošević, it was very much on American pressure. It was the day before the U.S. was organizing a donor conference that finally he was surrendered to The Hague. So it was obviously extremely important support at that time.

Since I took over office, it is obvious that the conditionality policy put in place by the European Union has really been instrumental linking the EU enlargement process directly with a full cooperation with our office. So every six months we were preparing reports to the Security Council, but also I had a number of meetings with the European Council of Ministers.

And based on our assessment, while our job was, of course, not to say who should or shouldn't move to the next level in EU enlargement, we were very pleased to see that politicians, governments, were taking our reports into consideration for not moving to the next level. And personally, I'm absolutely convinced if there would not have been the international support by the U.S., by the European Union and others, we would not have had a judgment, a life sentence for General Mladić, two years in court. I really want to be clear on this point.

And the lesson learned here is very, very clear. International justice, international tribunals, accountability mechanisms, can only be successful if there is a clear political support and if the political agenda is going in the same direction, you can be successful. And it is definitely one of the lessons learned at our tribunal.

Second element—and, of course, I could speak hours about the legal legacy. As the first tribunal after Nuremberg, it is obvious that the experiences we had, the way we were working, the structure put in place, it was very much also the basis for the creation of many other tribunals—the Rwanda tribunal, Sierra Leone, Cambodia, Lebanon—and also for the International Criminal Court, which has taken over a number of practices we have used.

Jurisprudence. Of course, jurisprudence is extremely large and is used in many countries around the world in relation to command responsibility, in relation to the law on genocide. But one area I really would like to say a little bit more about is conflict-related sexual violence, where, by the way, we had a big conference on in Sarajevo very recently, a few months ago, where we had the opportunity to show the Bosnian version of a book we wrote together with a number of colleagues on all our experiences over 25 years of prosecution of conflict-related sexual violence, where in the early days, in our early cases, we had relatively little success in getting commanders convicted for crimes committed by their soldiers in relation to sexual violence. Why? Because sexual violence was considered as not being linked to the conflict. It was considered as opportunistic and not as a weapon of war.

Later on our jurisprudence, which was much more clear in accepting sexual violence as torture, accepting sexual violence as enslavement, and convicting a number of commanders for the sexual violence committed by their soldiers because they considered those crimes as being foreseeable, this is very important jurisprudence I wanted to mention, which, as I said, we collected—translated already in the languages of the region that which will be a very important tool for training in the future.

And the third point I wanted to make is what we have learned, that to be successful and to really have impact in terms of looking for accountability, you need, when possible and where possible, an integrated approach between the international level and the national level. You know, the ICTY was put in place as the tribunal with primacy over national jurisdiction. So it has always been the rule that the ICTY could take whatever cases we wanted to take from the region if we thought that our jurisdiction was triggered.

And it was only after 2004 when the Security Council decided about the completion strategy that we had to transfer as many cases as possible to the region and should only keep the most important ones. And this has somehow forced us to start working much more intensively with the colleagues in the region. And the results today are really very much visible in Bosnia-Herzegovina, but also in Croatia and in Serbia, despite many problems.

For example, we have more than 9 million pages of documents in relation to the conflict. And we organized remote access for prosecution offices in the region to access our not confidential part of the databases. We put in place over the last 10 years, with the financial support of the European Commission, liaison prosecutors.

So I have, for the last 10 years, a Bosnian, a Serbian and a Croatian prosecutor physically in our office, having access to our databases, and using those information in the region. And we have really seen that this is a very efficient way of working. It is reducing the famous impunity gap we are always speaking about, that if you have an international accountability mechanism, international tribunal, which is only dealing with 5, 6, 10 accused, and the thousands of perpetrators which are on the ground, which are much more visible for the victim's community, are not prosecuted, I think you have a major problem.

And having been in Sarajevo a few weeks ago, there are still 3,000 cases ongoing in relation to crimes committed in Bosnia-Herzegovina, which makes it obvious that if we want to have impact, we need an integrated approach. I mentioned already that we had 161 indictments at our tribunal. It is a lot. It is, in fact, more than all other tribunals together. But it's very little if we look at the number of crimes which have been committed.

So in conclusion, well, what will happen, what is the future? Is it over with the closure of the ICTY? Of course not. If the ICTY is closed, if the Security Council took this decision, it is not because the work is over but because the Security Council is of the opinion that one should not trust more than in the past national jurisdictions to do their work. It will be a difficult challenge. I have to say that the quality of cooperation among countries in the former Yugoslavia went backwards over the last few years. This is a reality we have seen.

You have seen all the comments over the last weeks by, I think, irresponsible politicians glorifying the war criminals. And it's always trying, as a number of the accused have tried in the courtroom, to paint the picture of, well, our people and our country is at trial, where we, of course, always insisted on the individual criminal responsibility. We are prosecuting individuals for their crimes and for their crimes alone, and are never prosecuting countries and people. But we have seen over the last weeks that we are far from achieving reconciliation in this regard, and that many politicians unfortunately are playing a negative role in this regard. But I'm personally absolutely convinced that, without all the work the ICTY has done and without the work national prosecutors are doing, so without accountability there would be no chance of seeing reconciliation being successful one day.

So the work we are doing—and my colleagues are doing the region—is not sufficient to achieve reconciliation, but I think it is really an important starting point. And very pleased to see our friends from the civil society world—you know, all those are—they're an exceptionally important work, and I really want to use this opportunity to ask for your support, of course, for prosecutors in the region, because there is a lot of work still to be done, but also for civil society because it is much more difficult job than the job we are doing with the mandate of the Security Council, because if you have to work in a society where the political leadership, where large part of the populations is not supporting you, I think it is extremely difficult and even more important to do the work Natasa Kandic with the organization and many others are doing.

You know, as a kind of anecdote, I saw today in the media—you saw perhaps that there was again a big event in support of the Croatian convicted war criminals in Zagreb yesterday—so we've a lot of, you know, music and speeches and considering all individuals as heroes, but there was one organization, one NGO calling for a kind of work in support of the victims of the crimes committed by those individuals—so only one small NGO having the courage to take these kind of steps. I very often believe more in the new generation than in a number of individuals who are today in power.

I thank you very much for your attention, for your support, and of course I'm happy to answer all questions you may have.

Thank you.

Mr. HAND. Thank you very much, Dr. Brammertz.

Before we turn to the Humanitarian Law Center, let me first give the floor to Representative Randy Hultgren of Illinois, who, as I mentioned earlier, is co-chair of the Tom Lantos Human Rights Commission. He's also one of my bosses, being a member of the U.S. Helsinki Commission, and we've worked together in the past on a variety of issues. And it's great having you here, sir. The floor is yours.

Mr. HULTGREN. Thank you, Bob. Thank you to our panelists. I appreciate all of you being here, and welcome to this joint hearing between the Helsinki Commission and the Tom Lantos Human Rights Commission. It's important for us to have this briefing on the International Criminal Tribunal for the former Yugoslavia and the state of accountability for atrocities committed during the 1990s Balkan Wars.

I'd like to thank again our panelists for coming here today and joining us via technology, and really appreciate their willingness to share their expertise and help us understand more what has happened, but also what we can do.

While many date the Balkan Wars to the succession of Slovenia and Croatia from Yugoslavia in 1991, it's worth noting that the late 1980s, Slobodan Milošević, at the time the president of the Serbian Republic within Yugoslavia, used demagoguery against the Albanian population in Kosovo to his own political ends, the beginnings of the ethnic and nationalistic extremism that would soon violently flare up throughout the region.

Tom Lantos, the namesake for the commission that I have the privilege of co-chairing, was one of the first members of Congress to draw attention to the plight of the Kosovar Albanians in the 1980s, as was Senator Bob Dole.

The Balkan War started in Croatia and spread to engulf Bosnia and eventually Kosovo. Some saw the complexities of Balkan ethnic groups, warring factions and history, and, feeling overwhelmed, decided to cry "a pox on all their houses" and avoid U.S. attempts to stop the conflict. This certainly seemed an easier path than to attempt to seek a meaningful investigation into the atrocities and ensure that at least the worst perpetrators would face trial and their victims find justice.

But Tom Lantos, Bob Dole and others, including my Tom Lantos Human Rights Commission colleague, Eliot Engel, continued to draw attention to atrocities committed in these wars and demand justice. Because of the work of these men and women and others, members of Congress from both parties have closely followed the actions and efforts of ICTY since its founding in 1993.

It's also why I, as co-chair, Representative McGovern and Representative Engel and others are co-sponsors of a bill introduced by Representative Virginia Foxx: H.R. 3851, the War Crimes Rewards Expansion Act, which would provide for rewards for the arrests or conviction of certain foreign nationals who have committed genocide or war crimes, even if those arrested are tried in national courts rather than in international tribunals.

The ICTY isn't perfect, but it remains a model with lessons to teach. As Tom Lantos remarked during the 10-year commemoration of the massacre at Srebrenica, "It is essential that we recommit ourselves to see justice for the victims, well-deserved punishment for the perpetrators, and commit ourselves to take all possible action to ensure and assure that such atrocities do not again occur in Bosnia, or in Rwanda, or in Darfur, or indeed, any place on this small planet."

Again, I want to thank our panelists. I thank my colleagues for their important work on this, and I look forward to hearing what our panelists have to say and figuring out, again, next steps for us.

So thank you so much, and I yield back.

Mr. HAND. Thank you, sir.

We'll now turn to Nemanja Stjepanović in Belgrade, with the Humanitarian Law Center.

Mr. HULTGREN. Can I say something?

Mr. HAND. Sure.

Mr. HULTGREN. I do want to say something really quickly. I do apologize—obviously there are a lot of things happening on the Hill today, but we have a markup, so I would love to be here. I've got a markup in Financial Services right now, so I do have to excuse myself. But again, thank you so much, and we'll certainly be monitoring this and watching this. But I have to go back.

Mr. HAND. OK.

Mr. HULTGREN. Thank you.

Mr. HAND. Thank you.

So we'll go to Nemanja now. You can hear us OK?

Mr. STJEPANOVIĆ. Yes. Can you hear me?

Mr. HAND. Yes, you sound pretty good.

If I could ask those in the audience who might be using the house Wi-Fi if maybe they could turn it off on their phones or while he is speaking. It might improve the reception, especially as we go to his presentation and then the question and the answer period.

So the floor is yours, Nemanja, and let me say that I think the Helsinki Commission and the Tom Lantos Human Rights Commission both share the spirit of Dr. Brammertz's comments about the brave work of various people in civil society in the countries of the region. You are making a big difference, and you have our support. We can only hope that if we were in the same situation you were we would be doing the same thing, and you are inspiring and have our admiration.

But the floor is yours.

Mr. STJEPANOVIĆ. Thank you very much, and thank you for your words. Thank you for recognizing our work as something important, and thank you for the opportunity to address you today during this briefing.

More than 20 years since the wars in Croatia and Bosnia, and almost 20 years after the conflict in Kosovo, the region is not just far from reconciliation, but in recent years—and we heard something about that already—there has been a notable regression. Politicians both in Serbia and in the region—and when I say Serbia you can also read Croatia, especially Croatia, but also the others—politicians claim that the work of the ICTY did not contribute to reconciliation. And at same time, the same politicians are refusing to accept the evidence and conclusions of the Court which could lead to reconciliation.

The current Serbian leadership openly rejects discussion of the accomplishments of the ICTY, calling them, quote, "biased." And we have heard about the situation—literally from day to day we've heard the same. And yesterday, our prime minister, Ana Brnabic, she said again that the Court was biased, and they are arguing that it was only prosecuting Serbs.

The true reason for such an approach lies in their refusing to accept the role of the political leadership of Serbia, and also in Croatia, Bosnia, and in Kosovo. For the same

reason, war crimes trials in Serbia have never fully come to life, and now have further slowed down. Basically, they are extinguished.

In the last three years, the Serbian War Crimes Prosecutor's Office has issued only eight indictments. So in three years we have only eight indictments. And—only in 2011 we had, for example, 15 indictments, all in that one year. We don't have a single indictment for almost four years for the war crimes committed against Kosovo Albanians.

Since the beginning of the war crimes trials, the Serbian War Crimes Prosecutor has never accused—and that is probably the biggest problem—never accused a high-ranking military or police officer or high political officials in Serbia of Serbian ethnicity. The Prosecution's targets are almost exclusively direct perpetrators of crimes, and from the indictments and judgments it is not possible to see their relationship with the state.

The Humanitarian Law Center has been pointing for years to the responsibility of the army commanders in Kosovo. Also the others, but especially army commanders—commanders who were engaged in Kosovo. But the national judiciary have never reacted.

One of the commanders of the military brigades in Kosovo is today Chief of Staff of the Serbian armed forces, former commander of 37th Brigade, Ljubisa Dikovic, whose members—members of his brigade—took part in attacks on Kosovo villages and massive crimes were committed. And after that, they were also involved in transferring bodies from Kosovo to mass graves in Serbia. In Serbia, four sites with mass graves have been discovered since 2001, with—nearly 1,000 Albanian civilian bodies were found there.

In one of these mass graves, at a place called Petrovo Selo in eastern Serbia, bodies were discovered—the bodies of American citizens were discovered, ex-members of the Atlantic Brigade of the Kosovo Liberation Army, Ylli, Agron and Mehmet Bytyqi, who were arrested in Serbia without arms and without uniforms in their attempt to help a Roma family get out of Kosovo. They were arrested and sentenced to two weeks in prison with the explanation that they had no proper documents.

After being released, they were again arrested by police, taken to Petrovo Selo, and executed there. In Serbia there was a trial against two policemen—again, low-level policemen who arrested the Bytyqi brothers when they were released from prison and who took them to Petrovo Selo, but those two policemen were acquitted. Despite the evidence that the order for the execution came from the top levels of the police, no senior police official has ever been charged for this crime.

I am giving this just as an example of when we have a situation that we already know a lot about some particular case, but nothing is final because there is no will to accuse anybody from the top of the structure.

Now we are expecting the first indictments of the newly established special court for Kosovo in The Hague. It is a court of the Kosovo National Judiciary, before which the crimes members of the KLA committed from 1998/1999, mostly, will be prosecuted. After the ICTY trials that brought limited satisfaction to KLA victims, that court represents a new chance for justice—but also brings a fear, especially for us here, that its work will be presented in Serbia as a proof that crimes in Kosovo were committed primarily against Serbs, which is not the case, and that there is no need for further trials in Belgrade, which are still a problem.

As part of the accession negotiations, the European Union has recognized the problem of war crimes trials as an important issue under Chapter 23 relating to justice and the rule of law, and we are of course satisfied with that. The adopted action plan for Chapter

23, a national war crimes prosecutor strategy, foresees a number of concrete steps that Serbia must take in order to improve war crimes prosecution. But nearly two years since their adoption, the action plan and the strategy remain dead letters. Literally, nothing is going on and more or less, nothing is applied.

In the meantime, suspected war criminals remain in public office, and what is particularly worrying is that convicted war criminals are returning to public life. They are trying to be installed as new moral authorities of this society, and not only in Serbia, unfortunately.

The most recent example is the appointment of General Vladimir Lazarevic, General of the Army of Yugoslavia. He was present in Kosovo. He served a 14-year sentence before the ICTY for crimes in Kosovo, and now he has become a lecturer at the Military Academy. And after that we have promotion of Nikola Sainovic, sentenced in the same case for the crimes against Kosovo Albanians. So he is promoted to the presidency of one of the ruling parties, the Socialist Party of Serbia. And these are not the only examples. I can go further in details.

At the same time, Serbian President Aleksandar Vucic gives conciliatory statements, while ministers and media loyal to him keep sending messages that Serbia does not accept responsibility for the policy that led to the gravest crimes on European soil since the Second World War. So we have always that situation that we have conciliatory statements, usually from the President or some top officials, and then their colleagues from the government, from the Parliament, and especially media—which are government-controlled—they go with a completely different story.

The result of this hypocrisy being that Serbia's international partners are calm—and we are very unhappy because of that—while at the same time, further conflicts in the region are being fueled with those statements and acts, which I already mentioned.

That's it for now. Thank you for your attention, and I hope that you could hear me well.

Mr. HAND. Thank you very much, Mr. Stjepanović. Your message was heard very clearly, both through the technology, but also substantively. So I thank you for your remarks.

Let me turn to Representative Eliot Engel of New York who has joined us—the ranking Democrat on the House Foreign Affairs Committee and the co-chair of the Albanian Issues Caucus in the House of Representatives.

Mr. Engel?

Mr. ENGEL. Well, thank you—thanks very much. And I thank the speaker who we just heard—the very important message that he sent, so thank you for your testimony. It's important that the world knows what has gone on and what continues to go on, so it takes a great deal of courage, and so we all salute you for your courage. Thank you so much.

Mr. Chairman, as the ranking member of the House Foreign Affairs Committee and as someone who has followed the Balkans for a long, long time, I want to thank the Tom Lantos Human Rights Commission and the Helsinki Commission for holding today's excellent joint briefing on the state of accountability for atrocities committed during the wars in the western Balkans in the 1990s.

As the International Criminal Tribunal for the former Yugoslavia winds up its work, this is the right time to look back on its successes and failures, and to learn the lessons

of its efforts to bring the perpetrators of war crimes to justice. We all know the history, to one extent or another. After the death of Tito, who held Yugoslavia together for many years, the country began to break up, but unlike the peaceful division of Czechoslovakia, Yugoslavia's dissolution turned into a vicious ethnic bloodletting, the most brutal to occur on the European continent since World War II. The conflicts over Yugoslav succession—conflicts were characterized by widespread, flagrant violations of international humanitarian law, war crimes and crimes against humanity, and ICTY was set up to bring the violators of the worst crimes to justice.

I'd like to commend the Helsinki Commission and the Lantos Commission for working together on this joint briefing to assess the tribunal's work, but Mr. Chairman, even as ICTY closes down, I fear that the need for justice in the former Yugoslavia has not diminished, and I would like to highlight two particularly horrific cases in Serbia.

While there has indeed been progress toward democracy in Serbia, I believe it has been held back by a continual unwillingness to deal with crimes committed during the 1999 Kosovo War. First, let's recall the fate of the Bytyqi brothers, three American citizens, who were murdered after they were arrested by Serbian police while trying to help their neighbors, a Roma family, return home.

Serbia's President Vucic promised Vice President Biden, and personally promised me, to bring the criminals to justice and said it would happen very soon. That was a long time ago, and it has not yet occurred despite widespread understanding of who was behind the crimes.

Before continuing, I would like to highlight the very important work of the Belgrade-based Humanitarian Law Center, which forms the basis of what I am about to recount. I thank you, representative, again for being with us here today from Belgrade.

On January 31st of this year, the Humanitarian Law Center released a dossier called "The Cover-Up of Evidence of Crimes During the War in Kosovo: The Concealment of Bodies Operation." This report describes mass graves in Serbia containing the bodies of 941 Kosovo Albanians, maybe civilians, killed outside combat situations in Kosovo during 1999. According to the report, and I quote it, "The evidence corroborated the decision to conceal evidence of crimes committed was planned as early as March 1999 at the highest level of the government and indicated that members of both departments of the Serbian NUP, which is the state security department and public security department, and the Yugoslav army's departments in charge of, quote 'clearing up the terrain,' were involved in it. The murder and mass burial of almost 1,000 innocent civilians is a grave crime against humanity, but the perpetrators have not only gone unpunished, they have not even been pursued."

Mr. Chairman, it is long past time for Belgrade to face the facts of injustice—to bring to justice the people, including high officials in its very government, who are behind these very serious crimes. At the same time, the Serbian unwillingness to achieve justice has brought no adjustment in policy to the United States, and the European Union's willingness to proceed with Serbia's accession process to the EU has been unaffected. This has to stop. It has to stop now.

Until Serbia brings those who have committed these serious crimes to justice, the EU should not move ahead with Belgrade's accession process, and the United States should think twice before advancing our relations with Serbia.



Mr. Chairman, I asked Secretary of State Tillerson and Deputy Secretary Sullivan what they were going to do about this mass murder and cover-up. In its response to me, the State Department expressed the beliefs, and I quote, “that those guilty of moving the bodies of Albanian civilians from Kosovo to clandestine mass graves in Serbia to conceal evidence of earlier massacres should be brought to justice,” unquote. The Department has, quote, “brought the report by the Humanitarian Law Center to the attention of Serbia’s newly appointed war crimes prosecutor,” unquote.

I thank the State Department for raising the issue with Serbia’s war crimes prosecutor. This is an important step forward and, in the days ahead, I look forward to an update from the Department and will pay close attention to whether Belgrade finally brings to justice those who committed these horrific crimes.

So again, thank you to the commissions for this briefing and for your willingness to tackle these difficult issues. Thank you so much.

Mr. HAND. Thank you very much, Mr. Engel, for all the work you have done regarding Kosovo, and the Balkans and Serbia over the years. I think your advocacy of justice in Serbia is not only in the interest of the other countries in the region, but also in Serbia’s own interest to pursue, and so it’s much appreciated.

Mr. ENGEL. I really agree. This is not anti-Serbian by any stretch of the imagination.

Mr. HAND. Right.

Mr. ENGEL. It’s something that I believe is the best thing for the Serbian people. If they want to become part of the EU and part of Europe, then this is a good thing for them, but they need to confront, they need to come to grips, they need to admit what happened.

Mr. HAND. Yes, I fully agree.

And I would also note that House Concurrent Resolution 20, regarding the murder of the Bytyqi brothers has also been made available here at this briefing, and we have a member of the Bytyqi family here. Ilir is present with us today.

Mr. ENGEL. If I might, Mr. Chairman, highlight what I already said before, I had a personal meeting with Mr. Vucic who promised me that this would be resolved within a month. That was probably about a year ago.

Mr. HAND. Yes. Well, I was present when he made promises at the Johns Hopkins University as well, and we have yet to see actions. Hopefully we can address that in more detail during the question and answer period.

Now, if I could, I’d like to turn to our last panelist before going to the question and answer period, Professor Diane Orentlicher, for her statement.

Professor?

Ms. ORENTLICHER. Thank you. Honorable Member and Chair, thank you so much for inviting me to participate in this briefing, and more important, for convening it. The excellent presentations of other panelists enable me to be brief.

I want to just strongly endorse what others have said about the crucial role that American sustained attention to the issues we’re addressing here has made. Today sustained American engagement remains, in some ways, more important than ever for reasons that have already been highlighted.

I was asked to speak about what the ICTY has accomplished as it prepares to close later this month after operating for 24 years, as well as what remains to be done. I’ve

just finished a book that explores these questions with a focus on the two countries that have, in many ways, been most affected by its work, which is Serbia and Bosnia-Herzegovina. So I'm going to address the tribunal's legacy in those two countries.

Being guided by the priorities of those who supported the tribunal in those two countries, my remarks focus on the three expectations that were most important to them as they embraced the creation of the ICTY. So let me begin with what I consider the most important priority of victims in particular, and that is quite simply but profoundly importantly, justice—what some call justice for its own sake.

Over the course of many, many, many interviews with many Bosnians over a long period, I repeatedly heard how many survivors of atrocities desperately needed justice. They were acutely aware that no measure of justice could redeem their loss, but they craved the moral satisfaction that they believed the ICTY alone could provide. So how well did the tribunal do in meeting that particularly?

First let me say the hard part before I get to the really important overall message. It's impossible to talk to victims in Bosnia without hearing a litany of criticisms about discrete aspects of the ICTY's performance. Among them, sentences are too short, trials take too long; certain suspects who represented themselves, notably Slobodan Milošević and Vojislav Seselj, turned the courtroom into what often seemed like a theater of the absurd; a series of controversial acquittals, starting in November 2012, shook victims' confidence in the tribunal.

It's often said that survivors of mass atrocities are never satisfied with the quality of justice, so it's important to recognize that many experts have echoed their concerns, and I believe that the prosecutor himself has often voiced the same concerns of survivors. To its credit, the ICTY undertook some important course corrections in recent years, and those have been important. Going forward, with respect to other tribunals with which we are engaged, I think it's really important for us to keep sight of the sort of mundane aspects of the delivery of justice that make all the difference to victims.

Now the big picture: in light of all of the criticisms I hear whenever I travel to the region—of discrete aspects of the ICTY's performance—it's been astonishing to see that survivors remain overwhelming happy that the ICTY was created. In the words of one actually very frequent critic from Bosnia, despite concerns about aspects of its performance, the ICTY is, quote, "the best thing that's happened to the former Yugoslavia since 1991, when it began to implode."

Last month's historic verdict in the case of Ratko Mladić was a real capstone for many victims. I'd like to quote the words of just one, which I think capture what the verdict meant to so many Bosnians. The day the verdict was announced, Mirsada Malagic, who lost her husband, two sons, and other relatives during the war, and who testified in Mladić's trial, responded this way when she was asked what difference the tribunal had made in the lives of survivors. What she said is, quote, "It's good that the Hague tribunal exists. The killing of so many people has been proven. They were sentenced just enough for us to get some peace in our souls."

And again, her response to the question really captured what I've heard so often from survivors. They got justice and that meant everything.

Beyond the importance of what many in the region call justice for its own sake in interviews that I did for my study, many Bosnians and Serbians hoped that, by judicially authenticating the fundamental facts of ethnic cleansing, the tribunal would dispel perva-

sive denial about those crimes, and more affirmatively, advance a wide-ranging process of acknowledgment.

As previous speakers have highlighted, those hopes have been frustrated. Nationalist discourses are on the rise with toxic effect in both Bosnia and Serbia. Strident challenges—strident nationalist discourses include—again this has been mentioned—challenges to fundamental facts and findings of the ICTY. And—again, as other have mentioned but it bears repeating—those convicted by the ICTY have been welcomed home, time and again, as heroes, and elevated, as Mr. Stjepanović mentioned.

So what are the takeaways from that? I'd like to briefly mention four. There's a lot to be said about this, but I'm going to be brief. First, I think one takeaway is that the experience in the region reminds us that we have to be careful, going forward with other mechanisms of international justice, not to raise unrealistic expectations about what they can achieve.

One of my Bosnian interlocutors noted, quote, "Disillusionment with the Hague tribunal was not just a problem of the Hague tribunal. It was also the problem of how we understood what it was going to do for us. Courts do not set political reality, right?" I think there is a lot of wisdom in her observation.

Second, I would nonetheless challenge the claim that the ICTY did not have an impact on acknowledgment. Importantly, public opinion surveys in both Bosnia and Serbia reflected rising levels of acknowledgment of wartime atrocities in roughly the first six years of this century. Bosnians and Serbians whom I've interviewed, including quite a few people who administered these surveys, are convinced that the ICTY played a huge role in that progress during that period. They saw this increasing level of acknowledgment as a direct dividend of Hague justice.

And so, again, I want to emphasize that, while we shouldn't raise expectations that are difficult to meet, we should also recognize that The Hague tribunal has made a difference and can make a difference under auspicious circumstances.

Which leads me to the next point. A tribunal, like the ICTY, and specifically the ICTY, can make a profound difference, even in these tough issues like acknowledgment, when local political circumstances are relatively auspicious. So in Serbia we saw progress in dispelling denial about Srebrenica, for example, during the years in which reformists were—held leadership positions in Serbia. Similarly—or somewhat similarly, we saw a high point in Bosnian-Serb acknowledgment of Srebrenica in the same period when there was robust engagement by the international community in Bosnia.

The last point I want to make about this is that—and it follows from my previous point—the international community can and, in my view, must remain profoundly engaged in addressing the toxic political developments in Bosnia in particular, but in the region more widely if we really want to see the full realization of the legacy of the international tribunal. It's no coincidence that there has been a surge in denialism in Bosnia precisely during the period when we've seen a retreat of robust international engagement.

Turning to the final area of impact that I want to touch upon, as other speakers have noted, one of the most tangible and hopefully enduring legacies of the ICTY was in spurring the development of local war crimes prosecutions. In Bosnia, the ICTY played a concerted role in launching domestic war crimes institutions, working with the Office of the High Representative as well as local Bosnian lawyers, whose contribution is often overlooked, to create these institutions. It didn't play the same deliberate role in Serbia. None-

theless and therefore notably, the ICTY played a key role in catalyzing the development of Serbia's war crimes institutions in 2003.

That's a fascinating story in itself. I'm going to just quote one former Serbian official about his conception of the role the ICTY played. What he told me was that the ICTY, through its existence and work, enabled the reformists and the coalition government in Serbia—the first post-Milošević government in Serbia—to realize their own aspirations to ensure accountability. They were operating in a deeply constrained and contested political space, and the ICTY, through its work, widened that space, enabling them to play a key role in addressing the legacy of Serbian violence itself.

I want to pay tribute to Mr. Brammertz because, under his leadership, the ICTY office of the prosecutor seized the opportunity that emerged when these institutions were created. His office has, as he mentioned, developed a number of really innovative programs to bolster the capacity of the ICTY's partners in the region.

As I've mentioned in my book, I think those initiatives are a model for all international criminal tribunals, and I hope that they receive more attention. Yet, as others have noted, particularly Mr. Stjepanović, those institutions are fragile, and in recent years have seen some backsliding in their important achievements. What has been clear throughout their life is that sustained international engagement has made a critical difference in addressing political pressures that have threatened, sometimes very seriously, their independence and their continued viability. As the ICTY closes, it's going to be more challenging to sustain that engagement but more important than ever precisely for that reason.

In closing, I want to note that the ICTY's legacy will extend far beyond its formal lifetime, and the tribunal can continue to have a profound impact if we nurture the seeds that it has planted. We know it took decades for Germany to embrace Nuremberg. Yet, as we also know, Germany eventually became what some have called a model penitent in relation to its painful past.

If the ICTY is to have its own salutary, long-term impact in Bosnia and Serbia, it won't happen without our sustained support and so, for that reason, I'm grateful for the two commissions that convened this hearing, for their leadership in constantly marshaling the attention of the U.S. Government when it has been necessary to do so.

Thank you.

Mr. HAND. OK. Thank you very much.

Now that we've heard from all of our panelists, we'll turn to a question and answer period. We have two microphones on either side of the room. If people could come up and, again, identify themselves, indicate if you want to address a specific one of the panelists or just ask the entire panel a question, and then make a brief comment and ask your question, and then we'll hear the answer to it.

So if you're interested, we'll start with Ilir, if you'd like to go up to the microphone. And then others, start thinking of your questions. And if you want to come up, feel free to do so.

QUESTIONER. Thank you, chairman, panel, Tom Lantos, and the Helsinki Commission for this opportunity. My name is Ilir Bytyqi.

I have three brothers, Ylli, Agron and Mehmet, all American citizens who were kidnapped and murdered in 1990s by the Soviet Government officials. Soviet President Vukcevic has promised numerous times to bring justice to this case, to us and the Vice

President Joe Biden, to resolve the issues when he's here or talking with western Balkans. He knows exactly what to tell them. When he's back in Serbia, he tells a different story. He refuses to prosecute high ranking officials and suspects, and tells the Serbia media that we are kicking him in the head and insulting Serbia. What powers does the MICT have when a national government refuses to prosecute war criminals? What can the U.S. and the European government do in such cases?

Thank you.

Mr. HAND. Thank you. I think we would first go to the chief prosecutor and see if he would to comment specifically on what the mechanism—MICT—might be able to do. But then we may also want to hear some comments from Belgrade, from Mr. Stjepanović, in terms of how he sees the case and the government's reaction to it.

So, Mr. Brammertz?

Dr. BRAMMERTZ. Sure. It's more difficult to me to comment on the specific case. As I understand, the case is hopefully ongoing with the Serbian judiciary. But of course, what you experience and what the member of Congress explained, about the assurances getting—well, I'm a very similar situation, because I meet with the Serbian president also every six months in relation to a number of open issues which are directly linked to our mandate. And it is true that it takes often a lot of time for issues to be resolved. And a number of the issues we have raised are still open, including in relation to the execution of arrest warrant of the tribunal in Belgrade, including in relation to the execution of sentences of courts from Bosnia-Herzegovina, which are not executed as they should be in Serbia.

So the specific situation you are mentioning, I think we all agree is that it remains in Serbia very, very difficult to have cases conducted in relation to mid-level or higher-level perpetrators. The few cases we have seen are all in relation to the physical perpetrators with relatively clear evidence. But if it's about a hierarchy or superiors, we see that this remains a big problem in Serbia, as it is a problem in the other countries. So this is very much one of our conclusions, that there has been some progress in relation to prosecutions of physical perpetrators, but in the entire region the moment it concerns someone who has a more political profile, then the investigations are not moving forward. So, in this sense, I see the problem.

Now, what can the MICT do? So the MICT is a mechanism, an international community tribunal, which is the successor of the organization of the ICTY. And we are receiving a lot of requests. And a lot of organizations are sharing concerns with us. The nongovernmental organizations in the region, of course, many members of the diplomatic community, but even those prosecutors in the different countries who are really willing to move forward are saying, well, we still need a partner in The Hague to continue working on those cases.

So while the name ICTY will not be there anymore, the mandate of the MICT is very, very similar. We cannot do new investigations or new trials. But in terms of supporting national prosecutions, it's exactly the same, continuing to organize access to our databases, having liaison prosecutors in The Hague. So what we are—you know, I had yesterday an all-day meeting at the State Department to see how the U.S. Government can continue supporting the MICT to make sure that you are relevant. We are having similar meetings in Brussels with the European Union because, as it was mentioned by Mr.

Engel, well, the EU enlargement process is still an important tool to create incentives, if not to say stick and carrot policy, to make sure that things are changing.

So I know I'm not giving an answer to the situation of your family. This is, of course, a case which is very well known, which is very symptomatic for, unfortunately, a number of situations where people have just been killed, bodies disposed of, and where investigations are not done very often the way they should be done. And sometimes, with trials taking place where we receive the comments from civil society saying, Well, this is everything but a correct trial, and not a decision supported by the evidence.

So it remains very, very fragile. But as I said, the MICT for a number of years to come continues the work of the ICTY. We still have one trial ongoing, Stanisic/Simatovic. Important trial, Stanisic having been the head of the Serbian intelligence service. We have the appeals proceedings, Karadžić/Mladić. And we will continue doing capacity building and training and support. It was mentioned the new war crimes prosecutor in Belgrade. She's taking a tough job. It's not very popular to be in this kind of job.

And just again, as an example, the predecessor, Vukcevic, during which time much more people have been prosecuted, and during which time cooperating was reaching much better, he, after retiring from office as a state official, he asked to become member of the bar, and he was refused by the bar association with the argument that he would not be worth joining the bar association because all his life he has prosecuted Serbs for crimes committed. And so just to say that it remains a big problem in the different countries of the former Yugoslavia, but definitely in Serbia, but also in Croatia. That those prosecutors who are trying to do their job are very often not supported by the political leadership, which remains a problem for many years to come.

Mr. HAND. Thank you. Mr. Stjepanović, do you want to comment specifically on the Bytyqi case from your perspective, in terms of President Vucic and the Serbian Government's response, promises, and then criticisms of those who are reminding them of those promises and responses?

Mr. STJEPANOVIĆ. Yes. Well, I can say that these promises usually come together with the visits of U.S. officials. So usually we hear the promises during or after that time, and then after that they remain quiet.

The Bytyqi brothers' case is actually part of broken problem, as I already tried to explain. We can't solve Bytyqi brothers without a decision to go with accusing of high officials from the police, in this case. During the trial, we heard that an order for the killing of the Bytyqi brothers came from the top of the police, from the Ministry of—at that time, Minister of Interior Vljeko Stojiljkovic, who committed suicide before he came to the ICTY.

So that means that if an order came from the top, that order couldn't be delivered to the direct perpetrators who were only—who were accused, and yet acquitted. And the reason why they were acquitted is also—I believe it is also—that the reason is that you can't convict in that case only two persons who are low level, because of fear that they can say what actually happened and who gave the order, et cetera. So that is the problem in that case. We have a situation that what did they—and we believe that if they want to go deeper in that case, they will do so.

We heard about—and I'm really proud that that dossier was mentioned—I am the author of that dossier about moving the bodies from Kosovo to Serbia. We, as an NGO, identified—of course, thanks to documents and evidence from ICTY—but we identified by

name 110 of the persons of predominantly ground police who were involved in that operation. And can you imagine what the Prosecutor's Office can do about the police? And I will remind you that three out of four mass graves in Serbia were found after only, let's say, one month's investigation in 2001. After that, nothing or almost nothing happened, especially no initiative—we didn't see an initiative from Serbia.

So, if we speak about that, we speak about a lack of will, and that's all. And we have the impression that the international partners have been failing to clearly communicate in recent times—and I would say in recent years—clearly to communicate with Serbia that the stalling of war crimes prosecuting and also widespread denial of court-established facts are unacceptable. So we don't—I mean, maybe it's our impression because we, as civil society, always wants more, but we don't see that will also from international partners.

So I will conclude. If we speak about the Bytyqi brothers, nothing is—we don't see that something is going on. And we believe that that is because there is no will to prosecute high-ranking officials from the police.

Mr. HAND. OK. Thank you very much. It sounds like we still have our work cut out for us.

If I could ask a question: The international tribunal has ruled unequivocally that the massacre at Srebrenica constituted a genocide. But it has not supported the contention that other atrocities, either alone or collectively, constituted the crime of genocide.

Mr. Prosecutor, you noted in your remarks after the Mladić verdict that while the court acknowledged the crimes committed in six municipalities, I believe it was, but they did not convict Mladić for those crimes on the genocide charge. You indicated your office would review the court's reasoning. And I was wondering if you could elaborate on that issue.

And, Professor Orentlicher, you were asked the same question 10 years ago at a Helsinki Commission hearing in 2007. And I think your answer was one of the best take-aways from that hearing. You first indicated that convicting for genocide is difficult because of the need to prove beyond a reasonable doubt that the crimes were committed, but also with the specific intent to destroy a group, in whole or in part.

You went on to use several words to describe how truly enormous and terrible crimes against humanity are. And you urged people as well not to devalue crimes against humanity, and their horrendous nature, because of the existence of genocide as a separate charge. I think that's important because I've seen some people criticize the tribunal decision. Even though they convicted Mladić on 10 of the 11 counts, and he got a life sentence, that they did not say that genocide was committed in these areas, other than Srebrenica.

So I was wondering if you could comment on that again as well, but perhaps after Dr. Brammertz first gives us an update based on his own reaction to the Mladić verdict.

Dr. BRAMMERTZ. Sure. I have to explain the genocide charges in a little bit more broader way. We have as office of the prosecutor, since the beginning, defended the hypothesis that there was not only genocidal intent in Srebrenica, and where we have been followed by the judges in a number of cases, but we were of the opinion that genocidal intent to destroy part of society—entirely a part of society for very specific reasons, that this intent was also present in a number of municipalities where massive killings have taken place.

The judges did not follow our thesis, our approach, at least not for the municipalities. Somehow, with the explanation that, well, as the number of persons who have been forcefully displaced is much higher than the numbers of people which have been killed, well, there was not a clear evidence about this genocidal intent. As I said, we disagreed from the beginning with this approach, and have always kept in our indictment genocide charges for the different municipalities. And in Karadžić and in other cases before, we never got a conviction in relation to those charges.

The Mladić judgement is a little bit different in the sense that while Mladić was also not convicted for genocide in the municipalities, for the first time—and it's the first time the judges confirmed that in a number of municipalities a number of physical perpetrators had a genocidal intention, but are not linking this genocidal intent up the chain of command to Mladić. It's an issue we are carefully looking at, because it is not necessarily for us absolute logic to have on one hand a genocidal intent accepted in relation to a number of officers, but not with Mladić. But, again, we are still really carefully doing our analysis to see what kind of remedy we will use.

But I will leave it to Professor Orentlicher, indeed, to explain, again, that crimes against humanity, war crimes, are as grave crimes as genocide is. And we, of course, have always seen that people try to—also victims, to create a kind of hierarchy among crimes. And we're in the press conference after Mladić. I insisted very much to say that, well, the crimes for which he was not convicted, for genocide, exactly for the same crimes he was convicted for murder, for persecution, as crimes against humanity, which were very important convictions leading to the life sentence as well.

Ms. ORENTLICHER. Thank you. I would just add that—you know, obviously, I still believe what you quoted me saying 10 years ago, but I believe it even more so. I think it's unfortunate that we forget that in the most symbolically resonate verdict for many of us historically—which is the judgement of Nuremberg—the surviving Nazi leaders were convicted of crimes against humanity. They were convicted of crimes against humanity, not genocide. And so I think we have to work harder to reinvest that conviction with the moral power that it had at Nuremberg, and not disparage the verdict. It should come as—provide great moral satisfaction to victims that Mladić was convicted of crimes against humanity.

There is a paradox that I don't think we know yet how to handle, which is that the person who campaigned for the genocide convention and coined the term, Raphael Lemkin, succeeded in investing genocide with a very unique stigma. And that's been useful. It has helped mobilize action. I remember, as the conflict in Kosovo geared up, I got a lot of calls from Congress asking me if what was happening in Kosovo met the definition of genocide. And I kept on making the case that a key point of the genocide convention is to persuade states to take action to prevent it from happening. So you don't need moral certainty or legal certainty that genocide has been committed in order for the convention to be relevant.

And indeed, it was mobilizing, I think, for many members of Congress to know that there was a risk of genocide. So that's one side of the paradox. The other side is that unfortunately, precisely because it does have that stigma, many victims feel that their own suffering was somewhat devalued, when it really shouldn't be.

Mr. HAND. Yes, and, again, I think that's why it's important to stress this point now, to let them know that we do not devalue what had happened to the victims. And I can recall vividly, referring to what you had said about the genocide convention and the



commitment of the parties to the convention to do something to prevent genocide, about the many congressional hearings we had, including some that were titled “Genocide in Bosnia-Herzegovina,” trying to convince members of the executive branch to concede that genocide was taking place or about to take place.

And they resisted, because what it meant is they needed to do something in response to try to stop it. And I think the biggest fear I had coming away from the whole Balkans experience is that you don’t have the political will to do something to stop genocide until it has already occurred. And that’s where, I think, the definition really comes into play, that you don’t want it to be that way. You want it to try to generate the political will, to try to stop it.

Let me, again, turn to the audience. I don’t see anybody in our—well, there’s one person, over here. Do you want to introduce yourself and then ask your question?

QUESTIONER. I’m Erika Schlager with the Helsinki Commission staff.

And I’d like to start out by thanking our speakers here today in Washington, as well as across the Atlantic, for participating in this briefing. My question is about the impact of the tribunal on Roma. Before the conflict in Yugoslavia, before the wars, Yugoslavia had perhaps the largest Romani minority of any country in Europe. Roma were victims of every aspect of this conflict—victims of the genocide, they were among the first who felt the consequences of this ethnically driven—or framed war, war crimes, crimes against humanity. But also for survivors, incredible legacy of continuing displacement and loss of citizenship.

So mindful of how many decades it has taken to get recognition of the genocide Roma experienced under German National Socialism, has the tribunal been able to play a role in either legal accountability for the crimes that were committed against Roma, for Roma as victims, and/or play a role in building a record that will help people understand the consequences of this conflict on Roma, that are experienced by Romani survivors who are now displaced all over Europe?

Thank you.

Dr. BRAMMERTZ. Well, in a number of cases we have, of course, important number of victims from the Roma community. And among the main victims there are many. Now, would there be a study or a reflection on the impact of the cases on the Roma community? Unfortunately, I would say no. Of course, it’s studied much more from a sociological perspective to see what the situation is. You know, we have in terms of victims of crimes, for example, by Bosnian Serbs, perpetrators, who would always call the victims “the non-Serb community,” just also to avoid making every time the differences between the different communities. But it is a sort of fact that an important number of members of the Roma community have been victims of those different crimes. But, again, I see absolutely your point in terms of impact.

We see the impact is much more visible, of course, in relation to the other communities where it was, of course, very clearly—if we take Srebrenica, which is, of course, always the most symptomatically, the number of Bosnians living in Srebrenica before the war, and the political situation now afterwards. So there you can very, very easily see, in terms of ethnic cleansing, the impact on specific communities in relation to the war.

But you have an important point. This is much less visible in relation to the Roma community, which by definition is much less located to a very specific place.

Mr. HAND. Would either of the other panelists want to say anything? Mr. Stjepanović? No? OK.

OK. Over here we have a question.

QUESTIONER. Thank you, sir. My name is Martina Hrvolova, and I manage the Balkan section at the Center for International Private Enterprise.

Thank you for the presentations to all the speakers. I'd like to ask prosecutor Brammertz a bit broader question. Could you please kindly share your vision of international criminal justice for us? Are you concerned? And what are the key challenges in international criminal justice for the coming years?

And then, Professor, if you could elaborate; I don't know if you had a chance to look at this, but what is the level of awareness of the importance of prosecution of war crimes outside of those countries that were affected?

Thank you.

Dr. BRAMMERTZ. Well, for the broader picture, I don't want to be too negative, but the fact is that today we have the highest number of ongoing conflicts since World War II, the highest number of internally displaced persons and refugees. We have conflicts where civilians are the major victims—where historically, you know, conflict was very much between armed forces, nowadays the main victims. Then, of course, we have the modern forms of conflict in relation to ISIS, terrorism in general. And if we look at accountability, well, the reality is that for the majority of victims for all those conflicts, accountability will be the exception and not the rule.

You know, I worked two years in Lebanon as head of the investigation commission after the assassination of Rafik Hariri. So I know quite well the Middle East as well. If you look at the Middle East today, total chaos. If you look at the Syria situation, more than 400,000 victims, already three times more than in the wars in Bosnia-Herzegovina; conflict ongoing for four or five years, and no perspective of any tribunal or anything of this nature.

So it is the unfortunate reality that when the ICTY was created, you had a consensus in the international community to create an accountability mechanism. This consensus is not there today. We're not entering to the politics, but it is obvious that international community is not speaking with one voice.

If you look at Yemen, Syria and others, well, there are now for Syria an investigation commission has been put in place, but collecting information, looking into information, transferring it to the competent authorities, but not with their own judicial authority. You had until a few weeks ago so-called Joint Investigative Mechanism (JIM). This was also a body put in place by Security Council in relation to the use of chemical weapons in Syria. Well, this mechanism was closed two weeks ago, but there were some critical voices in the Security Council.

So the picture is not great. But again, it's not a reason not to continue fighting for it, pushing for it. We have shown, I think, that with the tribunal for the former Yugoslavia that time plays in our favor. You know, we all know this expression, justice delayed is justice denied. Well, at the international level, someone who is well protected today and cannot be prosecuted, this can change 5 years later, 10 years later.

And the main challenge today is to make sure that you collect evidence as soon as possible. You asked about challenges. I would say that's the biggest challenge today. We have seen in the former Yugoslavia if—for Srebrenica, for example, we all remember that

the genocide in Srebrenica happened after the creation of the tribunal. So we always speak about deterrence. Well, the creation of the tribunal has no deterrence impact.

But the massacres—the genocide took place after the creation of the tribunal, but it still took one year for the first investigator of the tribunal to be on the ground in Srebrenica. And in the meantime, Bosnian Serbs have moved thousands of bodies from the primary mass graves to hundreds of secondary graves, where still today bodies are found.

So while we are today back in a situation where we have accountability mechanism for a number of conflicts, one would at least hope that, in securing evidence, some progress is made, just to avoid that in 20 years, if there is a tribunal for Syria, colleagues will be again in the same situation, looking for evidence and having difficulties to find it.

So political consensus is absent today in terms of accountability. That's the biggest problem. And then, from a practical perspective, if you are not able to secure evidence as soon as possible, prosecutors later in court will have big, big difficulties to convince judges about individual responsibility.

Mr. HAND. Professor?

Ms. ORENTLICHER. Well, of course, I agree with everything the prosecutor just said about changing the political environment. It's striking to me that it took, I think, 18 years from the day the ICTY was created until the day the final fugitive was arrested. So it was an uphill struggle, to say the least. And yet it answered all of its indictments because there was almost a singular international commitment to the ICTY.

So you faced challenges. You had to constantly remind governments of their responsibilities. And yet you have one of the strongest and most concerted commitments that the international tribunal has enjoyed over a sustained period. Obviously, the International Criminal Court struggles to garner that kind of support to apprehend many of those against whom it's issued arrest warrants.

That said, I think two things are true. One is that we keep seeing that there's a very strong demand for justice in many countries where I wouldn't frankly expect it, where we see victims who are struggling to survive on a daily basis. They're still trying to collect evidence and provide a foundation for accountability in the future. And I think that's going to continue to be a factor in the future emergence of mechanisms of accountability in places where it doesn't now seem likely that it will happen.

I also think we need to educate the public and diplomats more about what international justice has achieved in ways that are not always visible. For example—and I'll be brief here—we talked earlier about the rise of nationalist rhetoric, which is indeed extremely worrying. And we should mobilize very hard to address that phenomenon.

It's often, I think, easy to sort of say, OK, so the international justice didn't work. It didn't dispel denial. That's not, as I said earlier, a fallout of international justice. It's a symptom of a much deeper problem in post-conflict countries where we're seeing this resurgence of nationalism.

What we don't see—as I said, that part is visible and it's easy to see—what we don't see so much is the many occasions in which the work of the ICTY strengthened reformists, removed political spoilers from the scene during critical and fragile moments of transition. Many Serbians have talked to me about the importance to their transition. But Milošević was physically removed from Serbia. And many Serbians have talked to me

about the specter of what their transition would have been like if the ICTY had not removed some of those spoilers from their scene.

So I think we need to learn more about the ways in which tribunals have been and potentially can be helpful, because I think we know all too well the ways in which countries continue to struggle in the aftermath of conflict even when there's international justice. That other story needs to be told more.

Mr. HAND. OK, thank you.

I think we have what will probably be the last question for our briefing.

QUESTIONER. Hi. Thank you very much. My name is Praveen Madhiraju, and I'm the executive director at Pretrial Rights International and also pro bono counsel to the Bytyqi family.

I essentially have a peace-versus-justice question, which I think the professor addressed a little bit just now. But in Washington, in the NGO community there has been a recent effort to get the U.S. re-engaged in the Western Balkans, and I think primarily from a security perspective. And by that I think the effort was preventing a return to war and the ascendance of Russia in the region.

I'm wondering if you have thoughts on the role of transitional justice in security—for the future security of the Western Balkans, and also things that the United States can do, the government can do, to advance those causes.

Mr. HAND. OK. Thank you.

I think that Praveen was referring especially to a recent Atlantic Council report that was released about U.S. policy towards the Balkans and trying to generate greater interest by Washington in the region. It's an excellent report. It's very comprehensive. But it does also beg the question of the role that transitional justice plays in U.S. policy and U.S. strategy, as well as that of the European Union and our other partners that work together in trying to integrate the Balkans into Europe and make a more stable, peaceful and prosperous place.

Dr. BRAMMERTZ. Well, you're asking what the U.S. can do. And I think it is crystal clear. And my experience, after being 10 years in this job, the fact is that changes will not happen because the political leadership thinks that it's now the right time for reconciliation to move forward all together.

Without incentives from outside, without giving the crystal-clear message that there's no alternative to the accountability, I think we will not see progress. It's very much the message I'm also giving in Brussels when I meet with members of the European Commission or the EU commissioner for enlargement, to say very, very clearly, well, the unfortunate reality is that people will do the minimum necessary to please the international community and not the maximum possible, where we would all hope that responsive politicians would, in the interest of their people and in the interest of a joint future, do the right things. This is not the case.

So government support from the U.S. is extremely important. As I said, it was instrumental to set up the tribunal. It was instrumental in getting the different fugitives arrested. But at a period where the region is going backwards, it is again as important as it was in the early days.

Now, transitional justice, well, this will remain a very long process. I said it earlier. In Bosnia-Herzegovina alone, there are more than 3,000 cases which still need to be conducted, more than 350 in relation to midlevel or senior-level individuals. There is very

little appetite and readiness in the region to cooperate, because many of the physical perpetrators of crimes committed in Bosnia-Herzegovina are in Serbia or in Croatia. But those countries are not extraditing their own nationals, so in theory they should take over in the context of the provision of justice. They should take over those cases.

But how do you want a prosecutor to do a good job if he hears in the media the head of state or the president of Republika Srpska or whomever saying, well, all those are heroes? How do you want an investigator, a junior investigator or a junior prosecutor, to do serious work on war crimes investigations if you have, like, General Lazarevic, as it was mentioned, a general who was convicted because of grave violations of the Geneva Conventions, who is then teaching at a military academy?

So as long as the political leadership is not showing strong support for war-crimes investigations, I'm very much afraid that we will see little progress. And this transitional justice will continue, I'm afraid, for a long time. There will be new war-crimes strategies to be put in place in Bosnia very soon. In Serbia it still needs to be implemented. But I don't want to finish, because I understand there will be also a record, and what we are saying will be in the public domain.

I, at the same time, want to say I don't want to be only critical towards my colleagues in the region, because I see the role of the MICT to really support prosecutors in Bosnia-Herzegovina, in Serbia and in Croatia to do their job by helping them in getting evidence, moving their cases forward, and making sure that they have knowledge in order to address those cases.

Mr. HAND. OK, thank you.

We are running out of time, and so we need to bring the briefing to a close. If either Mr. Stjepanović or Professor Orentlicher, do you have any last comment on that last question or anything else before we close? But please keep it short if you do.

Mr. STJEPANOVIĆ. I would like to add one sentence, if I may. When we speak about impunity, about accountability, about work of the ICTY, I can imagine a situation in which, if the ICTY was never established, that we would have Radovan Karadžić as the President of Republika Srpska and Jadranko Prlic as the leader of the Bosnian Croats today, because everything what we've seen that is happening now can show us what would have happened if the ICTY was never established, with, of course, all the criticism which we can address to that institution.

Mr. HAND. OK. Thank you very much.

At this point I'll bring the briefing to a close. I think this has been an excellent discussion we've had here. And I do see a fairly positive assessment of the work of the ICTY. As I mentioned to the prosecutor at the beginning, I think the challenge now is that as we look at what the countries themselves will do, we don't have ICTY to set the standard by which we can judge their actions. When somebody was indicted by The Hague, we knew there needed to be that cooperation to arrest and transfer them. We're now not quite sure what needs to be done, et cetera.

We hope that through the mechanism, through the MICT, that we'll continue to hear reports about how the countries are doing. We hope that civil society in Serbia, but also working with the civil societies in all the other countries, will also be putting out their press releases, issuing their reports on how they see their countries are doing, and that people here in Washington and the Congress and our own NGO community will continue

to press the United States to continue to push for justice as an integrated part of the solution for stability in the region.

I'd like to thank the Bosnian ambassador for being here today, Ambassador Hrle; and Voice of America for covering our briefing today. And I see other friends out there—Nina Bang-Jensen, who probably should get the most credit for the forceful U.S. effort in support of the tribunal when she was head of the Coalition for International Justice over the years, and particularly for pressing for conditionality on assistance to Serbia until they handed over all at-large indictees.

And Praveen and Mr. Bytyqi, thank you for being here today and for your good work in reminding us all that there are still these outstanding cases that need to be resolved, and pressing us to do our job in making sure that they get resolved.

At this point this briefing is adjourned. Again, thank you. Have a good day, everybody.

[Whereupon, at 11:52 a.m., the briefing ended.]

# A P P E N D I X

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## PREPARED STATEMENT OF HON. ELIOT ENGEL

Mr. Chairman, I would like to thank the Tom Lantos Human Rights Commission and the Helsinki Commission for holding today's excellent joint briefing on the state of accountability for atrocities committed during the wars in the western Balkans in the 1990s. As the International Criminal Tribunal for the former Yugoslavia winds up its work, this is the right time to look back on its successes and failures, and to learn the lessons of its efforts to bring the perpetrators of war crimes to justice.

We all know the history to one extent or another. After the death of Tito—who held Yugoslavia together for many years—the country began to break up. But, unlike the peaceful division of Czechoslovakia, Yugoslavia's dissolution turned into a vicious ethnic bloodletting—the most brutal to occur on the European continent since World War II.

The conflicts over Yugoslav succession were characterized by widespread and flagrant violations of international humanitarian law, war crimes, and crimes against humanity, and the ICTY was set up to bring the violators of the worst crimes to justice.

I would like to commend the Helsinki Commission and the Lantos Commission for working together on this joint briefing to assess the Tribunal's work. But, Mr. Chairman, even as the ICTY closes down, I fear that the need for justice in the former Yugoslavia has not diminished, and I would like to highlight two particularly horrific cases in Serbia.

While there has indeed been progress toward democracy in Serbia, I believe that it has been held back by a continual unwillingness to deal with the crimes committed during the 1999 Kosovo War. First, let's recall the fate of the Bytyqi brothers, three American citizens who were murdered after they were arrested by Serbian police while trying to help their neighbors—a Roma family—return home. Serbia's President Vucic promised Vice President Biden and personally promised me to bring the criminals to justice, but that has not yet occurred—despite widespread understanding of who was behind the killings.

Before continuing, I would like to highlight the very important work of the Belgrade-based Humanitarian Law Center which forms the basis of what I am about to recount. I thank their representative for being with us from Belgrade and HLC for its critical work to see justice and the truth.

On January 31st of this year, the Humanitarian Law Center released a Dossier called, "The Cover-Up of Evidence of Crimes During the War in Kosovo: The Concealment of Bodies Operation." This report described mass graves in Serbia containing the bodies of 941 Kosovo Albanians, mainly civilians killed outside combat situations in Kosovo during 1999.

According to the report:

"The evidence corroborated that the decision to conceal evidence of crimes committed was planned as early as March 1999 at the highest level of the government, and indi-

cated that members of both departments of the Serbian MUP (State Security Department and Public Security Department) and the Yugoslav Army's departments in charge of "clearing up the terrain" were involved in it."

The murder and mass burial of almost 1000 innocent civilians is a grave crime against humanity, but the perpetrators have not only gone unpunished, they have not even been pursued. Mr. Chairman, it's long past time for Belgrade to face the facts and bring to justice the people—including high officials in its government—who are behind these very serious crimes.

At the same time, the Serbian unwillingness to achieve justice has brought no adjustment in policy from the United States, and the European Union's willingness to proceed with Serbia's accession process has been unaffected. This has to stop and has to stop now. Until Serbia brings those who have committed these serious crimes to justice, the EU should not move ahead with Belgrade's EU accession process and the United States should think twice before advancing our relations with Serbia.

Mr. Chairman, I asked Secretary of State Tillerson and Deputy Secretary Sullivan what they were going to do about this mass murder and cover-up. In its response to me, the State Department expressed its belief that "those guilty of moving the bodies of Albanian civilians from Kosovo to clandestine mass graves in Serbia to conceal evidence of earlier massacres should be brought to justice." The Department has "brought the report by the Humanitarian Law Center to the attention of Serbia's newly appointed War Crimes Prosecutor."

I thank the State Department for raising this issue with Serbia's War Crimes prosecutor. This is an important step forward, and in the days ahead, I look forward to an update from the Department and will pay close attention to whether Belgrade finally brings to justice those who committed these horrific crimes.

Again, thank you to the Commissions for this briefing and for your willingness to tackle these difficult issues.



For Immediate Release

November 17, 2017

**STATE DEPARTMENT: BRING PERPETRATORS OF CRIMES IN  
HUMANITARIAN LAW CENTER REPORT TO JUSTICE**

WASHINGTON—In a response to questions Representative Eliot L. Engel, Ranking Member of the House Committee on Foreign Affairs, submitted for Secretary of State Rex Tillerson and Deputy Secretary of State John Sullivan, the State Department expressed its belief that “those guilty of moving the bodies of Albanian civilians from Kosovo to clandestine mass graves in Serbia to conceal evidence of earlier massacres should be brought to justice.” The Department has “brought the report by the Humanitarian Law Center to the attention of Serbia’s newly appointed War Crimes Prosecutor.”

Below are the full texts of questions by Rep. Engel and responses from the State Department, followed by Humanitarian Law Center’s Summary of its “Dossier: The Cover-Up of Evidence of Crimes During The War in Kosovo: The Concealment of Bodies Operation.”

**EXCHANGE WITH DEPUTY SECRETARY JOHN SULLIVAN:**

REP. ENGEL: “The response to Engel QFR #26 from the hearing with Secretary Tillerson said, “We take seriously the allegations raised by the Humanitarian Law Center, and are reviewing the report.” Now that you have had opportunity to review the report, have you engaged the government of Serbia on how it will prosecute the perpetrators of the massacres or whether some form of international tribunal will be needed?”

DEPUTY SECRETARY SULLIVAN: “We have brought the report by the Humanitarian Law Center to the attention of Serbia’s newly appointed War Crimes Prosecutor. We believe that those guilty of moving the bodies of Albanian civilians from Kosovo to clandestine mass graves in Serbia to conceal evidence of earlier massacres should be brought to justice.

“We share your frustration with the lack of progress in Serbia, and in the Western Balkans region generally, on investigating and prosecuting war crimes cases. We have raised the issue with Serbian officials at all levels of government, including with Serbian President Aleksandar Vucic, continually emphasizing the importance of Serbia thoroughly investigating such atrocities and bringing those responsible to justice. In addition, we remind Serbian officials that prosecuting human rights abuses such as these is imperative for Serbia to fulfill its obligations under Chapter 23 (Judiciary and Fundamental Rights) of the European Union (EU) *acquis* as it pursues EU accession. The U.S. Ambassador to Serbia, Kyle Scott, regularly speaks out, both publicly and privately, on the need to bring war criminals to justice.

“The United States has strongly supported the International Criminal Court for the former Yugoslavia (ICTY). Following the closing of the Tribunal this year, the United States will continue to push for justice for war crimes committed in the Balkan conflicts of the 1990s-but now it is imperative that momentum shift toward national prosecutions. The United States continues to push for timely and just prosecution of the remaining

cases, without regard to the ethnicities of victims or perpetrators. To that end, we have worked to help Serbia and other former Yugoslav states improve their judicial systems and to expand regional cooperation, which is critical to building solid cases and conducting successful prosecutions.”

#### **EXCHANGE WITH SECRETARY REX TILLERSON:**

REP. ENGEL: “I am deeply concerned with the lack of justice for murders and crimes committed by the government of Serbia during and after the Kosovo War. In particular, there have been no charges brought against anyone for the murders of the three American citizens, the Bytyci brothers, despite widespread understanding of who was behind them.

“Serbian President Vucic and Acting Prime Minister Dacic have promised very senior U.S. government officials for many years that they would bring to justice the perpetrators of this crime and the crime of burning our embassy in 2008. They both also made these promises to me.

“On January 31st of this year, the respected Humanitarian law Center of Belgrade released a Dossier called, “The Cover-Up of Evidence of Crimes During the War in Kosovo: The Concealment of Bodies Operation.” This report described mass graves in Serbia containing the bodies of 941 Kosovo Albanians, mainly civilians killed outside combat situations in Kosovo during 1999. According to the report:

“The evidence corroborated that the decision to conceal evidence of crimes committed was planned as early as March 1999 at the highest level of the government, and indicated that members of both departments of the Serbian MUP (State Security Department and Public Security Department) and the Yugoslav Army’s departments in charge of “clearing up the terrain” were involved in it.

“The murder and mass burial of almost 1000 innocent civilians is a crime against humanity, but the perpetrators have gone unpunished. It’s long past time for Belgrade to face the facts and bring to justice the people—including high officials in its government—who are behind these very serious crimes.

“At the same time, the Serbian stalling and stonewalling has brought no adjustment in policy from the United States, and the European Union’s willingness to proceed with Serbia’s accession process has been unaffected. This has to stop and has to stop now. Until Serbia brings those who have committed these serious crimes to justice, the EU should not move ahead with Belgrade’s accession process and the United States should think twice before advancing our relations with Serbia.

“What is the United States doing to press Serbia to bring to justice the murderers of the Bytyci brothers, those who burned the United States Embassy, and those who murdered and buried in mass graves almost 1000 innocent Kosovo civilians? With the ICTY no longer accepting any new cases and closing down at the end of this year and Serbia seemingly unwilling to prosecute anyone for these grave offenses, will you support a new international or special tribunal, similar to that which was established in Kosovo, to prosecute those responsible?”

SECRETARY REX W. TILLERSON: “We share your frustration with the lack of progress in the Bytyqi case and the slow progress in the 2008 Embassy burning case, and raise the issue with Serbian officials at all levels of government, including with Serbian Presi-

dent Aleksandar Vucic. We have also informed Serbian officials that these issues stand in the way of closer bilateral relations. Serbia recently appointed a new Special War Crimes Prosecutor—the position had remained vacant for almost a year-and-a-half—and we have called for the Bytyqi case to be a priority in her work. We are hopeful that that appointment will serve to advance the investigation and prosecution of those responsible for the Bytyqi murders.

“There have been some recent developments in the Embassy burning case, as five high level Serbian police officials, including the then-Chief of the Armed Police, have been indicted for allowing the attack to take place. Additionally, the re-trial of seven hooligans involved in the burning itself is scheduled to begin July 21. We will follow both of these prosecutions and continue to insist that those responsible be held accountable. We take seriously the allegations raised by the Humanitarian Law Center, and are reviewing the report.

“The United States has strongly supported the International Criminal Court for the former Yugoslavia (ICTY), which served as a model of fairness, impartiality, and independence in the trials of defendants accused of the worst crimes known to humanity: genocide, war crimes, and crimes against humanity. Justice for war crimes committed in the Balkan conflicts of the 1990s will remain a U.S. priority following the close of the Tribunal later this year. It is important to ensure both that justice is done and that heinous crimes do not go unpunished in the future. As the ICTY’s work draws down, it is imperative that momentum shift toward national prosecutions. The United States continues to advocate with relevant actors in support of the swift and fair prosecution of the remaining cases, without regard to the ethnicities of victims or perpetrators.”

## **HUMANITARIAN LAW CENTER RELEASE ON REPORT**

January 31, 2017

Dossier: “The Cover-Up of Evidence of Crimes During the War in Kosovo: The Concealment of Bodies Operation”

Since 2001, mass graves containing the bodies of 941 Kosovo Albanians, mainly civilians killed outside combat situations in Kosovo during 1999, have been found on four locations in Serbia. 744 bodies of Kosovo Albanians have been discovered in Batajnica, on the outskirts of Belgrade, at least 61 in Petrovo Selo, and 84 at Lake Perucac. At least 52 bodies have been subsequently found in the mass grave at Rudnica.

The bodies found in mass graves belonged not only to males, but also to females and children. The cause of their deaths, in most cases, was a gunshot wound, mainly to the head, suggesting that the victims did not die in combat but as a result of execution-style killings outside situations of combat.

The analysed testimonies and witness statements could be divided into two groups: the first group comprises statements given by eyewitnesses and survivors of crimes; the second group, more numerous, comprises statements of insiders, mostly members of the police and workers of utility companies, who took part in the transportation and burial of the bodies. In addition to these, numerous police and military documents were also

analysed, primarily those available through the ICTY database, but also some documents the Humanitarian Law Center acquired on its own, independently of the courts.

The evidence corroborated that the decision to conceal evidence of crimes committed was planned as early as March 1999 at the highest level of the government, and indicated that members of both departments of the Serbian MUP (State Security Department and Public Security Department) and the Yugoslav Army's departments in charge of "clearing up the terrain" were involved in it. Civilians and workers of municipal utility companies also took part in removing the corpses, and the machines and other equipment of these companies were also used for this purpose.

Now, sixteen years after the discovery of the mass graves in Batajnica, Petrovo Selo and at Lake Perućac, and more than three years after the discovery of the mass grave at Rudnica, all these locations remain unmarked, without any sign to indicate that hundreds of bodies of men, women and children who had been killed in numerous mass crimes in Kosovo were buried in Serbia. The Humanitarian Law Center has launched an initiative to establish a memorial site at the Batajnica mass grave site. At the time of the publication of this Dossier, the online petition in support of the initiative has been signed by several hundred people.

No one has ever been held accountable before courts in Serbia for the large-scale operation of concealment of bodies of Kosovo Albanian victims in mass graves.

Dossier: "The Cover-Up of Evidence of Crimes During the War in Kosovo: The Concealment of Bodies Operation"

## PREPARED STATEMENT OF SERGE BRAMMERTZ

Honorable Chairpersons, Members of Congress, Ladies and Gentlemen,

I am grateful for the opportunity to brief you today on the work of the International Criminal Tribunal for the former Yugoslavia, or "ICTY," and the future of justice for atrocity crimes in the Western Balkans.

Just a few weeks ago, the ICTY completed its mandate with the delivery of its final judgments. For twenty-four years, the Office of the Prosecutor, which I have had the honor to lead in its final phase, fought to bring to justice those most responsible for the horrific atrocities committed during the conflicts in Bosnia and Herzegovina, Croatia and Kosovo.

As I reported to the United Nations Security Council last week, I believe we achieved credible results in our mandate. We indicted 161 individuals for genocide, crimes against humanity and/or war crimes. The Tribunal completed its proceedings against 109 of these individuals, with 90 convictions and 19 acquittals. Another 13 individuals were referred to national courts in the former Yugoslavia for prosecution.

We are also the only international criminal tribunal that has accounted for all fugitives, including men like Radovan Karadžić and Ratko Mladić who for many years were among the world's most wanted men.

But numbers alone do not tell the story of the ICTY.

All of us remember the atrocities and devastation in the Western Balkans that shocked humanity's conscience. The widespread and systematic ethnic cleansing campaigns in first Croatia, then Bosnia and Herzegovina and later Kosovo that victimized so many. The campaign of terror against the civilian population of Sarajevo. And in July 1995, the Srebrenica genocide, during which more than 7,000 Bosnian Muslim men and boys were exterminated while 30,000 women, children and elderly were terrorized and forcibly displaced from their homes.

Impossible as it was to imagine twenty-four years ago, and despite what seemed at times almost insurmountable odds, I can inform you today that many of the most senior leaders who planned and implemented these crimes have been brought to justice and punished for the immense suffering they caused.

Equally, the truth of what happened has been proved in a public court of law. That men in positions of great authority used propaganda and lies to incite fear, division and hate. That these leaders then abused their power to commit horrific atrocities in order to achieve their political and military aims.

In large measure, then, the ICTY has achieved what it set out to do. In accordance with universally-recognized principles of law, we independently and impartially investigated the crimes, prosecuted senior leaders from all parties to the conflicts and held them individually responsible for their crimes against the victims and indeed all of humanity.

Reflecting on our work for the last two decades, I would like to offer three points.

First, what we concluded in the courtroom began in the halls of government, particularly here in Washington, D.C. and European capitals. The United States, together with European partners, mobilized and led the international community in support of justice and accountability for the former Yugoslavia. This resulted in the establishment of the ICTY, and its sister tribunal for Rwanda, by a unanimous Security Council.

At the same time, you correctly recognized that continued diplomatic and political support was needed if we were to achieve our mandate. The greatest challenge my Office faced was obtaining the cooperation of the States of the former Yugoslavia, particularly in access to evidence and the arrest of fugitives. For many years, the governments of Bosnia and Herzegovina, Croatia and particularly Serbia refused to provide cooperation, hindering our investigations and delaying our trials.

Yet with bi-partisan commitment across multiple administrations, the United States government's support was decisive to achieving justice. To take the most dramatic example, the 106th Congress in coordination with the George W. Bush Administration successfully secured the arrest of Slobodan Milošević. By conditioning foreign aid on full cooperation with the ICTY, Congress ensured that authorities in Belgrade adhered to their international legal obligations by arresting Milošević and transferring him to the Tribunal's custody.

This conditionality policy was then continued by the European Union. Linking progress in the EU accession process and Euro-Atlantic integration to cooperation with my Office, conditionality policies resulted in the arrest of all remaining fugitives, most notably Radovan Karadžić and Ratko Mladić.

The lesson is clear: if there is a clear political agenda in support of justice, and if the international community speaks with one voice, those most responsible for atrocity crimes can be held accountable.

Second, even after it closes the ICTY's legacy can support further efforts to achieve justice for atrocity crimes. The ICTY's establishment led to the creation of international tribunals for crimes committed in Rwanda, Sierra Leone, Cambodia and elsewhere. Today and in the future, the ICTY will continue to be a symbol of justice to other victims and survivors, such as the Yazidi and religious communities who have suffered from Daesh's horrific crimes.

But the ICTY is not just a symbol. We greatly developed the law and practices needed to bring war criminals to justice. Our work prosecuting conflict-related sexual violence is notable in this respect. My Office spent more than four years reviewing and documenting our lessons learned from prosecuting rape, sexual enslavement, torture and other crimes of sexual violence in more than 50 cases. We identified what worked, what didn't and the key recommendations we can offer to other investigators, prosecutors and judges. These lessons have now been published in a book that focuses on improving capacities in other justice institutions. We also prepared a training program that we are offering to national prosecutors in Africa, the Western Balkans and elsewhere in the world.

This leads me to my third point and what may be my Office's under-appreciated legacy, our support to national prosecutors and judges in the countries of the former Yugoslavia. As the Chief Prosecutor of the ICTY, I have been intimately involved in the sustained cooperation and coordination between my Office and prosecutors throughout the former Yugoslavia in support of national investigations and prosecutions of atrocity crimes. This cooperation included numerous capacity building activities and close cooperation on concrete cases. Looking at the ICTY's experiences, we can see clearly how international justice can help reestablish the rule of law in countries devastated by conflict.

This has been an important lesson. To have more impact, there should be an integrated, global solution to justice for atrocities crimes. If international tribunals focus

on those most responsible for the crimes, there will need to be national courts to bring other perpetrators to justice in order to avoid significant impunity gaps. As the ICTY has shown, if international and national justice mechanisms work together, meaningful justice can be achieved. In the future, collaboration and intense cooperation between the international and national should be the rule, not the exception.

By way of conclusion, I would like to look to the future.

The ICTY is closing not because full justice has been achieved for crimes committed during the conflicts, but because the Security Council decided to transition responsibilities from the ICTY to national judiciaries in the former Yugoslavia. The truth is that much more remains to be done, and many victims from all communities are still waiting for justice. Thousands of cases remain to be processed, particularly hundreds of complex cases against senior- and mid-level suspects.

So the completion of the Tribunal's mandate is not the end of war crimes justice, but the beginning of the next chapter. Further accountability for the crimes now depends fully on national judiciaries in the former Yugoslavia.

It is clear that for this strategy to succeed, our national colleagues will need as much—if not more—support as the ICTY and my Office received. As my Office has reported over the last few years, accountability for atrocity crimes in the national courts of the former Yugoslavia faces many challenges, with negative trends often overshadowing the positive.

At the same time, it is also clear that reconciliation has not yet been achieved in the Western Balkans. As reactions over the last two weeks have reminded us, the crimes have left wounds that still have not healed. Convicted war criminals continue to be seen by many as heroes, while victims and survivors are ignored and dismissed. Difficult facts continue to be denied and rejected.

So the question is why reconciliation remains a significant challenge today. Unfortunately, there is still no true will within the region to accept the immense wrongdoings of the past and move forward, most of all among the political leadership.

This is not just an issue of the past, but a risk to peace and security in the Western Balkans today. When irresponsible officials use fear and division to secure power, conflict and atrocities can gain a logic of their own. That was true two decades ago, and it remains true now. With the closure of the ICTY, it is more important than ever to address this challenge.

So ultimately, I believe that the ICTY's legacy is not simply measured by our own work, but by whether the countries of the former Yugoslavia build the rule of law, demonstrate they can secure meaningful justice for the victims, and show the courage to accept the facts and pursue meaningful reconciliation.

Following the ICTY's closure, I will continue to serve as the Chief Prosecutor of the Mechanism for International Criminal Tribunals. My Office is committed to continuing and strengthening our assistance to our national colleagues. At the same time, the region's partners, like the United States and European Union, can also strengthen their engagement, and ensure that national war crimes justice is at the top of the diplomatic agenda.

If we speak with one voice, and provide our full support, more victims from all communities will receive a greater measure of justice, and hopefully the countries of the former Yugoslavia can achieve real reconciliation. Thank you for your attention.

## PREPARED STATEMENT OF NEMANJA STJEPANOVIĆ

Honorable Chairpersons, Members of Congress, Ladies and Gentlemen,

On behalf of the Humanitarian Law Center I thank you for inviting me to present our views in regard with the prospects of dealing with the past and war crimes trials in Serbia and in the region, after the International Criminal Tribunal for former Yugoslavia (ICTY) has completed its mandate.

More than 20 years since the end of the wars in Croatia and Bosnia and almost 20 years after the conflict in Kosovo, the region is not just far from reconciliation, but in recent years there has been a notable regression. The latest judgments of the ICTY—to Bosnian Serb military commander Ratko Mladić and six Bosnian Croat war politicians—are clear examples of the former Yugoslav societies' rejection of facts pertaining to their past.

Politicians both in Serbia and the region claim that the work of the ICTY did not contribute to reconciliation, at the same time refusing to accept the evidence and conclusions of the Court, which could lead to reconciliation. The current Serbian leadership openly rejects to discuss the accomplishments of the ICTY, calling the court "biased" and arguing that it was only prosecuting Serbs. The true reason for such an approach lies in refusing to accept the role of Serbia, its political leadership, its army and secret police in the wars in Croatia, Bosnia and Kosovo.

For the same reason—the concealment of the role of Serbian state structures in the wars of the nineties—war crimes trials in Serbia have never fully come to life, and now have further slowed down, so to speak, they are before quenching.

In the last three years, the Serbian War Crimes Prosecutor's Office has issued only eight indictments. The fact that only in 2011 the same Prosecutor's Office issued fifteen indictments—speaks for itself about the slow down.

Since the beginning of the war crimes trials, the Serbian War Crimes Prosecutor has never accused any high-ranking military or police officer, or high political officials of Serbian ethnicity. The Prosecution's targets are almost exclusively direct perpetrators of crimes, and from the indictments and judgments it is not possible to see their relationship with the State.

For example, at the trial of members of the Scorpions unit for the murder of six boys and young men from Srebrenica which happened in Trnovo near Sarajevo in the summer of 1995, the least effort was never made to establish the connection of that unit with the Ministry of Interior of Serbia, while even in the verdict it was never stated that the victims were brought from Srebrenica. The obvious goal being to prevent establishing Serbia's connection with the Srebrenica genocide and, in general, the war in Bosnia.

Considering the 25-year work of the ICTY and the 14-year work of the domestic War Crimes Chamber in Serbia, a paradoxical conclusion can be made that the crimes were planned by the highest political, military and police officials, while their execution was conducted by the lowest levels of the structure. As if there was no one in between them. When the domestic war crimes judiciary was established, the idea was for it to complement the work of the ICTY by prosecuting senior and middle ranked individuals within military-police structures, and not by prosecuting mere perpetrators.

The Humanitarian Law Center has been pointing for years to the responsibility of the Army commanders in Kosovo, but the national judiciary never reacted. One of the



commanders of the military brigades in Kosovo is today the Chief-of-staff of the Serbian Armed Forces. This is Ljubisa Dikovic, a former commander of the 37th Brigade, whose members took part in the attacks on Kosovo villages where massive crimes were committed, and the evidence points to their role in concealing the crimes, that is, transferring bodies from Kosovo to mass graves in Serbia.

In Serbia, four sites with mass graves were discovered, where nearly 1,000 Albanian civilian bodies were found. Their bodies were transported as part of a concealment operation of the crimes in Kosovo, and it is clear from the ICTY judgments that everything was executed on the orders of former FR Yugoslav President, Slobodan Milošević, and with the participation of the highest state structures, primarily from the police. None of the hundreds of participants of this process, however, has ever been prosecuted before the national judiciary.

In one of these mass graves, at the police pole in Petrovo Selo in eastern Serbia, the bodies were discovered of American citizens—ex members of the Atlantic Brigade of Kosovo Liberation Army (KLA) Yili, Agron and Mehmet Bytyqi—who were arrested in Serbia without arms and uniforms, in their attempt to help a Roma family to get out of Kosovo. They were arrested and sentenced to two weeks in prison; after being released they were again arrested by the police, taken to Petrovo Selo and executed there. In Serbia, there was a trial against two policemen who arrested the Bytyqi brothers when they were released from prison and who took them to Petrovo Selo, but they were acquitted. No senior police official has ever been charged for this crime.

Former war crimes prosecutor Vladimir Vukcevic publicly said that, according to his knowledge, the murder was ordered by the Serbian police minister, late Vljako Stoiljkovic, and that the part of the structure that executed this order was Goran Radosavljevic Guri, until recently a member of the Main Board of the ruling Serbian Progressive Party. Despite the government's promises—which mostly coincide with visits by U.S. officials to Belgrade—there is no progress in this case. This is yet another example of how high state officials are shielded from accountability—in this case, police officers; and an illustration of the capitulation of the judiciary before the state.

Furthermore, only 61 Albanian victims from Kosovo are covered by the judgments of the Serbian War Crimes Chamber, which is less than 1 percent of approximately 7,000 Albanian civilians killed by the Serb forces in 1998 and 1999. It is particularly of great concern that the domestic War Crimes Prosecution Office has not raised any new indictments for crimes committed against Albanians from Kosovo for almost four years.

At the same time, the first indictments of the newly established Special Court for Kosovo in The Hague are expected. It is a court of Kosovo's national judiciary before which the crimes of members of the KLA committed from 1998 to 1999 will be prosecuted. After the ICTY trials that brought limited satisfaction to the KLA victims, that Court represents a new chance for justice, but also brings fear that its work will be presented in Serbia as proof that crimes in Kosovo were committed primarily against Serbs and that there is no need for further trials in Belgrade. With Serbian war criminals convicted for war crimes in Kosovo out of prison and back in Government, we fear that Serbia will perceive and present to the public the work of the new Kosovo court as Serbia getting a well-deserved "last laugh."

As part of the accession negotiations, the European Union recognized the problem of war crimes trials as an important issue under Chapter 23 relating to justice and the rule of law. The adopted Action Plan for Chapter 23 and National War Crimes Prosecution

Strategy foresee a number of concrete steps that Serbia must take in order to improve war crimes prosecution. Although these documents are not perfect, their effective implementation would without a doubt make war crimes prosecution in Serbia far more effective. However, nearly two years since their adoption, the Action Plan and Strategy remain dead letters.

Our impression is that international partners have been failing to clearly communicate to Serbia that the stalling of war crimes prosecution and the widespread denial of court-established facts are unacceptable. As a result, suspected war criminals remain in public office and, what is particularly worrying, convicted war criminals are returning to public life.

The most recent example is the appointment of General Vladimir Lazarevic, who served a 14-year sentence before the ICTY for crimes in Kosovo, as a lecturer at the Military Academy and the promotion of Nikola Sainovic, sentenced in the same case to 22 years in prison, to the Presidency of one of the ruling parties—Socialist Party of Serbia. These are not the only examples. The Government, more specifically, the Minister of Defense publicly stated that “the time of shame has passed.”

At the same time, Serbian President Aleksandar Vucic gives conciliatory statements, while ministers and media loyal to him keep sending messages that Serbia does not accept responsibility for the policy that led to the gravest crimes on European soil since World War II. The result of this hypocrisy being that Serbia’s international partners are calm, while at the same time, further conflicts in the region are being fueled.

The situation is not much better in the whole region neither, primarily in Croatia where refusal to perceive the past has reached its peak after a recent verdict to Croatian war leaders in Bosnia and Herzegovina. Recent unrest in the region is getting more and more frequent, and the calls of politicians to look only in the future do not seem promising. For years, civil society offers a suggestion for resolving such a situation—the Regional Commission (RECOM) to establish all the facts about War Crimes, whose work would be supported by all the governments in the region. The Initiative exists for years and it is our hope that with the support of the international partners in the region, the importance of the initiative will be finally understood and the establishment of the Regional Commission supported.

Thank you for your attention.

## PREPARED STATEMENT OF DIANE ORENTLICHER

Honorable Members of Congress and Chair,

Thank you for inviting me to brief you this morning, and for your longstanding and critically important leadership on the issues that are the focus of this briefing. The closing this month of the International Criminal Tribunal for the former Yugoslavia (ICTY) offers an ideal opportunity to reflect on what the Tribunal has accomplished and, perhaps more important, what remains to be done to ensure that its contributions have an enduring impact.

As is well known, the Tribunal unexpectedly became the leading edge in the contemporary era of international justice, a field and phenomenon that had been dormant since postwar prosecutions in Nuremberg and Tokyo until 1993, when the ICTY was created. In short order, the UN Security Council created the International Criminal Tribunal for Rwanda (ICTR); the United Nations joined with the governments of Sierra Leone and Cambodia to create hybrid courts to judge mass atrocities in those countries, and a permanent International Criminal Court (ICC) was created by multilateral treaty. Other war crimes courts have operated with international participation in Kosovo, Bosnia-Herzegovina, Timor Leste and elsewhere. Because of this dimension of the ICTY's impact, my law students have grown up in a world in which leaders responsible for grievous atrocities often end up facing judgment before a tribunal instead of enjoying a quiet retirement in relative luxury—the norm when I was in law school. To be sure, governments' enthusiasm for international war crimes tribunals has diminished compared to 20 or even ten years ago. Even so, these courts will continue to operate for the foreseeable future: victims will demand as much. Thus some of my remarks will consider lessons learned from the ICTY's exceptionally rich experience that we would do well to apply to the future work of other tribunals—including the residual mechanism for the ICTY itself.

My principal focus, however, will be on the impact of the ICTY in the two countries most affected by its work—Bosnia-Herzegovina, which endured the highest level of wartime atrocities accompanying the implosion of the former Yugoslavia, and Serbia, whose wartime leader, Slobodan Milošević, brought the region to ruinous violence. I will draw extensively on the insights of Bosnians and Serbians whom I interviewed for my forthcoming book, *Some Kind of Justice: The ICTY's Impact in Bosnia and Serbia* (Oxford University Press, forthcoming 2018), 2 which explores the Tribunal's evolving impact over its unexpectedly long lifetime. Citizens of both countries who enthusiastically supported the ICTY identified three principal spheres in which they expected it to make a meaningful difference in their lives; I will take their priorities as my point of departure. The three spheres are: (1) satisfying victims' need for justice; (2) dispelling denial and fostering acknowledgment of wartime atrocities; and (3) catalyzing and bolstering domestic war crimes prosecutions.

### *I. Victims' Justice*

In the course of many interviews with Bosnian survivors of “ethnic cleansing,” I repeatedly heard that it was desperately important for them to receive justice. While keenly aware that no measure of justice could redeem their losses, they craved the moral satisfaction they believed the ICTY would provide. How well, then, did the Tribunal meet Bosnians' expectations?

While the answer inevitably is mixed, there is no question Bosnian survivors are overwhelmingly and unambiguously grateful for the Tribunal's work. Even so, most are disappointed in specific aspects of the ICTY's performance. In their view, for example, trials lasted too long; many sentences were too short; some defendants who represented themselves, notably including Slobodan Milošević and Vojislav Šešelj, turned the courtroom into a theater, mocking the dignity of the Tribunal; and a series of controversial acquittals, beginning in November 2012, shook victims' confidence in the Tribunal's independence. Since it is often said that survivors of mass atrocities are never satisfied with justice, it is worth noting that international jurists have echoed virtually all of their concerns. To its credit, the ICTY undertook a number of reforms to streamline its procedures, addressing victims' (and donors') concerns about trial lengths. Still, when we invest in other tribunals, we need to ensure they take on board the discrete lessons we can learn from the ICTY's experience—relatively mundane but all-important lessons about court management, for example.

In light of victims' often strong criticisms of the ICTY's performance, it is all the more noteworthy and important that Bosnian survivors are, as I mentioned, overwhelmingly happy the ICTY was created. In the words of one of the Tribunal's fiercest Bosnian critics, "the ICTY was the best thing that happened to the people of the former Yugoslavia since 1991," when the country began to implode.<sup>1</sup> That survivors of ethnic cleansing feel this way about Hague justice is an inestimably precious achievement.

Last month's historic verdict in the case of Ratko Mladić was, for many survivors, a powerful vindication of the hopes they invested in the ICTY more than two decades ago. I would like to quote the words of one, which capture what the verdict meant to many Bosnian victims. The day the verdict was announced, Mirsada Malagić, who lost her husband, two sons, and other relatives during the war, responded this way when a BBC reporter asked if the ICTY had made any difference in the lives of Bosnian survivors: "It is good that the Hague Tribunal exists . . . [T]he killing of so many people has been proven. They were sentenced. Just enough for us to get some peace in our souls."<sup>2</sup>

## *II. Dispelling Denial and Fostering Acknowledgment*

Beyond the profound importance of what Bosnians and Serbians sometimes call "justice for its own sake," many hoped that, by judicially authenticating the fundamental facts of ethnic cleansing, the Tribunal would dispel pervasive denial about those crimes and, more affirmatively, help advance a wide-ranging process of acknowledgment. In the view of many in the region, this type of acknowledgment is the most important foundation for reconciliation among Bosnia's ethnic communities.

As other panelists have noted, these hopes have been frustrated. Nationalist discourses are on the rise, with toxic effect in Bosnia in particular. Strident challenges to key findings of the ICTY figure prominently in the rhetoric of nationalist leaders like Republika Srpska (RS) president Milorad Dodik, and individuals convicted of monstrous crimes are routinely welcomed home and celebrated as heroes when they complete their prison terms. There is much to say about this, but in the interests of time I will make just three interconnected points.

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<sup>1</sup> Refik Hodžić, *Accepting a Difficult Truth: ICTY Is Not Our Court*, BALKAN TRANSITIONAL JUST. (Mar. 6, 2013).

<sup>2</sup> *News Hour*, BBC WORLD SERVICE (Nov. 22, 2017).

(1) *Raising expectations.* The first point has implications primarily for tribunals that have recently begun their work, like the Kosovo Specialist Chambers, or that might be created in the future, as well as for the ongoing work of the ICC: We must take care not to raise unrealistic expectations about what international tribunals can achieve. Claims put forth by diplomats and ICTY officials about the impact the Tribunal would have on acknowledgment and reconciliation raised expectations sure to be disappointed among those who had already suffered enough. At the same time, unrealistic expectations may have diverted many citizens' and leaders' attention from the hard work of social repair that can only take place locally. As one of my Bosnian interlocutors noted, "Disillusionment with the Hague Tribunal was not just a problem of the Hague Tribunal. It was also the problem of how we understood what it was going to do for us. Courts do not set political reality right."<sup>3</sup>

(2) *Contributions to acknowledgment.* I would nonetheless challenge the claim, now made increasingly often, that the ICTY had *no* impact on acknowledgment. Notably, public opinion surveys in both Bosnia and Serbia reflected rising levels of acknowledgment of wartime atrocities in roughly the first six years of this century. Bosnians and Serbians whom I interviewed, including several who designed and administered these surveys, made a convincing case that this positive trend was a direct dividend of Hague justice.

I believe the principal takeaway from this experience is that The ICTY could and did have a meaningful impact in dispelling denial *when political conditions were relatively auspicious* in both Bosnia and Serbia. In Serbia, we saw progress in dispelling denial of Srebrenica, for example, during periods in which reformists, like Zoran Dindić and Boris Tadić, held leadership positions in government. We have seen deeply worrying regression, however, during the era of governance by "reformed" nationalists, who have led Serbia since 2012. (I address Bosnia shortly.)

This should not surprise us. The ICTY does not communicate directly to citizens in Bosnia and Serbia, few of whom have ever read any of its judgments. Instead, its work is mediated by political and other elites, who have played a powerful role shaping local citizens' reactions to ICTY judgments and their opinions of the Tribunal itself.

(3) *External engagement in addressing political challenges.* And so my third point about the ICTY's failure to end denialism is that developments in post-Milošević Serbia and postwar Bosnian highlight the vital importance of sustained attention to the wider political challenges that are sure to arise in post-conflict countries as they emerge from debilitating violence. As I have suggested, it is naive to assume that the work of a tribunal can itself ensure social transformation, but *in a relatively auspicious political context*, it can make a meaningful contribution. My point here is that the international community has a crucial role to play in addressing and shaping the political environment in which denialism either flourishes or recedes.

It is by no means coincidental that we saw the greatest progress in Bosnian Serb acknowledgement of wartime atrocities during a period of robust international engagement in Bosnia. In the early years of this century, with the support of the Peace Implementation Council established in Dayton, the Office of the High Representative

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<sup>3</sup> Interview with Svjetlana Nedimović, Activist, in Sarajevo, Bosn. & Herz. (Sept. 18, 2014).

(OHR) was the principal “motor driving Bosnia forward”<sup>4</sup> during the most productive period of state-building in the post-Dayton period. Two successive High Representatives, Wolfgang Petritsch and Paddy Ashdown, helped foster a relatively positive political environment during these years.

In this setting, we saw milestones in Serb acknowledgement and condemnation of the 1995 Srebrenica massacre. For example, following the release in 2004 of an RS commission’s report about the massacre, then RS President Dragan Čavić publicly acknowledged that “atrocities were committed in the area of Srebrenica.” Čavić condemned the massacre in words Bosnians would long quote: “I have to say that these nine days of July of the Srebrenica tragedy represent a black page in the history of the Serb people.”<sup>5</sup> Several months later, the RS government issued an apology.

Regrettably, the PIC and OHR have retreated from robust engagement since 2006. That same period has seen a deeply troubling resurgence of strident nationalism, often manifested in denial of fundamental facts about Srebrenica.

### *III. Catalyzing Domestic War Crimes Institutions*

One of the Tribunal’s most tangible and hopefully enduring legacies is its role in spurring the development of domestic war crimes institutions. In Bosnia, the Tribunal played a key role, along with the OHR and Bosnian lawyers, in designing those institutions. Although the ICTY did not set out to help Serbia launch domestic war crimes institutions, its very existence catalyzed the creation of a local war crimes chamber and the new position of War Crimes Prosecutor in Serbia. As explained to me by a former Serbian government official, the ICTY enabled reformists in the coalition government that succeeded Milošević, who operated within a contested and constrained political space, to realize their *own* aspirations to ensure accountability.

During the tenure of Mr. Brammertz, the ICTY’s Office of the Prosecutor seized the opportunity that emerged, and has engaged in innovative and impressive efforts to bolster the capacity of its partners in the Western Balkans. These efforts provide a model well worth emulating by the International Criminal Court.

Yet war crimes institutions in both Bosnia and Serbia are fragile and face relentless political pressure. Dodik and other RS leaders have continuously challenged Bosnia’s war crimes institutions, while the Office of the War Crimes Prosecutor in Serbia has come under heightened and overt pressure in recent years. This has taken a visible toll: its work has slowed down markedly.

In recent years, Mr. Brammertz has provided vital leadership in marshaling international support for these institutions at times of special peril. He played a key role in neutralizing serious threats to the independence and efficacy of Bosnia’s Special Department for War Crimes in the past year, while he, the United States, and others have provided crucial protection to Serbia’s War Crimes Prosecutor in the past. Regrettably, despite the unique influence the European Union (EU) now has in respect of Serbia, a candidate country, it has not fully used the leverage it has to address deeply worrying threats to Serbia’s war crimes institutions.

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<sup>4</sup> INTERNATIONAL CRISIS GROUP, EUR. REP. 198, BOSNIA’S INCOMPLETE TRANSITION: BETWEEN DAYTON AND EUROPE i (2009)

<sup>5</sup> *Bosnia Herzegovina: President Dragan Čavić Acknowledges Atrocities against Muslims in Srebrenica in 1995*, REUTERS (June 22, 2004).

It is critically important that the international community continue to provide robust support for these bodies, whose independence and effective operation can go a long way toward preserving and enhancing the ICTY's regional legacy. In the near term, these institutions can provide justice to thousands of survivors of ethnic violence whose cases have not yet been the subject of prosecution. In the longer term, their work can strengthen the rule of law and help prevent a recurrence of ethnic violence.

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In closing, the Tribunal's legacy will extend far beyond its formal lifetime. After World War II, it took decades for Germany to emerge as a "model penitent"; notably, when it did, its society embraced Nuremberg and the principles for which it stands. There are, of course, vast differences between postwar Germany and the Western Balkans. Yet Germany's experience reminds us that a Tribunal's future influence can be profound. If the ICTY is to have a salutary long-term impact in Bosnia and Serbia, it will not happen without the sustained engagement and commitment of the international community.

Thank you.



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