



The Case against Ratko Mladic

Questions and Answers

May 2011

1. Who is Ratko Mladic?

Ratko Mladic was the commander of Bosnian Serb Army (VRS) during the 1992-1995 war in Bosnia and Herzegovina. The International Criminal Tribunal for the former Yugoslavia (ICTY) initially indicted Mladic in July 1995.

The Serbian authorities arrested him on May 26, 2011 in the village of Lazarevo, north of Belgrade. In the years leading up to his arrest, Serge Brammertz, the tribunal's prosecutor, had repeatedly said that Mladic was “within reach” of Serbian authorities.

2. What is Mladic accused of?

Mladic and his co-accused, Radovan Karadzic, the wartime president of Republika Srpska, the Bosnian Serb entity, are charged before the ICTY with genocide as architects of the killings of at least 7,000 Bosnian Muslim men and boys following the [July 1995 seizure of the Srebrenica enclave](#)—a designated United Nations (UN) “safe area”—from NATO and UN troops by Bosnian Serb forces.

Mladic was initially charged with 15 counts of genocide, war crimes, and crimes against humanity. On May 27, the ICTY granted the prosecution’s request to restructure and reduce the indictment to 11 counts. The prosecution submits that the proposed amendments, once finalized, will bring Mladic’s indictment “largely” in conformity with that against Karadzic. The prosecution must submit an amended indictment within seven days of the filing of the court’s decision.

Karadzic’s indictment includes charges on two counts of genocide, one for Srebrenica and a separate genocide charge for killings, rapes, torture and other acts committed by Bosnian

Serb forces against Bosnian Muslims and Bosnian Croats between March and December of 1992 in a number of municipalities. The prosecution says the goal was to remove Bosnian Muslims and Bosnian Croats permanently (sometimes called “ethnic cleansing”) from areas in Bosnia which the Bosnian Serbs claimed as their territory.

Karadzic faces nine further charges of war crimes and crimes against humanity for other wartime abuses committed by Bosnian Serb forces, including the 43-month siege of Sarajevo and taking UN peacekeepers hostage.

After the Yugoslav tribunal indicted Mladic and Karadzic in 1995, the trial chamber issued international arrest warrants for both in mid-1996. Karadzic was arrested in Belgrade on July 21, 2008, and surrendered to the tribunal on July 30.

3. Why is the Mladic case significant?

Mladic is one of the highest-level officials and senior military commanders to be prosecuted by the Yugoslav tribunal. He and Karadzic are accused of being the masterminds of the most serious crimes committed during the Bosnian war. The genocide charges mean that he is accused of intending to destroy, in whole or in part, a national, ethnic, racial, or religious group. Both the ICTY and the International Court of Justice (ICJ) in the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) in Bosnia and Herzegovina v. Serbia and Montenegro have held that the acts and killings that took place in Srebrenica constitute genocide. In the same case, the ICJ above ruled that Serbia was in violation of the [Genocide Convention](#) because the perpetrators of the genocide, particularly Mladic, had not been brought to justice.

It is hoped that the trial will help uncover the truth about Mladic’s individual criminal responsibility for genocide, the most serious crime under international law. The victims have waited a long time to see Mladic in the dock. The ICTY convicted Mladic’s second in command, General Radislav Krstic, of genocide in August 2001, and Vujadin Popovic (Chief of Security in the Drina Corps) and Ljubisa Beara (Chief of Security of the Bosnian Serb Army Main Staff) of genocide in June 2010.

Mladic's arrest also serves as a powerful reminder to other perpetrators or would-be perpetrators of war crimes, crimes against humanity, and genocide that accountability for the worst crimes known to humankind is becoming the rule rather than the exception.

4. Why did his arrest take so long? And why did it happen now?

The lengthy delay in arresting Mladic exposes the “Achilles heel” of international justice: without their own police forces, international courts must depend on individual countries to arrest and surrender suspects. Most of the defendants who are or were in the tribunal's custody were handed over by the authorities in the region or apprehended by international peacekeepers in Bosnia, with only a small number surrendering voluntarily.

For many years, Mladic lived openly in Serbia, appearing in public in the capital, and drawing an army pension. A genuine search for him only began under the current government of Boris Tadic, although the tribunal's chief prosecutor had been critical of the scale of those efforts. Public support for the arrest and eventual prosecution of Mladic also has remained low in Serbia. In a poll released only 10 days before the arrest, 78 percent of Serbs who responded said they would not report Mladic to the authorities, and more than half said they would not approve sending him to the tribunal for prosecution.

European Union (EU) pressure on Serbia, linking cooperation with the tribunal to closer ties, was an important factor in securing Mladic's eventual arrest, in much the same way that it helped persuade the Croatian authorities to cooperate in the capture and surrender of General Ante Gotovina to the tribunal in 2005. While some member states sought to allow Serbia to move closer to the EU without progress on war crimes, the insistence of the Netherlands on cooperation with the tribunal helped the EU stand firm.

The precise timing of Mladic's arrest may be connected to the fact that the tribunal's chief prosecutor was due to make a critical report on Serbia to the UN Security Council on June 6, which would have undermined Serbia's desire to start formal EU membership talks later in 2011. In any event, Mladic's arrest shows that making a country's respect for its international justice obligations a condition of international support can deliver results.

Mladic's capture means that only one of the 161 people indicted by the tribunal remains at large: Goran Hadzic, a Croatian Serb. He is charged with war crimes and crimes against humanity for his role in the persecution of Croat and other non-Serb civilians in 1991 and 1992 in parts of Croatia controlled by rebel Serbs. The ICTY prosecutor has repeatedly said that Hadzic, too, is “within reach” of the Serbian authorities.

5. What happens following Mladic's transfer to the Yugoslav Tribunal in The Hague?

On May 31, a Serbian court, rejected an appeal filed by Mladic's lawyers alleging he is too ill to be tried, among other grounds, and Mladic was immediately surrendered to the ICTY, transported to The Hague and admitted to the UN Detention Unit.

Under the tribunal's rules of procedure, Mladic must now be brought before the Trial Chamber assigned to his case "without delay" and will be formally charged. No date has yet been set for the initial appearance, but Mladic can enter a plea at that appearance or within 30 days. If he refuses, the court will enter a "not guilty" plea on his behalf.

6. Is Mladic too sick to stand trial?

Mladic's family members and lawyers have been quoted in the media suggesting that he is seriously ill. The Serbian investigating judge considered the results of an independent medical examination before finding on May 27 that Mladic met all of the legal requirements for transfer. The court reviewing the appeal also considered the issue and rejected the appeal.

In the UN Detention Unit, Mladic's health will be assessed to determine if he requires immediate treatment for any medical conditions. If so, treatment will be provided.

The trial chamber will have to determine whether he is mentally and physically capable of standing trial. The test used is one of "rational participation": i.e. whether a defendant can exercise his right to a fair trial so that he can participate effectively in his trial and have an understanding of basic procedural matters. Under the tribunal's case law, the defense has the burden of proving that the accused is not fit to stand trial "on the balance of probabilities." A number of options are available to accommodate Mladic's health needs while facilitating the trial, including establishing a video link between the detention unit and the proceedings.

The court has, in some cases, declared a defendant unfit to stand trial while leaving open the possibility of resuming proceedings if a defendant's health situation improved. For instance, the Trial Chamber in the case *Prosecutor v. Vladimir Kovacevic* determined that the accused did not have "the capacity to enter a plea and stand trial, without prejudice to any future criminal proceedings against him should his mental health condition change."

7. Will Mladic's case be joined with Karadzic's?

Mladic and Karadzic were indicted together. However, in October 2009, the court decided to sever the cases formally since Mladic was still at liberty and Karadzic's case was ready for trial.

The prosecution's request to revise the indictment against Mladic so that it "largely conforms" to the indictment against Karadzic was made in part to "allow for a possible joinder" of both cases. Since the amended indictment has not been finalized, it is not yet clear if the prosecution will indeed seek to join the cases.

If the prosecution does, both Karadzic and Mladic can object on several grounds, including alleging that it would violate their respective right to trial "without undue delay." The presentation of evidence in Karadzic's trial began over a year ago. Depending on the defense strategy for both defendants, there may also be concerns about a possible conflict of interest, for example where one defendant may wish to introduce evidence in mitigation of his charges, but which could incriminate his co-defendant. It is ultimately up to the court to determine whether the benefits of joining the case—such as efficiency and reducing the hardship on witnesses—outweigh the possible prejudice to both accused.

8. May Mladic represent himself?

Like Karadzic, Mladic could choose to exercise his right to represent himself, rather than having a lawyer. In the case of Slobodan Milosevic, the former Serbian leader, self-representation resulted in significant delays in the trial, as the defendant made long speeches and questioned witnesses at great length. Lessons have been learned since that trial, and the judge trying the Karadzic case keeps the trial on a strict time line, cutting off the defendant if his comments or questions are unrelated to the factual matters at issue in the trial, while preserving Karadzic's right to a fair trial. We can expect to see a similar approach to Mladic if he chooses to represent himself.

It is also important to note that the right to self-representation is not absolute. The tribunal's appeals chamber has ruled that when a defendant's lack of ability to conduct his own case significantly obstructs the proper and expeditious conduct of his trial, then the "restriction of his right to self-representation" is legitimate. This could include imposing counsel as well as less restrictive alternatives.

9. Isn't the Yugoslav tribunal supposed to be closing down?

In mid-2003, the UN Security Council endorsed a completion strategy for the Yugoslav tribunal, calling for completion of investigations by the end of 2004, all trials by the end of 2008, and all remaining work, including appeals, by 2010. These dates have since been extended several times.

Given the unpredictable nature of tribunal activities, including the late apprehension of key fugitives, as well as unexpected contempt proceedings and the health of defendants, it is impossible to state with certainty a precise time line for the tribunal to complete its work. The desire to meet the deadlines should not compromise the fairness and the effectiveness of the remaining trials, particularly those of Karadzic and Mladic, two of the most senior—and notorious— officials tried by the tribunal.