



Embassy of the Republic of Azerbaijan to Hungary

FOUNDATION FOR THE INTERNATIONAL PREVENTION  
OF GENOCIDE AND MASS ATROCITIES

## **Report on the conference**

### **Prevention of genocide and mass atrocities in practice**

### **'Role of international jurisdiction in the Western Balkans and the South Caucasus'**

Venue: Embassy of the Republic of Azerbaijan, Budapest

16 February, 2012

#### **I. Background**

The Embassy of Azerbaijan in Budapest and the Foundation/Budapest Centre for the International Prevention of Genocide and Mass Atrocities organized the event in order to support the stabilization and reconciliation processes and prevent the outbreak of genocide and mass atrocities in the Western Balkans and the South Caucasus. They wished to call the attention of the international community to the important role of legal institutions and processes play in taking forward peace efforts and settlement of conflicts as well as prevention of violations of international humanitarian law.

In the first panel of the conference the lessons learned in the domain of international criminal jurisdiction in the Western Balkans were presented. In the second panel the challenges in the South Caucasus were discussed and the tragic events in Khojaly in 1992 were presented. In the third panel the panellists shared their views on the political role and responsibilities of the major players in both regions.

In total more than 100 persons, representatives of the Diplomatic Corps in Budapest and Hungarian state structures, scholars and NGOs took part in the discussions.

## **II. Opening Session**

The conference began with the welcoming words of the organizers, who emphasized the importance of prevention and timely actions to address the challenges of genocide and mass atrocities. The UN Convention on the Prevention and Punishment of the Crime of Genocide serves as solid framework for actions. There is scope, however, for enhancing international collaboration and introducing an agreed methodology and mechanism to translate its letters and spirit into practice.

The importance of parallels between tragic events in Srebrenica, Bosnia and Herzegovina and in Khojali, Azerbaijan was highlighted. It was underlined that though in both regions a lot of crimes against civilians have been perpetrated, the application of international criminal law has remarkably differed. While in the case of Srebrenica an international tribunal had been established to take the perpetrators of crimes to justice, in the case of Khojali the efforts to launch international investigation have failed so far that is to be explained by the lack of sufficient international political will.

## **III. Experience and lessons learned in the Western Balkans**

The first panel started with an introduction of the work of the State Court and Prosecutor's Office in Bosnia and Herzegovina focusing on war crimes, crimes against humanity and genocide. Its establishment was the result of the recognition of the need to leave no impunity gap and continue the work of the International Criminal Tribunal for the former Yugoslavia. The War Crimes Chamber of Bosnia's State Court was opened in 2005 and it completed more than 80 cases. It has set standards which have significantly advanced the legal expertise in the region. It is currently being transitioned into a completely national institution. International experts regard the court as a model of success for future interventions in similar situations; cases have already been transferred from the ICTY to national authorities due to the tribunal's limited mandate and with a view to cut the expenses.

Views were expressed on the current challenges, such as the accusation of the jurisdiction of being biased and having a limited effect on the reconciliation processes. It was emphasized that the media and the civil society play an enormous role in fostering reconciliation and accepting decisions of international jurisdiction. It was also mentioned how hard it is to restoring confidence of individuals in justice. There was made a positive ending note on the merits of war crime trials as means which might to some extent be preventing future conflicts.

Experiences were shared on the international justice in common and then on the work of the ICTY. Over the past years, a number of international courts and tribunals were established and international investigations have been conducted to address crimes against humanity and war crimes. Several examples were mentioned to prove that the days of impunity and immunity for senior leaders responsible for grave crimes starts to come to an end.

There were also mentioned the difficulties related to the launch of the tribunal and its legitimacy. It was explained how the tribunal was created as an enforcement measure under Chapter VII of the UN Charter. It was stressed that international justice is a reality despite the many questions regarding the activities of ICTY or the International Criminal Court.

It was underlined that the tribunal's primary function was not to bring peace, stability and reconciliation. It is mandated to prosecute individuals and not societies for grave crimes; the tribunal would not determine collective responsibility. International trials are long and complex procedures and often perceived as detached from the places where the crimes were committed. For many, reconciliation is still far from being achieved.

Another key issue was how an international tribunal differs from national jurisdiction: nationals have direct access to crime scenes, are able to interrogate victims, have a strong public acceptance, whereas an international tribunal have lot of restrictions to cope with. Fulfilling its mandate depends mainly on international cooperation and support, where EU generally plays a crucial role, and it is still a strong political tool on the side of the ICTY.

In the near future all the cases will be transferred to Bosnia and Herzegovina, put at the domestic level, due to the limited mandate of the ICTY. The lack of cooperation between Croatia, Bosnia and Herzegovina and Serbia is a grave problem; success is only guaranteed if local institutions are generally able to contribute to the work of jurisdiction. An other dilemma is how the whole legal aspect of international jurisdiction could fit into the political situation, where the big challenges generally remain.

The criteria concerning war crimes are a much more important and sensitive issue now than ever before. It was featured as an outstanding problem that the perpetrators of war crimes are often considered war heroes, not criminals within the population, therefore people are not willing to extradite them, nor do they want to accept a legitimate decision

regarding them. The close cooperation between the ICTY and the EU as well as the role of EU in providing the political support for the work of the tribunal was highlighted.

It was mentioned that the aim of the international community's political activity shall be the reconciliation, which includes dealing with the past and involving the civil society for bringing in legitimacy from the broader population.

Based on personal experience, a survivor of Srebrenica presented the history of the massacre in 1995 by the help of maps, and explained the irony that though the territory of Srebrenica was declared an enclave and one of the UN 'safe areas', the worst killing and open aggression by the Serbian army throughout the Yugoslavian conflict occurred exactly there. The problematic situation of the Dutch soldiers being on duty at the very time of the massacre was also pointed out.

One of the conclusions from the genocide in Srebrenica is that as there is never a response to genocide once it is perpetrated all that is possible has to be done to prevent genocide.

The Genocide Summer School in Srebrenica was also presented and highlighted that people shall not forget but learn from what happened to them in the past.

#### **IV. Chances and challenges in the South Caucasus**

The second panel began with describing the role international judicial bodies may have in prevention and reconciliation.

Although international courts can play only a limited role in preventing mass atrocities, an organ at the international level still has the possibility to give a higher appearance of objectivity and lessen the risk of politically biased decisions than an organ at the national level. Avoiding impunity for individuals responsible of war crimes is in itself a form of prevention. In addition, international courts develop legal standards that can be relied upon in handling future cases both from the legal and the political point of view, which is also important in achieving a durable peace.

It is clear that when a court is being established, it is crucial to ensure, as far as possible, a clear basis of jurisdiction *ratione personarum*, *ratione temporis* and *ratione materiae*, as regards all the most sensitive issues at stake. Given that international jurisdiction is still based on the principle of consent, it cannot be overruled even when breaches of *jus cogens* are at stake. A dispute settlement at either national or international level is crucial,

but there is still the possibility for the UN Security Council to set up an agreement.

Another key issue was the state responsibility, namely the liability of state under international law, the effective control and influence a state must provide. The attribution of the state as an organ was questioned, e.g. in the case of Ratko Mladic, whether someone could be responsible for giving Mladic authorisation to perpetrate the brutalities. According to international law, the one who gave the command shall as well be indicted, but in such cases, regarding the conduct of the perpetrator, an ultra vires responsibility could also be considered. It was underlined that the specific context and criteria of genocide related crimes should thoroughly be investigated before describing a crime as genocide, as it is a very sensitive issue.

Before talking about the tragedy in Khojaly, a moment of silence was tributed to the victims of Khojaly.

During the discussions the research project of the University of Leicester titled 'Khojaly – A Legal Analysis' was presented and the importance of further legal investigations on circumstances of Khojaly tragedy stressed with the view to take the perpetrators of crimes to justice. The issue of state responsibility of Armenia in the case of Khojaly massacre is also being examined.

According to speakers the events in Khojaly meet the criteria of genocide as no other roots than the willing for systematic ethnic cleansing and mass annihilation have been revealed. It was also found it is imperative to make further efforts to facilitate peace negotiations between Armenia and Azerbaijan through setting the problem of mass atrocities in legal frameworks both inside the countries and in the international field.

There was made a presentation on the outcome of investigations by the Azerbaijan authorities of the crimes committed by Armenian militaries against Azerbaijani civilians in Khojaly. The representative of the Military Prosecutor Office of Azerbaijan emphasized that based on the military facts and statistics, the crimes have to be considered as crimes of genocide. He expressed the readiness to cooperate with international structures to also prepare an international legal assessment and asked for assistance of the international community in instituting criminal proceedings against the perpetrators.

A survivor of Khojaly massacre reminisced of her personal experience and brutalities and how she outlived the terrible events twenty years ago. She said the survivors would like the world to know about and learn from the realities of Khojaly. A film was also shown about the massacre.

## **V. Responsibility of international players in the Western Balkans and the South Caucasus**

The third panel began with emphasizing that as the European Union itself is a peace project, it provides the best example for finding common solutions. The EU shall continue its efforts that war would never happen on the European continent again. Bearing that in mind, focusing on the Western Balkans is of utmost importance. The increasing attention paid to transitional justice could contribute to the acceptance of the responsibility and fundamental credibility of the international tribunals also amongst those being indicted.

Ideas were also shared on how to address the challenges of conflict settlement process between Azerbaijan and Armenia. It was emphasized that international players should assist and support the conflicting parties in finding solution for the settlement where legal instruments should be given priority. The importance of implementing of the resolutions adopted by international organisations, including UN Security Council in respect of Nagorno-Karabakh conflict had been underlined.

It was recommended the designation of a special United Nations Representative or *rapporteur* on the conflict to sort out the components and complementarities in international commitment to the resolution of the Nagorno-Karabakh conflict, mobilize and align policy support in the international arena, in particular for the operational priorities agreed in the context of the Minsk process.

The first steps of reconciliation would be the withdrawal of occupation forces from Nagorno-Karabakh and other 7 regions of Azerbaijan and the fullest possible return of displaced persons and refugees to their homes. A high degree of autonomy and self-governance for an Armenian minority within the internationally recognized borders of Azerbaijan should be provided.. The Armenia-Azerbaijan conflict remains a security threat, where the Lisbon Treaty provides new ways for the European Union to act more coherently and effectively.

It was also highlighted how completely different the investigation and the approach were in the case of Srebrenica and Khojaly, the latter of which is to be explained with the absence of political will. Although law should function equally at both national and international levels, regarding also a consistent respect for humanitarian law, where there is a proved fact of aggression, there is no need to discuss whether an international intervention should take place – only the methods may be conciliated.

Another grave problem is that if individuals remain unpunished and no legal steps are following the perpetrated crimes, people will keep thinking they can violate rules of international humanitarian law without consequences. It would be most important to spread that people would be punished for perpetration of mass atrocities, henceforth not to be considered heroes after committing such brutalities; so would the number of war crimes be decreased. There are various reforms to be brought which could help the international community being more effective at reacting timely.

## **VI. Conclusions**

At the end of the conference, there were drawn the following conclusions from the discussions:

- genocide and war crimes are open wounds and remain root causes of ethnic tensions and fragility in both regions for long-term;
- there is no stability and peace without justice and there is no justice without peace and stability;
- the dialogue on genocide and related crimes contributes to heal the wounds and prevent new tragedies;
- the role of international players in sustaining the dialogues and the legal processes is vital and should be increased; local ownership and national judicial capacities in the context of Srebrenica genocide should be strengthened;
- the massacre committed against Azerbaijani civilians in Khojaly should be internationally investigated and assessed in order to prosecute the perpetrators of crimes.

## **VII. Recommendations**

Based on the information and experience shared by the panellists and the discussion among the participants of the conference, the organizers suggest:

1. Continue the dialogue in the regions to share information and experience on the legal aspects of genocide and mass atrocities with local authorities and population.
2. Identify and implement initiatives on both strengthening the national judicial capacities related to genocide in Bosnia and Herzegovina and developing dialogues on the genocide in Srebrenica among representatives of the societies, including the youth and scholars in the region.
3. Continue the preventive efforts in the South Caucasus through

further exploring the legal nature of Khojaly massacre and involving international organizations and all states concerned.

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The Ambassador of Azerbaijan in Budapest, dr. Vilayat Guliyev has expressed his will to publish the materials of the conference in a book and organise a follow-up event to this conference.