The trials of indicted war criminals at the
International Criminal Tribunal for the former Yugoslavia

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On that day we’ll say to Hell: “Have you had enough?”
And Hell will answer: “Is there more?”

Meša Selimović, Derviš i Smrt (The Dervish and Death)

The disintegration of Yugoslavia and the subsequent conflicts amongst the various ethnic groups from 1991 to 95 degenerated into a system where widespread killing and ethnic cleansing became commonplace, resulting in the bloodiest conflict on European soil since the end of the Second World War. The sheer level of violence presented the West with the issue of holding perpetrators accountable for the amount of suffering that was inflicted upon the civilian populations of the former Yugoslavia, primarily in Croatia and Bosnia.\(^1\) The trials of indicted war criminals at the International Criminal Tribunal for the former Yugoslavia (ICTY) presented victims with the opportunity to seek justice for the suffering that was inflicted upon them, but it also provided an insight into the events of the war, from the initial fragmentation due to an enhanced influence of nationalist politics to the massacre at Srebrenica and the eventual intervention by NATO. The trials themselves – involving minor players such as guards and regular soldiers, generals and even political leaders – provided a deeper insight into mindset of those who committed some of the worst atrocities during the conflict, as well as an historical perspective by detailing events as they

\(^1\) Not to diminish the importance of the region of Hercegovina but throughout this essay I will use the term ‘Bosnia’ rather than ‘Bosnia and Hercegovina’. I will also use the appropriate terms to distinguish between the various ethnic groups, e.g. Bosnian Serb instead of Serb, Bosnian Croat instead of Croat. However, Bosniaks will be referred to as either Bosnian Muslims or simply Muslims. Despite the fact that, theoretically, ‘Muslims’ cannot be identified as a national group as it is a religion, it seems to be the norm to refer to them as such in the discourse of the Yugoslav conflict. The term ‘Bosnian’ will not be used solely for Bosnian Muslims, but for the general populace of that country, including Muslims, Serbs and Croats; continually distinguishing between the nationalities residing within Bosnia would diminish the importance or even the existence of the Bosnian nationality.
unfolded. This essay aims to compare the historical narrative of the conflict with the testimonies of the indictees, the expert witnesses and the victims of the conflict who testified at the trials.

To begin with, it is important to understand why the ICTY was created and what was its intended purpose for the victims, the perpetrators and the international justice system. Established in 1993 at the height of the war in Bosnia, the principal purposes of the ICTY were to act as a venue for punishing offenders of international humanitarian law, crimes against humanity and war crimes. Eric Stover, a journalist who worked extensively with witness testifiers at the tribunal, suggests that the establishment of the tribunal may have been a method to ease Western guilt and ineffectiveness during the conflict, primarily on the parts of the United Nations and the European Union. One of the focal points for the establishment of the ICTY was also to act as a deterrent for future war crimes, not only in Bosnia and throughout the former Yugoslavia but also throughout the world. The idea was that future perpetrators of war crimes might be dissuaded from doing so by the possibility of answering for their crimes on an international stage. However, respondents to a study in Bosnia in 2004 were unconvinced that the ICTY would deter war crimes in the future. Other survivors remained sceptical of the court’s eagerness for apprehending the leaders and instigators of war crimes rather than targeting the triggermen of the crimes. Hasan Nuhanović, a survivor of the Srebrenica massacre whose mother, father and brother were murdered by the Bosnian Serb forces, told Elizabeth Neuffer after the indictment of Bosnian Serb general Ratko Mladić, “If I go to Vlasenica (a town in eastern Bosnia), I won’t meet Mladić in the street, but I may meet my mother’s murderer – and who should I go to complain to?” Janine di Giovanni captured a similar sentiment in Sarajevo after the arrest and extradition to The Hague of the President of Serbia, Slobodan Milošević.

No one was celebrating Milošević’s capture. The big fish are getting caught, but the ones who really did it – the ‘executioners,’ as people call them – are still living peacefully.

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walking the streets. They are the men who raped and killed and burnt and now sit in cafes in Foča and Srebrenica, confident that The Hague will never find them.\(^6\)

It is however the trials of the ‘big fish’ that reveals the extent of their knowledge of what was occurring in the towns and villages of Croatia and Bosnia, and their case is crucial in understanding the truth behind the events during Yugoslavia’s darkest period.

The first theatre of war where war crimes were committed on a mass scale, warranting ubiquitous condemnation from the international community, occurred in the Croatian city of Vukovar, located in the eastern region of Slavonia. After the quick and relatively bloodless secession of Slovenia from the Socialist Federal Republic of Yugoslavia in June-July 1991, the Yugoslav People’s Army (JNA) diverted its attention to the next republic that declared independence from Yugoslavia on the same day as the Slovenes: Croatia. Vukovar, given its proximity to Serbia and its mixed Croat and Serb population, was locked into the sights of the now Serb-dominated JNA as a town to be incorporated into the ‘Greater Serbia’.\(^7\) After a three-month siege of Vukovar that reduced the town to the status of ‘Croatia’s Stalingrad’,\(^8\) the town fell to JNA forces and Serb paramilitaries on 20 November 1991.\(^9\) Vukovar accounted for 2,642 of the deaths in Croatia’s war of independence, most of those killed during the relentless shelling of the town over the three months.\(^10\) The most egregious crime to take place after the fall of Vukovar was the removal of over 200 male patients from the town hospital, who were then transported to locations near Ovčara, approximately 10 kilometres from Vukovar. These men were not seen until December 1992, where a mass grave capable of holding up to two hundred bodies was located.\(^11\)

The case that revealed the greatest details of the crimes committed in Vukovar was that of the ‘Vukovar Three,’ who were Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin. The most credible witness to take the stand against the three indictees was Dr Vesna Bosanac, the director of the Vukovar hospital who became known in the world for her broadcasts from the besieged hospital, begging for Western intervention and humanitarian assistance to the dying patients. On the 20 November, the Serbs expelled the Red Cross observers on the orders of JNA commander

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\(^9\) Silber and Little, *The Death of Yugoslavia*, p. 179.


Šljivančanin, allowing the Serbs to transport the male patients to their execution site. In Bosanac's testimony to The Hague relating to the evacuation of the patients from the hospital, she stated that

When I talked to Colonel Mrkšić we discussed a number of possible evacuation routes. He listed some of those that he deemed possible. I told him that a route had already been agreed on and signed in Zagreb. The following route: Hospital-Luzac-Bogdanovci-Marinci-Vinkovci. He said this might prove a problem, because mines would have to be cleared from Zidine – Zidine is a place – and this was the reason that no evacuation could start on the 19th, but, rather, one would have to be organised on the following day, the 20th.

Another former JNA general, Milorad Vojnović, who recently arrived in the region, confronted Mrkšić about the mistreatment of the prisoner patients in Ovčara. Prosecution lawyer Ferrara stated on behalf of his client that ‘during his meeting with Mrkšić, the witness (Vojnović) raised the issue of maltreatment of prisoners at the Ovčara hangar, and Mrkšić replied, “Don’t talk about this.”’ Mrkšić was sentenced to 20 years in prison, while Šljivančanin received an initial 5-year sentence that was extended to 17 years after an appeal, instigated by the fury of Vukovar residents.

The trials related to the massacre in Srebrenica and the surrounding areas in July 1995 revealed the extent that Bosnian Serbs were willing to go to achieve the end goal of incorporation this region into ‘Greater Serbia’, and the atrocities the leaders were willing to commit to cleanse eastern Bosnia of its Muslim population. The collapse of the UN-designated ‘safe area' of Srebrenica in eastern Bosnia on the 11 July 1995, and the subsequent massacre of a suspected 7,000-8,000 Muslim men and boys by Bosnian Serb forces and Serbian paramilitary forces, counts as the single largest massacre on European soil since the Second World War. Responsibility for the massacre of Srebrenica’s male population and the expulsion of up to 23,000 civilians from the ‘safe area’ has been a topic of contention. Failure to prevent the massacre has been blamed on the

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Dutch peacekeepers allocated to protecting the safe area, the Dutch government, the Bosnian government, the U.S. government, the U.N. Command Centres in Tuzla, Sarajevo, Zagreb and New York, the Bosnian Army, and the list continues. While all of the aforementioned parties certainly played a role in the fall of Srebrenica, it is the trials of those indicted Bosnian Serb war criminals who took part in the executions who revealed that the massacre of men of fighting age was indeed pre-meditated.

Dražen Erdemović not only encapsulated the absurdity of this war – at various points in the war he had fought for the Muslims, the Croats, and the Bosnian Serbs\(^\text{17}\) – but he also became the first indictee to enter a guilty plea for his role in Srebrenica. His cooperation with the tribunal resulted in a reduced sentence from ten years to five years, to the outrage of many survivors and victims’ families.\(^\text{18}\) Nevertheless, Erdemović’s testimony was crucial to the prosecution as it detailed the systematic executions of the male population, organized and overseen by General Ratko Mladić. Erdemović’s account of the day at Branjevo farm, where up to 1,200 men were executed, was described by Slavenka Drakulić, a Croatian author who was a witness to several key trials in The Hague:

Dražen knew that he would never forget this day, and that it would remain his curse: that smell of fresh air in the morning, the blue of the sky, the sound of the first bus arriving, the thin man with a moustache, another man’s trousers soaked with urine, the stench of rotten meat, the dark red colour of blood gushing from a wound, the man who asked him how he could do what he was doing, the boy calling for his mother. He had sensed that this day would change his entire life – that it was already changing.\(^\text{19}\)

Erdemović’s suspicions that an execution was about to be carried out at Branjevo farm were confirmed on their arrival, as he discovered a pile of weapons and ammunition for Kalashnikov rifles awaiting his unit.\(^\text{20}\) After the massacre at Branjevo farm, his unit was rerouted to perform another execution in Pilica. He refused, along with others in the unit.\(^\text{21}\) Erdemović’s remorse over his actions was evident throughout his trial, from his guilty plea where he said “because of


\[^{18}\text{Neuffer, The Key to My Neighbor’s House: Seeking Justice in Bosnia and Rwanda, p. 245.}\]


\[^{20}\text{Rohde, A Safe Area: Srebrenica – Europe’s Worst Massacre Since the Second World War, p. 308.}\]

\[^{21}\text{Drakulić, They Would Never Hurt a Fly: War Criminals on Trial in The Hague, p. 105.}\]
everything that happened I feel terribly sorry, but I could not do anything (Erdemović initially objected to carrying out executions of civilians, until his commander suggested that he either joins in, or joins the Muslims due for execution). When I could do something, I did it.”\textsuperscript{22} The crucial evidence that Erdemović provided apportioned the responsibility of the Srebrenica massacre to the man who had avoided capture and extradition to the tribunal until May 2011, General Ratko Mladić.

The trial of Ratko Mladić will unquestionably deliver the details of the massacre in Srebrenica that have been left unanswered so far. However, many fear that Mladić’s contemptuous behaviour and grandstanding will result in a lengthy trial, denying truth and justice to those who seek it most: the survivors of the Bosnian war. Mladić’s arrogance after the fall of Srebrenica was bound to catch up with him. After the fall of Srebrenica, Mladić was recorded by Serbian television marching through the town, issuing orders to his soldiers to remove street signs with Muslim-sounding names. He then told the reporter: ‘We present this city to the Serbian people as a gift. The time has come to take revenge on the Turks (slur used to describe Bosnian Muslims).’\textsuperscript{23} Mladić, in a discussion with Srebrenica’s civilian leaders, also bragged that ‘the fate of Srebrenica’s Muslims lies in my hands.’\textsuperscript{24} The massacre at Branjevo farm, in which Dražen Erdemović took part, occurred on Sunday 16 July. Mladić’s defense about the lack of knowledge of the Branjevo farm massacre is that he was attending a wedding in Serbia on that same day, and therefore could not have known or witnessed the executions taking place.\textsuperscript{25} Although it appears clear from the outset that Mladić will deny any part in the massacres that occurred after the fall of Srebrenica (he described the charges against him as obnoxious and monstrous\textsuperscript{26}), there is at least one witness who has testified to seeing Mladić present at one of the execution sites. The story of Hurem Suljić, a survivor who hid under corpses of relatives and neighbours until the shooting had ceased, recounted his story to David Rohde:

\textsuperscript{23} David Rohde, A Safe Area: Srebrenica – Europe’s Worst Massacre Since the Second World War, p. 167.
\textsuperscript{26} ICTY, Pre-Trial Session, The Prosecutor vs. Ratko Mladić, 3 June 2011, available from http://www.icty.org/x/cases/mladic/trans/en/110603ID.htm
Two officers got out of the car and Suljić recognized one of them immediately. General Ratko Mladić surveyed the killing field. His face was grim. Suljić could see that he was speaking, but couldn’t hear what Mladić was saying. Suljić heard the execution squad fire several volleys. The shooting stopped. Mladić and the officers departed.  

Many more survivors of Srebrenica are expected to testify against Mladić. His trial is one of the most anticipated of all the ICTY trials. However, there are fears that the trial will degenerate into a podium for sprouting the nationalist Serbian narrative; an element that was prevalent in the trial of the man who was charged with orchestrating the entire war as a means of pushing his own agenda. That man was President of Serbia, Slobodan Milošević.

Dubbed ‘the trial of the century,’ the trial of Slobodan Milošević revealed the extent of the man’s knowledge of events in Croatia and Bosnia and exactly what orders he provided and to whom. The trial was also a test to the ICTY’s ability to try a former head of state without inadvertently charging the Serbian nation with crimes against humanity – a scenario that may inflame a region still struggling under a fragile peace. Proving that Milošević initiated orders would be a challenge for the prosecution. After the break-up of Yugoslavia, Milošević became President of Serbia, not the Federal Republic of Yugoslavia to whom the JNA answered. He could also deny control of the Bosnian Serb forces which came under the direct leadership of Radovan Karadžić. Milošević’s decision to defend himself eventually backfired, as many witnesses whom he presumed to be loyal ended up being the most crucial to the prosecution in revealing the extent to which Milošević controlled the war from the comfort of Belgrade. Dragan Vasiljković, a commander of a Serb paramilitary unit and Australian citizen, told the tribunal that he attended a meeting in Belgrade with Jovica Stanišić, the head of the Serbian State Security Services of the Ministry of the Interior. When Vasiljković enquired as to why he could not return to the Krajina, a Serb-held region of Croatia, he was told that these were orders from ‘the boss’, meaning Milošević. Under the glaring eye of Milošević, Captain Dragan recanted his signed statement as a false document that was signed under the pressure from the tribunal.  

Another damning witness was Slobodan Lažarević, a former intelligence officer in the JNA. When Milošević denied any control over the JNA or its sub-branches, including the intelligence service, Lažarević shot back, ‘You were head of the

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27 David Rohde, A Safe Area: Srebrenica – Europe’s Worst Massacre Since the Second World War, p. 299.
Yugoslav Army and you know full well.’ Lažarević also explained to the court that Milošević purged the army of non-Serbs as well as those who were either disloyal to him, filling the vacant positions with nationalists who would obey his wishes.29 When the going got tough, Milošević resorted to the tactic of accusing the tribunal of judging the entire Serbian people by glossing over the crimes committed against Serbs in Croatia and Bosnia by those nations' forces. He accused the tribunal of collaborating with the media in satanising the Serbian people and persuading the international community that Serbs are an evil people.30

It is ironic that Milošević's rise and fall revolved around the notion of Serbian victimisation, the notion that history has been cruel to the Serbs. In the speech at Kosovo Polje in 1987 that catapulted him to the status of hero of the Serbian people, he declared in front of one million people that ‘six centuries later (referring to the Battle of Kosovo Polje against the Ottomans), again we are in battles and quarrels. They are not armed battles, though such things should not be excluded yet.’31 He also capitalised on the grievances of the Serb population in Croatia, accusing the Croatian leadership of deliberately launching a program of discrimination against the Serbs, as well as suggesting a resurrection of pro-Ustaše sentiment amongst the Croatian population, referring to the pro-Nazi fascist movement that, during the Second World War, was responsible for the deaths of up to 200,000 Serbs.32 Stjepan Mesić, the then President of Yugoslavia and future President of Croatia, testified against Milošević and accused him of launching a campaign of 'Serbianisation' of the JNA and the federal institutions. Mesić vehemently denied that Croatia was adopting the nationalist identity that was exploited by the Ustaše, and reminded Milošević that the Croatian identity could not be erased by killing innocent people and destroying towns and villages.33

Unfortunately, Milošević's behaviour in the courtroom and his declining health resulted in a lengthy trial and much time wasted. Slavenka Drakulić observed Milošević's behaviour in the courtroom:

29 Judith Armatta, Twilight of Impunity: The War Crimes Trial of Slobodan Milosevic (Duke University Press, 2010), Location 2229
33 Armatta, Twilight of Impunity.
Milošević would sit with his head turned away from the judges; he avoided looking at them, as if the whole thing had nothing to do with him. He appeared relaxed, disinterested in the long exchanges between the judges and the prosecution about the technical details of the proceedings. Instead, his eyes were scanning the members of the public, perhaps looking for familiar faces.  

Milošević died in custody on the 11 March 2006. His death naturally terminated the proceedings against him, but thereby denied justice to the victims who suffered because of his megalomania, his idea of a ‘Greater Serbia’, and his exploitation of nationalism to serve his political agenda.

The trials in The Hague have not concluded. The Mladić trial will commence in May 2013, the trial of Radovan Karadžić is allowing the voices of victims across Bosnia to be heard, and many of the lesser-known triggermen are still in proceedings. The ICTY is responsible for establishing the facts of the wars in the former Yugoslavia and providing justice for those who would otherwise have been denied the opportunity in their home country. The trials also provide the historical narrative of the conflicts, merging the information researched by historians with the witness accounts provided in The Hague trials. By the time the trials are concluded, the wars in the former Yugoslavia will be some of the most well documented conflicts of the 20th century.

**Serbian/Bosnian/Croatian pronunciation guide**

C – as in ‘ts’ in ‘cats’  
Č – as in ‘ch’ in ‘church’  
Ć – as in ‘t’ in ‘tune’  
Đ – as in ‘d’ in ‘duke’  
DJ – as in ‘dg’ in ‘bridge’  
J – as in ‘y’ in ‘yes’  
LJ – as in ‘lli’ in ‘million’  
NJ – as in ‘ni’ in ‘onion’  
Š – as in 'sh' in 'ship'  

34 Drakulić, *They Would Never Hurt a Fly: War Criminals on Trial in The Hague*, p. 115
Ž – as in 's' in 'measure' or 'zh' in 'Zhivago'

**BIBLIOGRAPHY**

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