

The Fog of Justice

Tim Judah

1.

If you lived through the Yugoslav wars it is strange to find how events can catch up with you. They sometimes seem to have happened yesterday, even though they took place years ago. In November I was in The Hague watching the trial of the former Serbian leader Slobodan Milosevic. I could not see one of the witnesses because his identity was protected, but he testified that he had survived an execution squad following the fall of the Bosniak enclave of Srebrenica in July 1995.¹ When Milosevic started to cross-examine the witness, he kept asking about the village of Kamenica, which is where he came from. I could not place Kamenica and kept trying to remember why the name was so familiar. Milosevic was talking about Serbs who had been killed there by Bosniaks. He said that they had "been cut into pieces" and their heads had been "severed." Angriily, the witness said this was a "fabrication."

Then it struck me that I had been there, in Kamenica, on the cold, sunny morning in February 1993 when the Serbs, who had just captured the village, were exhuming a mass grave. The stench was appalling. At least one body had no head. When the frozen bodies were laid out in the sun, they began to steam. Then Serbian soldiers and others wandered about looking for their relatives.

Of course Milosevic was playing to Serbian public opinion. While in jail in The Hague, he is still heading his party's list in Serbia's general election to be held on December 28. What happened in Kamenica was not directly relevant to the evidence about the murder of up to eight thousand Bosniaks in Srebrenica. But what Milosevic was saying underlined just how difficult the task of international justice in the former Yugoslavia has become, and how tightly the record of the past is bound up with today's politics.

Bosnia has changed beyond recognition during the last three years. Almost one million refugees out of an original total of 2.2 million have gone home—far more than seemed possible when the war ended in 1995. Each day Bosnian Croats, Serbs, and Bosniaks have to work together a little more closely to make their country function.

More than a decade ago, in 1992, I drove through the Bosniak-inhabited town of Kozarac, which had just been ethnically cleansed by Bosnian Serb

"During the war Bosniaks were called Bosnian Muslims or simply Muslims. Since then, however, the name Bosniak, which implies a nationality rather than a people simply identified by their religion, has become accepted.

forces. Not a single house remained intact. Today Kozarac lies deep inside the Republika Srpska, the Serbian entity inside Bosnia which, under the terms of the 1995 Dayton peace agreement, coexists with the government of the Bosniak-Croat federation. Visiting it now, I saw that almost every single house in the town has been rebuilt and half the original population of 20,000 has returned.²

It is true that the rate of return in Kozarac and some nearby towns has

date came out on top, but not enough people voted to make the election valid.

In the Serbian government building, close to where his mentor, the former Serbian premier Zoran Djindjic, was murdered on March 12, I met Ceda Jovanovic, one of the country's outgoing deputy premiers. He is in a good position to talk about the effects of the Hague Tribunal in Serbia, he says, having put Milosevic "on the helicopter" that in 2001 took the former Serbian leader to Tuzla in Bosnia from where

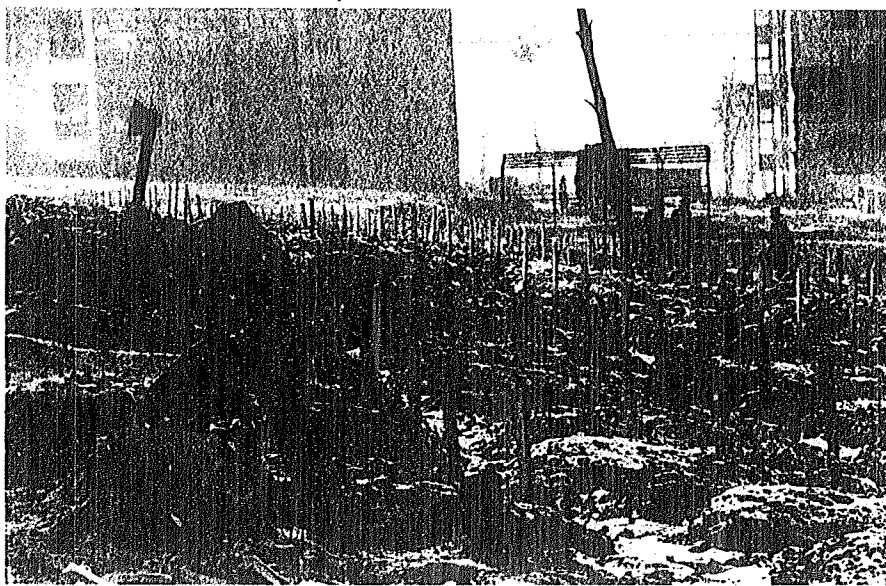
He owes his job to the fact that he betrayed Milosevic just at the right time and supported the democratic forces led by Djindjic. After Djindjic was killed, Lukic was in charge of rounding up some ten thousand people, while the state mounted a counterattack against many of the organized crime syndicates that have done great damage to Serbia in recent years.

Indeed, if it turns out, as many believe, that a coup backed by some of the military was supposed to follow Djindjic's assassination in order to end cooperation with the tribunal, Lukic was probably instrumental in foiling it. One of the apparent motives for the coup plotters, and for the support they had from the military, was to end cooperation with the tribunal. But now Lukic's past has caught up with him. On October 20, Ms. del Ponte announced in London that she had indicted him, along with three other generals, for war crimes in Kosovo, where he was chief of police during the conflict there. By way of his response to the indictment, he and one of the other generals will be candidates in the election on December 28.

I don't believe that the Hague Tribunal is the only, or even a major, reason for the collapse of the reformist government that led Serbia since 2000, but it has contributed to it. That may be because, as Nataša Kandić, Serbia's leading human rights activist, told me, no one in the government had the courage to say that Serbs needed to face up to the crimes that had been committed in their name. Instead the government had handed over Milosevic, among others, "because he was their enemy." Because of international pressure, and because aid had been tied to cooperation with the tribunal, Kandić said.

No one mentioned war crimes or the criminal acts for which Milosevic and the others were accused. They said "we must cooperate because Serbia and Montenegro is a member of the UN" or "we need financial aid, the support of the IMF or the World Bank." We don't have politicians who think they have an obligation to accept responsibility for Milosevic's time.

All the polls have consistently shown that Serbs mistrust the tribunal and continue to view it as anti-Serb. They point to the apparent fact that three Serbs are indicted for each non-Serb. While it is also true that Serbs fought in all the main recent Yugoslav wars—in Croatia, Bosnia, and Kosovo—as Aleksa Djilas, a leading Serbian commentator and an eloquent opponent of the tribunal, points out, Serbs are suspicious of the court since, apart from military men, the only political leaders



A man gathering firewood in a Bosnian cemetery, Sarajevo, December 24, 1992

been exceptionally high. But Bosniaks tell you that far fewer people would have returned had it not been for the Hague Tribunal. Nineteen of the local killers and organizers of wartime ethnic cleansing have been indicted, arrested, or effectively removed; as a result people have felt it was safe to return home. In eastern Bosnia, where fewer people have been indicted or arrested, the rate of return is far lower.

This is just one example of the way the court affects the region. But there are many others too. In fact, it is remarkable how important the tribunal has become throughout the former Yugoslavia. In Belgrade I met Predrag Simić, the dean of Belgrade's Diplomatic Academy. In his view, the chief prosecutor, Carla del Ponte, dealt a deathblow to the reformist government of Zoran Živković, which then collapsed, by indicting four Serbian generals just before the presidential election on November 16. "It was a dagger in the back," he said, "for a reason no one can reasonably explain." An extreme nationalist candi-

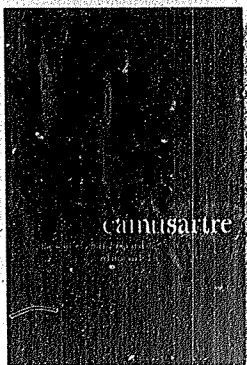
A superb book has just been published in French on the events in Kozarac and nearby Prijedor. It discusses the question of war crimes and how they have been dealt with at the tribunal as well as the return of Bosniaks to their homes. It is *Bosnie, la Mémoire à vie: Prijedor, laboratoire de la purification ethnique*, by Isabelle Wesselingh and Arnaud Vaulerin (Paris: Buchet/Chastel, 2003).

he was taken to The Hague.

I asked him about Serbia's troubled relations with the tribunal since the fall of Milosevic. Why, for example, hasn't General Ratko Mladić, the former Bosnian Serb military leader who is charged with genocide and widely believed to be in Serbia, been handed over as Milosevic had been? At first, he said, Mladić was protected by the military, which supported Vojislav Kostunica, the first (and last) Yugoslav president after Milosevic fell. Kostunica was Djindjic's great rival and now, ironically, partly because of the much-resented pressure from The Hague to deliver more indicted Serbs for trial, Kostunica's party could return to power on December 28. "The top of the federal administration," Jovanovic said, meaning the people originally around Kostunica, "gave support to the Hague war criminals." And Djindjic, he continued, "is dead because of that. His killers told the special prosecutor that they had done it because they were patriots and Djindjic was a Hague traitor" because he had handed over Serbs to the tribunal.

Still, I said, Kostunica left office when Yugoslavia was abolished and replaced with the new "state union" of Serbia and Montenegro last February, so why had General Mladić not been arrested since then? Well, he said, "we did not have the instruments for that. Who would do it? Sreten Lukic?" This was an ironic question, Lukic is in effect Serbia's current chief of police

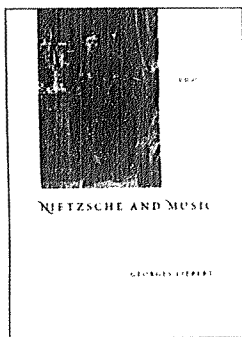
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indicted so far have been Serbs. In his view the tribunal "is a conspiracy, basically to...punish the main enemy of NATO, the US, and the West." The tribunal, he believes, seeks "to justify the [1999 NATO] bombing of Serbia because of Kosovo. If Milosevic is indicted for genocide in Bosnia then it justifies the bombing over Kosovo."

Djilas and many of his fellow Serbs charge that only part of the truth comes to light in The Hague. He has no doubt about the guilt of many of those indicted but finds it disgraceful that Franjo Tudjman and Alija Izetbegovic, the Croatian and Bosnian wartime leaders, did not end up in the dock, although, after both of them died, it was revealed that they had been under investigation by the Hague prosecution. Tudjman might have been accused of responsibility for killings in Krajina, the Serb enclave in Croatia. Izetbegovic was being investigated for his responsibility for a camp in which Serb civilians may have been held and abused, as well as for killings by mostly foreign mujahideen fighters. It is not as though Serbs don't know what was done in their names. Djilas says, but few see the Hague Tribunal as concerned with "the whole truth."

After I left Belgrade I traveled to Vukovar, the eastern Croatian city that was virtually flattened by the Yugoslav military and Serbian paramilitaries when they besieged it and finally took it over in 1991. In 1999, it was peacefully handed back to Croatia. Outside the city there is a large cemetery and a monument to both Croats who died defending the town and civilians killed during the siege.

One of the people I talked to in Vukovar, which has now been substantially rebuilt, was Petar Mlinovic, the local vice-president of the Croatian Democratic Union (HDZ), the party that had led Croatia to independence. It had been out of power since 2000, but on November 23 was about to win the general election in which Mlinovic was elected to parliament. He had been one of Vukovar's defenders. What, I asked, did he think of the case against General Ante Gotovina, one of the main military leaders of Croatia's reconquest of Krajina in August 1995? The general has been indicted for war crimes, including murder, the destruction of thousands of Serbian homes, and the ethnic cleansing of up to 200,000 Serbs. He has not been handed over to The Hague and the outgoing Croatian government has claimed that it does not know where he is.

Mlinovic insisted that the tribunal was "much more favorable to Serbs." The Croats it was trying to indict were, he said, "only trying to defend their country," so they could not have been responsible for war crimes. "Lots of things happened there in Iraq," he said bitterly, "but no one is blaming America for war crimes. The Croatian government made an agreement with The Hague thinking it would threaten Serbs, not Croats!"

Mlinovic's view is a common one. In the cemetery outside Vukovar I talked with Vendelin Koch, an elderly man who was laying flowers on the graves of his two sons, who had died as the city fell in 1991. On the day before it fell, he had tried to escape with ten other men, including one of his sons,

Mr. Koch was the only survivor. I asked him about the tribunal and he said: "Sometimes they apply the same measures to aggressors and defenders. Mladic, Karadzic, and Gotovina cannot be in the same group." (Radovan Karadzic, the indicted Bosnian Serb wartime leader, remains at large in Bosnia, despite the presence of 12,000 NATO-led troops.)

While many believe that Ms. del Ponte was to some degree responsible for the fall of the Zivkovic government, exactly the same argument is heard in Croatia, where pressure for Gotovina's arrest is believed to have been partly responsible for the collapse of a similarly reformist administration. Still, Croatia, like Serbia, cannot escape the tribunal. Croatia has been told in no uncertain terms that its path toward accession to the European Union is blocked by the government's failure to turn over General Gotovina. Similarly, unless General Mladic is handed to the tribunal by next March, the US will cut aid to Serbia and refuse to support any loans or aid from the IMF and the World Bank.

Ivo Sanader, the head of the HDZ and Croatia's next premier, assured me that his administration would live up to its obligations to the tribunal. He seemed desperate to tell the world that the HDZ is no longer a nationalist party but rather should be understood as a conventional, well-behaved European conservative party. Thus, despite the views of people like Mr. Mlinovic, it is more than likely that General Gotovina will, if he is still in Croatia, soon find himself on a flight to The Hague. In fact, because of his party's nationalist credentials, Sanader will be in a far better position to take on this unpleasant task than his reformist predecessors, who, like their counterparts in Serbia, could always be accused of being "Hague traitors."

2.

In Zagreb I met Visnja Staresina, a columnist on the daily paper *Večernji List*. General Gotovina, she believes, has not been delivered to The Hague because he is protected by people outside Croatia. After all, she points out, the Croatian attack on Krajina in 1995 was planned with the help of Military Professional Resources Inc. (MPRI), an organization of former US generals and top military men who could not have acted without encouragement from the US administration. The American military planners "would not like to have such an operation on trial," she said. True or not, such speculation can also be heard about General Mladic and Radovan Karadzic. What they might have to say about their relations with certain Western politicians could prove to be very embarrassing. Whether such claims are the product of Balkan conspiracy theories or whether there is serious evidence for them remains an open question.

In Staresina's view, "The Hague has fulfilled its role but if they continue with their work they will destabilize the region." During the next few weeks, indictments for some thirty more people will be made public; across the former Yugoslavia there is constant speculation about the names that will be on the list.

Just as in Serbia, perceptions about the tribunal have large political implications. Indeed, while there is widespread mistrust of the tribunal in Croatia, Jadranka Slokovic, a lawyer who has defended Croats in The Hague, told me that most Croats don't realize how few of them are on trial there. In fact, all the Croats who have been tried so far are from Bosnia. General Janko Bobetko, Croatia's former chief of staff, was indicted but he died before he was sent to The Hague; General Gotovina is still at large. That leaves only one man from Croatia against whom proceedings have actually begun, General Rahim Ademi. Slokovic's client. There is no doubt in his mind and hers, she says, that he was "the scapegoat." Apart from the fact that he had served in the Yugoslav army and was thus an "outsider" in Croatian nationalist circles, he was delivered to The Hague, she says, because he is an ethnic Albanian from Kosovo and for that reason no one appears to care about him.

When you talk with Ms. del Ponte, a former Swiss prosecutor of the mafia, you get the impression that nothing angers (or bores) her more than having to rebut once more the allegations of political bias and timing in her indictments. "My principle," she says firmly, "is not to care about the political impact [of indictments], otherwise I would not be independent." Every time she is ready with an indictment, she says, "I have been confronted with the political situation in the Balkans.... I am confronted with 'It is elections, it is this or it is that....'" What she can do, she says, is inform governments in advance that indictments are coming. For example, she told the authorities in Serbia six months before the indictment of the four Serbian generals, but it seems they did nothing to prepare public opinion for it. As for General Gotovina, the reaction to her warning was that "he disappeared."

Ms. del Ponte denies allegations of bias, pointing out that while many senior non-Serb politicians like Bosnia's Alija Izetbegovic might well have been indicted, her critics appear to forget that evidence is needed for an indictment and this is generally hard to secure, especially for politicians. Hardest of all has been finding evidence: and potential witnesses against Kosovo Albanians. Because of their code of honor, few with inside information are prepared to collaborate with the prosecution for fear of their lives.

When it comes to Slobodan Milosevic and the charge of genocide, the most serious one he faces, hard proof apparently still needs to be found in order to show that he intended to commit the act, apart from the simple fact, if indeed that is shown, that genocide was a result of his actions.

Ms. del Ponte made it clear to me that a complex and little-known problem has developed in the case of Serbia. The Hague's prosecution team wants documents and transcripts from Serbia and the former Yugoslav federal archives. The authorities in Belgrade say that the prosecution can have specific documents. But they don't want to give the prosecutors the freedom to go on a fishing expedition that might later help Bosnia to prosecute the state of Serbia and Montene-

gro at the International Court of Justice (ICJ), also in The Hague, which deals only with states, not individuals. In that court Bosnia launched a case against Serbia for genocide in 1993. One of the main aims of the Yugoslav tribunal is to prosecute individuals, and thus ensure that there is no Serbian or Croatian or any other collective guilt. With the entire state accused of genocide, Goran Svilanovic, the foreign minister of Serbia and Montenegro, told me, "the endgame will be collective responsibility. What is the state? It is the nation, meaning Serbs. Maybe that is wrong, but that is how people feel."

Svilanovic has been at the center of this struggle over documents because, apart from being foreign minister, he is also head of the state council for coordination with the tribunal. He has an impeccable record, having opposed Milosevic and been an advocate of human rights. But he told me: "The burden of responsibility we are bearing is not well understood by the rest of the world. We are trying to prove at the ICJ that there was no genocide. We don't want to be the first state to be found guilty of that." After the elections on December 28 Svilanovic may be replaced by someone who does not believe in cooperating with the tribunal at all.

If Bosnia wins its case at the ICJ, several things may follow. One is that Serbia may have to pay compensation. The second, Serbs argue, especially in Bosnia, is that the Republika Srpska may be threatened. If it is found in court that genocide was committed by Serbia and Serbian leaders in Bosnia, then the Republika Srpska may be said to be an entity founded on genocide, hence illegitimate. In that case, they argue, Bosnia's own stability would also be threatened.

Vladimir Djerić, who is on Serbia's legal team at the ICJ, told me that if Bosnia does not drop its case, there will be other grim consequences for reconciliation in Bosnia:

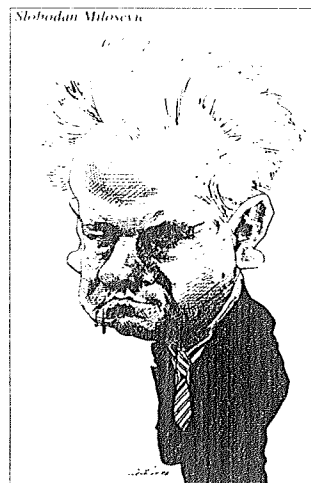
If we win, the public here and in the Republika Srpska will say that there was not only no genocide but no crimes at all. If the Bosnians win, the Serbs will say that it was "one more conspiracy against Serbs." We are not saying that no crimes took place but what we say is that there was no genocide as opposed to crimes against humanity and war crimes.

Two other cases concern Serbia and Montenegro at the ICJ. In a case that is widely seen as weak, the Croats have also brought an action against Serbia for genocide. Serbia, for its part, is accusing ten NATO states, including the US and Britain, of the illegal use of force against it during the NATO bombings of 1999. Djerić told me that he believed all three cases should be dropped. The main problem, he says, lies in Sarajevo, where Bosniak politicians have been insisting on pursuing their accusations.

There is no doubt that more Bosniaks died than any other single nationality in the former Yugoslavia, but how many did remains uncertain. Amor Masovic, who is in charge of the Bosnian state commission that excavates mass graves, told me that between 130,000 and 200,000 may have

died in Bosnia between 1992 and 1995. Since 1995, he told me, 17,200 people had been exhumed from graves, of whom some 9,000 had been identified. He said 88 percent were Bosniaks, 8.5 percent Serbs, and 3 percent Croats. He does not think that the ICJ case against Serbia should be dropped. He is also skeptical about a new plan to try war crimes in a special court in Sarajevo, in which, he predicts, local judges will simply vote along ethnic lines. For him, the Hague Tribunal and the ICJ are vital for bringing justice to the former Yugoslavia, "and justice is the most important condition for reconciliation."

However, he is pessimistic about the future. The tribunal says it will complete its investigations by the end of 2004 and close its doors by 2010. This means that from now on only a few more people can be tried, and thus



many others will never be brought to justice. This, he says, could have disastrous consequences:

In 1946 in Yugoslavia we decided to close mass graves and caves [where bodies had been dumped] and to cement them over. The goal was, "What happened, happened. Forget it, let's go forward." But that "forward" brought us to 1992. The families of the victims cemented in caves started to take revenge. They remembered their fathers and mothers in mass graves so they decided to pay back the suffering of the last fifty years by killing others.

He is implying that without full justice revenge will again haunt the Balkans.

The tribunal, I was told, is under pressure to wind up indictments because of the recent opening of the International Criminal Court (ICC), also in The Hague. Many people at the tribunal told me that because of the Bush administration's implacable hostility to the ICC, the US wanted the tribunal closed and cases in future to be handled by war crimes courts in the countries concerned. By supporting local trials, despite their obvious difficulties, the US was thus in effect backing its own assertion that it should have domestic jurisdiction in the cases of Americans suspected of war crimes.

One of the main aims of the Hague Tribunal is to encourage reconciliation in the Balkans. The president of the court, the respected legal scholar

Theodor Meron, born in Poland, who became a US citizen and now teaches at New York University, came to his profession by way of bitter experience. Between the ages of twelve and fifteen he was a slave laborer for the Nazis and he lost most of his family in the Holocaust. He told me that although "reconciliation was one of the historic goals for establishing the tribunal, more than on any other aspect the jury is still out on" this. Still, he added: "Were it not for such a tribunal, prospects [for reconciliation] would be greatly, adversely affected." Without justice, he said, men's primary instinct is revenge.

In Serbia, Croatia, and Bosnia, however, I met virtually no one who believed that the tribunal was helping to reconcile people. A Serbian girl whom I met in Prijedor in the Republika Srpska said she had nothing against Serbs from her town being sent to The Hague to answer for their crimes. But then, she added bitterly, when the mainly Bosniak Bosnian army took the nearby town of Sanski Most in September 1995, her grandmother disappeared. Three years later her remains were discovered in a mass grave with those of some 120 other Serbs killed after the town's takeover. Nobody, she thought, would ever answer for that crime. So, she said, Serbs did not see the tribunal "as a tool of justice."

In The Hague I talked with Emir Suljagic. For the last two years he has covered the tribunal as a correspondent for the Bosnian magazine *Dan*. A translator for the UN in Srebrenica, in 1995 he escaped the fate of the thousands of other Bosniaks murdered there after the fall. Precisely because he came from Srebrenica and had been a translator, he knew both defendants and witnesses in the Srebrenica trial. It had been very difficult for him, he told me. When one of the defendants, Momir Nikolic, accepted his guilt,

I was crying in court. When he said, "I plead guilty," I ran downstairs and locked myself in the toilet and cried my eyes out. It was a genuine relief to hear someone like him saying, "Yes, we killed seven thousand or eight thousand people."

In Sarajevo, Haris Silajdzic, the urbane Bosniak wartime foreign minister of Bosnia, now the head of his own political party, told me that as far as he was concerned the tribunal was a force for good and for reconciliation. "It helps a cathartic process in societies on all sides. The message is that there is responsibility. There is crime and punishment, so the message is that you cannot murder, kill, or dislocate people without punishment." But when I asked Suljagic about reconciliation he said:

I feel the way a Holocaust survivor would have done if the Nazis had repented themselves... I am against reconciliation as seen from The Hague perspective. I never wronged anyone. I did nothing wrong. Reconciliation means we have to meet halfway, but that's offensive. I was wronged and almost my entire family was killed. I care about justice and truth.

December 17, 2003

IN MEMORIAM



Hugh Kenner

1923-2003



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Professor, Friend



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