

THE CAMPAIGN FOR TRUTH & JUSTICE

THE MILOSEVIC TRIAL

Boston College

February 12, 2008

By Judith Armatta

Slobodan Milosevic was the first head of state tried for war crimes by an international tribunal, the International Criminal Tribunal for the Former Yugoslavia or ICTY, established in 1993 by the UN to help stop the conflict raging there. As Chief Prosecutor Carla Del Ponte proclaimed in her opening statement: *“This prosecution is arguably the most significant trial ever to be held of a political leader and Head of State. By the indictment he faces, the accused is alleged to be considered as perhaps the principal cause of much of the crime, tragedy and misery occasioned by the three wars covered by the charges.”*

The historic case ended without a verdict. After four years of trial, frequently interrupted by Milosevic’s illness, he died of a heart attack with only weeks remaining before his defense case was to end.

Milosevic was charged with 66 counts of war crimes, crimes against humanity and genocide for his role in crimes perpetrated during a decade of war that put Yugoslavia to the torch, as it raged through Croatia, Bosnia and, finally, Kosovo, leaving millions of people displaced and homeless and at least a hundred thousand dead. According to the indictment, Milosevic, with other named and unnamed persons including Radovan Karadzic and Ratko Mladic, was part of a joint criminal enterprise to forcibly remove Bosnian Muslims and Croats from large areas of Bosnia and Croatia in order to establish an ethnically pure state where all Serbs would live together. The indictment further charged that the criminal enterprise included genocide. Milosevic’s defense to the Croatia and Bosnia indictments was that he, as president of Serbia, had nothing to do with conflict there. He claimed they were civil wars.

As only a leadership trial can, the Milosevic trial allowed a broad view of the decade of war in the former Yugoslavia and what was behind it. It is likely to be the only ICTY trial that comprehensively examines Serbia’s role in Bosnia and Croatia, including its role in genocide. The trial also allowed the prosecution to present evidence that genocide was not confined to Srebrenica in July 1995, but began in 1992 and encompassed a far larger area.

Only in the *Karadzic, Mladic* and *Milosevic* indictments did the prosecution allege a genocidal campaign broader than Srebrenica. The prosecution brought separate cases against other individuals for genocide committed in the 1992 murderous takeover of 70% of Bosnia's territory, in the detention camps and in the 1995 takeover of Srebrenica. This piecemeal approach, in part necessitated by the ICTY's jurisdiction to try individuals not states or ethnic groups, precluded the Tribunal from considering the actions of participants in one, comprehensive joint criminal enterprise from March 1992 through December 1995. In individual cases, relevant evidence is limited to the sphere of operations of the accused. As a result, it is much more difficult to establish the pattern of actions that indicate genocide. Hence, the ICTY failed to find genocide occurred anywhere except in Srebrenica in 1995. The Vice President of the International Court of Justice wrote in a case Bosnia brought against the state of Serbia and Montenegro, "[G]enocide is . . . a complex crime in the sense that unlike homicide it takes time to achieve, requires repetitiveness, and is committed by many persons and organs acting in concert. As such, it cannot be appreciated in a disconnected manner." The ICJ is a separate institution from the ICTY. It differs in that it is a permanent court and only hears disputes between states.

Genocide was the charge most difficult to prove against Milosevic. In the Krstic case, the ICTY Appeals Chamber described the seriousness of the crime: *"Among the grievous crimes this Tribunal has the duty to punish, the crime of genocide is singled out for special condemnation and opprobrium. The crime is horrific in its scope; its perpetrators identify entire human groups for extinction. Those who devise and implement genocide seek to deprive humanity of the manifold richness its nationalities, races, ethnicities and religions provide. This is a crime against all of humankind, its harm being felt not only by the group targeted for destruction, but by all of humanity."*

Based on the Geneva Conventions, the ICTY statute defines genocide as "[A]ny of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

More than an intent to commit murder, even on a mass scale, the perpetrator of genocide must have had a specific intent to destroy a substantial part of a group protected by the statute. Perpetrators rarely leave written evidence expressing their intent to commit genocide. As a result, the law provides intent can be inferred from circumstantial evidence, as long as it is the only inference that can be made. It is a very high standard.

The difficulty of proving genocidal intent insures few will be held responsible. Yet, one person alone cannot commit genocide. Nor can it be accomplished without the contributions of numerous others, including policy-makers, logistical planners, military suppliers, those who do the killing and terrorizing and those who stand and watch. Though all are necessary, not all are equally guilty. While some bear legal guilt, the guilt of others is moral, unreachable by the law. If the law sweeps too broadly, it risks diluting the seriousness of the crime. If applied too narrowly, it risks minimizing any deterrent effect, as well as leaving survivors outside the pale of the larger community and diminishing the historical memory of what the victims have suffered.

Milosevic was charged with two counts, genocide and complicity in genocide. The underlying crimes included widespread killing of the civilian population during takeovers of territory, and the killing, torture, rape, beatings and starvation of thousands in detention facilities, as well as the mass exterminations at Srebrenica in 1995.

After the prosecution's presentation of evidence, the Court, denied a motion to acquit the accused and ruled the prosecution had presented sufficient evidence, if believed, to support its charge that genocide occurred beginning in 1992 during and after the ethnic cleansing and takeover of 70% of Bosnia, in detention camps and in Srebrenica. It was a much wider genocide than the Tribunal had yet established. The Court further ruled the prosecution's evidence supported its charge that Milosevic was guilty of genocide or complicity in genocide. The decision did not assess the credibility of the prosecution's evidence, nor was it based on Milosevic's defense case which had yet to be presented. It merely held the evidence did not support dismissal of the genocide charges against Milosevic after the prosecution had presented its evidence. Nevertheless, it is instructive.

Evidence the Court found sufficient to establish a more extensive genocide included demographics, the scale and pattern of attacks that targeted Muslims, and intercepted statements of the Bosnian Serb leadership as far back as 1991, calling for extermination of the Bosnian Muslims. In terms of demographics, the Court pointed out that the Muslim population in the relevant area fell from approximately 345,000 in 1991 to less than 8,000 in 1997-98, about 1.4 percent of the total. The judges also noted Bosnia's mosques were targeted. The Court found salient that Bosnian Muslim leaders were targeted for killing in community after community.

Whether the Court's preliminary conclusions would have withstood the Court's full evaluation of prosecution and defense evidence will remain unknown. Milosevic's death before the trial's end dealt a blow to an ICTY determination whether genocide in Bosnia was limited to Srebrenica or was more comprehensive in time and place. With a decision in the *Milosevic* trial foreclosed, the only remaining possibility to consider a

wider genocide is in the trials of Mladic and Karadzic, if they are ever brought to justice. To date, while the Tribunal has established genocide occurred at Srebrenica, it has not convicted a primary perpetrator for it. The only guilty verdict for genocide – of General Radislav Krstic who commanded forces on the ground -- was reduced by the Appeals Chamber to aiding and abetting. The Tribunal may yet establish the guilt of at least some of those responsible for the Srebrenica genocide, even if Mladic and Karadzic are never tried, as members of the Bosnian Serb army main staff are now on trial for genocide and conspiracy to commit genocide.

If a wider genocide occurred and is never officially acknowledged, truth is distorted, with implications for survivors, perpetrators and the remaining citizens of the former Yugoslavia – and certainly for future generations. Like buried crimes before it, the truth, forced into the subconscious, may surface in the future in an explosive and destructive way.

Without a judgment in the Milosevic case, Serbia's role in the Bosnian Muslim genocide remains legally uncertain, though Serbia's involvement in Bosnia will be addressed in other ICTY cases. In a case before the International Court of Justice, where states not individuals are parties, Bosnia accused Serbia of genocide and asked for reparations. The Court majority found Serbia was not responsible for genocide in Bosnia, though it had violated its duty to prevent genocide by the Bosnian Serbs over which it had substantial influence. Only in the trial of Mladic or Karadzic will Milosevic's (and Serbia's) role in the Bosnian Muslim genocide emerge, since he, as well as they, are named in the indictment as members of the genocidal criminal enterprise.

Despite its unsatisfactory ending, the proceedings against Milosevic accomplished a great deal. They broke the seal of secrecy around a decade of crimes to reveal the pivotal role played by Serbian political and military leaders – and Milosevic, the most powerful man in the Balkans in the 1990's. With regard to Srebrenica, a Karadzic confidante testified for the prosecution and described for the first time Karadzic's intimate involvement in the Srebrenica massacre and its planning months before it was carried out. The prosecution introduced documents establishing that Serbian State Security Forces were part of a unit ordered to take part in the Srebrenica operation. Most startling of all, the prosecution unearthed a videotape of a paramilitary group called the Scorpions as they executed six young Bosnian Muslim men at point blank range. The Scorpions were under the command of the Serbian State Security Service. While the Milosevic trial court refused to admit it as evidence, the tape will be offered in evidence in another ICTY trial.

Documents, intercepted telephone calls, transcripts of meetings, as well as testimony from those who once helped Milosevic in his criminal endeavor exposed a vast record that would never have come to light without the trial. The record will be used in other trials at the ICTY, as well as in the former Yugoslavia. It will be available to historians who have a critical role in revealing truth, preventing revisionism, and helping establish a common historical understanding of events that tore a country and its people apart. It may take generations as it did in Germany following the Nuremberg trials, but the record will remain available for the time Serbs, Kosovars, Croats, and Bosniaks are able to view it more openly, without the fog of war, hatred and suffering. Though Adolph Hitler never stood trial, the record amassed at the Nuremberg trial of 22 top Nazis informed future generations of the Reich's atrocities and broke through German denial.

The Milosevic trial, like other ICTY trials, provided a public forum with the requisite solemnity for survivors to tell the world what happened to them. Some such forum is necessary to reweave the web of community that the perpetrators of violence have so egregiously broken. It is a way for the larger community to acknowledge the harm done and stand in solidarity with the victims. I would like to read a short passage from my forthcoming book about the testimony of one survivor of the Srebrenica massacre.

B-1401 was a 17-year-old refugee when he and his family were caught in the ethnic cleansing and mass executions that became known to the world as "Srebrenica." When the Bosnian Serbs attacked the UN safe area on 6 July 1995, B-1401, along with other able-bodied Muslim men and boys, was faced with the decision to seek shelter at the UN base in Potocari among the women and young children or flee into the woods. Understandably lacking confidence that the small UN force would protect them, B-1401, his father, uncle and other male relatives headed for the woods.

They joined a column of 15,000 men led by one to three thousand Bosnian army troops, heading toward Bosnian-controlled territory. In fierce fighting, the Bosnian army soldiers broke through enemy lines, but civilians and some of the soldiers were left behind. They spent the night in the woods under heavy shellfire. B-1401 described a scene of extraordinary chaos. Men were wounded and dying. Some were hallucinating and a few killed themselves rather than surrender. They did not know where they were. The witness lost contact with his father and never saw him again.

Next day the shelling let up and Serb forces demanded the column surrender. While some men headed deeper into the woods, many thousands walked toward Serbian forces with hands raised. B-1401 described walking over corpses, seeing men with their faces and hands blown off from shells. He estimated about 500 men were killed in the woods.

After demanding the men throw down their weapons, valuables and German marks, their Serb captors crowded them onto trucks, where they spent the night without food or water. The following morning, they were crammed into a school building in Petkovci under even worse conditions. The men were so thirsty they drank their own urine.

As night fell, they were taken out in groups of three to five, followed by the sound of gunfire. None returned. Soldiers led the remaining men out, tying their hands and loading them onto a truck. The witness described feeling a sticky substance on his foot and seeing a large pile of corpses in front of the school. After a five to ten minute ride, the truck stopped. Men were unloaded in groups of five. Each time, the men remaining heard shots. B-1401 said they tried to avoid getting off the truck, knowing they were going to be executed. Many begged for water. They did not want to die thirsty. The witness said he tried to hide, too. "I just wanted to live another minute or two."

When it was his turn, Serb soldiers ordered his group to find a place to lie down among the dead bodies. "Everything happened so fast," he told the Court. "I thought I'd die soon and not suffer any more, that my mama would never know where I am." The soldiers opened fire. B-1401 was shot in his right side. When the next group came and the shooting resumed, he was wounded again -- in his left foot. Later, he was hit once more. He was suffering so much from his wounds, he testified, he wanted to cry out and beg to be killed. The moaning of the man next to him elicited a bullet in the head. The killing continued for another hour.

His pain was so excruciating he never would have tried to escape had it not been for another survivor. They untied each other's hands with their teeth, crawled on their stomachs across the field of corpses and reached the top of a hill. Next morning, they saw a yellow loader collecting a "very large pile" of dead bodies. Speaking of the trek through the woods with the other survivor, B-1401 testified, "He was the only one who knows how badly I suffered. I couldn't walk. He would leave me, then come back and beseech me to go on. I hurt so badly." After four days of traveling, they reached safety.

Milosevic questioned the witness about the nature of the column of men -- how many were armed, how many were soldiers, how many in the woods were killed in combat. The accused was seeking support for his defense that a large number of the Srebrenica dead died fighting. Yet, if 500 men died fighting in the woods, at least 6,500 more remained to be accounted for. When Milosevic questioned the young man about apparent discrepancies in identifying the execution site, B-1401 responded, "It happened during the night. You'll never be able to understand the feeling when one is taken out to be executed." As one of the prosecutors later wrote, "When this boy testified something happened in the courtroom. We were all -- judges, prosecutors, amici choking back

emotion. It was [as] if his having passed through that experience imparted a quality to him that impacted us all."

While the Milosevic trial did not reach judgment, the trial was not a failure. Milosevic was called to account before an international court and spent the last five years of his life behind bars, rather than on the sunny shores of a Greek isle. Once the leader of Serbs, considered the most powerful man in the Balkans by international leaders, he ended his life ignominiously. Responding to well-substantiated allegations, he was made to face those whose lives he shattered, as well as the international figures he courted. While there was great disappointment that he evaded a verdict, there was also satisfaction that he died in jail. As Hajra Catic of the Association of Srebrenica Mothers stated, "It is a pity that we will not see him facing justice, that we will not hear the verdict. However, it seems that God punished him already." Eric Stover conducted a study of victim witnesses who testified at the ICTY in other cases and found: "For many study respondents, merely being in the courtroom with the accused while he was under guard helped to restore their confidence in the order of things. Power, one witness said, 'flowed back from the accused to me.' If only for a brief while, this witness finally held sway over his personal tormentor, and his community's wrongdoer. . . ."

Unless Mladic and Karadzic, the two men now living who are most responsible for the genocide of the Bosnian Muslims, stand trial, those whose lives they have shattered will never have that closure. As the survivors struggle every day to make sense of their world with all its absences and loss, the two arch criminals will continue leading free, though circumscribed lives. Justice will remain unfinished, breeding hatred and the arrogance of impunity for future generations.