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THE ROLE OF WAR TRIBUNALS IN SHAPING SERBIAN HISTORICAL NARRATIVES

Abstract

This paper analyzes the role of the International Criminal Tribunal for the former Yugoslavia (ICTY) in shaping historical narratives of the Serbian role in the Yugoslav Wars. It explores criticisms of the ICTY's perceived biases, its impact on conflict narratives, and concerns about its legitimacy. The paper discusses the portrayal of Serbian actions in the closing statements of Radovan Karadžić and Slobodan Milošević, highlighting the invocation of historical contexts such as World War I and II. It concludes that while the ICTY has been instrumental in addressing war crimes, it has also contributed to a simplified portrayal of Serbs as aggressors, neglecting the complexities of the conflict and the diverse experiences of the Serbian population.

Keywords: *ICTY, Yugoslav wars, Radovan Karadžić, Slobodan Milošević, historical narratives*

The International Criminal Tribunal for the former Yugoslavia (ICTY) has rightfully faced criticism regarding its perceived biases and the politicization of its proceedings. Critics argue that the ICTY's justice delivery was influenced by political considerations rather than solely based on evidence. One point of contention is the alleged failure to prosecute NATO personnel for actions comparable to those for which others were indicted, suggesting a double standard in the application

of justice (Wilson Center [WC], 1999): *Why, then have there been no indictments of NATO's May 7 attack on the city of Nis, where cluster bombs fell on the market, killing fifteen people, and hitting also the city's main hospital?* The use of cluster bombs by NATO and the International Criminal Tribunal for the Former Yugoslavia's (ICTY) approach to these incidents, compared to similar actions by others, is particularly highlighted. In his analysis, "Biased Justice: 'Humanrightsism' and the International Criminal Tribunal for the Former Yugoslavia," Robert M. Hayden argues that the ICTY delivers a biased form of justice, where prosecutorial decisions are based on the personal and national characteristics of the accused rather than on evidence. The failure to prosecute NATO personnel for the use of cluster bombs is cited as a glaring example of politicized justice, suggesting that the Tribunal serves as a tool for Western countries, especially the United States, to pursue political goals in the Balkans.

Therefore, the critical question arises whether international tribunals, such as the ICTY, genuinely contribute to peace or inadvertently hinder conflict resolution efforts, by proposing an analytical framework that examines their impact on conflict narratives, the attitudes and incentives of warring parties, and overall peace processes (Kersten 2016, 56). The establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) can be analyzed as a multifaceted collaboration among emerging international criminal law, human rights advocacy, and international relations (Kerr 2004, 12–18). Nevertheless, the intricacies of the interplay between diplomatic strategies and judicial objectives during its inception and operational phases have led to scrutiny regarding the genuine motivations behind its establishment. The employment of international legal principles for strategic purposes, such as the identification of suspected war criminals, accentuates the intricate interconnection between legal frameworks and political agendas. This phenomenon, termed "strategic legalism," occasionally resulted in conflicts between the aspirations of achieving peace and administering justice. Consequently, the endeavor to establish an international tribunal did not unequivocally demonstrate the harmonization of these goals. Instead, it highlighted the inherent challenges in reconciling the pursuit of justice with the diplomatic imperatives of peace within the realm of international diplomacy (Bosco 2014, 33). Doubts about the legality of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Special Tribunal for Lebanon (STL) have been raised. Moreover,

assessing the legitimacy of these tribunals is even a more challenging endeavor (Schmitt 2004, 27). Concerns have primarily been raised about the legitimacy of the ICTY and the STL, in contrast, for an instance, to the International Criminal Court (ICC) and other international criminal courts, which have not faced similar scrutiny (Franck 1990, 11).

Furthermore, the case of Slobodan Praljak and the involvement of the Croatian government in Bosnia-Herzegovina highlight the complexity of the ICTY's work and its impact on the region. The investigation into Croatian support of the Bosnian Croats and the resulting focus on Croatian involvement, as opposed to Serbian involvement, has been a source of contention. The Croatian government's efforts to sway the court and clear its historical record, as well as the division of investigative teams on an ethnic basis, have contributed to perceptions of bias and inequality in the Tribunal's proceedings.

The International Criminal Tribunal for the former Yugoslavia (ICTY) significantly contributed to redefining the historical understanding of the conflict in the former Yugoslavia by establishing legal precedents in the prosecution of war crimes and crimes against humanity (Bassiouni 2005, 12). Concerns have been raised about a perceived anti-Serb bias, with allegations that the ICTY disproportionately targeted Serbian individuals for prosecution while being more lenient towards individuals from other ethnic groups. This has led to fears of reinforcing stereotypes and contributing to a sense of collective guilt among the Serbian population (E International Relations [EIR], 2012).

On the other hand, strong arguments are presented by Karadžić in his closing statement (Unified Court Records [UCR], 2016) aiming at redefining the narrative of the conflict, portraying the actions of the Serbs as defensive and justified, while also questioning the legal and evidentiary foundation of the case brought against him by the prosecution (Case No. It-95-5/18-T). The actions of the SDS and the Serbian people are delineated as a legitimate endeavor for self-defense and the preservation of fundamental rights, accentuating the sacrifices made by the Serbian people and their efforts to achieve compromises and uphold minority rights during the conflict (UCR 2016). The victimization of the Serbian people, both historically and during the conflict in the former Yugoslavia, is emphasized, with the claim that *never have so many direct perpetrators of crimes against Serbs, murderers, been set free* (Closing Argument, Day 1). This portrayal could be interpreted as an attempt to shift the narrative from Serb aggression to Serb victimhood.

The conflict is described as a *war that was imposed on us* (Closing Argument, Day 1), strongly suggesting that the Serbs were not the aggressors but rather were forced into the conflict. This contradicts the widely accepted view that Serb forces were responsible for significant aggression during the Yugoslav Wars.

Before the International Criminal Tribunal for the former Yugoslavia (ICTY), the accuracy of the simultaneous translation provided to the Trial Chamber is contended by Karadžić, emphasizing that it undermines the veracity of the official English transcript and the judges' understanding of his statements. The prosecution's reliance on exaggerated claims and circumstantial evidence is also rightfully challenged, asserting that the case against him is constructed on flimsy allusions rather than concrete evidence: *There are so many falsified facts, so many bastardizations of complete sentences that have been illegitimately edited* (Closing Argument, Day 1).

The actions of the Serbian Democratic Party (SDS) and the Serbian people during the conflict are defended as a struggle for fundamental rights and self-defense, rather than aggression, highlighting the dedication and self-sacrifice of the SDS. These actions are characterized as a legitimate endeavor for the preservation of fundamental rights and self-defense. The dedication and self-sacrifice of the SDS are lauded, noting that the party's ranks were comprised of esteemed members of Serbian society, including university professors, jurists, academicians, writers, and doctors, thereby rendering it the most exemplary and selfless entity among the Serbian populace.

The response of the Serbian people to the conflict is underscored, observing that one and a half million Serbs participated in referenda that endorsed the SDS's principles, and that they committed their sole offspring to endure the harsh conditions of the trenches to safeguard their domiciles and families for a duration of three and a half years. The prosecution's capacity to elucidate his motives and those of his associates, as well as the collective intentions of the entire Serbian community in Bosnia-Herzegovina, which encompasses one and a half million individuals, is also successfully challenged. It is further contended that the Serbian people did not harbor ambitions to annex the villages and territories of other ethnic groups or to impose their will upon them. The claim by the prosecution that the Serbs aimed to establish an ethnically pure Republika Srpska on Bosnia-Herzegovina's territory is disputed further elaborating on this claim by arguing that the Serbs had already

had a majority in 60% of the territory of Bosnia-Herzegovina and that Serbian property ownership in Bosnia-Herzegovina amounted to about 64%. It is argued that the Serbs were open to protecting minorities and had suggested the formation of homogenous territories to prevent conflict. This point is illustrated by referencing the settlement of Bosanski Kobaš in Srbac, where, prior to the onset of the war, an agreement was reached to name a school after Meša Selimović (1910–1982), a distinguished Serbian writer of Serbian ethnicity and Muslim faith, showcasing an inclination towards flexibility and compromise.

Karadžić (UCR 2016) addresses the historical context of the territories in question, emphasizing that these areas had belonged to the Serbs even before World War II: *The record is replete with evidence that these territories had belonged to us even before the war; that we had a far greater territory before WWII, but that we had that territory before this war.* He also refers to the genocide against the Serbs in Bosnia-Herzegovina and Croatia during World War II, suggesting that the memory of this genocide influenced the actions and fears of the Serbian people in the 1990s (*Yet there is not one single family that does not have among its living members either witnesses or descendants of those who were killed in the genocide that took place during WWII*). This reference to World War II serves as a backdrop to his argument that the Serbian people were motivated by a desire to protect what they already had, rather than to conquer new territories. But, even further, the creation of Yugoslavia after World War I is discussed, mentioning that *Yugoslavia came into existence with Serbia's along with its Allies' victory in WWI* and how the Croats, who were on the defeated side, sought to enter a joint state with the Serbs and Slovenes. The consequences of King Aleksandar's decision to form Yugoslavia are reflected upon, with the belief that it led to the loss of *a million and a half lives* among the Serbs during WWII. Additionally, the fears of the Serbs regarding a possible resurgence of genocide are emphasized, with an argument made for the acknowledgment of historical trauma (p. 94666 the overall numbering of the pages in the case file IT-95-5/18-T): *Had there been no genocide against the Serbs in Bosnia-Herzegovina and Croatia fifty years ago... then Karadžić as well as others could defend themselves.* Therefore, the conviction of Karadžić was also a conviction of the historical perspective in his testimony – the same one that clearly pointed to Serbian suffering in the First and Second World Wars as a preparation and, ultimately, one of the possible causes of the wars in the 1990s.

The Joint Criminal Enterprise (JCE) concept is critiqued as a crude construct used to unjustly implicate the entire Serbian nation, with a specific rejection of responsibility for the Srebrenica massacre (*I never defended myself by blaming others, and I never blamed anyone for Srebrenica because I don't know what took place there*, Closing Argument, Day 1).¹ The challenge is posed to the prosecution to provide evidence of individual guilt outside the context of a JCE, with the assertion that there would have been no indictment without such a construct, deemed unconvincing and dishonest. Namely, Karadžić challenges the prosecution to provide evidence of his individual guilt outside the context of a JCE, stating (page 94661): *There would have been no indictment without such a crude construct, unconvincing and dishonest as it is; If you don't believe this, then order the Prosecution to cobble together an indictment against me that would stand outside the context of a JCE.* The legitimacy of Bosnia's move towards independence is questioned, suggesting it was unprepared for the transition, and it is argued that the Serbs had agreed to remain in an independent Bosnia under specific conditions.

The interpretation of statements by the prosecution is criticized, with examples provided of misrepresentation and the argument that the evidence presented relies heavily on indirect sources such as telephone conversations and testimony from the Tribunal's employees, rather than direct evidence. The emphasis is placed on the democratic process within the SDS and the Republika Srpska, arguing that decisions were made through discussions and compromises, countering allegations of autocratic or unilateral actions.

Similarly, during the trial of Slobodan Milošević (IT-02-51), the celebration of the 600th anniversary of the Battle of Kosovo was acknowledged during 12 February 2002 hearing. This historical event

¹ There should be noted that in a letter dated 14 January 2016 (UCR 2016), addressed to the Ambassador of Bosnia and Herzegovina in The Hague, Radovan Karadzic seeks assistance from the Bosnian government for his defense at the International Criminal Tribunal for the former Yugoslavia (ICTY). The request specifically targets information that refutes the testimony of Srećko Acimović, who claimed in the ICTY trial of Popović et al. that he had no role in the execution of prisoners following the fall of Srebrenica. The letter points out that Acimović faced an indictment by the Court of Bosnia and Herzegovina on 31 December 2015 for his alleged participation in the execution of prisoners post the fall of Srebrenica. This development raises doubts in Karadzic's mind about the veracity of Acimović's testimony, which was used as evidence in Karadzic's trial. The concern is that the Trial Chamber in his case might be relying on inaccurate evidence. To address this issue, assistance is sought from the Bosnian government to provide information that could shed light on the matter and aid in the pursuit of truth in his case. Contact details of Karadzic's legal advisor, Peter Robinson, are provided for any further correspondence regarding the request.

was celebrated in a manner that highlighted its enduring significance. According to documents (UCR 2002) the prosecution noted that Milošević's 28 June 1989 speech was powerful and skillful,² reflecting on the Serbs' historical role and portraying them in a positive light. The judges did not delve into the details of why the battle was celebrated in such a way, but the recognition of this event in the trial underscores its importance in understanding the broader historical context Milošević invoked during his leadership.

In his defense according to official documents (UCR 2002), the historical context of World War I (WWI) and World War II (WWII) was frequently invoked by Slobodan Milošević to contextualize the situation in Kosovo and the wider Yugoslav conflicts. The argument was made that the Serbs have historically been victims of aggression, with reference to the suffering endured by the Serb population during both world wars (12 February 2002, page 17): *Serbs... had been the valiant victors in World War I, the chief architects of the new Yugoslavia, the valiant victims of World War II, those who had won in law – in war but lost in peace and all or very many Serbs were willing to complain about Kosovo.* The role of Yugoslav partisans was also highlighted by Milošević, who stated that our ancestors fought bravely against fascism in WWII, to underscore the anti-fascist tradition of the Serbs and to draw parallels between their historical resistance and the contemporary conflict.

Historical changes in borders and territories resulting from the world wars were utilized to support territorial claims, with the assertion that Serbs have historical rights to certain territories based on their sacrifices during the world wars. A moral equivalence was attempted to be drawn by Milošević between the actions of Serbian forces in the Yugoslav conflicts and those of Allied forces in WWII, suggesting that “just as the Allies were justified in using force to defeat fascism, so were the Serbs in combating separatism and terrorism”. In his defense (UCR 2002), a narrative was presented by Slobodan Milošević suggesting that the breakup of Yugoslavia and the subsequent conflicts were part of a broader conspiracy orchestrated by Western powers, described as a neo-Nazi idea. It was claimed that these powers sought to replot the map

² *Comrades at this place at this place in the heart of Serbia on the Field of Kosovo Kosovo Field six centuries ago a full 600 years ago one of the greatest battles of that time took place. The Kosovo heroism for six centuries has inspired our creativity has fed our pride and does not allow us to forget that we were once a large army a proud army a rare army who in its loss was not vanquished. Six centuries later - today - we are once again fighting battles and faced with battles. They are not armed battles although such battles are not excluded either.*

of the Balkans and create a greater Albania. The argument was made that the prosecution's mention of Nuremberg was not symbolic but rather an attempt to reverse the roles of victim and aggressor, portraying the Serbs, who were claimed to be the victims of aggression, as the culprits. During the 14 February 2002 hearing it was stated (page 267): *So that is what I would call the neo-Nazi idea according to which Yugoslavia was broken up and in which the map of the Balkans was replotted, and a greater Albania is behind it all.* Further in the document (UCR 2002) asserted was: *They are not satisfied with the crime committed over Yugoslavia and the settling of accounts with Serbia because of their defeat in both world wars. They want to proclaim us the culprits, who were the victims of their aggression, and me, with the help of this Tribunal, to bring me before Nuremberg to reverse the roles.* The prosecution's use of photographs as evidence was criticized, with questions raised about what they were trying to prove by showing images of police restoring order during rallies or of funerals attended by large crowds.³ The argument was made that these images did not demonstrate any wrongdoing on the part of the Serbian forces.

The data from the original documents clearly testify the ICTY attempt to give a specific perspective on historical narratives regarding the Serbian people's role in the Yugoslav Wars. But, taking into the account Western perspective of the conflict (Orentlicher 2008, 40): *To the extent that in the view of many Serbian supporters of the ICTY, one of the Tribunal's most important functions is to advance public acknowledgment and condemnation of Milošević-era crimes, the Tribunal's greatest challenges are presented by those sectors of Serbian society that still need to be convinced,* we may conclude that prosecutor's main arguments is that the ICTY has played significant role in Serbia by bringing war crimes to light, holding perpetrators accountable, and challenging narratives that deny or justify atrocities. In Western perspective, the tribunal's work has contributed to a greater awareness of the crimes committed during the Yugoslav Wars and has set important legal precedents for international criminal justice.

Original documents analysis clearly shows that the primary focus of the ICTY was on crimes committed during the Yugoslav Wars

³ Similar suggestion regarding questioning the overall expertise of those involved in Tribunal could be found in transcript from a hearing in the trial of Slobodan Milošević (UCR 2003) dated 14 March 2003. In this session, Dr. Davor Strinovic, a forensic expert, provides testimony about his involvement in the exhumation and identification of bodies in Croatia during the conflict in the former Yugoslavia.

in the 1990s, and references to earlier historical events were generally not central to the judgments. Therefore, it worth noting that the ICTY failed to fully reinterpret Serbian history in a way that acknowledges the complexity of the conflict and the diversity of experiences within the Serbian population. The data from the testimonies above clearly demonstrate that ICTY focus on high-profile Serbian leaders and the emphasis on ethnic-based crimes may have contributed to a one-dimensional portrayal of Serbs as aggressors, overlooking the nuances of the political and social context, as well as the suffering experienced by Serbs themselves during the wars. The verdicts against Milošević and Karadžić are pivotal in interpreting Serbian history, as they represent legal judgments on the actions of key figures in the Serbian political and military leadership. These verdicts have had a profound impact on public perceptions, both within Serbia and internationally, and have influenced the way not just the Yugoslav wars, but also WWI and WWII are remembered and understood. However, they also raise questions about collective guilt, individual responsibility, and the limits of legal proceedings in capturing the full scope of historical events. Therefore, historians and political scientists are obliged to examine the historical context of the Balkans, the rise of nationalism, and the disintegration of Yugoslavia, all of which contribute to a more comprehensive historical narrative than the one proposed by ICTY.

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РОЛЬ ВОЕННЫХ ТРИБУНАЛОВ В ФОРМИРОВАНИИ СЕРБСКИХ ИСТОРИЧЕСКИХ НАРРАТИВОВ

Аннотация

Международный уголовный трибунал для бывшей Югославии (МУТБЮ) подвергся критике за воспринимаемые предвзятости и политизацию, особенно в отношении его обращения с персоналом НАТО и использованием кассетных бомб. Критики утверждают, что судебное решение МУТБЮ было под влиянием политических соображений, а не исключительно на основе доказательств. Учреждение МУТБЮ можно анализировать как многоаспектное сотрудничество между развивающимся международным уголовным правом, защитой прав человека и международными отношениями. Однако сложности взаимодействия между дипломатическими стратегиями и судебными целями привели к критическому анализу подлинных мотивов его учреждения. Были высказаны опасения относительно легитимности МУТБЮ и Специального трибунала для Ливана, сомнения в их законности и сложности в оценке их легитимности. Дело Слободана Праляка и участие правительства Хорватии в Боснии и Герцеговине подчеркивают сложность работы МУТБЮ и его влияние на регион. МУТБЮ значительно способствовал переосмыслению исторического понимания конфликта в бывшей Югославии, установив юридические прецеденты в преследовании военных преступлений и преступлений против человечности. Однако были высказаны опасения по поводу воспринимаемой антисербской предвзятости, с обвинениями в том, что МУТБЮ несоразмерно преследовал сербских лиц, в то время как к лицам из других этнических групп относился более

мягко. Это привело к опасениям усиления стереотипов и способствованию чувству коллективной вины среди сербского населения. Действия Сербской демократической партии (СДП) и сербского народа во время конфликта защищаются как борьба за основные права и самооборону, а не агрессия. Исторический контекст Первой и Второй мировых войн часто используется Слободаном Милошевичем для контекстуализации ситуации в Косово и более широких югославских конфликтах. Статья заключает, что, хотя МУТБЮ сыграл значительную роль в Сербии, освещая военные преступления и привлекая виновных к ответственности, он также способствовал одномерному изображению сербов как агрессоров, не учитывая сложности конфликта и разнообразие опыта внутри сербского населения.

Ключевые слова: МУТБЮ, югославские войны, Радован Караджич, Слободан Милошевич, исторические нарративы.