**The Crime, the Time, and the Politics of ICTY Justice**

Dr. Srdja Pavlovic, University of Alberta

“We should thank Radovan Karadzic for sending us to Canada,” said my friend Tanja, as we discussed the effects of his sentencing hearing in The Hague. Together with her husband and their young son, she left Sarajevo for Edmonton in 1995.

“Yes, many people had died and even more, including the three of us, had suffered terribly because of what he did and encouraged others to do. We were lucky though to be able to escape death and establish a home in Canada, and befriend wonderful people whom we otherwise would have never met. It might sound strange and maybe even inconsiderate to say this, but the war had changed us in so many ways, and not all of those had been negative. We have decided not to remain victims of Radovan Karadzic’s politics and actions but to build our lives anew, and enrich ourselves with new experiences and friendships. On the other hand, I hope that he would spend the rest of his days behind bars.”

Indeed, Karadzic affected us all, including this author, albeit in different ways. For years, I felt uneasy about my family relations to him (on my mother’s side) and in my infinite naivety did not speak publicly about it as if being silent would somehow make it go away. His actions and his politics had soured my family relations and casted a shadow over my occasional visits to the country of my birth, Montenegro. Today, like my friend Tanja, I also hope that he would end his days in prison.

The former President of the Republic of Srpska para-state, Radovan Karadzic, was convicted of a joint criminal enterprise and crimes against humanity, including the siege of Sarajevo, campaign of ethnic cleansing, mass killings and detention of Bosnian Muslims and Croats, and the kidnaping of the UN peacekeepers in order to prevent the NATO bombing of the Serb positions. He was also found guilty of the 1995 Srebrenica genocide.

Such verdict rested on a significant amount of written evidence proving the existence of genocidal intent on the political level in the case of Srebrenica. Radovan Karadzic’s court file alone is almost 35000 pages long and includes documents produced by the Parliament of the Republic of Srpska and its Ministry of Interior as well as a number of local police precincts.

For many of those who had survived the Bosnian slaughterhouse orchestrated by Radovan Karadzic and his nationalist clones, his 40-year conviction does not sound just. Following his sentencing a number of organizations and victim advocacy groups had expressed their frustration with the fact that Karadzic had not received a life sentence.

We should not forget that such a lengthy sentence does amount to life in prison. Taking into account time already served and considering the practice of the court to release convicts after they had served 2/3 of their sentence, Karadzic still has to serve19 years. Being in his mid-70s it is unlikely that he would live long enough to walk again as a free man. The proverbial longevity of the male members of his extended family notwithstanding.

We also know that there is no such a thing as absolute justice, and that our understanding of it as well as our expectations would seldom, if ever, be met by any legal ruling of any court. No court in any legal system, national or international, could bring back that what had been taken away forever.

It is worth noting that in 2010 the Canadian parliament unanimously adopted the Srebrenica genocide resolution (M-416). The adopting of this resolution was, for the most part, the product of a lengthy campaign led by victim groups and the Institute for the Research of Genocide - Canada (ICG). The recent convicting of Radovan Karadzic is the opportunity for the Canadian government to reaffirm its commitment to prevent such atrocities from happening again, and support the continuing functioning of the ICTY by protecting its immense archive from being parceled between former belligerents. Such parceling of files between Serbia, Croatia, and Bosnia and Herzegovina (as it had been suggested some years ago) could be detrimental to the integrity of the documents and might also result in a restricted access for researchers. Instead, the Canadian government should work with its international partners on identifying the most appropriate location elsewhere that would house the entire collection and make it open both to the public and to researchers.

For their part, the Serbian nationalists see Karadzic’s verdict as yet another proof of the international conspiracy against the Serbs and of the political nature of this tribunal. History shows us that international tribunals emerge from a particular political and social post-conflict discourse and could not be divorced from it. This inherent connection does not mean such tribunals are less objective when it comes to gathering evidence and evaluating it according to the letter of the law.

The reality is that in their work international tribunals always display a keen sense of balance and historical responsibility. The ICTY is not an exception to this rule, and we had witnessed the desire of the tribunal to once again strike a balance of some kind in the case against the president of the Serbian Radical Party, Vojislav Seselj. His sentencing in absentia had further sharpened the disagreements over the nature of the ICTY and deepened the national, ethnic and religious fault lines in the region.

A warmonger extraordinaire, Vojislav Seselj surrendered to the ICTY in 2003 and was acquitted on all charges in 2016. The story of his departure had been “wrapped” in the Serbian national flag by his supporters, while Seselj promoted his resolve to defeat the international tribunal. He portrayed himself as an Eastern Orthodox white knight who entered the belly of the beast so he could take it apart from within. The outcome of the trial is taken by many as a victory over the Serb-hating international legal machine.

With one dissenting opinion, the judges found no connection between Seselj’s warmongering and crimes committed by paramilitary forces. They concluded that he was only attempting to lift the spirit of the Serbian people. But what remained sidelined in many of the the post-sentencing analyses was the fact that Seselj had been charged with individual responsibility, and not with the command one. The article 7 of the ICTY Statute specifies that inciting violence that leads to the committing of crimes listed in the articles 2-5 would be adequately sanctioned. It seems that judges had sufficient legal basis to convict Vojislav Seselj of inciting violence against non-Serbs. Moreover, the International Tribunal for Rwanda (ICTR) had tried three journalists who incited violence and had found them guilty. Two of them received life sentences, while one was sent to prison for 35 years.

The long-lasting negative effects of Seselj’s acquittal have to do with the lack of legal sanctions for warmongering and inciting violence despite the overwhelming evidence to the contrary and despite the abovementioned precedents established by the ICTR. The judges made a conscious effort to disconnect words from actions that followed. It has been clear to those of us who have studied the Yugoslav wars that Seselj’s inflammatory rhetoric and his “call of duty” were a major contributing factor to the crimes being committed. It has also been clear that his words carried political weight and legitimacy because the audience knew that the structures of power in Serbia had approved of his message. The judges, however, failed to acknowledge this important and direct link, thus fueling further the accusatory narrative about the ICTY as a political court. Truth be told, the acquittal of Vojislav Seselj has not been the first time the ICTY manifested questionable judgment and a desire to strike a curious balance between convictions and acquittals. The earlier verdicts reached in the proceedings against Ante Gotovina, Ramus Haradinaj, and Naser Oric had betrayed the same desire.

On a more general note, Karadzic and Seselj’s verdicts, each in its own way, manifested an effort to misrepresent the character of the conflict in the SFR Yugoslavia, and absolve the official Serbia from having any responsibility for the bloody breakup. Karadzic was acquitted on Article 1 of the indictment - genocide in the municipalities of Prijedor, Bratunac, Foca, Zvornik, Sanski Most, Vlasenica, Kljuc. Convicting him of this charge would have meant acknowledging assistance provided to Karadzic by external actors as well as their knowledge of the genocidal intent and, most importantly, their direct involvement. As rightly pointed out by Eric Gordy and others, one of the lines which the judges have appeared unwilling to cross is the recognition of the involvement of Serbia in cross-border conflicts. Karadzic was expendable even though he was the leader of the Bosnian Serbs. Or, was it precisely because of that?

Seselj, being the politician from Serbia and one of the former vice-premiers of the Serbian government, was portrayed by the judges as nothing more than a nationalist orator who had motivated Serbs from Croatia and Bosnia to fight. The manner in which he had been acquitted shifted a burden of responsibility from Belgrade to the leaders of the Bosnian and Croatian Serbs, many of whom have been already convicted. With this in mind, it is indeed very difficult to overlook a curious balancing game the ICTY has been playing for years.

The outcome of these trials notwithstanding, the legacy of the ICTY is an important one indeed. Its most significant achievement is amassing an archive of documents illustrating atavistic passion of nationalism in the SFR Yugoslavia and the immense suffering it caused. One hopes that the evidence collected might at least give pose to some retired Canadian officers, high-ranking peacekeepers, and war correspondents turned Balkan experts, who have been denying Srebrenica genocide and relativizing the criminal nature of Radovan Karadzic’s and Vojislav Seselj’s politics and ideology.

**About the author:** Dr. Srdja Pavlovic teaches Modern Balkan and European history at the University of Alberta. He is also the research associate with the *Wirth Institute for Austrian and Central European Studies* (University of Alberta) and a member of the team of experts with the *Institute for the Research of Genocide – Canada* (ICG). Dr. Pavlovic is currently completing the work on the collection of article entitled *It Could Have Been Spring: Case Studies of Direct Democracy and Active Citizenship* (to appear in print in 2017). He could be reached at pavlovic@ualberta.ca