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The trial of Ratko Mladic will not mean that justice has been served

By Marko Attila Hoare, 29th July 2011

EXECUTIVE SUMMARY:

1. The trial of Ratko Mladic could be important for shedding light on the relationship between the regime of Slobodan Milosevic in Serbia and Mladic's Bosnian Serb forces during the war and genocide in Bosnia of the 1990s.
2. Mladic's trial also represents the best chance yet to establish legally that genocide occurred in Bosnia, not merely at Srebrenica in July 1995, but throughout the country beginning in the spring of 1992.
3. Nevertheless, the significance of Mladic and of his trial should not be overstated. Mladic was a middle-ranking orchestrator of the war and genocide unleashed by Milosevic's Serbia against Bosnia in the spring of 1992, and most of the top-ranking orchestrators were never indicted by the ICTY.

The start of Ratko Mladic's trial means that the most important Bosnian Serb war-criminal, alongside Radovan Karadzic, is now facing justice. This trial will be crucially important for two reasons.

Firstly, its proceedings may shed some light on the role of Serbia and its military in the Srebrenica massacre of July 1995. At the time of the massacre, Serbia was in a federal union with Montenegro, and the joint state went by the name of the 'Federal Republic of Yugoslavia' (Savezna Republika Jugoslavija – SRJ). Its army, the 'Army of Yugoslavia', provided logistical support for the Bosnian Serb army – the 'Army of the Serb Republic' – and its Croatian Serb counterpart, though these were formally independent of it. The minutes of the SRJ's Supreme Defence Council (which comprised the presidents of 'Yugoslavia', Serbia and Montenegro) were recently used by the prosecution of the International Criminal Tribunal for the former Yugoslavia (ICTY) in its case against former Yugoslav army Chief of Staff Momcilo Perisic. They reveal that Perisic regularly appealed to the Supreme Defence Council to provide such logistical support to the Bosnian Serb military, and that these appeals continued up until the eve of the Srebrenica massacre. Hopefully, the trial of Mladic, alongside that of Perisic, will provide more information on the role of the Army of Yugoslavia during the Srebrenica massacre. Indeed, it is likely that Mladic's ability to provide such information was one of the reasons that Serbia's military shielded him from arrest for so long. This is, however, an optimistic hope, as Mladic is more likely to continue denying responsibility for the massacre and to shield his former protectors than he is to spill the beans.

The second, and more important reason why Mladic's trial is important, is that it provides the best chance yet to prove that genocide occurred not only at Srebrenica in 1995, but in other places and at other times in Bosnia-Herzegovina as well. The judicial record on this question so far is ambiguous. Germany's courts have convicted Bosnian Serb perpetrators for offences relating to genocide carried out in parts of Bosnia outside of

Srebrenica. One of these, the paramilitary leader Nikola Jorgic, was convicted of genocide in the north Bosnian region of Doboï in 1992, but appealed his conviction all the way to the European Court of Human Rights. The latter upheld Jorgic's conviction for genocide, ruling that the German courts' definition of genocide was consistent with the international legal definition. The German and ECHR rulings on Jorgic corroborate the view that genocide occurred across Bosnia from 1992, not merely at Srebrenica in 1995. On the other hand, the International Court of Justice, in the case for genocide brought by Bosnia against Serbia, acquitted Serbia of all genocide-related charges apart from failure to prevent and punish genocide. The ICJ specifically stated that genocide in Bosnia occurred only at Srebrenica in 1992, not in other places or at other times. Mladic, however, stands accused by the ICTY prosecution of systematic genocide across both western and eastern Bosnia from May 1992. If Mladic is found guilty on all charges, the judicial record for a genocide in Bosnia that occurred across the country from 1992 to 1995 will be greatly strengthened.

Be this as it may, the significance of this trial, and of Mladic personally, should not be overstated. News reports have suggested that Mladic was, along with Serbia's wartime president Slobodan Milosevic and the wartime Bosnian Serb political leader Radovan Karadzic, one of the three principal perpetrators of Serb war-crimes in Bosnia. In fact, the singling out of these three individuals, to the exclusion of all others, betrays a false understanding of the nature of the Great Serbian killing campaign and of how it was organised. In reality, the Serb military aggression against Bosnia and programme of mass killing of its non-Serb inhabitants was planned and organised by the regime in Belgrade; not merely by Milosevic the despot, but by a much wider circle of top political, military and police officials. This war followed on seamlessly from the prior war waged by Serbia against Croatia in 1991-1992.

Mladic, on the other hand, was merely a run-of-the-mill officer in the Yugoslav People's Army (JNA) until well after the war in Croatia had begun. He served as chief of the Department for Instruction of the JNA's 3rd Military District based in Skopje in Macedonia until January 1991, then as

assistant to the commander of the Pristina Corps in Kosovo until July 1991, when he was transferred – still as a mere colonel – to Knin, which was the self-proclaimed capital of the Serb rebels in Croatia. He was appointed chief of staff of the 9th (Knin) Corps at the end of July, and played a central role in ethnic cleansing operations against Croatia. In October, after Serbia together with Montenegro had carried out a coup d'état to establish exclusive control of the federal organs of rump Yugoslavia, including of the JNA, Mladic was promoted to major-general. From late November or early December 1991, as they were preparing to wind down the war in Croatia and to shift it to Bosnia, the Milosevic regime and the leadership of the JNA set about organising a Bosnian Serb military within the framework of the JNA, something that involved concentrating all Bosnian Serb soldiers and officers in the JNA on Bosnian territory. On 30 December, the rump Yugoslav presidency (i.e. the representatives of Serbia and Montenegro) established a new military district – the '2nd Military District' – based in Sarajevo, that had jurisdiction over Mladic's Knin Corps. At the same time, Mladic was promoted to commander of the Knin Corps.

Thus, when the JNA launched a full-scale war against Bosnia in March and April 1992, Mladic was not even based in Bosnia, but was still in the relatively junior position of commander of the Knin Corps, based in Serb-occupied Croatia. He nevertheless participated in the start of the aggression against Bosnia; his forces captured the town of Kupres in south-west Bosnia from its predominantly Bosnian Croat defenders on 8 April 1992 and helped to organise the future Bosnian Serb army in that region of the country, after which he returned to the Knin region for further operations against the Croatian Army.

On 27 April 1992, Milosevic's regime proclaimed the new 'Yugoslavia' – i.e., the Federal Republic of Yugoslavia (SRJ), consisting only of Serbia and Montenegro. The Bosnian Serb rebel entity, subsequently known as the 'Republika Srpska', had already proclaimed independence a month before. By establishing the SRJ and the Bosnian Serb republic as formally separate states, the Milosevic regime aimed to pretend to the world that it was not involved in the war in Bosnia, and that this war was really just a 'civil war'.

This necessitated a formally independent Bosnian Serb army, separate from the Yugoslav army, and Mladic was handpicked by Belgrade to be its commander. On 30 April, Milosevic and other top officials of Serbia, Montenegro and the JNA met with the Bosnian Serb leaders under Radovan Karadzic to arrange the formation of a Bosnian Serb army, and it was agreed that Mladic – who had been promoted to lieutenant general only a few days before – would serve as its commander. In early May, JNA Chief of Staff and acting Yugoslav defence minister Blagoje Adzic summoned Mladic to Belgrade to inform him that he was to be promoted to both commander and chief of staff of the JNA's 2nd Military District, based in the Bosnian capital of Sarajevo. At about the same time, the acting president of the Yugoslav presidency, Branko Kostic, ordered the previous JNA incumbent of the post to surrender his duties to Mladic, whose appointment as commander of the 2nd Military District was reported by Belgrade TV on 9 May.

Mladic subsequently recalled that 'When I took up duty in the 2nd Military District I immediately assigned myself the task of assembling men and forming a command and General Staff, partly from the remnants of the 2nd Military District and partly from the men who had come with me from Knin and from other areas, who were born in Bosnia-Herzegovina. We immediately began the formation of a General Staff of the [Bosnian] Serb Army.' On 12 May, the self-declared Bosnian Serb parliament voted to establish a Bosnian Serb army incorporating all JNA units on Bosnian territory, and to appoint Mladic as its commander. Yet the law was not promulgated by the presidency of the self-declared Bosnian Serb republic until 19 May. Until that time, Mladic was still formally subordinate, along with all Serb forces on Bosnian territory, to the Yugoslav military command and Yugoslav presidency in Belgrade. Only on 19 May did the the JNA formally split into two separate armies: the 'Army of Yugoslavia', made up of troops from Serbia and Montenegro, which formally withdrew from Bosnia on the same date; and the 'Army of the Serb Republic of Bosnia-Herzegovina', subsequently simply the 'Army of the Serb Republic', headed by Mladic and now formally independent.

In other words, although Mladic played a prominent and significant role in

the Serb military assault on Bosnia that began full-scale in the spring of 1992, he was far from being its chief instigator or organiser. The latter was the political and military leadership of Serbia, Montenegro and the Yugoslav People's Army, which handpicked and groomed Mladic for the role. Attributing excessive importance to Mladic as organiser of the war in Bosnia downplays the party that was actually responsible: the regime of Slobodan Milosevic.

War crimes investigators at the ICTY were aware of how the war and mass killing in Bosnia were organised. According to the amended indictment of Milosevic for war crimes in Bosnia:

‘Slobodan MILOSEVIC participated in the joint criminal enterprise as set out below. The purpose of this joint criminal enterprise was the forcible and permanent removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of the Republic of Bosnia and Herzegovina (hereinafter referred to as “Bosnia and Herzegovina”), through the commission of crimes which are in violation of Articles 2, 3, 4 and 5 of the Statute of the Tribunal. The joint criminal enterprise was in existence by 1 August 1991 and continued until at least 31 December 1995. The individuals participating in this joint criminal enterprise included Slobodan MILOSEVIC, Radovan KARADZIC, Momcilo KRAJISNIK, Biljana PLAVSIC, General Ratko MLADIC, Borisav JOVIC, Branko KOSTIC, Veljko KADIJEVIC, Blagoje ADZIC, Milan MARTIC, Jovica STANISIC, Franko SIMATOVIC, also known as “Frenki,” Radovan STOJICIC, also known as “Badza,” Vojislav SESELJ, Zeljko RAZNATOVIC, also known as “Arkan,” and other known and unknown participants.’

However, at the time of writing, not a single official of Serbia, Montenegro or the Federal Republic of Yugoslavia – i.e. of the regime that organised the war – nor any officer of the JNA (excluding officers of the Bosnian Serb army who had previously served in the JNA) has been convicted by the ICTY of war crimes in Bosnia. The weight of ICTY punishment has, so far, fallen exclusively on the Bosnian Serbs, while the regime of Milosevic in Belgrade and the leadership of the JNA have been mostly let off the hook. Only six such officials were ever indicted: Milosevic, Stanistic, Simatovic,

Perisic, Arkan and Seselj. Arkan was assassinated before he could be arrested, while Milosevic died while his trial was in progress. This leaves a maximum of four representatives of the regime who could, if the prosecution is wholly successful, receive punishment for organising the worst case of aggression and mass killing in Europe since World War II. None of these belonged to the top rank of officials responsible for organising the war in Bosnia, with the exception of Stanistic, who was head of Serbia's State Security Service.

Of the other representatives of the 'joint criminal enterprise' from Serbia, Montenegro and the JNA high command who were listed in the Milosevic indictment, Stojicic was assassinated in Belgrade before the indictment was issued. Adzic and Kadijevic, the two top figures in the JNA during the war in Croatia and (in Adzic's case) during the first stage of the war in Bosnia, were never indicted. Neither were Jovic and Kostic, the Yugoslav presidency members for Serbia and Montenegro respectively, and therefore (along with their counterparts for Vojvodina and Kosovo) the individuals in ultimate formal command of all Serb forces in Croatia and Bosnia up until 19 May 1992. Other top officials of Serbia, Montenegro and the JNA also escaped indictment over Bosnia or Croatia – such as Montenegro's wartime president Momir Bulatovic, and acting Yugoslav army chief of staff Zivota Panic (who died in 2003).

Some relatively minor JNA figures were indicted for war-crimes in Croatia, in relation to Vukovar and Dubrovnik, but over Croatia, as over Bosnia, the weight of the ICTY's punishment has fallen on the Croatian Serb agents of Belgrade – such as Milan Martic and Milan Babic (and potentially also the still unarrested Goran Hadzic) – while the officials of the former Milosevic regime have escaped extremely lightly.

This extraordinary failure of international justice over Bosnia – the failure of the ICTY to indict more than a handful of the officials of the regime and army responsible for the planning and launching the war, and so far to convict a single one of them – reflects both the inability of its prosecutors to understand the war properly, as well as their poor strategy in issuing indictments. As I have indicated elsewhere, a preliminary draft of a war-crimes indictment for the leadership of the SRJ (Serbia and Montenegro)

drawn up in 2001 by investigators – including the present author – aimed to indict Milosevic and other members of his regime together, including Jovic, Kostic and Adzic. But by a decision of Chief Prosecutor Carla del Ponte, the policy was then dropped in favour of an indictment of Milosevic alone. Apart from allowing his chief collaborators to escape justice, this had the unfortunate effect – as Geoffrey Nice, who led the prosecution of Milosevic, himself noted – that when Milosevic died in 2006, his trial came to an end, and with it, the trial of his regime. This contrasts with the sensible indictment strategy pursued over Serbian war-crimes in Kosovo by del Ponte's predecessor, Louise Arbour, who indicted five top members of the regime together, including Milosevic.

In her published memoirs, del Ponte's failure to understand the planning and organising of the war in Bosnia is apparent; it is a failure that found expression in her misguided indictment strategy. She describes Milosevic and Croatia's Franjo Tudjman as the two figures primarily responsible for the break up of Yugoslavia – as if their respective roles in the process were equal, and as if none of the other leading members of Milosevic's Belgrade regime was of similar importance. But this is false.

The break up of Yugoslavia and the wars in Croatia and Bosnia all formed part of a single process, planned by the regime in Belgrade under Milosevic's leadership from at least the spring of 1990, with the goal of creating a Great Serbia (masquerading as a 'new Yugoslavia'). So far as Bosnia was concerned, this 'joint criminal enterprise' aimed to destroy the country and kill or expel most of the Muslim or Bosniak population. Most of Bosnia, as well as large parts of Croatia, were to be annexed by Serbia, and rump Croatia was to receive some Bosnian territory as well, with the Muslims or Bosniaks, at best, being confined to an Indian reservation in between. Tudjman was an eager collaborator in this programme of genocide and aggression, whose other leading members were, in particular, the aforementioned Jovic, Kostic, Kadijevic, Adzic, Stanisic, Panic and Bulatovic. None of these has yet been punished, and most of them certainly never will be.

As for Mladic, he was merely a middle-ranking agent in the planning and launching of this enterprise – more than a pawn, but not more than a knight or a bishop. So while his arrest and trial should be celebrated, and while we have much to expect from it, let us not pretend that justice is being served.

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