Chapter 28

The Archives as a Means of Confronting the Past

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Introduction

Is it possible to reach a common truth using the records of the International Criminal Tribunal for the former Yugoslavia (ICTY) when the attitudes vis-à-vis these records differ markedly from one part of the former Yugoslavia to another? Other participants in the panel have covered the issue, but there may be something to add to what has been said. In Serbia and Republika Srpska, opinion about the ICTY legacy and its role in peace building has little in common with the opinion in the rest of the region. There is something missing from the case law of the ICTY that could have contributed to bridging this gap. Many Serbs see events in the villages around Srebrenica in 1992-1993, as well as those in Sarajevo and Tuzla, as terrible atrocities overlooked by the Tribunal. Now, there has probably been no other armed conflict where the relevant facts were established by an independent body so quickly and to such extent as were the armed conflicts in the former Yugoslavia. It is a pity, then, that the ICTY has left the question of legal status of the Serbs who were killed in the villages around Srebrenica unanswered—to take one example. Were they combatants, civilians protected against attack, or civilians who lost that protection? The silence of the ICTY provides an opportunity for circles within Serbia and Republika Srpska to create a monolithic narrative of suffering and injustice. Such a narrative is one of the key obstacles to meaningful dialogue between various communities within the former Yugoslavia.

Can the ICTY Legacy and Records Be Used for Purposes of Historical Reflection and Peace Building?

The rigorous way in which the ICTY chambers examined the evidence submitted by the parties—as reflected in the judgments—and the sheer abundance of the material gathered by the ICTY clearly provide a basis for historical reflection for generations

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to come. If we accept that a lasting peace cannot be based on deceptions and half-truths, then the ICTY legacy and records are critically important elements of peace building in that they are tools in the fight against distortions of truth.

Another aspect of the issue also deserves attention: what, in this context, is missing in the ICTY legacy and records? The judgments, and maybe even the evidence used in the trials, do not seem to provide a complete response to some of the key issues hampering consolidation of peace in the region. For example, the judgments have not addressed in detail, or addressed at all, the four controversial issues that many in Serbia and Republika Srpska frequently use to argue that nearly as many Serbs were victims of crimes as Bosnian Muslims, and that the Serb victims are unfairly denied their due. Those four issues are: the killings of the Serbs in the villages around Srebrenica and Bratunac in 1992-1993; the killings, disappearances, and imprisonment of Serbs in Sarajevo throughout the war; and the incidents both in Tuzla and in Sarajevo in April and May 1992, when the Bosnian forces clashed with the Yugoslav People’s Army (JNA) forces who were leaving the two towns, allegedly in breach of agreements ensuring safe withdrawal of JNA troops.

The Serb interpretation of these events has acquired the status of undisputed truths at the local level. According to this narrative, in each case the Bosniak side committed unspeakable crimes against Serb victims, while the figures concerning the Serb victims in the Srebrenica/Bratunac area and in Sarajevo approach the numbers of the Bosniak victims in the same locations.

When looked into more carefully, each of these cases shows a more complex picture than the one painted in Serbia and Republika Srpska. For example, it appears that many—possibly most—of the Serbs who died around Srebrenica were killed in combat, as combatants or civilians taking part in hostilities. The nature of the Tuzla incident revolves around the critical and yet unresolved issue of how exactly the shootout started; the recent judgment in the Ilija Jurišić case, by the War Crimes Chamber in Belgrade, actually evades the issue.

Unfortunately, the ICTY did not address any of these cases, or did so only in passing (in the trial of Naser Orić, where the indictment pertained only to wanton destruction of several Serb villages around Srebrenica/Bratunac not justified by military necessity, but not the killings there). This is unfortunate, because the absence of well-established facts now gives ample room to those within the most numerous ethnic group in the region who are eager to create or perpetuate myths. The myths, in turn, undermine efforts to normalize the relationships between ethnic groups—in this case, the relationship between Serbs and Bosniaks.

It seems that the work of the historians and perhaps of a truth commission will be critically important in addressing these issues, which decisively shape the collective Serb memory. Most of the answers concerning these particular issues are probably not in the ICTY records. Another issue with regard to which the ICTY records probably contain less than one would desire is that of the historical context that gave rise to the conflicts in the 1990s. Any expectation that a criminal court could resolve all major controversies connected to an event of such magnitude as a four-year armed conflict, and its historical underpinnings, was unfounded. The ICTY, which is after all only a criminal court, should not be blamed for not providing all the answers.