

The trial of Ratko Mladic at the International Criminal Tribunal for the former Yugoslavia shows once again that it is possible to have justice without reconciliation.

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In May, the main hearings of the trial of the accused war criminal, Ratko Mladic, began in the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. [Denisa Kostovicova](#) argues that the narrow perpetrator-centred approach of the ICTY means that the role and complicity of specific groups in war crimes is not debated. However, the on-going scrutiny of official authorities' rhetoric and policies by local liberal civil society groups provides some reasons for hope.



Before taking part in the opening ceremony of the 2012 Olympics in London, U.N. Secretary General Ban Ki Moon went for a symbolic run at a stadium in Sarajevo, the host of the 1984 Winter Olympics. The city drew global attention in the early 1990s when Bosnian Serbs subjected it to indiscriminate pounding with heavy artillery and mortar fire from the surrounding hills. Ban Ki Moon's next stop was Srebrenica, the site of the biggest massacre in Europe after World War II. In July 1995, Bosnian Serb forces commanded by General Ratko Mladic killed some 8,000 Muslim men and boys. Nearly twenty years on, many hundreds of wives, mothers and sisters are still searching for the remains of their loved ones. The guns have fallen silent, but justice still eludes them.

Ban Ki Moon took the message of resilience and revival from Sarajevo to London. However, on his tour of the Western Balkans, in Bosnia, as well as in Serbia and Kosovo, he spoke repeatedly about reconciliation. It was a warning against a repeat of the horrors of war.

While reconciliation may not automatically result from the pursuit of transitional justice, it cannot take place without it. But, the exercise of transitional justice does not necessarily imply the acknowledgment of suffering for many survivors and relatives of victims of war crimes and human rights violations. This is illustrated by Mladic's trial at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague – despite its recent start. Ratko Mladic was nicknamed the 'butcher of Bosnia' for his ruthless pursuit of the Serb-project of carving out an ethnically homogenous state by force out of the multiethnic fabric of Bosnia and Herzegovina. He stands charged with 11 counts of genocide, war crimes and crimes against humanity. Mladic's hand-over to the ICTY by the Serbian authorities has also opened questions about the protection he enjoyed in Serbia, thus managing to evade extradition for nearly sixteen years since the initial indictment against him was issued. At the same time, the beginning of Mladic's trial has again exposed the inter-ethnic divide deepened by disputes over the interpretation of facts associated with the crimes.

The concept of transitional justice was first introduced to the Western Balkans through the establishment of the ICTY during the Bosnian war in 1993. The linkage with the European integration process followed at the end of the decade. The ICTY conditionality predicated progress in approximation with the European Union cooperation with The Hague. The external introduction of transitional justice removed the possibility for local leaders to opt for the 'forget and move on' strategy. Without the ICTY, it would have been tempting to do so given ethnic groups' prevailing belief that they are solely victims and never perpetrators of crimes committed in the former Yugoslavia's violent disintegration. The fact that the issue of past crimes was not swept aside will stand as the ICTY's uncontested legacy, despite the Court's inability to persuade ethnic groups in the Western Balkans that justice is being done. How does Mladic's trial illuminate the resulting paradox of justice without reconciliation?

The contrast between the keen interest in Mladic's trial among the Bosniak community in Bosnia and Herzegovina, and the relative lack of interest in Serbia is notable. Apart from the sensational coverage of its first day, the trial remains a non-event. Serbian media reserve brief matter-of-fact reports for the painstaking

process of law that exposes the depth of human suffering told by victims themselves. At the same time, headlines are grabbed by Mladic's pastimes in the detention unit, such as playing chess with his once political master Bosnian Serb leader Radovan Karadzic, also presently on trial at the ICTY. The trial is trivialised in the absence of a serious debate about the role of those purporting to represent Serb interests in the war. One's perceived victimhood and others' culpability, alongside collectivisation of responsibility for war crimes, are taken as measures of the limited effectiveness of the ICTY. However, both have less to do with the 'quality' of justice, and more to do with the domestic context that mediates the message(s) coming from The Hague.

In Serbia, facing past crimes committed in the name of the nation has been constrained by the authorities' reluctance to open a substantive debate on the issue. This equally applies to the recent pro-European leadership, led by now former President Boris Tadic that extradited Karadzic and Mladic to The Hague. In fact, their hand-over was largely possible because the authorities have managed to reduce the issue of cooperation with the ICTY to a purely technical matter. War crimes suspects were delivered to The Hague. The issue of transitional justice was considered closed. The EU played along. It was satisfied the ICTY condition was met, even though it was devoid of any substantive examination of past wrongs.

Activism in liberal civil society has proved to be a chink in the armour of such a technical approach to transitional justice that emerged as a barrier to the acknowledgment of past wrongs. It has kept the issue of responsibility for war crimes in the public domain. Since the start of the ICTY trials, civil society throughout the region has been the bedrock of the international court's local support, although it pointed to limitations of a narrow perpetrator-centred ICTY approach. It has subjected official authorities' rhetoric and policies promoting impunity to unrelenting critical scrutiny. In Serbia, its mission was made even harder with the emergence of non-state groups endorsing illiberal and exclusive ideas, in direct support of nationalist projects that plunged the region into conflict. This was reflected in their public support for suspected war criminals, such as Ratko Mladic.

Following the presidential elections in Serbia, liberal civil society is again faced with attempts, coming from the top, to call into question the work of the ICTY. Days after the start of Mladic's trial, Serbian civil society groups rallied in criticism of newly-elected Serbian President Tomislav Nikolic, once the ideological ally of Serbia's late leader Slobodan Milosevic and his war project. Upon assuming office, Nikolic said that the killings in Srebrenica were 'grave war crimes', and not genocide. The Belgrade-based Youth Initiative for Human Rights demanded that Nikolic apologise to the victims of genocide and their families for insulting them. Joining the international outcry coming from the EU and the US, ICTY Chief Prosecutor Serge Brammertz said that Nikolic's statements 'contravene the factual and legal findings of both the [Hague tribunal] and the International Court of Justice,' which found that the massacre in Srebrenica was genocide.

Mladic is currently facing justice in The Hague. For victims and relatives of the perished, Mladic's appearance in the court signifies the end of impunity — even if it does not take away the pain. Mladic's trial, like others at The Hague, demonstrates that the question of reckoning with war crimes, including the prospects for inter-ethnic reconciliation in the aftermath of mass atrocities, also hinges on delegitimisation of nationalist ideologies that led to violence in the first instance. The ICTY has served to keep the question of the bloody past on the agenda in the Western Balkan states. However, for the established facts to become a trigger for revisiting one's own role in bloodshed, The Hague needs a local partner. In the context of continued contestation of the post-conflict settlements in the region, limited progress on resolving the issue of missing persons, and instrumental use of justice by elites to political ends, where justice is used to tick a box, rather than initiate a searching self-reflection, liberal civil society remains a hope for the quest for justice and reconciliation in the Western Balkans.

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