

By Joe Attwood

Last month's arrest and the subsequent extradition to The Hague of General Ratko Mladić, former Chief of Staff of the Army of the Republika Srpska, has brought the number of fugitives from the International Criminal Tribunal for the former Yugoslavia (ICTY) to an impressive total of 1, down from the 161 individuals who were indicted at the tribunal's birth in 1993. In Serbia, reaction to Mladić's extradition has been mixed; public opinion is divided between supporters of the Bosnian Serb Army General, and the victims of the crimes he committed during the Yugoslav Wars of the 1990s. The international community, by contrast, has resolutely recognised the cathartic and moral importance of bringing Mladić to justice.

The apprehension of Ratko Mladić is seen as a significant event for Serbia. The response of the Serbian public in Belgrade to his arrest demonstrated that wide cultural and political divisions and unrest continue to simmer under the surface of the country's calm exterior. Understandably, the wounds of the wars that racked the region for almost ten years have yet to heal. Serbian broadcaster B92 conducted a national poll in May of 2011 that attempted to gauge the response to any attempt to remove Mladić from the country. 51 percent of those polled said that they would not provide information leading to the capture of Ratko Mladić, nor support his extradition to The Hague. Only 34 percent of Serbians supported his arrest, whilst 40 percent of those polled told researchers that they regarded Mladić as a hero.

On the face of it, it seems that the majority of Serbians would seek neither the apprehension nor the prosecution of the accused former General. But this is not necessarily evidence of support for Mladić, his ideology, or the atrocities he is alleged to have committed during the Yugoslav Wars. The newest generation of Serbians are desperate to leave the gruesome past of their fledgling state behind.

The majority of Serbians are keen to show the international community that their country no longer deserves its unstable reputation and 'outsider' label. The primary focus of Boris Tadić's Democratic Party is achieving membership of the European Union, to which it expects to accede in 2014. The Serbian polity and public are focused on becoming a modern, respected, reliable member of the European and international community, and are eager to show that they have progressed from the violence of their past. For many the arrest of Mladić is an unwelcome reminder of their country's former instability. The apparent opposition to his capture can be interpreted as a desire to keep buried that which has inhibited their progression towards status as a legitimate member of the international community: the tender memory of the bloody wars of the 1990s.

The results of the poll thus raise the following question: are the continued operations of the ICTY assisting in Serbia's drive for growth and maturity; or are they simply a painful reminder of a troubled past Serbians are desperate to detach themselves from?

Is the ICTY good for Serbia?

According to the mandate of the ICTY, the tribunal works to bring to justice those persons responsible for the crimes committed in the former Yugoslavia as a form of contribution to the restoration and maintenance of peace in the Balkans. The establishment of international tribunals to investigate breaches of international humanitarian law and to prosecute those who perpetrate such violations has been recognised as an important aspect of transitional justice since the Nuremberg and Tokyo tribunals of the 1940s. Since 1993, the ICTY has detained 160 of 161 individuals it initially indicted with crimes of war, crimes against humanity, and genocide (amongst others). Goran Hadžić, former President of the Republic of Serbia Krajina (RSK), remains the only fugitive still at large.

The ICTY is close to fulfilling its mandate. Although the tribunal has exceeded the time frame in which it was initially expected to complete the tasks it was set by the United Nations, no one involved in its creation could realistically have anticipated that it could abide by such limits. It can hardly be criticised for its obvious and extraordinary successes in capturing all of its primary indictees, even if achieving them has meant it has failed to comply with time constraints. There is no doubt that the ICTY has experienced unrivalled successes in comparison to other tribunals operating today. Its prosecutorial record is impressive, but there are serious questions as to whether the tribunal is capable of healing the Balkans' deep psychological wounds. The tribunal cannot conceivably prosecute every single individual guilty of committing atrocities in the Balkans, for numerous reasons. The tribunal's budget, which stood at US\$302 million in 2010-11, is limited since the cost is borne by member-states of the United Nations. The time restrictions placed on the tribunal have also raised questions regarding the fairness and justness of its trials. During his tenure at the ICTY, Judge David Hunt argued with some accuracy that the United Nations' insistence on the maintenance of respect for the rights of defendants and on trial fairness were inconsistent with the amount of resources it was prepared to devote to prosecutions.

The reality that individual victims of the atrocities committed in the former Yugoslavia may never see their oppressors punished is a tragic, yet all-too common story. The ICTY's strict practical confines mean that those who gave the orders at Srebrenica in July 1995 will be prosecuted in The Hague, whilst those who pulled their triggers and perpetrated the genocide of more than 8,000 Bosnian Muslim men and boys will go unpunished. The principle of command responsibility ensures, in most cases, that commanding officers who directed or permitted their soldiers to commit atrocities in war will be punished. Yet the very personal nature of the violence in Yugoslavia, where murderous soldiers and brutal prison guards were the former school teachers, neighbours, and friends of those they oppressed, means that the punishment of commanding officers and the lack of punishment for direct perpetrators, goes hardly any way to achieving retribution or compensation for victims.

Serbia's past relations with the ICTY indicate that the state itself recognises the tribunal's limited ability to effectively aid its progression to maturity. In a speech formally announcing that the ICTY had taken Mladić into custody, prosecutor for the ICTY Serge Brammertz said that the tribunal was critical of the way the Serbian government had conducted itself in the hunt for Mladić. Brammertz asked for improvements in the conduct of operations on the ground as the state assisted in the location and capture of the remaining fugitive. The government's cooperation with the tribunal has been far from energetic, and has been one of the primary

reasons that the tribunal has taken longer to fulfill its mandate than was initially expected.

The Serbian government has a lethargic attitude to cooperation not because it believes that the tribunal's indictees don't deserve punishment for the crimes with which they are charged. Indeed, lack of cooperation with the tribunal remains one of Serbia's key obstacles to accession to the European Union. The government's lacklustre efforts are arguably consistent with the flow of public attitude towards the work of the tribunal highlighted in the results of B92's national poll: 53 percent of those polled believed the tribunal at The Hague to be biased and would not give detainees a fair trial. Evidence suggests that Serbia sees the tribunal's operations as digging up a past it would prefer remained hidden. It sees the ICTY as a tool for the wealthier European states who did not act sufficiently to prevent or halt the atrocities of the 1990s to alleviate the guilt they feel; to give the rest of the world a token indication that it is trying to repair the horrific damage that occurred in the former Yugoslavia on its watch.

The ICTY's purpose is to bring war criminals to justice and to bring justice to victims. In 2011, the evidence suggests that the tribunal that was created 17 years ago has had little healing effect on many of the victims of the Yugoslav Wars. That Ratko Mladic and the most significant criminals of the wars have all but been brought to justice is a remarkable achievement for the tribunal. For Serbia, for the benefit of whom the work of the tribunal was intended, the courts in The Hague are less important. Located far from the place where the criminal acts were committed, the tribunal has arguably never been in touch with the situation on the ground or the prevailing mood of the Serbian people. Whilst the capture and prosecution of the most significant war criminals might help the consciences of the European states who largely sat and watched the horrors of the wars of the former Yugoslavia take place, to the victims who bore the terrifying brunt of the violence, there will almost certainly never be retribution.

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