

Introduction: Historians' search for historical truth at the ICTY

In this issue of the *Časopis za suvremenu povijest* [Journal of Contemporary History], we decided to publish some of the reports by professional historians which were produced for the purpose of issuing judgments at the ICTY [International Criminal Tribunal for the Former Yugoslavia] This *ad hoc* court was established by the Security Council of the United Nations, under a resolution of 25 May 1993. The court should wind up all of its investigations by 2004 and conclude all of its proceedings by 2008. According to the intentions of its founders, the court is significant as an experiment.

Since the court's establishment, many charges have been laid, the majority of those charged have been brought before the court, and a number of judgments have been made against some of the leading political and military figures, calling forth various reactions from intellectuals as well as the wider public, ranging from sharp criticism and rejection of these judgments to unconditional support for them. Those who have challenged the court believe that it has an overly political function and they criticise it for its bias. Its supporters are convinced that it objectively pursues and punishes all those who conceived, committed or abetted war crimes. In terms of international law, the court has established new standards of justice in the international community, which are at times in conflict with state sovereignty. Analysts feel that the court has played an important role in "isolating extremism" in the territories that have been under its responsibility. Despite various opinions, without a doubt the court has had a prominent political dimension, which has practical implications. According to the reports of the highest Croatian functionaries, the Hague Tribunal is one of the greatest problems in Croatian relations with the European Union.

To us, especially from a historiographical point of view, the most interesting matter is the approach of recognized historians from various countries in their capacity as expert witnesses at the court, who have in their particular testimonies, attempted to explain the historical context of the bloody conflict in Bosnia and Hercegovina, and even beyond its frontiers. As a result, we concentrated on the criminal proceedings against Dario Kordić and Mario Čerkez. The indictment in this case began with the claim that the Croatian Democratic Union was the leading party in Croatia, and that its aims included the right of secession of the whole 'Croatian nation within its historical and natural borders.'¹ The reference here to 'historical frontiers' was sufficient reason for the testimony of professional historians to be included because it could not be expected that the judges of an international court were familiar with the historical issues of Bosnia and Hercegovina and the surrounding

¹ See Subject Kordić and Čerkez (IT-95-14/2) Indictment ("Lašvanska dolina"). <www.un.org/icty/bhs/glance/cis.kordic.htm>

region. In the presentation of evidence, both the defendant and the prosecutor relied on the findings of individual historians which they believed could explain the historical context of the conflict. A part of these historians' theses entered into the judgment. Thus one of the headings in the judgment refers to the "historical background" (Subject no. IT-95-14/2-T, pp. 133-137).

The articles by R. J. Donia and M. Almond published here are in fact the reports which they produced in their capacity as expert witnesses for the prosecution or defense in the Kordić case. The articles by M. Ančić and D. Čepulo were produced to assist the defense in preparing for the testimony of expert witness historians. The article by the historian D. Marijan was his expert's report in the Vinko Martinović Štela and Mladen Naletilić Tuta case (Subject IT-98-34). However, since in this case the key point was the contemporary history of Bosnia (and Hercegovina), and this work is distinguished for its thorough examination of military history, we included this article as well in order to present a more complete thematic whole. This collection of articles, in our opinion, enables an overview of the historical interpretations of domestic and foreign experts as they explain the historical conflict between Croats and Bosnians/Muslims in Bosnia and Hercegovina.

In an effort assist our observations of this intersection between historiography and the Hague Tribunal, we asked lawyers to attempt to explain what in fact was the importance of the findings of historians in criminal proceedings. Ksenija Turković, in her article "Povjesničari u potrazi za istinom o sukobima na prostoru bivše Jugoslavije u svojstvu vještaka pred ICTY-em" [Historians in search of the truth about the conflicts on the territory of the former Yugoslavia in their capacity as expert witnesses before the ICTY], feels that the role of historians "in large part is determined by the goals which the court wants to achieve." Her study shows the difference between historical and judicial proceedings when determining the truth about a specific event. Especially valuable are her views about the problem of impartiality of the historians in criminal proceedings and her posing of the question of whether a court is an appropriate institution for the evaluation of past events that are connected to the present or that should contribute to a better understanding of the present.

The reports of experts are historical works, which show how historians have until now participated in the work of the International Tribunal in the Hague. This is certainly a professional challenge, because it has had to do with the practical presentation of personal insights. Historians found themselves in a peculiar situation, because they could have a particular influence on the court decisions about war crimes and crimes against humanity. In other words, historians were able with their historical analyses to direct judges to an understanding of relevant facts which help in connecting the crimes committed with the wider events in a specific time and place. In every case they offered a general historical analysis of the responsibility for war crimes and submitted specific value judgments, and it remained for the judges to determine whether the accused merited the appropriate punishment.

The Hague Tribunal raised another theme that is important to historians. We have in mind selective use of official documents, for the most part, these have been limited to transcripts of the recordings of specific politicians. Their publication was to aid in the clarification of conflicting questions from the recent past, that is, in the case of the court, confirm certain points of the indictment. The selective presentation of confidential information has not been common thus far, because all the states, including the democracies of the western type, have closely guarded the secrecy of their official documents, and when they opened their secret archives they did this very carefully. On the other hand, one of the aims of the court has been to “collect authentic documentation and impartially note historical facts”.² An objective thusly defined raises at least two questions: 1) who has the right to collect historical sources? And 2) who is empowered to write impartial history?

It seemed to us useful to publish these articles from heterogenous points of view in order to promote deliberations on their quality as works of historiography or whether they are perhaps tendentiously composed in order to exclusively serve the defense or prosecution in specific cases. From the point of view of contemporary historiography we hope to ascertain whether the testimony of historians at the Hague Tribunal, or other similar bodies, such as the future International Court of Criminal Law, is useful to their profession or whether this is for the most part about their appearance *pro domo suo*. Historians might have a particular role to play in the work of national courts, when it has to do with cases of less exposure. There are similar examples here, in the cases of Andrija Artuković and Dinko Šakić for instance, when historians took part in the analysis of events that took place during the Second World War.

We expect that in the near future we will continue with the publication of thus far unpublished testimonies of historian expert witnesses, but we also hope to stimulate reactions, as well as professional polemics, in order to achieve a more complete picture of the divisive issues of the past and more recent history of Bosnia and Hercegovina and Croatia. We believe that we will have the opportunity to examine the proceedings against Slobodan Milošević, the former Yugoslav president. During this proceeding, much discussion has occurred about the various historical aspects.

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² See Ksenija TURKOVIĆ, “Historians in Search for Truth about Conflicts in the Territory of Former Yugoslavia as Expert Witnesses in front of the ICTY”, 46-47, published in this volume.