
Miroslav Tuđman (2020)

Poaching in the Hague: Analysis of Evidence of a Joint Criminal Enterprise in the ICTY Case IT-04-74

https://www.amazon.com/Poaching-Hague-Analysis-Enterprise-04-74-ebook/dp/B08QH4ST6R/ref=sr_1_1?dchild=1&keywords=poaching+in+the+hague&qid=1627851074&sr=8-1

Professor Miroslav Tuđman has written a book which should be compulsory reading, not only for those interested in the tangled story of the Croat-Muslim War of 1992-1994, but also in the work of the Hague Tribunal (ICTY) and in the wider problems of supranational criminal justice. Dr Tuđman, the son of Croatia's first democratically elected president, Franjo Tuđman, was director of the Croatian Intelligence Service at the time of the Croat-Muslim conflict. His analysis of the case of the "Croat Six", sentenced for war crimes in that conflict, makes disturbing reading. The case is now remembered principally for the dreadful suicide of General Slobodan Praljak, televised and in open court. But Dr Tuđman's lucid investigation of the judicial

process should leave any objective reader with another impression, namely of the systematic and cumulative unfairness of what transpired.

The ICTY devised, at an earlier stage, the entirely new concept of a "Joint Criminal Enterprise" (JCE), in order to secure the conviction of people that the prosecutors thought should be punished. In British law, the evidence used to secure such convictions would have been inadmissible, and rightly so. The JCE was a device to override gaps in proof and assert connections between actors and actions which are speculative and, in many cases, improbable.

It is not mere chance that the final case before the Court, that of the Croat Six, was aimed at Croatia. Throughout, the policy of the international community was to disperse blame between all "parties" to the conflict. The work of the ICTY, itself, became increasingly political as time went on, and as its budget and its practitioners' ambitions grew. The ICTY saw itself as the beginning of a new supranational legal order, in which (politicised) experts and

(politically appointed) judges rather than elected national political leaders would determine outcomes.

This politicised justice was not even political useful. In Bosnia and Herzegovina, the sentencing of the Croat leaders to a total of 111 years in gaol, without any proper investigation of the numerous heinous criminal acts committed by the Muslim forces, especially the imported Mujahedeen, has undermined rather strengthened this already fragile state. It demoralised the shrinking Croat community, thus accelerating the trend towards an exclusively Muslim identity in the Federation, with the perils that entails – including for secular-minded Muslims.

It set back the commitment to establish Bosnia on the principle of cooperation between three equal constitutive peoples – a principle rooted in history and guaranteed by the Washington and Dayton Agreements that enabled peace. Despite the fact that it lost, at one point, a third of its territory to Serb/JNA aggression, Croatia is the only successor state of the former

Yugoslavia to be found guilty of waging an international armed conflict. Yet Croatia is also the only neighbor of Bosnia and Herzegovina with the will and means to make that currently failing state a successful entity.

The ICTY is as an object lesson in international institutional failure. Miroslav Tuđman shows us why.

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Prime Minister, Lady
Margaret Thatcher*

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The concept of a Joint Criminal Enterprise many experts and analysts see as a 'net', or 'magic bullet' utilized by the Prosecution for the purpose of summarily punishing those the powers that be want to see punished, not on account of their alleged crimes but on the basis of their affiliation with a certain civil or military structure whose members, positioned at lower rungs of the hierarchical ladder, may have committed the crimes in question. The concept of a Joint Criminal Enterprise is not a feature of customary law. But the Appeals Chamber negated the dictates of customary law by announcing independence from all legal precedent and established practice.

Miroslav Tuđman, in his book, lays bare the self-indulgent nature of the Hague Tribunal, excoriates the tribunal's penchant for disregarding pertinent evidence and historical facts and proves that the Plić et al. was, ultimately, a failed experiment that resulted in a miscarriage of justice.

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