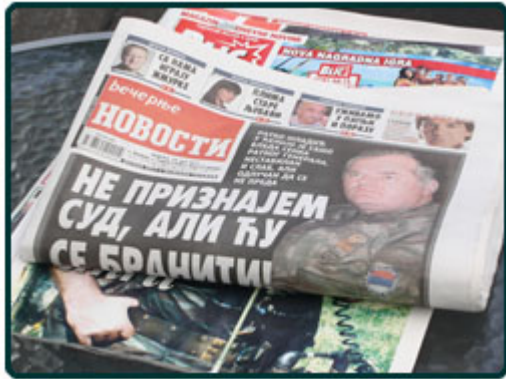


CARNEGIE COUNCIL *for Ethics in International Affairs*

The Ethics of a Justice Imposed: Ratko Mladic's Arrest and the Costs of Conditionality

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It has been 16 years since the Bosniac population of Srebrenica—a small town in eastern Bosnia—was systematically annihilated in a brutal campaign of genocide and ethnic cleansing. Over the course of several weeks, more than 8,000 people were slaughtered.

The victims of Srebrenica were largely, but not exclusively, men. Some had their throats slit. Most were shot with a single gunshot to the head. Of those killed, 500 were young boys under the age of 18—some not old enough to have taken their first step. Among those murdered, several dozen were women and girls. Of the

survivors, many were raped and thousands were left without fathers, brothers, and sons.

The arrest of Ratko Mladic, the former Bosnian Serb general accused of implementing the genocidal assault on Srebrenica, marks the closing of a difficult chapter in Serbia's history. Driven largely by foreign policymakers who have sought to condition Serbia's Euro-Atlantic integration on the arrest and extradition of suspected war criminals, Mladic's arrest adds to a long list of former presidents, prime ministers, and generals that Serbia has apprehended over the course of the past decade.

Unfortunately, if promises of lucrative loans, visa-free travel, and EU membership have succeeded in driving Serbia's compliance with the International Criminal Tribunal for the former Yugoslavia (ICTY), material incentives have had far less success in inciting a process of societal self-reflection. To the contrary, when it comes to the crimes committed in their name, most Serbs remain skeptical, ill-informed, and even disinterested. Where they support Serbia's cooperation with the tribunal, they do so for material—rather than ethical—concerns. Indeed, the desire to see justice done and past wrongs righted plays remarkably little role in Serbs' desire to deal with the past.

This was evident even in Serbian President Boris Tadic's lengthy address to the Serbian people on Thursday, May 26, 2011, the day of Mladic's arrest. Despite his repeated reference to Serbia's "moral responsibility," the Serbian president made no mention of the crimes for which Mladic stood accused, the reasons for Serbia's moral culpability, or the genocidal actions that warranted Mladic's arrest. The great bulk of Serbia's media followed suit, focusing not on the war crimes motivating Mladic's arrest but rather on whether his arrest would secure Serbia EU candidacy status by the end of the year.

Thus, while Serbia may have closed the chapter on Mladic's arrest, it has yet to open the book on

the past. For all their success, policies of conditionality have failed to get this process started.

To make sense of this, this article examines the interplay between policies of conditionality and transitional justice, drawing attention to the ethical implications of a transitional justice that emerges not as a result of moral penance, but out of a desire for material well-being.

The Benefits of Conditionality: Justice Delivered

Scholars have written extensively on the subject of conditionality. Many view such policies as useful incentives in prodding political and economic shifts. Some regard conditionality as deeply flawed. There is one issue on which there is notable consensus, however: conditionality's effectiveness with respect to ICTY compliance. In Serbia, in particular, the conditioning of foreign aid and EU membership on Serbia's compliance with the ICTY is viewed as responsible for Serbian cooperation with the tribunal. It is a claim borne out in practice.

When Slobodan Milosevic was removed from power in October 2000, many hoped that Serbia would begin to account for its role in past crimes, most notably by complying with the ICTY. Yet the country's new president, Vojislav Kostunica, was a staunch Serbian nationalist who, like many of his compatriots, viewed the tribunal as having an anti-Serb bias. Kostunica's repeated refusal to cooperate with the tribunal encouraged American policymakers to turn to conditionality.

The first attempts to encourage transitional justice in Serbia through the use of conditionality came in early 2001 in a mandate set by the U.S. State Department. In exchange for \$100 million in non-humanitarian aid (as well as U.S. backing for World Bank and International Monetary Fund loans), Serbian authorities would have to arrest Milosevic (by then an ICTY indictee), extradite at least one accused, adopt a new law governing ICTY cooperation, and permit tribunal prosecutors full access to state archives. After several weeks of procrastination, on April 1, 2001 Milosevic was arrested. Many attributed his arrest to a U.S.-driven policy of conditionality.

A protracted period of non-compliance followed and four years later conditionality was re-employed, this time by the EU. In 2005, Olli Rehn, the EU Commissioner for Enlargement, [issued](#) the EU's first public reference to the conditioning of the country's EU trajectory on ICTY compliance: Unless Serbia cooperated with the tribunal (by extraditing indictees), Serbia's road to EU membership would be obstructed. Shortly following Rehn's announcement, more than a dozen indictees were transferred to the ICTY, thus adding further credence to conditionality's presumed effectiveness.

Conditionality has since been credited for Serbia's tally of 42 indictees. [According](#) to former ICTY Chief Prosecutor Carla Del Ponte, it was "only thanks to the international pressure" that Serbia cooperated with her office. Florence Hartmann, a former ICTY spokesperson, has written that "EU conditionality and pressure have proved to be the only effective means of overcoming their reluctance and eliciting the cooperation without which the tribunal would not have been able to fulfill its mandate."¹

Scholars agree. Victor Peskin [maintains](#) (p.90) that "without international pressure and the promise of economic and political incentives, there would be little change in Belgrade's willingness or capacity to cooperate with the ICTY." Pierre Hazan [argues](#) (p.26) that conditionality "explains the fact that practically all of the accused were arrested." Now with Mladic in The Hague, only one indictee from Serbia—Goran Hadzic—remains on the run, contributing to the widespread consensus that

conditionality accounts for Serbia's success in cooperating with the tribunal, enabling Serbia to achieve retributive justice and accountability.

Yet the confidence in conditionality's success in facilitating criminal justice and Serbia's compliance with international law has not been without its critics. Some believe that the strategic employment of conditionality has unduly materialized the process of dealing with the past in Serbia, removing the ethical urgency that should underline the process of dealing with the past.

The Ethical Limitations of Conditioned Compliance: A Moral Imperative Denied

Conditionality has long dominated Serbia's discourse on the ICTY. Newspapers, TV, and radio—all frame the subject of ICTY compliance within the context of Serbia's move towards Europe. This is most visible in the comparison of media coverage of the ICTY before and after conditionality. For example, in her analysis of Serbian print media conducted over a one month period in 2002, Larisa Rankovic found that of the 848 articles published on the ICTY, all but several dealt with substantive issues such as testimonies provided during the Milosevic trial. This situation changed dramatically by the mid-2000s, however. Of the thousands of articles that discuss the ICTY in Serbian print media today, the vast majority focus not on the content of the ICTY's work, but on the context within which compliance takes place (i.e. its impact on European integration).

Not surprisingly, conditionality has defined Serbia's motivation for ICTY compliance. Over the last decade, the provision of a material incentive for ICTY cooperation has become *the* motivation for Serbia's compliance, overshadowing the moral imperative for doing so. Emblematic of this are the public pronouncements of Serbia's politicians. Statements regarding the tribunal made by leading Serbian politicians are patently lacking in ethical overtures. Rather than elucidating the moral imperative for cooperation, politicians and policymakers emphasize the material benefits to be gained by compliance—thereby removing the ethical urgency of dealing with the past.

Thus, in explaining the need for ICTY cooperation, Boris Tadic, Serbia's reform-oriented President and a long-time supporter of ICTY cooperation, notes that "without cooperation there is...no entry into the EU, no increase in the standard of living. Our poverty rate will rise, we will have no political stability, so long as we are excluded from the international community." Similarly, when asked whether Serbia would support ICTY cooperation, Miroljub Labus—a former deputy prime minister of Serbia—maintains that it is not a question of "whether we want to cooperate with The Hague but whether Serbia wants to join the EU."

Such sentiments are shared by Serbia's public. A 2009 poll found that of the 50 percent of Serbs who support ICTY cooperation, less than a quarter do so out of a concern for justice. By contrast, 34 percent do so because they believe cooperation will enable Euro-Atlantic integration, and the remaining 44 percent do so in the hopes of avoiding sanctions. Not surprisingly, a compliance that emerges not out of a desire for justice, but out of a concern for material well-being, has been unable to change the attitudes of most Serbs towards the tribunal or to Serbia's role in the Yugoslav wars more generally.

Thus, polls show that despite growing support for ICTY cooperation, Serbs remain deeply suspicious of the tribunal's legitimacy and motivations. In fact, just 2 percent of Serbs believe the ICTY is "needed" or has "positive effects on society." As Igor Bandovic notes, "Most people view the ICTY as an unavoidable and enforced precondition for Serbia's full return to the world community and simply the price that Serbia has to pay."² Unfortunately, these views completely sideline the issue of the

guilt of those indicted by the ICTY.

Indeed, knowledge of the ICTY and of Serbia's role in war crimes more generally remains glaringly low. [Most Serbs](#) do not know why either Karadzic or Mladic have been sought by the ICTY and boast "very little" or "little" familiarity with the work of the tribunal. Moreover, [evidence](#) indicates that "the percentage of people who admit to having heard about certain crimes being ascribed to Serbs is on the decrease."

Such evidence suggests that rather than use the occasion of Mladic's arrest to probe their state's complicity in the Yugoslav wars or to come to grips with their own role—however indirect—in Serbia's genocidal policies of the 1990s, most Serbs will likely do neither. After all, as one person from Serbia interviewed for this article said shortly after Mladic's arrest, "Why does this concern me? Why should I be held responsible for crimes that were committed in Bosnia?"

Conclusion

Although the Serbian government has in large part submitted to ICTY demands, [experts agree](#) that the country's "acquiescence to the ICTY has been based on expediency, not conviction." Indeed, as [ICTY chief prosecutors](#) readily admit, Serbia's cooperation has thus far hinged not on Serbians' moral convictions, but on their shared aspirations for Euro-Atlantic integration, most notably EU membership.

This is so problematic in part because policies of conditionality have removed the ethical urgency that necessitates transitional justice. When the U.S. and EU condition material benefits on dealing with the past, they risk materializing the process of coming to terms with the past—diverting the dynamics of the national discussion away from past wrongs to a national fixation on the fruits of ICTY compliance. So concerned only with the material benefits of ICTY compliance, Serbs have stopped asking why men like Mladic are hunted by the global community.

As a consequence, it has become harder for Serbia to come to terms with its role in past wrongs. Indeed, today's Serbia exists in a strange limbo, whereby it has succeeded in contributing to criminal justice, but has failed to partake in transitional justice. For all its significance, it is unlikely that Mladic's arrest will change this.

NOTES

¹Hartmann, F. (2009) 'Europe and the Necessity of Adopting a Transnational Approach to Restorative Justice in the States of the former Yugoslavia' in Kostovicova, D. (ed.) (2009) *The European Union and Transitional Justice: From Retributive to Restorative Justice in the Western Balkans* (Belgrade: Humanitarian Law Center).

²Bandovic, I. (2004) 'Remarks of Igor Bandovic.' In: *International War Crimes Trials: Making a Difference?* Ed. Steven R. Ratner and James L. Bischoff (Austin: University of Texas Press).