

The Un Criminal Tribunal: To What End?

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Professor Magnarella's article "The Conflicts of the Former Yugoslavia in the Courts"(AEER, Spring 1996) has provided a welcome overview of the background and workings of the UN Tribunal convened to prosecute war crimes committed during the current Yugoslav civil war. At the same time, his succinct and evenhanded overview raises as many questions as it answers, far too many in fact to be dealt with adequately in this brief commentary. Thus, I will address only one, to what end the Tribunal? In this regard, Magnarella cites Payam Akhavan, a member of the Tribunal's prosecution team, who voices a naive but nevertheless commonly held bit of conventional wisdom that the creation of conditions for a "genuine and lasting reconciliation requires that the various ethnic peoples of the former Yugoslavia be absolved of collective guilt for the horrific crimes that have been instigated by their leaders," and that this can be accomplished "by bringing criminal leaders to justice." This, of course, means Radovan Karadžić^a and Ratko Mladić^a since not a single high-level Muslim or Croat leader of their stature has been indicted. Clearly those who hold such a view have very little insight into Balkan history and culture. In this regard, there is little evidence to suggest that "collective guilt' in respect to behavior toward enemies has ever played a significant role in the South Slav psyche as evidenced by the lack of any visible remorse by any of the ethnic groups following the excesses of World War II.

It is difficult to imagine that the conviction of Karadžić^a and Mladić^a, who are heroes to the masses of Bosnian and Hercegovinian Serbs, would make any positive contribution to a lasting peace in the area. In fact, making of martyrs of them would surely enflame ethnic passions and the desire for revenge, and thus further enhance the influence of nationalist hard-liners. To believe otherwise, given the positive value placed on revenge in the Balkans, would be extremely naive. Moreover, the failure of the Tribunal to indict Muslim leaders such as Izetbegović^a and those closest to him further damages its legitimacy in Serbian eyes. This is in spite of ample evidence to suggest the involvement of the Muslim leadership in the massacre of 105 of their own civilians in the two mortar attacks on Sarajevo's Markale Market Square in an effort to blame the Serbs and to get sympathy and draw America and NATO into the war.' The indictment of a few relatively unimportant Muslims and Croats will do little to dispel Serbian cynicism or

instill a sense of parity in the judicial proceedings. The legitimacy of the Tribunal in Serbian eyes is further eroded by the absence of any judge of Eastern Orthodox origin or from any country friendly to the Serbs, from Greece or Russia, for example. In short, the Serbs regard the Tribunal not only as a sham, but also as a tool of their expressed enemies. Thus, one can only conclude that the Tribunal can do little as it is now constituted and oriented to make any significant contribution to the achievement of a lasting piece in former Yugoslavia. Finally, the question must be posed as to why, given the worldwide occurrence and frequency of similar conflicts characterized by genocide and other "crimes against humanity" over the past half century, this is the only instance of the convening of a war-crimes tribunal since Nuremberg? Unfortunately, its enthusiastic supporters in America and some other Western countries appear utterly insensitive or oblivious to the all too obvious hypocrisy inherent in this judicial process.

Notes

' Among many other sources regarding such Muslim attacks on their own people, see: David Binder, *The Nation* October 2, 1995, p. 336; Hugh McManners, *The Sunday Times* (London), October 1, 1995; Mike O'Connor, *The New York Times*, August 1, 1995, p. A-5; and John E. Sray, "Selling the Bosnian Myth to America: Buyer Beware," October 1995, United States Army Foreign Military Studies Office, p.3