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# The Parting of Ways

## Public Reckoning with the Recent Past in Post-Milošević Serbia

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*Critics point to defects in the trial process, or to the persistence of nationalism, as reasons for the limited transformative impact of the Milošević trial in Serbia. However, the role of memory and different understandings of how to confront the past have been equally important in shaping responses to the Tribunal. These factors are explored in this chapter by examining a debate the Milošević trial generated within Serbia's liberal intelligentsia: The 2002 Vreme debate exposed the existence of two alternative narratives of the Serb experience of the wars of the 1990s, two approaches to the question of responsibility for the crimes committed in those wars, and two deeply opposed visions of the role played by the West in Serbia's democratic transition. The Vreme debate offers important insights into why the impact of courts in transitional societies is not as straightforward as their advocates might hope.*

### I. Unmet Expectations, Alternate Narratives—The *Vreme* Debate

Since the Nuremberg Tribunal, international trials have included goals of societal education and transformation alongside their formally defined purpose of trying individuals for

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specific crimes. International criminal tribunals are seen as vehicles to establish a historical record, counter forgetting and denial of crimes, and ultimately promote reconciliation.<sup>1</sup> In the eyes of its practitioners and its advocates, the ICTY has had the task of promoting just such wider collective aims in the post-Yugoslav region. As a 2008 report on the impact of the ICTY in Serbia noted, many supporters of the Tribunal “believe that one of the most important benchmarks for [it] is educating the Serbian public about atrocities—especially about crimes committed by their political leaders.”<sup>2</sup>

Of all the trials conducted by the ICTY so far, the *Milošević* trial undoubtedly embodied the greatest expectations in this regard. In her opening statement, Chief Prosecutor Del Ponte described the trial as marking “a turning point of this institution” and possibly “the most significant trial that [it] will ever undertake.”<sup>3</sup> According to Del Ponte, this trial—more than any other—would contribute to writing the history of Yugoslavia’s violent disintegration and “fratricidal conflicts”<sup>4</sup> and play an instrumental role in promoting a reckoning with the recent past and reconciliation in the region. Serbia, whose former leader was being prosecuted and whose role in the wars was generally seen as the most important, was clearly at the heart of this process.

These expectations were not met. Milošević’s death before the conclusion of the proceedings represented a tremendous blow to the Tribunal, but it was clear already from the beginning of the trial that the Tribunal’s pedagogical aims were going to be very difficult to fulfil. Although the trial was transmitted live on state television and sparked tremendous public interest, the effect was in fact the contrary of what had been hoped by the Tribunal’s advocates. Rather than discrediting Milošević and unequivocally exposing his guilt, the trial actually improved his standing with the Serbian public.\* Although subsequently the ICTY Prosecution did present significant evidence linking Serb paramilitaries and the Milošević regime to atrocities committed in Croatia and Bosnia and thus countered denial of Serbia’s complicity in these crimes, it remained largely unsuccessful in persuading the Serbian public of its own version of the truth about the wars of the 1990s.†

Two types of reasons for the undesired effects of the *Milošević* trial can be found in the literature: defects of the trial itself and the pervasiveness of nationalism in Serbia. Legal critiques of the trial have focused on the failings of the Prosecution, notably its joining of the three indictments, imputing too much to Milošević and attributing too great a weight to his Greater Serbia policy. This made the trial an unwieldy marathon in which the Prosecution’s case alone took three years and produced an indigestible 1.2 million pages, compromising both its own ability to prove all its counts and Milošević’s ability to defend himself.‡ The

\* According to the pollster Strategic Marketing, over 60 percent of Serbian citizens tuned in to the trial in the first days, a higher rating than even for the extremely popular Latin American soap operas. Asked to rate Milošević’s defense on a scale of one to five, 41.6 percent gave him five (the top mark), one-fifth gave him a four and another fifth a three; 5 percent gave him a two, and 11.6 percent were completely dissatisfied with his performance (BETA, 22 Feb. 2002). See Bieber’s chapter.

† An analysis of the impact on public opinion is provided in Bieber’s chapter. See also ORENTLICHER, SHRINKING THE SPACE FOR DENIAL 108–23 and Gordy, *Rating the Sloba Show: Will Justice Be Served?*, 50 PROBS. OF POST-COMMUNISM 53–63 (2003).

‡ These problems are elaborated by Boas, Prelec, and Waters in their chapters. See also BOAS, MILOŠEVIĆ TRIAL; Gow & Zverzhanovski, *Milošević Trial: Purpose and Performance*, 32 NATIONALITIES PAPERS 898–919 (2004).

literature also highlights problems with the Prosecution's choice of witnesses, its apparently insufficient knowledge of Serbia and its history, and its decision to begin with the Kosovo indictment—all of which played into the defendant's hands.\*

The second explanation, emanating from political science perspectives, attributes the ICTY's lack of success in promoting its pedagogical mission primarily to domestic factors, notably enduring nationalism in Serbia. This literature emphasizes the continuities between the Milošević regime and Serbia's post-2000 leadership in terms of both goals and rhetoric, ascribing the ICTY's lack of impact on Serbian society to “the continued prominence of illiberal, chauvinistic nationalism in Serbia.”† It is illusory, from this perspective, to expect the ICTY to have a transformative impact as long as this is the case; only when domestic elites genuinely embrace the process of confronting the past can a society become more receptive to the liberal human rights message of international courts.

Both these arguments contribute to our understanding of why the ICTY has had problems reaching its audience in Serbia, both generally and more specifically during the *Milošević* trial. However, there are other reasons for the limited pedagogical or transformative impact international tribunals such as the ICTY have in post-conflict societies. Notably, the role of memory—particularly memory of directly experienced trauma—is an important factor shaping responses to judicial proceedings against former leaders. Indictments, arrests and, above all, trials represent grand public spectacles that can act as triggers for “irruptions of memory” of a political past that still constitutes an important part of the lived experience of a population.<sup>5</sup> Evocations of such memory can take different symbolic forms and incorporate different commemorative practices, but, most important, they are articulated in the course of intense public debate as contending narratives about this past: what really happened, why events took the course they did, and who was responsible. As an examination of the debate that arose in the course of 2002 in the pages of the news weekly *Vreme* shows, this is in fact what happened in the case of the *Milošević* trial.

The debate in *Vreme*, one of the main organs of the Serbian liberal intelligentsia, provides a useful lens through which to examine the impact of the *Milošević* trial in Serbia, precisely because it pitted members of the former antinationalist and antiwar civic opposition—the self-designated *Druga Srbija* (Other Serbia) group—against each other. These were not people who had believed Milošević's propaganda or endorsed his nationalist ideology and goals. Indeed, they were keen to see accountability for the crimes perpetrated in the wars of the 1990s and thus should have been the Tribunal's natural allies within Serbia.‡ In a multitude of ways, from independent investigation of crimes to the organization of

\* These critiques are listed in ORENTLICHER, *SHRINKING THE SPACE FOR DENIAL* and can also be found in Dimitrijević, *Justice Must Be Done and Seen to Be Done: The Milošević Trial*, 11 E. EUR. CONST. REV. 59 (2002) (noting, at 60, that “rather than taking up the first and worst occurrences, Milošević's indictment for crimes in Bosnia and Croatia came only after the indictment for Kosovo” and the Prosecution, “unexpectedly, as in a post-modernist play, started showing the final act first.”). The implications of this initial focus on Kosovo as a memory trigger are discussed later in this chapter. But on the sequencing of the cases, see Del Ponte at 142-143.

† McMahon & Forsythe, *ICTY's Impact on Serbia: Judicial Romanticism Meets Network Politics*, 30 HUM. RTS. Q. 412 (2008). See also SUBOVIĆ, *HIJACKED JUSTICE* 38-82, as well as Bieber's, Krasniqi's, and Trix's chapters.

‡ Many of these individuals' political origins are found in the dissident activism of the “Belgrade critical intelligentsia” during the 1970s and 1980s, with its various committees for the defense of free thought and expression and

public demonstrations, this loose coalition of individuals associated with NGOs, independent media outlets, and various intellectual groupings had in the course of the 1990s built up a publicly available record and created a foundation for future examinations of the legacy of the Milošević years. Some of them even contributed to judicial processes through their own testimony or by supplying evidence.\* However, rather than representing a united force supporting the Tribunal and its prosecution of Milošević, this group effectively split over questions about Serbia's recent past that were generated by the trial.

The significance of the *Vreme* debate was clearly understood at the time. As one perceptive commentator noted:

There are at least two reasons why this polemic about responsibility for war crimes on the pages of *Vreme* can be considered an important social and political happening, even one of extraordinary public interest. One is certainly the fact that this is the first public debate here in which many well-known individuals are trying to define their personal and also collective approach to the crimes perpetrated by the Serb side in the recent past. Until now, there was reluctance to broach this theme.... This polemic has also attracted attention for another reason. The confrontation, accompanied by deep differences in visions of the recent war crimes, is taking place among people who were until now verifiable members of the democratic—in other words, anti-Milošević and anti-war—bloc in Serbia....†

The *Vreme* debate led to the public articulation within the liberal intelligentsia of two alternative narratives of the Serb experience of the wars of the 1990s, two different approaches to the question of responsibility for the crimes committed in those wars, and two deeply opposed visions of the role played by the West both before 2000 and during Serbia's democratic transition—all of which have lasted to this day. Neither the defects of the *Milošević* trial nor lingering nationalism provide us with a satisfactory explanation for the deeply divergent standpoints that emerged during the *Vreme* debate on questions concerning the recent past—questions that split the *Druga Srbija* group and provoked such intense emotional fallout among its members. Rather, the debate revealed that the underlying source of the discord among Serbia's liberal intelligentsia resided in the deeply divisive experience of the 1999 NATO intervention against Serbia—the memory of which was triggered by the onset of the *Milošević* trial.

its petitions for the respect of human and civil rights. See DRAGOVIĆ-SOSO, "SAVIOURS OF THE NATION": SERBIA'S INTELLECTUAL OPPOSITION AND THE REVIVAL OF NATIONALISM.

\* For example, the journalists Dejan Anastasijević and Jovan Dulović testified for the Prosecution in the *Milošević* trial about crimes committed in Croatia, whereas Nataša Kandić, a human rights activist and director of the Belgrade NGO Humanitarian Law Centre, supplied the Prosecution with the documentary footage of Serbian paramilitaries killing Bosniak civilians in Srebrenica in 1995 known as the *Škorpioni* video (also discussed in Bieber's and Popović's chapters).

† D.I. *Teškoba pred zločinom*, REPUBLIKA, 1–31 Oct. 2002. Only a few months after the debate ended in November 2002, it was published in book form by one of the NGOs whose members had been involved. *Tačka razlaza*, 16 HELSINKIŠKE SVESKE (2003). It should, nevertheless, be noted that not all individuals who took part in the debate were members of *Druga Srbija*; lines of allegiance were at this point becoming more fluid.

## II. The Context and the Onset of the Debate

The *Vreme* debate took place in the context of considerable political and public hostility toward the ICTY, some six months into the *Milošević* trial. It followed a year of intense pressure by Western governments, particularly the United States, for Serbia to cooperate with the ICTY by extraditing individuals to The Hague.<sup>6</sup> As Pešić explains, this external pressure and the conditioning of vital economic aid to Serbia on such cooperation contributed to the rift within the already fractious DOS coalition that had defeated Milošević in 2000. In particular, it exposed a conflict between Serbia's prime minister Zoran Đinđić, who championed the position that Serbia had to accept such demands in order to achieve economic recovery and a rapprochement with the West, and Yugoslavia's federal president Vojislav Koštunica, who argued that cooperation with the ICTY was not a priority and had to be undertaken only within the framework of incremental legal change, such as the adoption of an extradition law. When it became clear that the federal Parliament and Supreme Court, populated by remnants of the old regime, were not going to enact the legal formalities in time for the deadline set by the United States before an important donors' conference, Đinđić invoked a provision in the Serbian constitution allowing him to engineer an eleventh-hour handover of Milošević to a U.S. base in Bosnia, from which he was then transported to The Hague. Although the transfer did not provoke an immediate backlash in Serbia, it did mark the disintegration of the DOS coalition, a growing opposition to Đinđić among Serbia's compromised security forces concerned about their own possible transfer to The Hague, and a sense among the population that Serbia simply had no choice but to give in to what was perceived as blackmail by the West.\*

Popular perceptions of the ICTY also became increasingly negative following the onset of the *Milošević* trial. The periodic opinion polls taken by the Belgrade Centre for Human Rights showed that the number of those with a positive view of the ICTY had fallen from 30 to 25 percent and the number of those who believed that individuals should be tried by the ICTY as opposed to domestic courts fell by a similar number, thus concluding that as opinions of the ICTY became more fixed (indicated by fewer "don't know" answers) so did negative assessments of it.<sup>7</sup> Questions specifically related to Milošević's transfer and trial showed similar trends: in 2002 the number of those who believed Milošević should not have been transferred rose from 44 to 62 percent, whereas those who approved fell from 43 to 27 percent. Finally, respondents gave the performance of the Prosecution and the chances of Milošević getting a fair trial the poorest marks, whereas Milošević's self-defense received the highest mark. The trial was, if anything, discrediting the ICTY rather than Milošević in the eyes of Serbs.

It is in this context that in August 2002 an article appeared in the independent Zagreb weekly *Feral Tribune* by the well-known Serbian political commentator and satirist Petar Luković. Luković alleged that post-Milošević Serbia was not fundamentally different from its

\* This perception was reinforced by Đinđić himself, who justified Milošević's handover as a purely financial transaction, without engaging in any discussion of the moral imperatives of trying Milošević for crimes committed in Kosovo, Croatia, and Bosnia. See SUBOTIĆ, HIJACKED JUSTICE 46.

predecessor and that it was actively engaged in promoting a “collective amnesia” toward the recent past, neglecting the fundamental questions of war crimes and the Hague Tribunal.<sup>8</sup> For him, the blame for this sorry state of affairs lay not only with the new political leadership, but also with the liberal intelligentsia, whose most important media outlets—the weekly *Vreme* and the radio–television station B-92—were in his view giving “obscure fascists and chauvinists” space to regularly air their views in public and collaborating with the political powers in their refusal to confront the crimes of the Milošević era.<sup>9</sup> The article was accompanied by an interview with Sonja Biserko, the director of the Serbian Helsinki Committee, who agreed with this view:

There are two problems that we encounter almost daily: one is the generalization and relativization of crimes and the other is the attitude towards the Hague Tribunal. As the crimes are becoming ever more apparent and as the evidence is increasingly accessible, Serbian society, or to be precise, its elites, are trying in an ever more organized way not just to relativize but to de-ethnicize the crime. The way in which the new truth is being presented—especially through the so-called independent media, like B-92 or *Vreme*—is as totalitarian as the nationalism that once started the war machinery.<sup>10</sup>

The reactions to these claims were instantaneous. Veran Matić, the director of B-92, responded in a letter to the editors of *Feral Tribune*.<sup>11</sup> He denied Luković’s allegations, highlighting B-92’s continued live transmission of the *Milošević* trial (even after state television had stopped) and listing its numerous other programs dealing with the recent past, including 66 documentaries focused on the wars and specific crimes shown as part of a prime-time series on “Truth, Responsibility and Reconciliation.” However, Matić agreed that life did go on in Serbia and that it was true that the crimes of the Milošević era were not foremost in people’s minds, asking whether “insensitivity and forgetting were a part of human nature or a special Serb invention[;]” in his view, “the demand that life has to stop until the graves are exhumed is simply crazy.”<sup>12</sup> He also rejected Biserko’s accusation of “totalitarianism,” noting that in the process of confronting the recent past, B-92 was trying to be as all-encompassing as possible. He agreed that criminals and warmongers should not be “amnestied,” but he also rejected the idea that memory should be “selective,” something he believed his critics were guilty of.<sup>13</sup>

The reaction of the editor-in-chief of *Vreme*, Dragoljub Žarković, was even stronger. Quoting Biserko’s interview in his weekly editorial column, he replied that none of the accusations were true except one—that *Vreme* indeed sought to de-ethnicize the crimes of the Milošević regime: “We work under the assumption that criminals have first and last names and that any approach that seeks to accuse an entire nation of crimes is itself totalitarian.”<sup>14</sup> Žarković also reminded his readers that Biserko had called for the de-Nazification of Serbia during the NATO bombing; by making these kinds of statements, he argued, Biserko was actually endorsing the extreme nationalists’ slogan that, along with Milošević, the Serbian

\* See also Bieber at 420-422.

nation as a whole was on trial in The Hague. This was the reason, in his view, for the public disgust with the NGO of which Biserko was the director.<sup>15</sup>

This acerbic exchange immediately highlighted the main lines of the debate that ensued over the next four months: first, the question of whether the liberal media were minimizing Serb crimes in the way they were reporting on the ICTY and thus contributing to political and public resistance to processes of justice and facing the past; second, the issue of whether acknowledgement of the past in Serbia needed to be focused only on crimes perpetrated by Serbs, or whether it should also include consideration of crimes committed by others against Serbs; and, third, the problem of whether it was possible and indeed productive to frame the discussion in terms of Serbs' collective responsibility for crimes perpetrated by their former regime. Finally, Žarković's point about Biserko's declarations during the NATO bombing campaign brought to the fore the underlying trauma that fueled this discord: the 1999 NATO military intervention against Serbia, nominally undertaken to defend the liberal values that the Belgrade opposition had been fighting for and with which it identified.

### III. The First Strand of the Debate: Reporting the *Milošević* Trial and the Role of the Media

The critique first provided by Luković and Biserko was taken up by a group of intellectuals—whom we shall call “the critics of *Vreme*” for the sake of clarity—which included among others the lawyers Srđa Popović, one of the founders of *Vreme*, and Nataša Kandić, the director of the Humanitarian Law Centre, along with the filmmaker Lazar Stojanović, the philologist Svetlana Slapšak, and the historian and former politician Latinka Perović. As Kandić put it, Serbia's independent media were forging public opinion in the same way as the old regime had done, by reporting on Milošević's trial as if it were a sports event, in which they were openly rooting for one side—Milošević.<sup>16</sup> Instead of reinforcing the ICTY's educational mission and unmasking Milošević's tactics as a “disgusting farce for domestic consumption[,]” reporters were relaying and applauding Milošević's cynical cross-examination of witnesses.<sup>17</sup> For this group, the ICTY was the single most important mechanism for Serbia's confrontation with the past, and it was the country's prime national interest to cooperate with it. However, as Srđa Popović noted, the pact concluded by Serbia's new political leadership and important elements of the Milošević apparatus—which had abandoned their former leader in return for promises that they would not be handed over to the ICTY—was preventing any real change in Serbia and hampering cooperation with the Tribunal.<sup>18</sup> In the view of the critics of *Vreme*, instead of explaining the judicial process taking place at the ICTY and justifying its purpose to the Serb public, the independent media had contributed to the Tribunal's delegitimation and the “organized oblivion” of the crimes that it was prosecuting.<sup>19</sup>

Countering this view, participants on the other side of the debate—whom we shall refer to as “the defenders of *Vreme*”—argued that the reasons for the ICTY's illegitimacy and unpopularity in Serbia lay with the Tribunal and its Prosecution, not with the Serbian media or political authorities. Stojan Cerović, a well-known columnist and another of *Vreme*'s founders, noted that most Serbs were forging their views of the *Milošević* trial from the daily

televised transmission of the court proceedings, not from reports in the written press. So, if the message about Milošević's guilt was not getting through, then "the problem resides with that court and/or its Prosecution."<sup>20</sup> Citing several American and British reports, the journalist Ljiljana Smajlović noted that Serbian media were not alone in their criticisms of the way the Prosecution was conducting the *Milošević* trial:

I understand the frustration of the human rights activists because the Hague trial of Slobodan Milošević is not going the way they hoped and is not having the effect they expected. But journalists are just reporters; they are not responsible for the mistakes of the Prosecution, the cynicism of the Accused and the lack of truthfulness of the witnesses.\*

Thus what to the critics of *Vreme* sounded like a defense of the former regime—criticisms of the witnesses and prosecutorial strategies—were to this side simply exercises in objective journalism. Several participants in the debate reported problems with the Albanian witnesses, who were apparently afraid of retaliation by the KLA and reluctant to admit that such an organization even existed or, indeed, that they had had any knowledge of the NATO bombs that had fallen on their villages.<sup>†</sup> Others noted that, although the Prosecution did show that crimes had been committed in Kosovo, it was not very successful at linking those crimes directly to Milošević. The insider witnesses that the Prosecution had produced for this purpose had either both oversold their importance and lacked credibility or—in the case of former high regime officials—were protecting their leader.<sup>‡</sup> Even participants in the debate who were otherwise supportive of trying Milošević in The Hague saw the strategic choices of the Prosecution as undercutting the trial's potential; they regretted that the Prosecution had made the trial too historical, trying to present Milošević as the exponent and executor of a long-standing Serbian nationalist project, which detracted from the war crimes issue and made his claim that he was defending the whole Serbian nation more credible to Serb ears.<sup>21</sup>

In other words, while they acknowledged the trial's negative impact in Serbia, the defenders of *Vreme* did not see the journalists' role as being one of educating the public about its benefits—of, implicitly, being advocates for the Tribunal. All the press could be responsible for was the fair recounting of what went on in the Trial Chamber and this, they argued, was being done. As Nenad Stefanović, *Vreme*'s correspondent from The Hague, put it:

[E]ven with the greatest sympathy for the objective difficulties with witnesses, [the trial so far] is not always achieving the legal standards which a trial of this kind must

\* Smajlović, *Činjenice i reagovanja*, *VREME*, 29 Aug. 2002. The problems with some of the witnesses are acknowledged by Del Ponte at 143-145, 147-148.

† This was also noted by respondents in ORENTLICHER, *SHRINKING THE SPACE FOR DENIAL* and by Dimitrijević, *Justice Must Be Done and Seen to Be Done*. See also Surroi's chapter.

‡ In the subsequent *Croatia* and *Bosnia* phases of the trial, there were more insiders willing to testify against Milošević, and their testimony proved invaluable in establishing the links between him and the Serbian armies in the two neighboring republics, as well as between the Serbian Ministry of the Interior and Serb paramilitary groups who were responsible for some of the most heinous crimes in the 1990s. Nenad Lj. Stefanović, *S puno žara i na brzinu*, *VREME*, 29 Aug. 2002.



have. And if the most rigorous legal standards are not met, this and similar Hague trials are unlikely to help achieve in Serbia a higher level of acknowledgment of the truth about our own crimes, increase the determination to reveal their perpetrators, or better illuminate the period during which national ecstasy brought so many victims. . . . It seems to me that much of the debate about The Hague and the reporting on its trials comes out of two different schools of thought: one that seems to believe that that which is impossible to defend does not even deserve to be defended, and the other that would like to hear all arguments for the Prosecution and the Defense before the sentencing.<sup>22</sup>

Stefanović's final comments alluded to the second theme of the debate: the questions of Serb responsibility and Serb victims, which became the main sites of contestation about how the past needed to be confronted.

#### IV. Serb Responsibility and Serb Victims: How Should the Past Be Confronted?

The dispute's second theme concerned a debate about whether discussions of the past could be productively framed in terms of Serbs' collective responsibility for the crimes committed or, to the contrary, a reckoning with the past needed to be as all-encompassing as possible, contextualizing the crimes and considering what *all* sides in the wars had done. The argument here was not just about defining victims and perpetrators, but about the more fundamental question of the extent and nature of the crimes committed: were Serb crimes of a different order compared to those of others, so that any evocation of Serb victims necessarily implied a false symmetry of responsibility? Could Serb intellectuals even invoke Serb victims without inevitably relativizing Serb crimes?

The most eloquent defense of the first position (taken by the critics of *Vreme*) was presented by Srđa Popović, who, in several contributions to *Vreme* and other media, argued the case that Serbia needed to reckon with its own crimes without considering those of other parties in the war and that responsibility for such crimes was inherently collective. First of all, "the crimes of which we speak were 'ethnic' and simply cannot be imagined in non-ethnic, non-national terms."<sup>23</sup> It was thus impossible to de-ethnicize the crimes because the victims were killed due to their ethnic belonging, and the call for the de-ethnicization of crimes was an expression of the discomfort felt by Serbs because the state that had committed those crimes was supported by a significant proportion of its citizens and institutions.<sup>24</sup> Echoing the German philosopher Karl Jaspers, Popović argued that "while the criminal responsibility of political leaders was individual, political and historical responsibility [was] quite collective" and would continue to be so as long as there was collective denial, justification and covering up of those crimes.<sup>25</sup> Second, Popović argued that it was not necessary at present to examine the causes of these crimes and to seek to achieve an overall picture of what had happened: this, he noted, was important for the sake of achieving "historical truth," but that that was a job best left to historians of the future.<sup>26</sup>

The immediate task for Serbs and their institutions and elites was to focus only on Serbian crimes:

1. "Our" criminals are under our jurisdiction and we have the right and the obligation to insist that "our" state pursues "our" criminals in "our" interest. . .
2. The image of this country in the world, its international identity, was shaped in the years of Milošević's wars almost exclusively through the images of Sarajevo, Vukovar, Dubrovnik, Srebrenica. Until then the world knew little about us. When Milošević felt we had the opportunity to change this image, to show the world that Milošević was falsely hiding behind the "nation" and that we do not accept as ours the crimes he committed and justified in the name of the "Serb nation" and that we have no reason to deny them. It is our national interest to make that clear.<sup>27</sup>

In Popović's view, although members of other national groups had also committed crimes, this was a matter for their own societies. Recalling these other crimes was merely an attempt to minimize crimes committed by Serbs and represented an unacceptable *tu quoque* argument.<sup>28</sup> Popović's viewpoint was echoed in a number of contributions from the critics of *Vreme*, as well as in other organs of the liberal intelligentsia, such as the fortnightly publication *Republika*, which noted that any attempt to establish a symmetry of crimes "is only a pretext to run away from responsibility for our own crimes. . . . We should not look over the fence at our neighbours' gardens, but more openly question our own conscience."<sup>29</sup>

Among the proponents of the alternative view, Stojan Cerović, once a close friend of Popović's, most directly took issue with Popović's arguments. Although he agreed that the questions of why Milošević at one point enjoyed so much popular support in Serbia, why the war took place, and why Serbia had come into conflict with "the whole world" deserved to be reckoned with, in his view, this reckoning could not be undertaken in the one-sided and distorted way he believed Popović and the other critics of *Vreme* were doing.<sup>30</sup> For him, Popović's insistence on the ethnicization of the crimes effectively represented a "stubborn selection of facts and a refusal to think about anything other than 'Serb guilt.'"<sup>31</sup> In fact, Cerović argued, Serbs had not backed Milošević's policy in the 1990s to the extent that was being claimed, and the critics of *Vreme* were conveniently forgetting another part of the story—"the history of Serbian resistance which finally toppled Milošević."<sup>32</sup>

In an interview in September 2002, at the height of the polemic, Cerović characterized Popović's approach to the past in the following way:

The critics of *Vreme* and B-92 do it in such a way that promotes the idea that the fault is entirely Serb and that victims are exclusively on the other side. This may be the case in many instances but it is not entirely true. There are also a large number of victims on the Serb side. . . . Those who insist on [Serb responsibility] and with whom I am disagreeing affirm that in Serbia something happened that was comparable to Nazi Germany. That is of course not correct.<sup>33</sup>

Cerović's rejection of the comparison with Nazi Germany was based on the belief, shared among the defenders of *Vreme*, that Serb crimes—although more extensive—were not of

a different order than crimes committed by others during the wars of the 1990s. From the perspective of this group, what Serbs had done in the 1990s was worthy of contempt and punishment, but was not equivalent to the Holocaust—Serbs' crimes were not morally unique.

This position was embodied by the appeal for a “third view” by the philologist and Belgrade University professor Ljubiša Rajić.\* Was it possible, he asked, to adopt an approach to the past in which Serbs were not cast exclusively as victims (as Serb nationalists did) or as perpetrators (as the critics of *Vreme* did)?

Am I allowed to think and say publicly that Muslims in Bosnia and Herzegovina were subjected as a nation to persecution, from simple theft to breaches of basic human rights to genocide, but that [Bosnian Muslim leader Alija] Izetbegović and [his party,] the SDA with their politics greatly contributed to that? Can I condemn Radovan Karadžić and the Serb leaders in the Krajina, but say that ordinary Serbs in Bosnia and Herzegovina and Croatia did have good reasons to fear majority rule in those states if they became independent? Do I have the right to say that Tuđman should be sitting right next to Milošević in the dock at The Hague? . . . Am I allowed to be against Milošević and the KLA and NATO—all three? Am I even allowed to criticize NATO or is that going to be considered a heresy? . . . May I support the trials of those accused of war crimes, but still say that the Hague Tribunal's Prosecution is behaving like one of the parties in the conflict and is acting politically rather than legally? May I condemn crimes committed against Albanians but also think that the KLA is guilty of similar crimes against non-Albanians? Is there a difference between Albanian and non-Albanian refugees? . . . Why shouldn't I be able to criticize the West without immediately being labelled a nationalist, or criticize nationalism without being branded a traitor? . . . Is there a right to a third view?<sup>34</sup>

This call for a “third view” implied that there was no “false” symmetry of crimes because the crimes of Serbs and those against Serbs were indeed comparable. Responsibility for the conflicts of the 1990s and hence for the atrocities perpetrated was also not solely that of Milošević, who—although guilty—was not the only leader who deserved to be put on trial at the ICTY. And, from this perspective, NATO and the West were not external bystanders but direct participants in the wars, bearing their own share of responsibility.

Although such a position could be construed as a relativization of crimes committed by the Serb side (and was construed this way by the critics of *Vreme*), for the defenders of *Vreme* it was simply a more accurate and more complete account of the truth, which took into consideration causality and the actions of all, and sought to explain rather than to judge. The role of Serb intellectuals—as elsewhere—was to speak about the past honestly and portray it in all its complexity; it was not to act as “moral inquisitors” who pronounced judgment on their people and sought “some kind of mass exorcism” to force the nation to accept its own guilt.<sup>35</sup>

\* Rajić, *Pravo na treće mišljenje*, *VREME*, 29 Aug. 2002.

In Cerović's view, such an approach to the past was not only wrong and unlikely to succeed, but was actually harmful.<sup>36</sup>

Cerović elaborated most clearly why the approach of the critics of *Vreme* was so detrimental for Serbia. It was harmful, first of all, for the evolution of democracy in Serbia, because claims about Serb responsibility were, in fact, playing into the nationalists' hands by giving credence to the discourse that "Milošević was the same as Serbia" and that the whole nation was on trial in The Hague.<sup>37</sup> Second, he argued it was counterproductive for overcoming denial in Serbia and achieving any genuine discussion of what had happened in the 1990s: "A discourse that sounds like an accusation, which presents unrealistic, impossible demands and goals, which rests on a misunderstanding of history and a lack of compassion, inevitably creates exactly that which it condemns."<sup>38</sup> Nobody, in his view, would accept dealing with the past under such conditions, and the *Vreme* critics' insistence on such an approach would merely lead to the self-fulfilling prophecy that Serbia and its elites refused to acknowledge any past wrongdoing.<sup>39</sup> Finally, Cerović argued that the critics' insistence that Serbs were incorrigible nationalists and that nothing had changed since Milošević's fall was harmful because it was fueling those same Western perceptions that had underpinned the coercive policies applied against Serbia in the 1990s and that still had their proponents in Western capitals:

For me, it is a genuine problem that there are still many of those in the world who are continuing their policy of "toppling" the Belgrade regime. It is simply detrimental, and has proven to be not at all insignificant... I thought at the time that Milošević was our great problem and we should not care who is helping us get rid of him and why. Now it turns out that nothing has been resolved and that the problem is Serbia itself and each one of us.<sup>40</sup>

For Cerović, if Serbs were still viewed as collectively responsible (even if not criminally guilty) for the actions of their former regime, and if the perception prevailed that despite Milošević's fall nothing had changed, then what reason was there for the West to discontinue its coercive approach to Serbia? As he put it:

For [criminal] guilt, the consequence is trial and punishment, and for responsibility—what? ... Is the consequence for responsibility also punishment? ... Serbia did experience such collective punishment in the form of the sanctions and the NATO bombing and I heard none of [the critics of *Vreme*] protest against that.<sup>41</sup>

Cerović's final comments indicated what was really at the heart of the debate on the *Milošević* trial and the issue of how to confront the past: the memory of the NATO bombing and the very different visions of that experience within the liberal intelligentsia that, thanks to the trial, had now burst onto Serbia's public scene.

## V. The Heart of the Matter: The NATO Intervention as Turning Point and Reference

By beginning with the *Kosovo* indictment, the *Milošević* trial probably made it inevitable that, in Serbia, the proceedings against the country's former leader would be linked to the

experience of the NATO bombing. The period between March and June 1999 is remembered very differently in the region: Whereas for Kosovar Albanians, it brings up the memory of mass deportations of hundreds of thousands of people, destruction and killing by the Serbian security forces, and ultimately liberation by NATO from years of Serbian oppression,\* for most Serbs, the memory of this period is synonymous above all with the fear and psychological trauma of being bombed nearly every night for 78 days, the deaths of civilians in the bombing raids, the wide-scale destruction of Serbia's infrastructure and economy, and—following the end of the intervention—the exodus of over a hundred thousand Serbs and other non-Albanians from Kosovo and the forcible loss of a territory that was traditionally viewed as Serbia's sacred heartland.<sup>†</sup> By constantly referring to the bombing rhetorically and with imagery, Milošević made the NATO intervention the focal point of both his defense before the Tribunal and his Serb audience.<sup>‡</sup>

By recalling the memory of the NATO intervention, the *Milošević* trial also had a profound effect on the liberal intelligentsia. In the words of the writer Velimir Ćurguz Kazimir, it brought to the surface “that which we have somehow tried to repress: the issue of who did what during the time of the undoubtedly hardest experience—the year 1999 and the NATO bombing.”<sup>‡‡</sup> Once again, two deeply divergent visions emerged of the causes of this trauma and who was responsible for it, two very different understandings of the role of intellectuals and the media during this period, and, above all, two irreconcilable positions on the part played by the West and its liberal ideology of “humanitarian intervention.” As the *Vreme* debate disclosed, the experience of the NATO bombing represented the underlying source of discord within Serbia's liberal intelligentsia—the real turning point of its history and the true *tačka razlaza* (moment of the parting of ways).<sup>‡‡‡</sup> In this respect, Srđa Popović's call to leave the recent past to historians of the future in order to concentrate on the justice process elided the fundamental problem here—that notions of justice and responsibility were intimately connected to the memory of that past.

The centrality of the NATO intervention to all discussions of the recent past became clear when both sides in the 2002 debate began referring to a petition signed by 27 prominent members of the liberal intelligentsia in April 1999, at the height of the bombing.<sup>‡‡‡‡</sup> The opposing positions taken in regard to this document reflected the widely different understandings of the Kosovo war and the NATO intervention among the critics and defenders of *Vreme*. The

\* See, e.g., Krasniqi at 214-216.

† Estimates of the numbers of civilians killed in NATO's bombing raids ranges from 500 to 1500. The first statistic is given by Hum. Rts. Watch, *Civilian Deaths in the NATO Air Campaign*, Report no. 1 [D], vol. 12 (Feb. 2000), <http://www.hrw.org/reports/2000/nato>, and the second by Grupa-17, *Završni račun* (Stubovi kulture 1999). The Humanitarian Law Center in Belgrade has published statistics for civilian deaths in Kosovo between 1998 and 2000, putting the toll for Albanians at between 8,000 and 10,000 and for Serbs and other nationalities at 2,000–2,500. Its research is still ongoing. Fond za Humanitarno Pravo, *Kosovska knjiga pamćenja*, <http://www.hlc-rdc.org/stranice/Linkovi-modula/Kosovska-knjiga-pamcenja.sr.html>.

‡ The signatories included 15 university professors, along with representatives of the independent media, culture, and NGOs: Stojan Cerović, Jovan Ćirilov, Sima Ćirković, Mijat Damjanović, Vojin Dimitrijević, Daša Duhaček, Milutin Garašanin, Zagorka Golubović, Dejan Janča, Ivan Janković, Predrag Koraksić, Mladen Lazić, Sonja Liht, Ljubomir Madžar, Veran Matić, Jelica Minić, Andrej Mitrović, Radmila Nakarada, Milan Nikolić, Vida Ognjenović, Borka Pavičević, Jelena Šantić, Nikola Tasić, Ljubinka Trgovčević, Srbijanka Turajlić, Ivan Vejvoda, and Branko Vučićević.

petition broadly reflected the *Vreme* defenders' view of a shared responsibility for the conflict and the negative role played by the West. It stated:

The democratic forces in Serbia find themselves caught between a rock and a hard place: NATO and the regime. As long-standing representatives and activists for a democratic and antisocialist Serbia, who have remained in our country during this difficult period and who desire for our country to once again find its place in the world community of states, we declare the following: We strongly condemn the NATO bombings which have hugely exacerbated the violence in Kosovo and caused the displacement of people outside and throughout Yugoslavia. We strongly condemn the ethnic cleansing of the Albanian population perpetrated by Yugoslav forces. We strongly condemn the violence of the Kosovo Liberation Army targeted against Serbs, moderate Albanians and other ethnic communities in Kosovo.<sup>45</sup>

The petition called for the immediate return of all the internally displaced people and refugees, respect for their human rights, and prosecution of all those responsible for crimes against humanity. It appealed to both the Serbian forces and the KLA to give up their most extreme demands and to return to the negotiating table.

At the same time, the petition presented a critique of the NATO intervention by highlighting its consequences: NATO's offensive action had broken a number of international covenants, as well as the constitutional provisions of several member countries, thus making "any struggle for the rule of law and human rights in this country and elsewhere in the world impossible."<sup>46</sup> It was destabilizing the whole of the southern Balkans, and, in Serbia, it was producing rising civilian casualties, along with the "complete destruction of the economic and cultural foundations" of its society and a patriotic reaction that was strengthening the regime.<sup>47</sup> The signatories thus noted that although they still opposed Serbia's "anti-democratic and authoritarian regime," they equally condemned "NATO's aggression."<sup>48</sup> Stating that "in the conflicts in the former Yugoslavia, the leaders of the international community committed many very grave mistakes," the petition warned that "new mistakes are leading to the worsening of the conflict and are taking us further away from any peaceful resolution."<sup>49</sup> It thus concluded: "We appeal to all: President Milošević, the representatives of the Kosovo Albanians, NATO, EU and US leaders to immediately stop all violence and military action and to engage in a search for a political solution."<sup>50</sup>

The critics of *Vreme*, who first brought up this letter in the course of the debate, characterized it as "a lasting public document about who was on which side in the war of Milošević against the free world."<sup>51</sup> Nataša Kandić thus recounted that she had been asked to sign the petition but had refused to do so because, in her view, it was Milošević alone who was responsible for the bombing campaign and would have thus been the only logical recipient of any such appeal.<sup>52</sup> For her, the signatories of the letter had by this action "*de facto* supported Milošević and entered into a devil's pact with him, which still hasn't been broken."<sup>53</sup> Kandić also condemned *Vreme's* and B-92's decisions to continue their work in censored form during the NATO intervention, stating that there was little difference between their reporting and that of the regime press; notably nothing was published about the crimes that

were being perpetrated against Albanians in Kosovo by the Serbian forces during the NATO bombing.\* Indeed, in Srđa Popović's view, *Vreme's* reporting of the time resembled an act of prostitution.<sup>54</sup>

The critics of *Vreme* generally viewed the NATO intervention favorably: It was "for our own good," and, although it may have arrived "at the wrong time and for the wrong reasons" it was certainly "not undeserved."<sup>55</sup> Consequently with their own position that Serb intellectuals should focus only on Serb crimes, they highlighted only the crimes against Albanians during the bombing, concluding, in the words of the lawyer Dragan Todorović, that NATO had "prevented the ethnic cleansing of a territory in the heart of Europe."<sup>56</sup> When incidents leading to civilian deaths were mentioned, these were presented as mistakes that NATO had readily admitted.<sup>57</sup> Even NATO's deliberate targeting of the Radio Television of Serbia (RTS) building on 23 April 1999, in which several employees were killed, was implicitly blamed on the RTS director (who had not evacuated the building despite warnings), without engaging in a discussion about whether state media could be considered a legitimate military target.<sup>58</sup> Finally, this group did not view the NATO bombing as negative for the development of Serbian democracy; their only regret was that it was not followed by a ground intervention that would have toppled Milošević and carried out a grand purge of Serbia's institutions similar to the Allied treatment of Germany in 1945.

The defenders of *Vreme* had a diametrically opposed standpoint. For them, "the bombing was against the law, a war crime, and had nothing to do with humanism but with the interests of the United States and NATO."<sup>59</sup> In fact, some of them argued, Milošević—no matter how repulsive his actions—was merely a bit player in a "dangerous militaristic game" whose protagonists were the United States and its Allies and whose effects were being felt worldwide.† From this perspective, the consequence of the NATO intervention was not the prevention of ethnic cleansing, as the critics of *Vreme* claimed; in fact, there would have been no mass deportation of Kosovar Albanians without it. Pointing out that the mass exodus of Albanians only began after the onset of the bombing campaign, the NGO activist Nadežda Radović thus argued: "The dropping of bombs produces massacres, enables and covers up crimes and keeps people living in fear. That was not hard to predict."<sup>60</sup> In contrast to the critics of *Vreme*, this group saw NATO's "collateral damage"—as the Alliance called the incidents in which civilians were killed by its bombs<sup>61</sup>—as war crimes that needed to be prosecuted. As one participant in the debate put it: These people were "victims, in the same way that Muslims in Srebrenica, the citizens of Sarajevo, the Albanians and finally also the Serbs in Kosovo were victims."<sup>62</sup>

Finally, echoing the April 1999 petition, the defenders of *Vreme* argued that NATO's intervention had not furthered the cause of democracy and human rights, but represented a

\* Kandić, *Neprijatelj u Srbiji*. She had traveled to Kosovo during this time, collecting evidence of such crimes, but was told by one of the *Vreme* journalists that the magazine could not publish this because of the risk that it would be closed down.

† Nadežda Radović, *Pismo pod bombama*, *VREME*, 12 Sept. 2002. Two years after the *Vreme* debate, Stojan Cerović compared the preparations for the bombing to those leading to the invasion of Iraq in 2003. CERVIĆ, *IZLAZAK IZ ISTORIJE 1999–2004*, at 19.

setback for these same liberal values. As Nadežda Radović stated in her 1999 letter to Sonja Biserko which, like the petition, was reproduced in *Vreme* in the course of the debate:

Democracy can be achieved only by difficult and patient work, the creation of the atoms of a democratic society, the rules and procedures of democratic decision-making. The United States and NATO have reversed the evolution of democratic relations, made worthless the decade-long effort of our nongovernmental organizations, and rendered senseless the Gandhi-like resistance of the Albanian people for which I have the greatest respect.<sup>63</sup>

From this perspective, NATO's intervention did not represent the advent of a more resolute humanitarianism, but merely confirmed that military might and power politics still ruled the world with impunity.

The defenders of *Vreme* vehemently rejected accusations that the weekly had compromised its ethical and professional standards by accepting to appear in censored form during the NATO intervention. Arguing that they simply did the best they could under extreme conditions of strict state surveillance and even physical danger (the editor-in-chief of another newsmagazine was murdered during this time), they justified their decision by arguing that during this difficult period *Vreme* had helped “hundreds of thousands of people not to lose their common sense and their hope.”<sup>64</sup> Regarding the way that they were reporting on the unfolding NATO campaign, Stojan Cerović polemically asked: “Were we supposed to explain to our brainwashed population that it should love the NATO bombs? Were we supposed to believe that all those bridges were destroyed for pedagogical reasons to teach Serbs a lesson in democracy?”<sup>65</sup> From the perspective of this group, it was not *Vreme* that had acted immorally, but its critics, who—“while posturing and parading in Western salons”—had put themselves in the service of NATO's propaganda machine.<sup>66</sup> They had not shared the fate of their nation at this, its darkest hour, so they had no moral right to chastise those who had remained and condemn choices they could not understand.

This highly emotionally charged and acerbic exchange between former friends and coactivists showed in the clearest and most poignant way to what extent the particular trauma of the NATO intervention still lurked under the surface of any discussion of justice and accountability. The divisions that had come into being in those 78 days of the bombing campaign had, in the course of the *Vreme* debate some three-and-a-half years later, been articulated into comprehensive worldviews of Serbia's recent past, intellectual responsibility and how to confront the crimes of the 1990s. Whereas for some of the critics of *Vreme* the references to the NATO intervention were an “irrelevant theme” and a diversion from the main issue—that of Serb crimes<sup>67</sup>—for most of the participants on both sides in the debate, the actions and positions taken during the spring of 1999 represented the turning point of *Druga Srbija's* historical trajectory and the reference for their own approach to the questions that were at the core of its activism.

In particular, for the defenders of *Vreme* those positions were absolutely central to the forging of their own attitude toward the ICTY and help explain their reaction to the Milošević trial. As Stojan Cerović noted some two years after the end of the debate and shortly before



his death, the NATO bombing—which he considered “unpardonable”<sup>68</sup>—had irrevocably changed his personal standpoint on Western policy and its human rights discourse, including the institution of the ICTY:

At that time we could see close up, through our own case, how badly even the most prestigious and best Western institutions could look. The propaganda lies were raw and rough, the military might excessive and non-selective just as that against which it had been employed, the international tribunal instrumentalized and politically manipulated. It became, of course, much harder to defend European values, even if there was no other way. And for Serbia after the war all roads back to the world led via The Hague. This was a problem not just for Serb nationalists, but it also insulted a sense of justice even among those who were immune to nationalism and who were certain that the Serb side had committed many crimes.<sup>69</sup>

As the *Vreme* debate showed, Cerović’s personal trajectory was paradigmatic for many liberal Serb intellectuals. Their loss of faith in the countries that embodied the ideals at the core of their activism provides the key to understanding their paradoxical reaction to the *Milošević* trial—which logically should have represented the crowning of their own efforts over the previous decade. In Cerović’s words, the bottom line was that “for Serbs, The Hague Tribunal is an instrument of those same powers that dropped humanitarian bombs here.”<sup>70</sup> Such a perception—forged at the time of the NATO bombing and confirmed by some of the ICTY’s subsequent actions\*—left no other outcome possible.

## VI. Conclusion: The Parting of Ways—Legacies of *Milošević* and the *Vreme* Debate

As Waters notes, “there is little evidence that reconciliation is occurring in the former Yugoslavia, or that individuals are converging on a common vision of the conflict, let alone that the ICTY has contributed to such a process.”<sup>†</sup> Clearly, the lofty didactic ambitions for the Tribunal to establish an authoritative narrative of the 1990s in the region now seem misplaced, as does the image of the ICTY spearheading efforts to promote reconciliation through justice. Nevertheless, as the *Vreme* case shows, the *Milošević* trial did have an impact in Serbia beyond its more narrowly defined legal purpose by generating a debate about the recent past, the issue of war crimes, and the responsibility not just of Milošević’s regime but

\* Notably, many Serbs found the ICTY’s indictment policy biased, with a much larger number of Serb political and military leaders being put on trial than Croats and Bosniaks, and particularly no KLA leaders being indicted until 2005. They also saw the Prosecution’s indictment of Milošević in May 1999, at the height of the bombing campaign, and the dismissal of any allegations of NATO war crimes following a perfunctory Inquiry in June 2000 as proof that the ICTY was an instrument of NATO. See, e.g., Đilas, *Viewpoint: The Politicized Tribunal*, IWPR’s Tribunal Update no. 230, Part 1 (16–21 July 2001), <http://iwpr.net>. On problems with the Inquiry, see also Waters, *Unexploded Bomb: Voice, Silence and Consequence at the Hague Tribunals: A Legal and Rhetorical Critique*, 35 N.Y.U. J. INT’L L. & POL. 1015 (2003).

† Waters at 298.

of Serbian society as a whole. Provoking discussion about the past is one way in which justice processes can contribute to broader social processes of reckoning with a difficult history of war and grave breaches of human rights. As one insightful study of the role of trials in periods of political transition notes:

The least we might fairly expect from courts, at such trying times, is a stimulus to democratic dialogue between those who wish us to remember very different things.

A courtroom may not be the optimal place for such a dialogue to occur, still less to be resolved. But a courtroom is one place where it might fruitfully begin or be carried forward.<sup>71</sup>

The *Vreme* debate represents precisely such a beginning of dialogue, an opening of difficult subjects, and an elaboration of different viewpoints on the recent past. It is perfectly natural for such a debate to have occurred within the ranks of those who in the 1990s had been the most opposed to the war, Milošević's policies and Serbian nationalism; indeed, the liberal intelligentsia is precisely where one would expect any such reckoning to begin. In this respect, despite problems with the prosecution of *Milošević* and the trial process itself—and without diminishing the serious insufficiencies of both—the ICTY did serve a useful social purpose in Serbia.

Understanding the social impact of ICL requires a careful consideration of local context, something political, historical, and anthropological analyses highlight. However, the emphasis on nationalism that some analysts have adopted obscures both the nuances in local visions of international justice and the reasons some members of the societies under scrutiny may not accept the “truths” generated by international trials. The *Vreme* debate is instructive in this respect, precisely because it pitted against each other individuals who had been long-standing opponents of Serb nationalism, who were keen to see their leader tried for war crimes in Croatia, Bosnia, and Kosovo, and who—despite the misgivings some of them had about the ICTY—were agreed in principle that it was the only place where such a trial could take place. Dismissing the views of those unwilling to accept the *Milošević* Prosecution's narrative as mere retrograde nationalism thus misses the point here. Instead, the *Vreme* debate reflected the divergent understandings even among antinationalists of specific events that characterized and defined that past—what happened, why it happened, and, ultimately, who was responsible—along with different visions of how the past should be engaged with and the role that they as public intellectuals and members of civil society needed to play in such an endeavor.

For each side in this debate, the principal reference for its particular viewpoint was the experience of the NATO intervention, when the war came to Serbia in the most direct way and when the crimes in Kosovo for which Milošević was first indicted and tried were actually taking place. This was the turning point in the common trajectory of the liberal intelligentsia, the moment when old friendships and intellectual commitments came under scrutiny and when irreconcilable differences first appeared. The role played by the NATO bombing in the *Vreme* debate points to a broader conclusion that itself calls for more sustained research: that the memory of Western military intervention in the 1990s—whether it came too late (as

for Croats and Bosniaks), on behalf of one's national group (as for Kosovar Albanians), or against it (as for Serbs)\*—continues to a considerable degree to shape local responses to the ICTY, still perceived as fundamentally a Western institution despite the international character of its staff and its UN framework. International justice cannot be divorced from the local experience of international intervention more generally, and the latter provides the lens through which the former is viewed and understood.

The debate in the liberal intelligentsia generated by the *Milošević* trial has left two lasting legacies in Serbia. The first of these is the definitive splintering of the *Druga Srbija* group. This is, of course, partly a natural consequence of the end of the war and the fall of Milošević. As one member of the group noted at the time, "it was all so much easier 'when we were united.' Now things are a lot more confusing since the lines of differentiation in our positions have become murkier."<sup>72</sup> It is also testimony to the fact that inherent in any process of examining the past in a democratic context is a divergence of viewpoints: "[I]n modern societies, telling stories that resonate identically in all quarters is much more problematic. When citizens gather at all to this end, they are likely to disagree about how the story goes."<sup>73</sup> Indeed, this is something to be welcomed, as previous attempts in socialist Yugoslavia to deal with a difficult and divisive experience of war and atrocities took place in a context characterized by an ideologically conditioned official meta-narrative and political constraints on permissible discourse.

However, at the same time, the splintering of *Druga Srbija* itself created an unfortunate legacy, as this loose coalition of NGOs, intellectuals, and independent media represented the principal motor for processes of confronting Serbia's recent history. Through both its activism and its public discourse, this group articulated the demand for political elites and society not to forget the past, and its disintegration diluted this demand and put a stop to the momentum and the optimism of the early post-Milošević phase. The *Vreme* debate thus opened the door for a broader reckoning with the 1990s in Serbia, but, instead of leading to a sustained process of investigation, debate, and dissemination of knowledge about the recent past, it effectively exhausted itself merely in producing irreconcilable ideological positions.

The two opposing narrative constructions generated by the *Vreme* debate have, to a large degree, continued to characterize the liberal segments of Serbian elite discourse on the recent past over the last 10 years. The first narrative presents Serbs as collectively responsible, in distinct and self-conscious contrast to the nationalist trope of Serbs as victims, and, argues that any genuine confrontation with the past means essentially a confrontation with that collective responsibility. From this perspective, invoking crimes committed against Serbs creates a false symmetry between Serb crimes and those of others, and only represents a denial of responsibility and a perpetuation of nationalism. The second narrative also acknowledges the crimes committed by Serbs against members of other national groups and agrees on the need to bring war criminals to justice, but argues that framing the past in terms of the Serbs' collective responsibility is both wrong and counterproductive because it only reinforces the public's sense of national victimization, thus playing into the hands of the nationalists.

\* The first NATO bombing of Bosnian Serb targets took place in April 1994, two years into the Bosnian war, followed by more air strikes later that year and in 1995, and the bombing of the FR Yugoslavia in 1999. On military intervention in Bosnia, see SHOUP & BURG, *WAR IN BOSNIA-HERZEGOVINA*.

Instead—the argument goes—what is needed is an all-encompassing consideration of the past, in which causes, consequences, and the crimes of all sides would be included.

Both of these narratives have also found expression in party politics and in public opinion in Serbia.\* Yet, neither one has managed to avoid the pitfalls predicted by its opponents in the *Vreme* debate and convincingly counter the still ubiquitous nationalist discourse they both oppose. The narrative of national responsibility has remained a minority view, and its proponents are marginalized and ostracized in Serbian society—in part because of their exclusive insistence on Serb crimes and their defense of coercive Western policies against Serbia, including the 1999 NATO bombing that continues to be viewed by a majority of the population as unmerited and unjust. At the same time, the narrative that insists on considering all victims, including Serb ones, in any examination of the past has become co-opted into a discourse that seeks to minimize the magnitude and specificity of Serb actions during the wars of the 1990s.† Indeed, the trope of “all sides have committed crimes” has come to stand for the avoidance of the past, rather than any genuine attempt to understand it. As a result, the kind of memory work that many hoped Serbian elites would undertake in the post-Milošević era remains a task for future generations.

\* In the political sphere, the first of these narratives is best represented by the *Liberalno-demokratska partija* (Liberal Democratic Party) of Čedomir Jovanović, and the second by the *Demokratska stranka* (Democratic Party or DS) of Borislav Tadić.

† This was particularly apparent in the 2010 parliamentary debates leading to the adoption of two declarations—one on Srebrenica and one on Serb victims—in March and October that year. In fact, even the Serbian Parliament's Declaration on Srebrenica contained a reference to the need of other sides in the wars of the 1990s to apologize for their own crimes against Serbs, thus minimizing the specificity of the Serb forces' genocide against Bosniaks at Srebrenica and producing a morally problematic apology. See Dragovic-Soso, *Apologising for Srebrenica: The Declaration of the Serbian Parliament, the European Union and the Politics of Compromise*, 28(2) EAST EUROPEAN POLITICS (July 2012).

- 26 DEL PONTE & SUDETIC, MADAME PROSECUTOR 90 (noting that, in the view of both her then-deputy and her chief of investigations, her office “had neither sufficient time nor resources to chase evidence on Milošević when it was so unlikely he would ever end up in The Hague.”)
- 27 Simons, *Proud but Concerned: Tribunal Prosecutor Leaves*, N.Y. TIMES, 15 Sept. 1999, at A3.
- 28 Press Release, Statement by Justice Louise Arbour, Prosecutor ICTY, JL/PIU/404-E (27 May 1999), <http://www.icty.org/sid/7764> [Arbour Press Release].
- 29 Arbour Press Release.
- 30 Arbour Press Release.
- 31 S.C. Res. 1244, U.N. Doc. S/RES/1244 (10 June 1999).
- 32 Press Release, Statement by Justice Louise Arbour, Prosecutor ICTY.
- 33 TRIAL OF THE MAJOR WAR CRIMINALS 99.
- 34 See, e.g., Klarin, *Impact of the ICTY Trials on Public Opinion in the Former Yugoslavia*, 7 J. INT’L CRIM. J. 89 (2009) (noting that the “the popularity of the ICTY in the former Yugoslavia is inversely proportional to the number of accused that come from these countries, entities, and particularly ethnic communities”) (internal quotes omitted). Klarin points in particular to the results of one 2007 poll showing that “only 7% of Serbians believed that the ICTY was unbiased when it tried Serbs” and “as many as 63% thought there were ‘too many’ Serb indictees (compared with other ethnic groups).” *Id.*

## CHAPTER 27

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- 10 Quoted in Luković, *Opšta amnestoza* 182.
- 11 Matić, *Tko relativizira zločin*, FERAL TRIB., 27 Aug. 2002, in *Tačka razlaza*, 16 HELSINŠKE SVESKE 183–84 (2003) [Matić, *Tko relativizira zločin*].
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- 18 Srđa Popović, interview in *Monitor* (Montenegro), carried in VREME, 3 Oct. 2002, at 65.
- 19 Slapšak, *Neprijatelji nezavisnih medija*, VREME, 22 Aug. 2002.
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- 1 Dragović-Soso at 391.
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- 18 *Predsednik Koštunica o saradnji sa Haškim tribunalom*, POLITIKA, 6 Oct. 2000 (“There will be no revanchism against political rivals. I refuse the possibility that the citizens of the FRY could be extradited to the Hague Tribunal, which is a means for achieving the influence and presence of NATO in the Balkans.”).
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- 24 MONTGOMERY, KAD OVACIJE UTIHNU: BORBA S DEMOKRATSKOM TRANZICIJOM 71.
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