

Chapter 5

A Crack in the Wall of Denial: The *Scorpions* Video in and out of the Courtroom

Vladimir Petrović

It was such a great afternoon [...] and then they showed that awful film, and it just spoiled every thing. (Hermann Goering after a screening of the documentary *Nazi Concentration Camps* in the IMT (1945))

Is that an appropriate way to act? On all world TV stations and Serbian TV stations, it has been said time and again that this is footage from Srebrenica [...] to play footage here that has nothing to do with Srebrenica whatsoever [...]. I do not understand this kind of handling of evidence at all. (Slobodan Milošević after screening the *Scorpions* footage in the ICTY (2005))

The wars that had torn apart socialist Yugoslavia were characterized by grave crimes. Their thoroughness indicates that they were neither sporadic nor circumstantial, but an integral part of the overall war strategy. Aimed towards the creation of homogeneous national communities, these violent strategies quickly came to be known as ‘ethnic cleansing’, a misnomer covering criminality ranging from the forced removal of population and unlawful detention in concentration camps to intimidation, torture, rape and mass killings reaching genocidal levels.¹ The legal system in the disintegrating state collapsed in the face of widespread crimes. Apprehension of war criminals stalled, despite numerous reports on human rights breaches by international commissions and nongovernmental organizations. Well after the war, the legal reaction in the successor states remained far from adequate and notoriously reluctant to put to trial wrongdoers from their own ranks. This obstruction was matched by the unwillingness of the political elite and the inability of the population to come to terms with the past. Impunity and denial were reinforcing each other.

¹ On the Yugoslav war in the context of a global change in warfare, see Mary Kaldor (2012, pp. 32–70); the course and character of warfare in Bosnia are analysed in Xavier Bougarel (1996). Crimes in wartime as strategy are extensively discussed in James Gow (2003). On the genesis of the term ‘ethnic cleansing’, see Vladimir Petrović (2007, pp. 219–244).

V. Petrović (✉)

NIOD Institute for War, Holocaust and Genocide Studies, The Netherlands
e-mail: v.petrovic@niod.knaw.nl

Therefore, a classical question of transitional justice, formulated by Argentinean legal scholar Carlos Santiago Nino, became the political reality of Yugoslav successor states: ‘How shall we live with evil? How shall we respond to massive human rights violations committed either by state actors or by others with the consent and tolerance of their government’ (Santiago Nino 1996)? The answer was not at hand, although the options were neatly summarized by Richard Goldstone, the South African constitutional judge: ‘Some countries have attempted to deal with the past crimes by simply ignoring the issue. Some have granted blanket amnesties, some have prosecuted the perpetrators, and some have instituted truth and reconciliation commissions designed to achieve some form of acknowledgement for the victims. And in some cases, prosecution is pursued under the auspices of international criminal tribunal’ (Goldstone 2000). Goldstone particularly advocated this last item from the transitional justice toolkit. He was also exceptionally well placed to do so, being appointed to head the prosecution of the International Criminal Tribunal for the former Yugoslavia (ICTY), created in May 1993 through the resolution of the Security Council ‘for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia’.² Two decades and three prosecutors later, the accomplishments, as well as blunders of the ICTY, are constantly debated, and reaching a peak in the context of forthcoming closure of the Tribunal.³ At the centre of many of these debates is an attempt to assess the transformative impact of the ICTY on the successor states in the region of former Yugoslavia. This chapter aims to contribute to this elusive quest by an in-depth scrutiny of a telling case of usage of visual evidence at the ICTY, its reception in the Serbian courtroom and its impact in the public sphere.

The Role of Visual Evidence in the Debate on Didactic Effects of Trials

The ICTY-generated discussions have added new insights into some old debates. Among them is the one on the didactic effects of trials. It was triggered as early as 1963 by Hannah Arendt in her analysis of the Eichmann trial, whose didactic aspects Arendt discarded as ‘bad history and cheap rhetoric’. In contrast, felt Arendt, ‘justice demands that the accused be prosecuted, defended and judged, and that all the other questions of seemingly greater importance [...] be left in abeyance’. Her general conclusion was formulated in an influential dictum: ‘The purpose of the trial is to

² UN, S/Res/827 (1993), 25 May 1993. Tribunal has the power to prosecute persons suspected for committing grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide and crimes against humanity. On the creation of the tribunal and context it operates in, see Michael Scharf (1997, p. 128). Rachel Kerr (2004).

³ Richard H. Steinberg (ed. 2011); A set of ICTY Global Legacy Conferences was held since 2011. See the video recording of the latest on ICTY TV, *Legacy of the ICTY in the former Yugoslavia*, Sarajevo, 6 November 2012, http://www.youtube.com/watch?v=vQ843aYwp44&list=PLqBsjklrfWbiq51DKRvi954lg5x4d_O7w.

render justice, and nothing else' (Arendt 1963). However, just around the same time, Judith Shklar equally persuasively recognized the need to situate trials within their overall political and social context, warning that 'it is not the political trial itself but the situation in which it takes place and the ends that it serves which matter. It is the quality of the politics pursued in them that distinguishes one political trial from another' (Shklar 1986).

Opinions have remained polarized ever since. Over the years, Arendt was followed by a number of authors who echoed her doubts about pedagogical functions of the legal process. Amidst hectic legal developments following the end of the Cold War, Ian Buruma expressed suspicion towards the relevance of historical narratives in the proceedings: 'Just as a belief belongs in church, surely history education belongs in school. When the court of law is used for history lessons, then the risk of show trials cannot be far off. It may be that show trials can be good politics—though I have my doubts about this too. But good politics don't necessarily serve the truth' (Buruma 1995). Dwelling on subsequent attempts at a legal encounter with the communist legacy in Central and Eastern Europe, Tina Rosenberg arrived at similar conclusion: 'Trials, in the end, are ill suited to deal with the subtleties of facing the past' (Rosenberg 1995).

On the other hand, the end of the Cold War was a powerful boost to a body of literature on transitional justice, readily recognizing that many trials are inevitably monumental and historical events, whose extralegal functions should not be overlooked. Ruti Teitel perceived them as 'long-standing ceremonial forms of collective history making' which 'enable vivid representations of collective history through the recreation and dramatization of the criminal past' (Teitel 2000). Mark Osiel emphasized their importance in shaping collective memory (Osiel 1997). Eventually, the Arendtian argument was confronted head on by Lawrence Douglas: 'No one, I believe, would deny that the primary responsibility of a criminal trial is to resolve question of guilt in a procedurally fair manner. And certainly one must appreciate the potential tension between the core interest of justice and the concerns of didactic legality. To insist, however, as Arendt does, that the sole purpose of a trial is to render justice and nothing else, presents, I will argue, a crab, bad and needlessly restrictive vision of the trial as legal form' (Douglas 2001).

Researching along these lines, Douglas analysed pivotal Holocaust-related trials, convincingly dissecting their pedagogical function, as expressed in the choice of the accused, the nature of incrimination, the scope of the indictment, the selection of witnesses, the collection of evidence and the manner of its presentation in the courtroom. Moving from theory to the mechanics of this process, which he called *didactic legality*, he assigned particular attention to the introduction of new media into the evidence. He particularly emphasized the screening of footage taken mostly in Nazi concentration camps, exhibited in the International Military Tribunal in Nuremberg. Douglas observed that 'the standard of admissibility of filmic proof, at least in Anglo-American jurisprudence, centered on the doctrine of the authenticating witness. This doctrine [. . .] maintained that the motion picture does not itself prove an actual occurrence but the thing reproduced must be established by the testimony of witness' (Douglas 2001). The screening of atrocity material in Nuremberg

through the documentaries *Nazi Concentration Camps* and *The Atrocities Committed by German-Fascists in the USSR* marked a departure from this doctrine, enabled through relaxation of rules of gathering evidence, and empowered by the reactions of the audience and accused, which confirmed that visuals could serve as a powerful vehicle of pedagogical messaging.⁴

In this respect, the ICTY, the first international criminal tribunal since Nuremberg, followed in the footsteps of its predecessor. Its high-profile legal proceedings operate in a complex context in which law, politics, history and memory intertwine in an extraordinary public happening. Ambitiously tasked from the creation, in time the ICTY developed an equally ambitious understanding of its own role, best expressed in its 1998 annual report to the Security Council: ‘ensuring that history listens is a most important function of the Tribunal [. . .]. Through our proceedings we strive to establish as judicial fact the full details of the madness that transpired in the former Yugoslavia. In the years and decades to come, no one will be able to deny the depths to which their brother and sister human beings sank. And by recording the capacity for the evil in all of us, it is hoped to recognize warning signs in the future and to act with sufficient speed and determination to prevent such bloodshed.’⁵

In attempting to do so, the ICTY could not rely on stacks of written evidence of the kind seized by the Allies and exhibited in Nuremberg. Withheld by most of the Yugoslav belligerent entities, many relevant documents were, at least in the beginning, out of reach of the Office of the Prosecutor. However, ICTY’s rules of admissibility of evidence stated that the ‘Chamber may admit any relevant evidence which it deems to have probative value’.⁶ As in Nuremberg, the reasons for this somewhat relaxed rule were inherently practical: ‘To adopt strict rules on admissibility of evidence in these circumstances would complicate the task of the Tribunal tremendously when its lack of coercive powers already makes gathering of evidence very difficult.’⁷ Thus, the ICTY proved to be very open to admitting visual records in evidence, showing considerable lenience and therefore adding new fuel to an already vivid debate on their admissibility and probative value. Indeed, many compelling photos and videos were exhibited in the course of the trials, from photos of Goran Jelišić murders in Brčko to videos of Serbian concentration camps in Omarska and Trnopolje, to satellite and aerial photographs of mass gravesites around Srebrenica at the Krstić trial (see Campbell 2002; Nice 2004).

⁴ Douglas (2001, pp. 11–37). The reactions of the accused to the film were carefully recorded by prison psychologist G.M. Gilbert (1995, pp. 45–49, 161–163). On American video, see also Lawrence Douglas (1995, pp. 449–481). On Soviet video see Holocaust Controversies, *The Atrocities Committed by German-Fascists in the USSR* <http://holocaustcontroversies.blogspot.nl/2011/04/atrocities-committed-by-german-fascists.html>; On the role of visuals in war crimes trials from Nurember to Milošević see Christian Delage (2006).

⁵ ICTY Annual Report, A/53/219-S/1998, p. 66. About the connection between the ICTY and history writing, see: Richard Ashby Wilson (2005, pp. 908–994), Robert Donia (2004).

⁶ Rules of Procedure and Evidence, 22 May 2013, 89 C.

⁷ Almiro Rodrigues and Cecile Tournaye (2001, p. 297). Therefore, the rules do not address explicitly the issue of visual records and photography as evidence.

What remains more difficult to assess is the role visual evidence has had outside of the ICTY courtroom. Logistically, the ICTY courtroom proved to be a very suitable place for the introduction and dissemination of visual material. The building housing the ICTY met the highest technical criteria, and the interest the proceedings provoked, at least in the early period of Tribunal's activity, caused considerable media attention. Thus, much of the proceedings, including its visual imagery, was broadcast internationally. To what extent it reached the war-affected region is another matter, where reception was less straightforward. According to the 2002 regional survey of the International Institute for Democracy and Electoral Assistance on the trust in international institutions in the Balkans, 'for The Hague Tribunal (ICTY), according to the survey trust ratings are highest in Kosovo (83 %) and the Bosnian Federation (51 %), lowest in Serbia (8 %) and Republika Srpska (4 %)'.⁸ Around the same time, the ICTY was about to embark on its greatest venture, the trial of Slobodan Milošević, wartime president of Serbia and the Federal Republic of Yugoslavia, transferred to ICTY in mid-2001 and charged with three separate indictments covering crimes committed in Kosovo, Croatia and Bosnia and Herzegovina.

Perceived as the symbolic peak of the Tribunal's activity, the Milošević case was also a moment of global relevance. For the first time, a head of the state was charged for the crimes from the time of his reign. Cases of such an importance inevitably function on at least two frontlines—in the courtroom and with the wider audience.⁹ While the prosecution was carefully balancing these two aspects, the defendant showed no such intention. Uninterested in the legal aspect of the trial, Milošević was using every opportunity to score at the 'home front'.¹⁰ In this communication, visual material played a significant role from the very start of the trial, turning the opening statements of the prosecution and the accused into multimedia events.¹¹ This trend lasted until the end of the trial, with Milošević presenting 50 video recordings of uneven length and content and the prosecution outperforming him with 117.¹² Their legal relevance and out-of-courtroom impact were equally uneven. In a sort of a paradox, one of these visuals, which never even became an accepted exhibit in the ICTY, nonetheless, had a huge impact out of its courtroom.

The Screening of the *Scorpions* Video in the ICTY Courtroom

The first of June 2005 started as any other day in the ICTY courtroom, with prosecutor Geoffrey Nice conducting a pedantic cross-examination of Milošević's witness, Serbian police general Obrad Stevanović, once assistant minister of the interior.

⁸ IDEA, South East Europe Public Agenda Survey, http://www.idea.int/europe_cis/balkans/see_survey.cfm. Accessed on 05.05.2013.

⁹ About Milošević trial and history, see Vladimir Petrović (2013 in print); Judith Armatta (2012, pp. 10–38).

¹⁰ Eric Gordy (2003). See also Eric Gordy's analysis of attention to the Milošević trial in Serbia, in this volume.

¹¹ ICTY, The Milošević case, Transcripts, Opening statements, 10–158.

¹² About the amount of evidence and problems it caused see Gideon Boas (2006).

Stevanović claimed that Serbian authorities would not allow paramilitary units to freely pass the border between Serbia and Bosnia and was particularly resentful to the allegations that such passage would be secured for the units which were perpetrating war crimes. He claimed he personally would have never turned a blind eye on something like that. It was during this questioning that Geoffrey Nice suddenly announced: ‘I’m going to show you some extracts from a video. The video lasts about 2 h but it will only be a few minutes of it that we will show in order to give its context. It comes in several clips [. . .]. *It’s only—it doesn’t have to become an exhibit* [emphasis VP]. It’s just a guide to the general territory.’¹³ What followed was a display of a short footage, interrupted with questions of the prosecutor and witness’s answers about a particular wartime unit from Serbia, named *Scorpions*:

‘NICE: What we see here, we see here a ceremony of the Scorpions being blessed by a priest, and this is happening at Djeletovci. And so that you can understand the usefulness of the film, we may get to the point where they come individually to be blessed so that they have full facial views provided for us, many or most of them, if not all of them.

STEVANOVIĆ: I cannot see the faces very clearly. I don’t know if it’s the quality of the image.’

‘NICE: So far as necessary, I will help you later with freeze-frame pictures to make life easier. To save time, we’ll move to the next clip.

NICE: Now, you can see the date, 25th of June. This is the same unit on its way. We saw there, of course, the sign of Pale, it having already entered Republika Srpska via, as I’m suggesting, Raca and now being on the—to the east of Sarajevo at Pale. Next clip.’

‘NICE: Now, this—pause there. This video, which is potentially distressing viewing and I’m only going to play very small parts of it. . . reveals, Mr. Stevanovic, if the evidence is in due course admitted, and that’s why I want your assistance, reveals that men were brought from Srebrenica in batches to this group of Scorpions to be executed and they were executed, and what you see here is a lorry load of six young men (. . .)[. . .]

NICE: The lorry leaves. The men are eventually taken up into the hills. It may be difficult to move it, but I don’t need to linger on this. Here they are taken up into the surrounding countryside.’



¹³ ICTY, The Milošević case, Transcripts, 40275.



Stills from the *Scorpions* video

'NICE: Two remaining not shot are untied. I needn't go into the detail, or we needn't view the detail. They're untied, they move the four bodies, and then they are themselves shot, and I'll leave it there'.¹⁴

At this point, after a moment of silence, the courtroom went into a state of agitation, with the judges asking about the origin of the video, amicus curiae interrupting the prosecutor to object its introduction and the witness protesting its display in connection with his testimony:

'JUDGE ROBINSON: Mr. Nice, can you tell us about that film?

MR. NICE: Yes, to a degree I will. But if I can just deal with—

MR. KAY: We haven't established any foundation for this. To my mind, this looks like sensationalism. There are no questions directed to the witness on the content of that film in a way that he can deal with it. It's merely been a presentation by the Prosecution of some sort of material they have in their possession that has not been disclosed to us and then it has been shown for the public viewing without any question attached to it. It's entire sensationalism. It's not cross-examination.

JUDGE ROBINSON: Mr. Nice, there is some merit in that. That's why I asked what are we going to be told about the film. Who made it, in what circumstances, and what questions are you putting to the witness in relation to it?

MR. NICE: Certainly. I'm coming to that. As to the film, my suggestion to the witness is that this is a film showing, as it happens, *Scorpions* executing prisoners from Srebrenica. And the questions I wanted to ask him and want to ask him are as follows:

JUDGE ROBINSON: Let him answer that question first.

MR. NICE: Certainly, he can answer that question, yes. I'm suggesting this film shows *Scorpions* executing prisoners from Srebrenica

STEVANOVIC: As I am upset, I have to say that this is one of the most monstrous images I have ever seen on a screen. Of course I have never seen anything like this in—live. I am astonished that you have played this video in connection with my testimony because you know full well that this has nothing to do with me or the units I commanded. I attempted to explain this yesterday, and I have also attempted to explain it today. I'm not saying that you do not have the right to do this, but I have to say that I am really upset—JUDGE ROBINSON: Do you agree with the—do you agree with the Prosecutor's suggestion or proposition that this is a film that shows *Scorpions* executing prisoners from Srebrenica?

THE WITNESS: Of course I do not intend to cast doubt on what the Prosecutor is saying, but I have not seen a single person I know here, and I have seen no evidence that this is the unit in question.¹⁵

¹⁴ ICTY, The Milošević case, Transcripts, 40277–8.

¹⁵ ICTY, Cases and Judgements, The Milošević case, Transcripts, 40279–40280. The stills are connected to the transcript at the website *Medien und Krieg, 'Bilder lügen nicht!' oder: Fand das 'Marsaker von Srebrenica' gar nicht in Srebrenica statt?* <http://www.arbeiterfotografie.com/galerie/kein-krieg/hintergrund/index-srebrenica-0005.html>. Full video shown in the ICTY courtroom is available on Stephen Talbot, *Srebrenica: The Video of a Wartime Atrocity*, <http://www.pbs.org/>

The session soon went to recess. However, if there was agitation in The Hague, it could not be compared with the havoc in Belgrade and in the rest of the Balkans. During the day, the video was broadcast by major regional broadcasting networks. It was promptly shown in Bosnia as breaking news, with shocked families recognizing the victims from the video. In Serbia, the footage was screened in the evening on the independent television B92, followed by a rapid police action in which four former members of the *Scorpions* unit were arrested in Serbian towns Novi Sad and Šid. The day after, new arrests followed. Chief Prosecutor of the ICTY, Carla Del Ponte, visited Belgrade and met with Serbian highest officials. As she commended the arrest action as ‘brilliant’, even the conservative prime minister Vojislav Koštunica stated that ‘it was important to react immediately on the basis of this video which was shocking and terrible for all of us’.

On June 2nd, the footage was shown on the Radio Television of Serbia (RTS), Serbian national television, followed by the grim statement of Serbian president Boris Tadić: ‘This video is an evidence of monstrous crimes which have been committed during the war in that region. The crimes were committed in the name of our nation.’¹⁶ In the next couple of days, the public reactions of indignation were flooding Serbia.¹⁷

During this flood of reactions, one man was silent—Milošević himself. He remained silent on the topic the next day too, while Stevanović was vigorously cross-examined by the prosecution about the *Scorpions* unit activities in Bosnia and Kosovo in 1995 and 1999. As the court adjourned over the weekend, Milošević addressed the issue only on 8 June while redirecting examination of general Stevanović. He insisted the tape be replayed, stating that the video shown in the courtroom was cut and doctored. He pointed out that most of the tape is undated, that the location of the murder is Trnovo, a village 160 km from Srebrenica, and claimed that the prosecutor merely speculated that the victims were from Srebrenica and that the perpetrators belonged to the Serbian Ministry of Interior.¹⁸ Most of all, he demanded information as to ‘when this footage was taken, when the tape was filmed, who taped, who took it, when it came into Mr. Nice’s possession and so on?’ Nice refused to oblige, on the grounds that the clips are not legal exhibits yet: ‘I’m quite happy to provide a certain amount of information, although the detailed information will come [. . .]. As to the source of the tape, no, I have no intention of providing any information of that at the moment.’ Instead, he rubbed into Milošević’s greatest concern, expressing hope that soon the entire background of the tape will be known in the light of ‘reactions and

frontlineworld/blog/2005/07/srebrenica_the_1.html#. The full video of ICTY courtroom during the screening of the footage at Milosevic Trial Public Archive, http://hague.bard.edu/past_video/06-2005.html.

¹⁶ ‘Horrific video of Srebrenica killings shown’, *AFP*, 3 June 2005, <http://www.smh.com.au/news/World/Horrific-video-of-Srebrenica-killings-shown/2005/06/03/1117568366412.html>.

¹⁷ ‘Srebrenica Video Sobers Serbia, prompts arrests’, *Reuters*, 3 June 2005; IWPR, Snimci egzekucije osvezili pamcenje Srbiji, <http://iwpr.net/sr/report-news/snimci-egzekucije-osvezili-pamcenje-srbije>; Beti Bilandžić, ‘Murder Video Broadcast Stuns Disbelieving Serbs’, *The Age*, 4 June 2005; ‘A Video Shocks Serbia’, *Radio Free Europe*.

¹⁸ ICTY, The Milošević case, Transcripts, 40697–40706.

acknowledgements in Serbia, by government sources, which may be of considerable value [. . .] *as a result of its being screened in Serbia* [emphasis VP].¹⁹

Milošević's amici curiae also insisted on full disclosure of the entire visual material to the defence. They insisted that, even though the tape is not considered evidence, it is still a subject of disclosure. As they seemed to have the support of the judges on the matter, Nice conceded to disclose once Milošević makes a formal request.

JUDGE ROBINSON: Well, he has made a request.

MR. NICE: As he has made. I agree.

JUDGE ROBINSON: He has made a request.

MR. NICE: But only today. I can check on whether there are any outstanding issues, and I don't believe there are [. . .]. That can be done. But it can't be done literally now.'

Milošević could only fume: 'Is that an appropriate way to act? On all world TV stations and Serb TV stations, it has been said time and again that this is footage from Srebrenica. And Mr. Nice says now that he is yet to establish the link showing that this has to do with Srebrenica.

JUDGE ROBINSON: Mr. Milosevic, whether he establishes the linkage or not is a matter for the Chamber. *We have no concern with the public's perception of the matter* [emphasis VP]. Ultimately we will examine all the evidence before us and come to a conclusion as to the worth, the value of the tape.

THE ACCUSED: Mr. Robinson, but he said, he spoke in the future [tense] that he has yet to establish this linkage. I assume that if he is asserting something, he has to prove that there is this kind of linkage, and it is only then that he can work on that basis, not for him to play footage here that has nothing to do with Srebrenica whatsoever. And you saw that it is 150 or, rather, 160 kilometers away from Srebrenica, and then he promises that he has yet to establish by way of a witness linkage between that footage and what happened in Srebrenica. And on the footage you do not even have the actual place where it was filmed and the time when it was filmed. I do not understand this kind of handling of evidence at all.

JUDGE ROBINSON: Mr. Milosevic, those are matters for us. We will determine—we haven't made any determination as to the production of the tape as an exhibit.²⁰

Milošević's worries materialized on 18 July 2005, as the prosecution bundled the tape with other additional newly acquired evidence and proposed new witnesses in a motion requiring the partial reopening of the case against him. It took the Chamber almost half a year to reach a decision—and deny—this request: 'Although most of the items have some probative value in relation to the underlying offences charged in the indictments, none is of significance for the ultimate legal question of whether the Accused is responsible for the crimes alleged in the indictments. None of the material proposed would add significantly to the existing evidence relating to the Accused's individual criminal responsibility. The Prosecution's request to reopen its case with regard to these items is therefore denied.'²¹ Milošević need not have worried, at least from a legal point of view. The evidentiary role of the *Scorpions* video was virtually

¹⁹ ICTY, The Milošević case, Transcripts, 40723, 40727.

²⁰ ICTY, Cases and Judgements, The Milošević case, Transcripts, 40730–4.

²¹ ICTY, Cases and Judgments, The Milosevic Case, Decision on application for a limited re-opening of the Bosnia and Kosovo components of the prosecution case with confidential

nonexistent in this case, and the death of the accused on 11 March 2006 closed this chapter permanently.

The *Scorpions* in Belgrade: In and Out of the Courtroom

However, the extralegal effect of this video material could hardly be overemphasized. The clip was aired in different versions more than 2,000 times on different TV stations, out of which 500 times in the region of the former Yugoslavia.²² Inquiries focused on the actual crime, identity of the perpetrators and the place of their unit within Serbian wartime tactics. The *Scorpions* were not a completely unknown unit. They captured public attention due to their activity in Kosovo in 1999, when the unit was briefly deployed in Podujevo on 26 March 1999, and withdrew in haste, after the murder of 14 or more Albanian women and children perpetrated by its members. The investigation (which lingered for some time until the verdict of the Belgrade court sent unit member Saša Cvijetan to 20 years imprisonment in 2004) brought the case to the attention of the Humanitarian Law Center, a major war crimes investigating non-governmental organization (NGO) in Serbia. Its director, Natasa Kandić, took part in the trial as a representative of the victims, collecting the information at the same time about the pre-1999 activity of the *Scorpions* unit and its wartime commander, Slobodan Medić Boca.²³ In the course of this activity, she heard about the existence of a certain tape, filmed by the unit members and documenting a crime, but was unable to locate it. The disclosure of one former *Scorpions* member gave her the details: The tape was actually multiplied after the end of the war in Bosnia in 1995, shared and screened among unit members. However, Medić launched a scrabble for the copies, with the intent to destroy the damaging evidence. Still, due to the discord among *Scorpions* veterans, a master copy was dispatched to the Bosnian city of Tuzla in late 2004, and eventually landed both at the ICTY and in the hands of Kandić.²⁴ Rather than screening it publicly, Kandić showed the tape to the Serbian authorities, during a meeting with war crimes prosecutor, Vladimir Vukčević, in the presence of the Serbian police head of war crimes investigation, Gvozden Gagić, and legal advisor to the US embassy, Sem Nazzaro, in early May 2005. After receiving commitments that the case would be immediately opened, she conceded to wait for 10 days. As time was passing and nothing happened, she revolted with a denialist public event staged at (of all places) Belgrade Faculty of Law, and she publicly announced the existence of the tape at a press conference on 23 May. About a week later, on 1

annex. Cf. 'Judges Crack Down on Milosevic case', Institute for War and Peace Reporting, http://www.iwpr.net/?p=tri&s=f&o=258726&apc_state=henptri.

²² Humanitarian Law Centre, *Škorpion—od zločina do pravde*, (Scorpions—From Crime to Justice), (Beograd: Fond za humanitarno pravo: 2007), 7–8.

²³ Dejan Anastasijević, *Ubod Škorpion*, *Vreme*, no. 667, 25.12.2003. <http://www.vreme.com/cms/view.php?id=361981>.

²⁴ Tim Judah, Daniel Sunter, 'How video that put Serbia in dock was brought to light', *The Guardian*, 5 June 2005.

June, as she saw that the ICTY prosecutor screened the segments of the tape in the Stanojević cross-examination, Kandić dispatched the entire tape to several Serbian broadcasting media. Only television B92 agreed to play the content immediately, but the day after the other media caught up, as the arrests of *Scorpions* and public statements by Serbian officials indicated that they meant business.²⁵

In the midst of public attention, the indictments against the commander of the *Scorpions*, Slobodan Medić, and unit members Pera Petrašević, Branislav Medić, Aleksandar Medić and Aleksandar Vukov were made public on 7 October 2005 by the Office of the Serbian War Crimes Prosecutor.²⁶ At that time, the full-length *Scorpions* tape, containing a 2-h long collage of different aspects of the activity of the unit from 1994 to 1995, entered the public sphere. If the segments containing the Trnovo murders were crucial for the upcoming trial, the rest of the material was revealing in terms of connections between the *Scorpions* and the post-Milosevic state security apparatus. One segment of the tape showed Medić in the company of Milorad Luković Legija during the 1994 operations in Western Bosnia. Legija rose in the ranks of the similar unit, the *Tigers* (a.k.a. Serbian Volunteers Guard), headed by the dreaded Željko Ražnatović Arkan. In the post-war period, Legija was instrumental in the institutionalization of wartime special units into the Serbian Ministry of Interior. Under the supervision of Jovica Stanišić and Franko Simatović, wartime heads of the Serbian Secret Service, these detachments merged into the armed wing of the Serbian secret police, known as the Unit for Special Operations. This unit, which was no less than Milošević's death squad responsible for the elimination of his political opponents, survived the deposing of its master.²⁷ Acting in collusion with organized crime, the leadership of the unit was involved in a succession of kidnappings and murders, culminating in the assassination of Serbian reformist prime minister Zoran Đinđić in March 2003.²⁸ This assassination triggered a massive police action, leading to the arrest of the unit members and transfer of Stanišić and Simatović to the ICTY. Legija surrendered to the authorities, and by the time of the screening of *Scorpions* video, he was on trial for a number of assassinations he masterminded.²⁹ Simultaneously, the *Scorpions* trial commenced in Belgrade on 20 December 2005.

²⁵ The entire story of making this video, its dissemination and recovery of the tape is neatly described by Natasa Kandic in Humanitarian Law Centre, *Škorpioni—od zločina do pravde*, [Scorpions—From Crime to Justice], (Fond za humanitarno pravo: Beograd 2007), 4–8.

²⁶ Serbian War Crimes Prosecutor's Office. http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2005_10_07_ENG.pdf.

²⁷ Cf. Vreme film/ TV B92, *Jedinica* (The Unit) (<http://www.b92.net/specijal/jedinica-eng/index.php>). See, in particular, part 3 of 17, <http://www.youtube.com/watch?v=7hcXnxtG1C8&feature=relmfu>. Also see Jovan Dulović and Filip Švarn (2003).

²⁸ Transcripts of the trial are available at the archive of Humanitarian Law Center, FHP-DJ-021, *Transkripti sa suđenja za ubistvo Predsednika Vlade Republike Srbije dr Zorana Đinđića*. They are also published by Dorotea Čarnić, Aleksandra Petrović (ed.), *Proces KP 5/03, Ubistvo Zorana Đinđića I-III* (The Murder of Zoran Đinđić), (Sedma sila: Beograd, 2008).

²⁹ Tatjana Tagirov, *Izrecene presude za ubistvo Ivana Stambolića i atentat u Budvi*, (Verdicts rendered for assassination of Ivan Stambolić and he assassination attempt in Budva) <http://www.vreme.com/cms/view.php?id=422576>.

On the same day in The Hague, the ICTY's prosecution amended the indictment against Jovica Stanišić and Franko Simatović to include the Trnovo murders shown in the *Scorpions* tape.³⁰ The disclosure of those connections and simultaneous trials in Belgrade and in The Hague raised hopes that the murky background of the system of repression launched during Serbia's wars in Croatia and Bosnia would be fully exposed. Indeed, if that was the case, the position of those authors who stipulate the extralegal, ethical and pedagogical relevance of the legal processes would be fully vindicated.

The trial of five *Scorpions* in Belgrade did start on that note. The trial was extremely tense and unusually well visited, as it was among the first large war crime trials in Serbia, with additional interest fuelled by the visual material. The large and recently refurbished courtroom of the Special Court in Belgrade was occasionally too small to receive all the visitors, families of the accused and of the victims, human rights supporters and journalists.³¹ During the pre-trial investigation, the arrested *Scorpions* were confronted with the video records, the existence of which completely undermined and broke into pieces their pre-prepared defence story. The commander of the unit, Slobodan Medić Boca, did his best to obfuscate even the elementary details about the creation and institutional design of this military unit, particularly hiding links to his direct superiors in Serbia's state security institutions.³² Building on the fact that he was not visible on the crucial segment of the video tape, he simply denied that he ordered the killing in Trnovo arguing that he learnt about it only once it was shown on TV. He claimed that he was never informed about the killing, suggesting that recorded soldiers did it on their own volition. He even went as far as to claim that, had he known that his soldier was recording the murders, he would cover the crime but 'would kill [the cameraman] like a rabbit for filming it'.³³

Medić's arrogant defence antagonized the other accused, Pero Petrašević and Aleksandar Medić, who testified that the direct order to kill six civilians, who were brought to Trnovo by a van of the Army of Republika Srpska (ARS), was given by Slobodan Medić. 'If you were a real commander', said Petrašević to Medić on trial, 'you would never allow your most trusted soldier to end up in jail with such a label. Just imagine, you claim that this was an incident, that we are not normal, that we killed those people and filmed it because we are retards!'³⁴ Only the fourth accused, Branislav Medić, supported the commander's version of events, claiming that in his absence that day he received an order from an unidentified colonel of ARS to shoot the prisoners and never reported back to his commander. The other

³⁰ ICTY, The Prosecutor of the Tribunal against Jovica Stanisic and Franko Simatovic, Second Amended Indictment, 20. December 2005.

³¹ The tense atmosphere with many interesting details from the trial is described by one of its observers, Jasmina Tešanović (2009).

³² Partial transcript, including the indictment, judgment-selected motions and selected evidence is contained in the volume *Škorpioni—od zločina do pravde*, [Scorpions—From Crime to Justice], (Fond za humanitarno pravo: Beograd 2007), 52–54.

³³ *Škorpioni*, 55.

³⁴ *Škorpioni*, 323.

members of the *Scorpions* testified, including the two who were assigned with the camera. One of them, Slobodan Stojković, claimed that Medić directly ordered him to film the execution of the prisoners.³⁵ He was a particular target of Medić's anger: 'If I knew about this fuck-up, you would remain there with them'.³⁶ 'Them' were the victims, Safet Fejzić (17), Azmir Alispahić (17), Sidik Salkić (36), Smail Ibrahimović (35), Dino Salihović (18) and Juso Delić (25), men and boys from Srebrenica identified by the family members who bravely testified in the hostile Belgrade courtroom, in which the attorneys of the accused wasted no opportunity to force them into contradictions.³⁷ This was mostly futile, as the existence of the tape completely confirmed their testimony. The video recording underwent audiovisual expertise, confirming the integrity of its content and undermining the possibility of the accused to pose a united front and to deny any knowledge or participation.³⁸ In the courtroom, old relationships between accused *Scorpions*, grounded not only in veteran solidarity and criminal complicity, but also in childhood friendships and family ties, quickly deteriorated in the frenzy of mutual incriminations.

Gradually, from all the gathered evidence, the story came out. On 16 or 17 July, a bus operated by personnel from the ARS, loaded with an unidentified number of Muslim men and boys captured after the fall of Srebrenica, came to the *Scorpions* outpost in Trnovo. Unloading six men and boys, the ARS officer assigned them to Medić, referring to them as 'packages', explained they were to be executed, and continued travel with the rest. It remained unclear if Medić consulted his superiors before assigning a group of his trusted men to carry out the execution and ordering a cameraman to tape it. The execution was carried out near the abandoned weekend house in an exceptionally cruel manner. The victims were driven there by the truck, beaten and insulted on the road, lined up on the ground and made to wait for the cameraman, whose battery ran out, to return with a new one. Continuously insulted, refused even a sip of water which they pleaded for, they were taken off the road. Four of them were made to walk in line and were executed one after another. The two remaining victims were made to carry their bodies into the house, where they were shot as well. The executioners returned to the command post and informed Slobodan Medić that the job was done. Soon the unit was withdrawn from Trnovo. The tape was shared by other *Scorpions* members, multiplied in Šid and periodically watched by a number of persons making it even to the local video store *Laser*.³⁹ However, the entire affair remained dormant until the 1999 massacre in Kosovo became a subject of judicial interest. The tape was finally unearthed due to the internal discord among the *Scorpions*, as not all of them obeyed Medić's instructions to destroy their copies.

The evidence mounted during the trial, which lasted from December 2005 until April 2007, when the judgment was rendered. Four out of five defendants were

³⁵ *Škorpioni*, Testimony of Slobodan Stojković (345–359) and Duško Kosanović (440–448).

³⁶ *Škorpioni*, 401.

³⁷ *Škorpioni*, Testimony of witnesses Hana Fejzić, Safeta Muhić, Nura Alispahić, Osman Salkić, Semir Ibrahimović and Betko Delić, 278–317.

³⁸ *Škorpioni*, Forensic expertise on the tape, 534–558.

³⁹ *Škorpioni*, 151.

pronounced guilty of war crimes against the civilian population. Slobodan Medić got 20 years for ordering the murder, Branislav Medić and Pera Petrašević got 20 and 13 years for the executions and Aleksandar Medić 5 years for assisting in execution. Aleksandar Vukov was acquitted. After the appeal, the Serbian Supreme Court on 11 September 2008 confirmed the sentences of Slobodan Medić and Pero Petrašević, but reduced Branislav Medić's sentence from 20 to 15 years and ordered a retrial for Aleksandar Medić.⁴⁰

The Aftermath of the *Scorpions* Video

On the face of it, the screening of *Scorpions* video reads as a showcase for the importance of extralegal aspects of international criminal trials and their didactic effects in particular. Indeed, on 1 and 2 June 2005 and in subsequent days it seemed that the wall of denial in Serbia came tumbling down. The events unfolded as if following pages from a transitional justice textbook: Screening of a shocking video material in the international courtroom was reported by the global media, taken over as breaking news by the media in the region, followed by a swift police action leading to a local judicial process, rounded off with the acknowledgment of the crime by leading politicians. No wonder that observers tended to describe the event in terms of a collective soul-searching process.⁴¹ The *Scorpions* footage will undoubtedly enter the literature as an example of the transformative value of high-profile war crimes trials and the integration of their societal impact into courtroom management. In fact, it already has. Carla Del Ponte, Chief Prosecutor at the time of the ICTY screening, noted in her memoirs: 'Slobodan Milošević was sitting in the dock, his face motionless [. . .]. In any case, if I were him at that moment, the despair would paralyze my soul [. . .]. Consciously, and what is even more important unconsciously, Milošević had to know that he will never be a free man again.' She also commented on the extrajudicial effect of the screening: 'Internet will make video-recording of the *Scorpions* available to anyone anytime, with a left click of a computer mouse, which will reduce Milošević's legacy to dust along the Bosnian road, right on the spot where these *Scorpions* murdered their victims, so certain in their impunity that they even bothered to record the crime, show their faces and faces of their victims in front of the camera, as if they are dancing on the wedding'.⁴² A Human Rights Watch report also noted: 'Although the video was never admitted as evidence [. . .] it had an enormous impact on Serbia [. . .] sending shockwaves through society. The

⁴⁰ The full judgment in *Škorpioni*, 597–732.

⁴¹ *The Guardian*, 'Serbia shocked by video showing Srebrenica shootings', 3 June 2005.; Allisa J. Rubin, 'Shattering images: Massacre prompts Serb soul-searching', *Los Angeles Times*, 15 June 2005.

⁴² Karla Del Ponte, *Gospođa tužilac*, (Beograd: Profil, 2008), 307–308.

airing of the video engendered a great deal of national discussion, forcing people to confront the fact of atrocities they had previously denied.⁴³

Tempting as it might be to conclude that out of the sea of documents presented at the ICTY during the two decades of its activity, the greatest potential to move the hearts and minds of people in Serbia was displayed by this short video clip, one needs to scrutinize more deeply the actual nature of its impact. Otherwise, we run the risk to confuse what we want to see with what actually occurred. There are some solid empirics on the matter. The Belgrade Center for Human Rights and the Organization for Security and Co-operation in Europe (OSCE) have been conducting yearly surveys on public attitudes towards war crime trials based on a carefully chosen sample in Serbia. One was done in April 2005, shortly before the *Scorpions* screening and another in December 2006, well into the Belgrade trial of the members of the unit. The most striking feature of the results was the level of ignorance. Although a number of respondents who considered themselves informed about the activity of the ICTY and national war crimes prosecution increased (from 27 % in 2005 to 43 % in 2006 and from 24 to 50 %, respectively for ICTY and national courts), when asked to name a single trial which was conducted in Belgrade in 2006, 59 % respondents were unable to do so. Only 6 % knew that something in relation to Srebrenica was going on. However, even the respondents who knew about the *Scorpions* trial had problems to connect it to Srebrenica. When asked to respond if they heard that a large number of Bosniak civilians were killed in Srebrenica, 72 % responded they had heard about it in 2005 and 71 % in 2006. When asked if they believe in what they heard, both in 2005 and 2006, exactly 50 % answered positively. When asked if they consider it a crime, only 42 % in 2005 and 43 % in 2006 answered affirmatively.⁴⁴ Therefore, one can only conclude that the initial dramatic reaction of indignation and outrage following the screening of the *Scorpions* video, no matter how genuine, was short-lived.

To account for those results, one needs to turn to the mechanics of transitional justice and the way it unfolded in the *Scorpions* case. The screening of the *Scorpions* video was an outcome of a complex interplay of key actors—international and national legal institutions, the state institutions, NGOs and politicians, global as well as local. They have worked towards specific, often contradictory aims and often with opposing interests. But this particular case seemed to serve them all well, despite their differences. By the virtue of example, on 1 June 2005, immediately after the ICTY screening of the video, Nataša Kandić demanded in vain that the director of Serbian national television screen it too. He insisted that she supply him with comparably

⁴³ Human Rights Watch, *Weighing the Evidence. Lessons from the Slobodan Milosevic Trial*, vol. 18, no. 10 (December 2006), 14.

⁴⁴ Cf. Surveys of Serbian public by the Belgrade Center for Human Rights and OSCE for the period both before and after the release of the Scorpio footage, available at http://english.bgcenter.org.rs/index.php?option=com_content&view=article&id=406:attitudes-towards-the-international-criminal-tribunal-for-the-former-yugoslavia-icty-&catid=103. Regrettably, people were not asked if they think that Serbia or its police forces were in any way related to or responsible for murders in Srebrenica or whether they consider this crime an act of genocide.

grim visuals of crimes committed against Serb population, to screen in parallel.⁴⁵ The day after, he readily allowed the screening of the video, as the *Scorpions* were already in jail and Serbian leading politicians were condemning the crime, rubbing elbows with the ICTY Chief Prosecutor Carla Del Ponte who had just arrived in Belgrade.

So what happened overnight? With many details still unknown, it appears that the swift reaction of Belgrade police, politicians and media could to a large extent be attributed to a local political context, with its key players finding benefits in the arrest of the *Scorpions*. Serbian president Boris Tadić used the occasion to fortify his image in the international community and in the region, as his condemnation of the war crimes correlated with a visit to the 10 years commemoration at the Potočari complex near Srebrenica in July 2005. On the wings of the *Scorpions* arrest, potential political losses of his visit to Bosnia on the home front were minimized, whilst he earned applause in the US Congress, ‘for the courage and humility he displayed by attending the commemoration of the tenth anniversary of the Srebrenica massacre’.⁴⁶ At a more technical level, the arrests of *Scorpions* members were also welcomed by the local war crimes prosecuting institutions, for which the issue of *Scorpions* was a publicity heyday, earning them over 700 articles in the media in June 2005, as opposed to the usual 200–300 monthly mentions.⁴⁷ Even the conservative Serbian prime minister, Vojislav Koštunica, conceded to the prosecution of the *Scorpions* executioners as a measure to impress Carla Del Ponte, his head of secret police running to a meeting in sweatshirt and jeans, apologizing that he was hunting *Scorpions* all night long.⁴⁸ Behind this diligence, there was an attempt to appease the demands from the international community to extradite much more highly ranked indicted persons, such as Radovan Karadžić or Ratko Mladić, to the ICTY. Uneasily as it might be, the key actors’ interests matched up.

But this agreement was temporary. Initial readiness of Serbian politicians to do some ‘housecleaning’ by dissociating themselves from the direct perpetrators of war crimes soon withered away, as the trial of *Scorpions* threatened to reveal much more unpleasant information about the wartime role of Serbia and its state institutions. The evidence appeared to indicate that besides being enlisted in the security apparatus of Republika Srpska Krajina, the Serbian proxy state in Croatia, the *Scorpions* also belonged to the Ministry of Interior of Republic of Serbia, or more plainly, were part of the Serbian police force. One is tempted to conclude that the court was unwilling to probe further in these directions for a particular reason: Simultaneously with the Belgrade trial, another proceeding was unfolding in The Hague, this time in front of the International Court of Justice (ICJ), where Bosnia and Herzegovina sued Serbia for violating the Genocide Convention during the war, by both committing

⁴⁵ *Škorpioni*, 8.

⁴⁶ Congressional Record Volume 151, Number 93 (Tuesday, July 12, 2005, <http://www.gpo.gov/fdsys/pkg/CREC-2005-07-12/html/CREC-2005-07-12-pt1-PgE1471-3.htm>).

⁴⁷ Tužilaštvo za ratne zločine Republike Srbije, *Drugi o nama*, http://www.tuzilastvorz.org.rs/html_trz/DRUGI_O_NAMA/DON_2005_06_00_LAT.PDF.

⁴⁸ Karla Del Ponte, *Gospođa tužilac* (Beograd: Profil, 2008), 309.

and aiding and abetting genocide on the Bosnian territory. There was a risk that full disclosure in the *Scorpions* case and especially their ties to Serbia, as well as full assistance in the ongoing cases in the ICTY, could strengthen the Bosnian case before the ICJ with unforeseen, but undoubtedly grave consequences for Serbia. This risk probably played a decisive role in determining the reduced, almost myopic scope of the trial in Belgrade.⁴⁹ The murder of six Muslim men and boys was tried as a totally isolated case, unrelated to the Srebrenica genocide, despite the continuous effort of the team of the Humanitarian Law Center representing the victims to call upon additional witnesses and introduce additional evidence.⁵⁰ All the possible questions that could have connected those six murders to Srebrenica remained unanswered and sidetracked, allowing for a gradual decontextualisation of the crimes and the proceedings.

On 26 February 2007, the ICJ ruled that Serbia did violate the Genocide Convention, not for perpetrating genocide but for not preventing it and for the lack of willingness to prosecute those responsible.⁵¹ This added another brick to the wall of denial that was steadily being rebuilt, though with different material. Public discourse quickly accommodated the presence of the evidence of crimes, with the absence of willingness to confront one's responsibility. On one level, there was occasional doubting of the authenticity of the video material and twisting of its context.⁵² Although such blatant denial was never mainstreamed, it was falling on fertile ground. Already in an opinion poll conducted 10 days after the release of the footage, one third of the respondents considered the footage a fake.⁵³ However, such attempts were more or less efficiently counteracted by civil society campaigning. On the occasion of the first judgment of the Belgrade trial, the Humanitarian Law Center made a documentary entitled *Scorpions—a home movie*, including footage with testimonies of two repentant *Scorpions* members.⁵⁴ As blatant negation of the content of the tape did not deliver lasting effects, disputing its context became a much more powerful tool of demobilising civic reactions. On that level, the public

⁴⁹ A similar explanation for the nature of the cooperation of reformist authorities with the ICTY was given by Karla Del Ponte, *Gospođa tužilac* (Beograd: Profil, 2008), 207.

⁵⁰ Many motions of HLC for calling witnesses and introducing other evidence were denied (Škorpioni, 613–614). On the other hand, wartime Deputy Interior Minister of Republika Srpska Tomislav Kovač (Škorpioni, 448–520) and Milan Milovanović (Škorpioni, 559–574), Deputy minister of Defense of Republic of Srpska Krajina, were called as witnesses on the trial and did their best to explain that documents connecting *Scorpions* to the Ministry of Internal Affairs (MUP) of Serbia (Škorpioni, 521–528) were doctored.

⁵¹ International Court of Justice, *Bosnia and Herzegovina vs Serbia and Montenegro, Case Concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Judgment of 26 February 2007.

⁵² See Nebohsa Malic, 'Deaths, Lies and Videotape', <http://www.antiwar.com/malic/?articleid=6275>; Julija Gorin, 'Serbs, Lies and Videotape', *Frontpage Magazine*, <http://www.freerepublic.com/focus/fnews/1424168/posts>; Milan Bulajić, 'Srebrenica—Outline for revision of the ICTY judgment on genocide', <http://guskova.ru/misc/docs/2004-may>.

⁵³ Beth Kampschorr, 'Serbs divided over grim video', *Christian Science Monitor*, 15 June 2005.

⁵⁴ Humanitarian law Center—*The Scorpions: a Home Movie* <http://www.hlc-rdc.org/?p=14360&lang=de>.

was served by a number of obfuscating assertions about the incidental nature of the taped crime, about a number of crimes against Serbs which remained unseen and hence unpunished, about the catastrophic effects of the potential establishment of the Serbian state responsibility for genocide, etc.⁵⁵ When all was said and done, the impression was created that *Scorpions* were a loose paramilitary formation of ‘dogs of war’ under a dubious chain of command, the top end of which was most definitely not in Belgrade. There was no readiness to take *Scorpions* for what they were—a unit for special operations, organized, funded and in all probability controlled by the Serbian security apparatus. To be sure, civic activists continued to hammer at the unpleasant questions, but this was rather in vain, as anaesthesia had already spread through the society.

Even if unintended, the long-term effects of such strategies of denial are downright worrisome. The regular survey on public attitudes towards war crimes in Serbia, repeated in 2009, revealed that although a larger percentage of respondents (77 %) heard that many Bosniaks were killed in Srebrenica, only 46 % believe it to be true and only 39 % think of it as war crime.⁵⁶ According to another poll, in 2010, only 30.5 % of respondents believe that there were atrocities against Bosniaks/Muslims in Srebrenica and only 1.4 % labelled it genocide. Another 30 % claimed they did not know about it; 1.5 % consider Srebrenica to be a crime staged to blame the Serbs and 2.8 % thought it to be a massacre of Serbs.⁵⁷ This is astonishing if one keeps in mind that Srebrenica remains among the best-documented atrocities ever and its perpetrators have been on trial at the ICTY from 2001 onwards. In many of these cases, the *Scorpions* video was properly introduced as evidence, from Beara and Tolimir to Stanišić and Simatović, as well as in the ongoing processes against Radovan Karadžić and Ratko Mladić.⁵⁸ However, the weight of legal evidence simply does not cut through the powerful obstructions of the political context of denial in Serbia.

When asked in 2009, ‘do ICTY proceedings contribute to the establishment of truth about what happened in the wars in the former Yugoslavia’, 54 % of respondents in Serbia said ‘no, because the truth will never reach the general public’. Another 35 % were of the opinion that this contribution would be only partial and utilitarian. In addition to that, 58 % of the respondents find the ICTY judges biased. The impression is that the majority Serbian population cannot wait for the Tribunal to shut its doors. Serbia is also divided on what comes next—46 % respondents think the trials

⁵⁵ Gradual decontextualizing of the crimes of *Scorpions* and public statements to that effect are analysed in Helsinki odbor za ljudska prava, *Slučaj Skorpion* <http://pescanik.net/2008/09/slucaj-skorpion/> See also Sabrina Ramet (2007).

⁵⁶ Belgrade Center for Human Rights and OSCE, 2009.

⁵⁷ Dubravka Stojanović, Radina Vučetić, Sanja Petrović Todosijević, Olga Manojlović Pinter, Radmila Radić, *Novosti iz prošlosti*. (Beograd: Beogradski centar za ljudska prava, 2010), 153.

⁵⁸ Sense Tribunal, ‘Wolves’ and ‘Scorpions’ at Ratko Mladić’s Trial 19.04.2013, http://www.sense-agency.com/icty/%E2%80%98wolves%E2%80%99-and-%E2%80%98scorpions%E2%80%99-at-ratko-mladic%E2%80%99s-trial.29.html?news_id=14880.

should continue in Serbia once the ICTY is closed; 36 % think they should not.⁵⁹ A true measure of Serbia's ability to publicly articulate these trends was a Declaration of the Serbian Parliament from March 2010, brought with an extremely narrow majority (127 out of 250 members of Parliament), as a condition in the process of European integration. The Declaration condemns 'a crime committed against Bosniak population of Srebrenica in July 1995', but expressing reciprocal expectations.⁶⁰ To make the situation worse, one senses a certain amount of a boomerang effect in the ICTY itself. Hailed only a couple of years ago for shrinking the space for denial, this aspect of ICTY's work seems to have eroded with the gradual winding down of the Tribunal since 2010. A number of acquittals of highly ranked accused, including the Secret Police bosses, Jovica Stanišić and Franko Simatović, disentangled from the *Scorpions* by the ICTY due to the lack of evidence in May 2013 is a case in point.⁶¹ In the meanwhile, in Serbia, on the last day of 2013, there was a shocking news that Slobodan Medić, ex-commander of *Scorpions*, was killed in a car crash with his wife and son, while driving back to a prison from a holiday leave. The tragedy revealed that he was serving his prison sentence under privileged conditions, and has caused loud, but short lived public outcry. All in all, there is a feeling that Serbia is entering 2014 with war crimes becoming old news.

Against this background, one is forced to conclude that the screening of the *Scorpions* video indeed was a crack in the wall of denial in Serbia, but remained no more than that. What initially appeared as a cathartic process of facing the darkest side of the recent past in the region was cut short. The intermediaries, including governmental and nongovernmental leadership in Serbia and abroad, national and international legal institutions as well as global and local media, whose mutually favourable constellation proved crucial for the initial public reception of the video, were equally instrumental in dismantling any lasting effects. Each cultivating its own contradictory visions of dealing with the atrocious past, these actors served as a powerful filter for production and dissemination of evidence, struggled to retain control over the seeming spontaneity of the process that the video seemed to have triggered. That said it is certain that this bleak situation would look even bleaker if it were not for the *Scorpions* screening. Indeed, both the ICTY and national trials have succeeded in proving the guilt of the immediate individual perpetrators and to secure confirmation of the authenticity of the video beyond reasonable doubt. The space for denial has shrunk that much. However, it still remains wide enough for local actors vested in exploiting a basic cognitive dissonance of the post-atrocious surrounding of former Yugoslavia. Rather than a coordinated effort to enforce justice, juridical reactions to Yugoslav wars—at the ICTY, the ICJ and Serbian and Bosnian courts

⁵⁹ Belgrade Center for Human Rights and OSCE, 2009 <http://english.bgcentar.org.rs/images/stories/Datoteke/public%20perception%20of%20icty%20and%20the%20national%20courts%20dealing%20with%20war%20crimes%20serbia%202009.ppt>.

⁶⁰ Peščanik, Deklaracija o Srebrenici, <http://pescanik.net/2010/03/deklaracija-o-srebrenici-2/>.

⁶¹ ICTY, Cases Stanišić and Simatović, Judgment. The impact of the trials was subject of *Diane Orentlicher, Shrinking the Space for Denial. The Impact of the ICTY in Serbia*, (New York: Open Society Justice Initiative, 2008).

—resemble a battlefield in which the armed conflict continues through legal means. ‘This does not mean, of course, that all attempts to arrive at the truth in criminal trials are doomed, much less that we should abandon them’, observes David Chuter soberly: ‘It means rather that we must stop loading onto the shoulders of justice requirements it is not suited to meet and that we should be modest in our expectation of what incidental clarifications justice can achieve (Chuter 2003).’

Lowering the high expectations one understandably seeks from the legal system means both saving oneself from a lot of disappointment and opening up the space for the proactive role of other social actors to wrestle with the issues of political and moral responsibility for the crimes of recent past. Evidence as striking as the *Scorpions* tape indeed creates a link between legal, political and moral dimensions of the case, but the links are not straightforward. The material displayed in the courtroom acquires a complex afterlife outside of it. Therefore, as much as the events surrounding the release of the *Scorpions* tape indicate that the extralegal effects of the trials are valuable and potentially crucial ingredient of social change, they also indicate that no matter how well conceived or timed, their consequences are neither fully predictable nor controllable. No matter how authors who abhor pedagogical functions of the trials dislike it, the extralegal aspect is simply here to stay. No matter how much hope other authors vest in the extralegal effects of trials and their didactic utilization, what we face is random effects which are up for grabs in an ongoing battle of context-specific interpretations of past events and their meanings.

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References

- Arendt, Hannah. 1963. *Eichmann in Jerusalem*, 16, 232. London: Faber and Faber.
- Armatta, Judith. 2012. Historical revelations from the Milosevic trial. *Southeastern Europe* 36: 10–38.
- Boas, Gideon. 2006. *The Milosevic trial. lessons for the conduct of complex international criminal proceedings*. Cambridge: Cambridge University Press.
- Bougarel, Xavier. 1996. *Bosnie: Anatomie d'un conflit*. Paris: La Découverte.
- Buruma, Ian. 1995. *The wages of guilt: memories of war in Germany and Japan*, 142. London: Vintage Books.
- Campbell, David. 2002. Atrocity, memory, photography: imaging the concentration camps of Bosnia—the case of ITN versus living Marxism. *Journal of Human Rights* 1 (1):1–33, 1 (2): 143–172.
- Chuter, David. 2003. *War crimes*, 232–233. Boulder: Lynne Rienner Publishers.
- Delage, Christian. 2006. *La vérité par l'image, De Nuremberg au procès de Milosevic*. Paris: Denoel.
- Donia, Robert. 2004. Encountering the past: history at the Yugoslav war crimes tribunal. *The Journal of the International Institute* 11 (2–3), (Winter-Spring/Summer 2004). <http://www.umich.edu/~iinet/journal/vol11no2-3/donia.htm>.
- Douglas, Lawrence. 1995. Film as witness: screening nazi concentration camps before the nuremberg tribunal. *Yale Law Journal* 105 (2): 449–481.

- Douglas, Lawrence. 2001. *The memory of judgment. Making law and history in the trials of the holocaust*, 27. New Haven: Yale University press.
- Dulović, Jovan, and Filip Švarn. 2003. *Documents on unit for special operations*. Vreme no. 638 <http://www.vreme.com/cms/view.php?id=336129>. Accessed 27 March 2003.
- Gilbert, G. M. 1995. *Nuremberg diary*, 45–49, 161–163. New York: De Capo Press.
- Goldstone, Richard. 2000. *For humanity: reflections of a war crimes investigator*, xii. New Haven, Conn.: Yale University Press.
- Gordy, Eric. 2003. Rating the Sloba show: will justice be served? *Problems of Post-Communism* 50 (3): 53–63.
- Gow, James. 2003. *The Serbian project and its adversaries. A strategy of war crimes*. London: Hurst & Co.
- Kaldor, Mary. 2012. *New and old wars—organized violence in the globalized era*, 32–70. Cambridge: Polity Press.
- Kerr, Rachel. 2004. *The international criminal tribunal for the former Yugoslavia, an exercise in law, politics and diplomacy*. Oxford: Oxford University Press.
- Nice, Geoffrey. 2004. The reality of the modern war crimes trial. In *Genocide and accountability*, ed. Nanci Adler, 22–38. Amsterdam: Vossius Pers.
- Osiel, Mark. 1997. *Mass atrocity, collective memory and the law*, 240–292. New York: Transaction Pb.
- Petrović, Vladimir. 2007. *Guerrilla warfare and ethnic cleansing: Some terminological and conceptual remarks*. In *Guerilla in the Balkans*, 219–244. Tokyo: Institute for Contemporary History.
- Petrović, Vladimir. 2013. Milošević in the Hague: Failed success of a historical trial, In *Remembrance, history and justice*, ed. Vladimir Tismaneanu. Washington: 2013 in print.
- Ramet, Sabrina. 2007. The denial syndrome and its consequences: Serbian political culture since 2000. *Communist and Post-Communist Studies* 40:42.
- Richard, Ashby Wilson. 2005. Judging history: the historical record of the international criminal tribunal for the former Yugoslavia. *Human Rights Quarterly* 27 (3): 908–994.
- Rodrigues, Almiro, and Cecile Tournaye. 2001. Hearsay evidence. In *Essays on ICTY procedure and evidence, in honor of Gabrielle KirkMcDonald*, ed. May Richard et al., 297. The Hague: Kluwer Law International.
- Rosenberg, Tina. 1995. *The haunted land*, 218. New York: Vintage Books.
- Santiago Nino, Carlos. 1996. *Radical evil on trial*, vii. New Haven: Yale University Press.
- Scharf, Michael. 1997. *Balkan justice: The story behind the first international war crimes trial since Nuremberg*, 128. Durham, N.C.: Carolina Academic Press.
- Shklar, Judit. 1986. *Legalism: law, morals, and political trials*, 145. Cambridge, Mass.: Harvard University Press. (1st 1964).
- Steinberg Richard, H. ed. 2011. *Assesing the legacy of the ICTY*. The Hague: Brill.
- Teitel, Ruti. 2000. *Transitional justice*, 72–73. Oxford: Oxford University.
- Tesanovic, Jasmina. 2009. *Skorpioni—dizajn zlocina*. Beograd: VBZ.