

## Media & Crime

---

INTERVIEW WITH A JOURNALIST

### SYSTEMATIC DIFFICULTIES FOR DENIAL

Mirko Klarin

**The standpoint of the Serbian, Croatian, Bosnian or Kosovo public in regard to the Tribunal is not a result of what the Hague prosecutors do or do not do, this attitude is primarily dictated by the local political elites and the media subordinated to them.**

Mirko Klarin, Director of the agency "Sense Tribunal" fell into the positive trap typical of court reporters and those who analyze events related to trials for the most serious crimes: he sees his professional engagement as a mission – that crime should by no means remain unpunished in the public and that the information on crime should be so penetrating to prevent even the thought of repeating the evil.

Together with the team that he gathered, he is reporting from the spot. From the Tribunal's building in the Hague, where the agency "SENSE" is located, Mirko Klarin began with his reports and later, after weekly reviews of trials for war crimes committed in the former Yugoslavia he made documentary films dealing with dramas which are going on every day in these courtrooms, which are but a reflection of the horrors which we were watching for years and remained judicially.

During one of the numerous gatherings of intellectuals and journalists from the ex-Yugoslav territories where you can meet Mirko Klarin, this time in Ljubljana, at an international conference "Achievements of The Hague Tribunal", at the end of September, we arranged this interview.

You were the first one to send from The Hague to Serbia a comprehensive and analytical view of what the International Criminal Tribunal for the former Yugoslavia is, how it functions; you were reporting in detail from the very first trials. Do you have the impression – from the articles in Nasa Borba up to now, up to SENSE Tribunal – that your messages, your reports, have been read with understanding?

Journalists do not control how their reports are read and understood. Sometimes I get the impression that everybody is taking from the reports from The Hague trials only that which confirms one's own prejudices or stereotypes on what happened in the last decade and on who is responsible for that. If my reports, as you say, were read with understanding than I am afraid this was the case only in a very restricted, narrow circle of like-minded people: people who, like myself, think that the Tribunal is one of the best – if not the best – things that has happened to us in the last 15 years. For me, it would be simply unbearable that after all these killings, displacements, destruction... there is no institution which will help us, whether we want it or not, to establish what had happened to us and who is responsible for that. Because, unfortunately, it has been illustrated that we neither want nor are capable to accomplish this by ourselves.

A lot has been written on the misunderstanding between The Hague Tribunal and the public, not only in Serbia. Such articles were published also in foreign media. Who bears the greatest responsibility for this: the media, the politics, or the Tribunal itself?

There is no doubt that, from the very beginning, the Tribunal has a "PR problem", not only in the Serbian public. I think, however, that it is wrong and naïve to attribute this to the fact that the Tribunal had for a long time been ignoring its "electorate", as once judge McDonald, former President of the Tribunal, called the public of the states under the Tribunal's jurisdiction. It is true that the Tribunal has only at the end of the nineties established its Outreach Programme and started to publish its press releases in the BHS-language – i.e. in the Bosnian, Croatian or Serbian languages – as The Hague defines them, maybe linguistically wrong but politically correct. However, it could have done so from the very first day, but I am certain that the result would have been identical. Because, the attitude of the Serbian, Croatian, Bosnian or Kosovo public in regard to the Tribunal is not a result of what The Hague prosecutors and judges do or not do, but this attitude is primarily dictated by local political elites and the subordinated media.

In this regard one should not forget the fact that in Serbia, Croatia and Bosnia up to 2000 the power was held by individuals and political elites under investigation – and in the case of Serbia under indictment – of The Hague prosecution. It is clear that it was not in the least their interest that the public in their

countries gets the real picture of the mission and functioning of the Tribunal. It should also not be forgotten that all the time until 2000 the most influential media were under full control of editorial groups which in the previous decade had been "outstanding" in the preparation of the ground for war and war crimes, and afterwards in their justification or covering up in the name of "higher" interests. In such a situation it was an illusion to expect the Tribunal to be more successful in solving its "PR problem" in the Serbian or Croatian public.

I even have an impression, paradoxical at first sight, that in the times of Milosevic the Tribunal had greater support and a better image in part of the Serbian public, than was the case after his removal from power. Things were much simpler then, black-white: to be "against" Milosevic was almost automatically meaning to be "for" the Tribunal. With its investigations, indictments and extradition warrants or demands for the transfer of documents, the Tribunal endangered the foundations of the regime, so that the then opposition saw it as a "factual ally" in the struggle for changes, i.e. for power. Not, of course, because that opposition was accepting the necessity to face the bloody past and the necessity to individualize responsibility for the committed atrocities so that it would not remain as collective responsibility, but because it saw the Tribunal and international justice exclusively as an instrument of political pressures which can contribute to the change of the regime.

When finally the regime was changed, things became, at once, far more complicated. The so-called democratic voices – hopelessly fractured, disoriented and mutually confronted – showed they were much more skilful in instrumentalizing the Tribunal than was the case with the previous regime. Milosevic was only ignoring and anathematizing the Tribunal; those who inherited him tried to make best use of it for their own political goals. First, they accepted cooperation with the Tribunal presenting it to their public exclusively as an instrument for securing the necessary financial and economic assistance. Pure trade in which – like in every transaction – the aim is to give as little as possible in order to get as much as possible. Second, apart from the "pure trade value", the additional value of cooperation seen in this way was also that it made possible the removal of certain "unsuitable individuals" of the former regime – headed by Milosevic, Sainovic, Seselj, Stanisic – whose further presence in Serbia could have been risky for the new authorities. Last but not least, the Tribunal and the attitude in regard to its arrest warrants or demands for the transfer of documents were used as the main "political hammer" in inter-party conflicts and were promoted to be the central political issue in election campaigns in order to distract the attention of the disoriented public from the dramatic economic, social and political reality. The image of the Tribunal that exists in Serbia is more a result of all this than a consequence of what is or is not done in The Hague. About which, I dare say, the public knows both little and wrong.

What does it mean for you personally to report on trials in the first international court for war crimes in former Yugoslavia? You had the opportunity to meet judges and prosecutors on the daily basis, to follow almost everything that was going on in the Tribunal's courtrooms.

During my carrier as a journalist I made much more exciting and more beautiful things, but I do not think that I have ever done something more important. At the end of the eighties and the beginning of the nineties a I had, so to speak, a clear vision of what is going to happen and it was unconceivable for me that in Europe, at the end of the 20th century, it is possible so overtly and without sanction to plan and propagate war and war crimes. Therefore, in mid-May 1991, in Borba I published a comment with the title "Nuremberg now" in which I pledged – saying that two crimes from the so-called Charter of Nuremberg were already committed – for the establishment of a "minor international criminal court" which would, as I wrote, have trials for our "leaders and petty leaders" instead of having war, and in order not to have them after war. When two years later, contrary to all expectations, this wish was fulfilled, I felt obliged to devote myself to this. I was lucky that the Tribunal was based in The Hague, some 180 kilometers from Brussels where at that time I was the correspondent of Nasa Borba, so it was no problem for me to be present at every occasion. At the beginning not much was going on, so that I managed to "cover" everything, and when the trials multiplied, I gathered a small team of journalists so that we were able to follow everything that was going on in the Tribunal. I think that in The Hague there are no "small" and "big" trials, equally as there are no "important" and "less important" victims of war crimes, so it is of extreme importance to report from these processes, because only in this way is it possible to get a real picture of the work of the Tribunal. Today we are, practically, the only agency in the world to do this.

You made a few documentary films dealing with The Hague Tribunal. How powerful is a documentary film in bringing closer so delicate issues as is the case with The Hague?

During my entire carrier, except initially for a short period in Radio Belgrade, I was working for the so-called written media – weeklies and dailies. However, already at the beginning of my "Hague engagement" I felt incapable to present in my reports all the drama and all the emotions from the courtroom. Like, for instance, how dramatic was Erdemovic's confession of guilt even before the judge has asked him to plead; or Jelusic, who speaks out 31 times loudly in Serbian "I plead guilty"; or the testimony of a boy who survived one of the Srebrenica executions, who said that he felt "real sorry to die

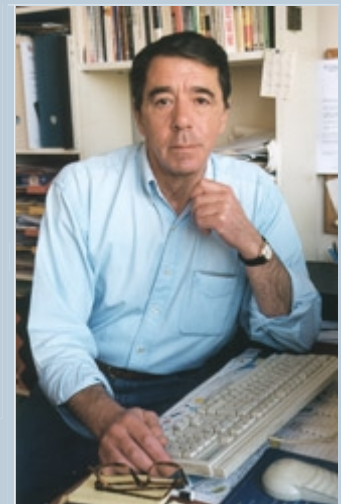
thirsty"; or a Muslim priest who – at the moment when in the cruel game "Russian roulette" the pistol was at point-blank range pressed to his heart – "thought of Lord, my family and the Olympic games". Therefore, from the very beginning I was seeking for possibilities to send from The Hague courtrooms, apart from written reports, authentic words and pictures of the victims' testimonies, their meeting face to face with the accused, or the confessions which confirm that the horrors described in the indictments had really happened. Finally, in March 2000, I was in the position to start with weekly television reports on trials and other events in The Hague, and up to now we have made and sent into the region 260 such broadcasts.

Since for our broadcasts we make pictures of everything going on in the courtrooms, we realized very soon that we have the opportunity to make documentary films dealing with complete trials – from the introductory statements to the verdict – and other themes related to the Tribunal, so up to now we made and presented six such films. We make them with the identical, above described ambitions: to make it difficult to ignore what is going on in the Tribunal and to make it more difficult to deny war crimes. I see as particularly important that the films on Srebrenica, or on the fugitives Karadzic and Mladic and the myths that surround them, were broadcast, among others, on TV networks of Republika Srpska and Belgrade.

A few documentaries, of course, cannot change over night the perception of the Tribunal created during the last decade by the media which were in service of political elites, which are now listed as participants in various common joint criminal enterprise, nor can they exterminate the deeply rooted denial of crimes, but they can give incentives particularly to the young ones who did not participate directly in all this, to ask questions on what has actually happened and who could be responsible for that. And that is the beginning of the facing with the past.

#### **Arbour's metaphor**

Let me quote here an unusual metaphor with which the former chief prosecutor Louise Arbour answered, in a similar interview, the question on global effects of The Hague Tribunal: "Disintegration, death of Yugoslavia" – said Arbour in this interview – "was an earthquake which hit the whole country and the entire region. I think that the Tribunal was an earthquake which hit the entire international law, and of same strength and scope regarding the waves it provoked. The Tribunal has made, I believe, the point from which there is no return in the sense of responsibility, an end of the culture of impunity and the expectation of the world that military and political leaders must be responsible for what they do. There will be disputes whether or not certain concrete decisions were wrong in the legal sense, but this will not remove the heritage which remains behind the fact that the Tribunal has succeeded, despite all initial expectations."



You were also the actor of one of the documentaries. The film shot by Refik Hodzic and Aldin Arnautovic "Blind justice" was very critical in regard to the efforts of the world to put on trial war crimes in the territory of the former Yugoslavia. On the basis of your documentaries I see that you do not think that "The Hague justice is blind". Still, did the Tribunal manage to accomplish its aims?

Hodzic and Arnautovic, if I understood correctly, think that "The Hague justice" is blind in regard to the sufferings and expectations of the victims, with which I would not agree. There were others, too, who criticized the Tribunal, particularly the Prosecution, accusing it of being "blind" in regard to political implications of some of its indictments. For instance, when Goldstone in July 1995 indicted Karadzic and Mladic, international mediators and many Western politicians did not conceal that they see his move as "extremely irresponsible" because it makes it impossible for them to continue their negotiations with them on a "peaceful solution" for Bosnia. Likewise, recently the Trial Chamber which found Limaj and Musliu not guilty, concluding that their individual criminal responsibility has not been proven beyond reasonable doubt, was accused of being "blind" for political consequences of such a decision in Serbia. Anyway, also in some European capitals there are today those who think it is not good that the Tribunal "insists so blindly" on the extradition of Karadzic, Mladic and Gotovina and the other fugitives, because by doing so it hampers Croatia and Serbia on their way to Europe and the bright future.

If the Tribunal has succeeded, then it did so exactly because it was "blindly" insisting upon the mandate given to it and on the standards according to which it works, independently of political opportunism or the political implications of justice.

Hence, I think that the Tribunal is fulfilling its goals, and those who think the contrary I invite to think about how the events in the region would have developed if by any chance there were no Tribunal. I have a very precise, and very scarring, idea in this regard.

First of all, it would have never, of course, been established what had happened and who was responsible and nobody would have ever been on trial for mass crimes. At least, not "ours", and "theirs" would be, as a rule, mainly beyond our reach. Just like "ours" are beyond reach for "them". Milosevic would, most probably, be still in power and together with Bush and Blair he would lead the "antiterrorist coalition" having in mind his often stressed "primacy" in the fight against "Islamic" and, particularly, "Albanian terrorism". General Mladic would share his rich experience from Bosnia, and, particularly, Srebrenica, with allied generals engaged in the fight with Talibans in Afghanistan or the rebels in Iraq. Karadzic, as an "experienced statesman", would be showing off with stately honors in Paris, London and Washington, and maybe he would also be a candidate for the Nobel Prize for literature. And sadistic killers, torturers and rapists like Jelusic, Landza, Bral – to mention just some of those accused in The Hague – would be presidents of municipalities or heads of police departments in their local environments.

If it has prevented only this, the Tribunal should be considered successful. And it has done more than that.

First of all, it established the principle that mass crimes cannot be committed without punishment. It accused and tried, or will try a – to be truthful – relatively small number of those responsible, or the most responsible ones, but the process which is opened by its establishment will continue through decades after the Tribunal ends its mandate. Even if it does not continue in Serbia, Croatia or Bosnia-Herzegovina, it will continue in the world, where "our" criminals which tried to escape to Canada, Latin America, Germany, Scandinavia, are already being arrested, tried or extradited. Second, The Hague investigations, trials and verdicts have reconstructed and documented a significant part of what was happening in the last decade in the territory of the former Yugoslavia. The Tribunal, to be honest, does not write history, but facts which were established within the rigorous probative procedure with a maximum respect of the right of the accused ones, which are written down in the Tribunal's verdicts, undoubtedly will represent precious documentation for future historians and will make it much more difficult to deny crimes and to re-tailor history.

How do you evaluate the capabilities of national judiciaries to cope with war crimes in the region? Is the Tribunal's exit strategy feasible in Serbia, Bosnia-Herzegovina, Croatia?

Here I think we came to the point – thanks to the Tribunal on the one hand, and the conditioning by the international community on the other – from which there must be no return to the times of irresponsibility and the culture of impunity. The Tribunal has, no doubt, encouraged reforms and the strengthening of national judiciaries, and the conditioning by the European Union and the United States obliges these countries to continue from the point where the Hague Tribunal will stop in 2008 or 2010. All these states, after in the last decade, to put it mildly, they did not show too much enthusiasm for war crimes trials, are becoming capable both for taking over the cases transferred by the Tribunal and the continuation of investigations which The Hague Prosecutor started but did not complete because of the "exit strategy". The majority of the evidence against more thousands suspects which the investigators of The Hague Prosecutor have collected from 1994 till the end of 2004 was, or will be, transferred to local judiciaries for further procedures. Hence, local prosecutors and courts should have full hands in the years and decades to come.

However, the ability of local judiciaries in Serbia, Bosnia-Herzegovina or Croatia is the necessary, though not the only, condition for an efficient criminal prosecution of those who got blood on their hands in wars of the previous decade. Equally, if not even more important, is to have in every of these environments a clearly established political will to get over with crimes in one's own group, and to have clear support for this within the public or the so-called critical mass in the public. The creation of these conditions is, clearly, the task of a responsible policy and responsible media. I am afraid, however, that neither the politicians nor the media are at the moment living up to this task, namely that there still prevail understandings and interpretations "this" we must do because of international pressure and conditioning, and not because for us, because these crimes, too, were committed in our (regardless whether Serb, Croat, Muslim or Albanian) name.

### **Ambitions**

I admit that sometimes we have the impression that what we are doing does not interest anyone, that we are throwing our daily reports from the hearings and the weekly televised chronicles into a "well", but we continue despite this. We have, so to speak, modest ambitions: to make it more difficult for the media and the public in the former Yugoslavia to ignore the Tribunal. And, simultaneously, to make it more difficult for reasonable people to negate crimes which were proven in the Tribunal, conscious that there will always be those others who will continue to deny, as there are today still some Germans who

deny crimes from World War II.

How much is the experience of The Hague Tribunal important for the International Criminal Court?

I am certain that we would still have fruitless diplomatic debates on the establishment of an international criminal court that started within the UN sometimes between 1945 or 1946, had not The Hague Tribunal with its first trials and verdicts, before the Statute of Rome was adopted, shown that international criminal judiciary is possible. Likewise, I am convinced that the initial successful practice of The Hague Tribunal gave strong impetus for the establishment of other ad hoc courts or specialized courts for war crimes: for Rwanda, Sierra Leone, "Red Khmers" in Cambodia... In the last ten odd years the Tribunal created an impressive corps of court procedure and practice, verdicts and decisions which develop and articulate principles of international criminal law in a way that will be of immeasurable significance both for the International Criminal Court and the national judiciaries, not only in the states of the former Yugoslavia.

Do you have the impression that verdicts like the one for Krstic, and afterwards for Kunarac, or shall we say Erdemovic, are historic ones?

They certainly are, exactly in the sense of developing, articulation and the implementation of the principles and norms of international criminal law, which we were just talking about. Each of the verdicts that you mention has, in its own way, filled in some gaps in the implementation of international criminal law. In the Krstic case that is the definition of assisting and supporting genocide; in the Kunarac case the first qualification of rape and sexual slavery as a crime against humanity, and in the Erdemovic case rejecting the possibility that acting in accordance with a command or under coercion can be accepted as "complete defense" in cases of soldiers indicted for crimes against humanity or war crimes. From this aspect as historic could be seen also some other verdicts, first of all the decision of the Appeal Chamber in the Tadic case, which elaborates in detail the jurisdiction of the Tribunal and defines precisely the elements of criminal acts contained in its Statute.

I admit that this is of little comfort for all the victims and sufferings in the past wars, but I do think that with our tragedy we have given and immeasurable contribution to the development of international criminal law and the struggle against the culture of impunity. The high principles that are "trained in regard to us" are actually still not universal and the principle of responsibility in the chain of command, according to which were sentenced some of "our" military commanders or commanders of camps, "does not apply" to allied commanders in Iraq or to directors of jails like Abu Graib, as the critics of "selective justice" like to point out. I must, however, admit that I do not feel discriminated because of that. On the contrary, I feel privileged.