

Eastern approaches

Ex-communist Europe

War crimes in the former Yugoslavia

Two puzzling judgments in The Hague

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THE credibility of the [International Criminal Tribunal for the Former Yugoslavia](http://www.icty.org/) (<http://www.icty.org/>) in The Hague is in shreds and few understand the reasoning behind recent judgments. This seems to be the consensus of comments made in the wake of two landmark judgements last week. In one the Croatian state was implicated in war crimes in Bosnia during the 1992-95 war. And in another Serbian officials were acquitted.

Carl Bildt, the Swedish foreign minister, who has a long history of involvement in Balkans summed it in a [tweet](#) (mailto:%3cblockquote%20class=%22twitter-



tweet%22%3e%3cp%3eit%20is%20becoming%20increasingly%20difficult%20to%20see%20the%20consistency%20or%20logic%20in%20the%20different%20judgements%20it%20is%20becoming%20increasingly%20difficult%20to%20see%20the%20consistency%20or%20logic%20in%20the%20different%20judgements.”

On May 30th Jovica Stanisic (pictured above on the right), the former head of Serbia's secret police, was [acquitted](http://www.icty.org/sid/11329) (<http://www.icty.org/sid/11329>) of all crimes, along with Franko Simatovic aka Frenki (pictured above on the left), who had been his right hand man. They had been charged with persecution, murder and ethnic cleansing in Bosnia and Croatia. They were alleged to have been part of a "joint criminal enterprise" (JCE) along with Slobodan Milosevic, the then Serbian leader, Ratko Mladic, the Bosnian Serb military leader, Radovan Karadzic, the Bosnian Serb political leader, Arkan, the infamous gangster and militia leader, and several others.

On May 29th six former leaders of the Bosnian Croat wartime statelet of Herceg-Bosna and its army, known as the HVO, were [convicted](http://www.icty.org/sid/11324) (http://www.icty.org/sid/11324) of “crimes against humanity, violations of the laws and customs of war, and grave breaches of the Geneva conventions.” Best known amongst them was Jadranko Prlic, former HVO head and then Herceg-Bosna prime minister.

In their case the Tribunal concluded that “in the majority of cases, these crimes were not committed in a random manner by a few undisciplined soldiers. On the contrary, they were the result of a plan put together by JCE members to remove the Muslim population of Herceg-Bosna.” In this case the JCE included Franjo Tudjman, the then president of neighbouring Croatia, amongst other top Croatian officials.

These two judgements come in the wake of three others which have left many people in the region shocked or confused. In 2011 Momcilo Perisic the chief of the General Staff of the Yugoslav army from 1993-98, was convicted to 27 years imprisonment but in February of this year he was acquitted on appeal. Last November Ramush Haradinaj, a Kosovo Albanian and former guerrilla leader, was acquitted after a retrial. Also in November Ante Gotovina, a former Croatian general who, in 2011 was sentenced to 24 years in prison, was acquitted along with another former Croatian general.

In the case of Mr Simatovic and Mr Stanisic the judgement describes their key role in setting up, organising, training and financing the various Serbian militias and police forces which operated in Croatia and Bosnia. It described how they murdered and ethnically cleansed non-Serbs. In the first years of the ICTY these charges would have been enough to secure a conviction. This is no longer the case.

In one example, referring to ethnic cleansing operations in Bosanski Samac and Doboï in 1992, the tribunal found that the unit in question had committed murder, deportation and forcible transfer:

“The Chamber ...further found that the Accused organised the involvement of the Unit in the operations in these municipalities. However, the evidence did not establish that the Accused personally directed the Unit during these operations or that they had issued orders or instructions to commit the aforementioned crimes.”

The judgement continued, that in this case, the assistance that they gave the unit, which committed the crimes “was not specifically directed towards the commission of the crimes of murder, deportation, forcible transfer, or persecution. Rather, it allowed for the reasonable conclusion that the assistance was specifically directed towards establishing and maintaining Serb control over these areas.”

The difference between the Frenki and Stanisic case as opposed to the Bosnian Croat Six appears to be evidence of direct orders for crimes in the latter. Eric Gordy, who teaches South East European politics at the School of Slavonic and East European Studies in London and has followed the work of the tribunal closely, said that the judgement said, in effect, that “it was not enough to provide the resources to commit a crime but that you needed specific knowledge of it.” He added that the record of the recent acquittals now meant that the “judicial record does not match the historical record”.

The point at which the ICTY appears to have changed its policy was with acquittal of General Perisic in which the judgement said that “the provision of general

assistance which could be used for both lawful and unlawful activities will not be sufficient, alone, to prove that this aid was specifically directed to crimes of principal perpetrators".

Last week's judgement stunned into silence those Serbs who have always claimed that the ICTY was a kangaroo court designed only to punish Serbs. One Serbian official said, however, on the condition of anonymity, that no one should be surprised, because all of its judgements were "political" and pointed to Mr Stanisic's close [relationship](http://articles.latimes.com/2009/mar/01/world/fg-serbia-spy-cia1) (http://articles.latimes.com/2009/mar/01/world/fg-serbia-spy-cia1) with the CIA. He argued that he and Frenki and probably General Perisic had benefitted from powerful outside protection.

Chuck Sudetic, a former ICTY analyst and the co-author of a [book](http://www.amazon.co.uk/Madame-Prosecutor-Confrontations-Humanitys-Criminals/dp/1590513029/ref=sr_1_2?ie=UTF8&qid=1370099176&sr=8-2&keywords=chuck+sudetic) (http://www.amazon.co.uk/Madame-Prosecutor-Confrontations-Humanitys-Criminals/dp/1590513029/ref=sr_1_2?ie=UTF8&qid=1370099176&sr=8-2&keywords=chuck+sudetic) on the tribunal with Carla Del Ponte, the former chief prosecutor, said that on the basis of the standard set at the Perisic acquittal, "arguably, if Hitler were being judged for crimes arising out of the Holocaust on the basis of the aiding and abetting standard now being applied by the ICTY, he might well have gotten off. Milosevic would likely have gotten off for Bosnia and Croatia. This is not blind justice. This is blindness."

Mr Sudetic said that that the new rule "turns back precedents set at Nuremberg after World War II and does so 20 years after the establishment of the ICTY and might eventually emasculate the capacity of the institutions of international justice to bring to justice the highest-ranking persons responsible for heinous war crimes. Only the actual killers will be punished, not the mass murderers."