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## The Hague

**H**E IS NOT A MAN of great importance. He is neither a president nor a general, nor, by all accounts, a person with great political aspirations or indeed any particular ambition. Dusan Tadic is short, with small eyes, visibly nervous, and subdued. On May 7, 1996, Tadic had the dubious distinction of becoming the first accused war criminal in the gleaming new dock at the UN international criminal tribunal for the former Yugoslavia (ICTY), in The Hague. He is surrounded by four UN guards, in baby-blue uniforms; they do not look very tough, but neither does he. Still, if the charges against him are true, he is at least an unusually cruel person: he is accused of killing, mutilating, and beating Bosnian Muslim detainees in 1992 at the Bosnian Serb-run concentration camps of Omarska and Keraterm. There were rape charges, too, but they were dropped because a witness was afraid to testify.

Tadic doesn't take many notes, and is often visibly bored as the trial drags on. When an expert witness gives a history lecture that starts in the fourth century, Tadic's earphones are off by the 1910s. He has a vain way of brushing his hair back with thick fingers. But there are subtle signs of strain. On those rare moments when he glances at the gallery to see the press and international dignitaries and dissolute Dutch schoolchildren on a grim field trip, all these people here to watch him in the dock, he quickly averts his gaze. They stare at him through the bulletproof glass that encloses the courtroom; he stares away fixedly. Sometimes his eyelids flutter, in erratic twitchy blinks, and he rubs his eyes and puffs out his cheeks as if trying to compose himself.

The tribunal, sorely in need of good publicity, has flacked Tadic's trial as the opening of the first international war crimes trial since Nuremberg and Tokyo. The Nuremberg comparison is inevitable, but it is not a flattering one. Göring, Ribbentrop, and Jodl were the most powerful surviving men in Nazi Germany; Tadic is only a savage pawn in the Bosnian Serb forces. The Nazis stood their trial soon after the war ended; Tadic went on trial more than three years after the establishment of the tribunal in 1993. The leading Allied staff at Nuremberg were at the rank of attorney general or Supreme Court justice; the staff here, with perhaps

two exceptions, are at best middle management. The Nazis were apprehended by victorious Allied armies at the end of the Allied crusade to liberate Europe; Tadic is in custody only because he had the bad luck to get arrested in 1994 by German police in Munich. As Tadic stood his trial, all of the more serious indicted figures—Radovan Karadzic, Ratko Mladic, and fifty-four more—were at large, as Western leaders refused to order the tens of thousands of NATO troops policing Bosnia's peace to arrest them.

Throughout the lands that had been Tito's Yugoslavia, indicted war criminals were in positions of power and comfort, intimidating their former victims with impunity. And never mind about Slobodan Milosevic or Franjo Tudjman, who had so far escaped indictment. (Milosevic was finally indicted in 1999; Tudjman was still publicly unindicted when he died in December 1999.) Historical comparisons only drove home how tokenistic the event was. As an official in the prosecutor's office had said, "The idea that because some thug who was a café owner has been indicted, that justice has been done—nothing could be further from the truth."

It was fitting that the tribunal's first trial was a token gesture. After all, the establishment of the Hague tribunal was an act of tokenism by the world community, which was largely unwilling to intervene in ex-Yugoslavia but did not mind creating an institution that would give the *appearance* of moral concern. The world would prosecute the crimes that it would not prevent. The tribunal was built to flounder.

At first, it did not disappoint. It staggered from one crisis to another: lack of funding; lack of intelligence cooperation from the great powers; lack of staff; threats of amnesties; inability to do investigations; inability to deter war criminals as the wars raged on in Bosnia; and, after the 1995 Dayton accords brought peace and sixty thousand NATO soldiers to Bosnia, a refusal by NATO to arrest the suspects indicted by the tribunal.

Above all, Western war crimes policy in ex-Yugoslavia has been driven by the desire to protect Western soldiers, not Bosnian civilians. Leaders like Bill Clinton and John Major, so solicitous of their own troops, showed an extraordinary ability to shrug off Bosnia's destruction. There were moments when Western public opinion seemed temporarily engaged, horrified by the images of concentration camps like Omarska in 1992, or by reports of mass rape, or by the televised carnage of both Sarajevo market massacres. Some influential constituencies did their best to push intervention, including some feminists (shocked by the use of rape as a weapon of ethnic war), many ethnic and religious leaders, and human

rights activists. But for the most part, public opinion in the major democracies was not outraged enough at the slaughter in Bosnia to apply the kind of overwhelming pressure that pushed liberal governments after World War I and World War II to seek vengeance for crimes against their own citizens.

Without that kind of outrage, the tribunal could merely point out blame. International human rights groups and the press, often the tribunal's best advocates, nudged the process along—a crucial role, but no substitute for state power. The best hope was a handful of angry and legalistic senior Western officials, foremost among them Madeleine Albright, America's UN ambassador and later secretary of state, and Robin Cook, British foreign secretary under Tony Blair. Under their pressure, NATO in July 1997 started making a number of arrest raids, mostly of mid-level war crimes suspects. Protecting NATO soldiers remains the top priority—whether they were British and French UN peacekeepers, members of NATO's force in Bosnia after Dayton, or NATO pilots bombing Serb targets from a lofty altitude in the Kosovo war. Even NATO's arrests in Bosnia have been scrupulously designed to avoid Western casualties: in total, one British soldier has been wounded in such raids so far. With a new and forceful NATO mission in Kosovo, and with Milosevic finally indicted and Tudjman dead, the prospects seem brighter. Still, eight years after the discovery of concentration camps in Bosnia, and five years after genocide indictments, Karadzic and Mladic remain at large. Even if they are finally caught, the overall story of The Hague will be largely a dispiriting one.

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#### CREATING THE TRIBUNAL.

##### *Ustashas and Chetniks*

In 1991, disintegrating Yugoslavia was a country that had failed to come to terms with its own brutal past. During World War II, the fascist Independent State of Croatia (NDH) committed unspeakable atrocities against Serbs and Jews. This Nazi quisling state, led by Ante Pavelic, launched a locally unprecedented wave of ethnic slaughter in 1941.<sup>1</sup> Imitating their Nazi allies, the Ustashas—as the Croatian fascists were known—set up concentration camps for their campaign of ethnic killing, including the notorious Jasenovac camp.<sup>2</sup>

The Ustasha state was finally destroyed in May 1945, just after Nazi Germany surrendered. But the memories of the Ustasha slaughter locked Serbs and Croats in mutual suspicion. For Serbs, the terrors of Jasenovac were fresh. Some of the fiercest opposition to the Ustasha regime had come from the Serb monarchist Chetniks, led by Draza Mihailovic, which were increasingly chauvinist in their call for Serb rights. Many Croats feared that the Chetniks would take revenge for the Ustasha atrocities.<sup>3</sup> In Bosnia, while Muslims fought on all sides, some Muslims had backed the ruling Ustasha, and their atrocities prompted Chetnik reprisals in 1942 and 1943.<sup>4</sup>

Tito's communist regime swept all of this grim history under the rug.<sup>5</sup> His Partisans, unlike Mihailovic's Chetniks, had preferred to make multi-ethnic appeals to all Yugoslavs to resist fascism.<sup>6</sup> After the Ustasha state fell, Tito's victorious Partisans executed at least 20,000 and perhaps 40,000 people who had already surrendered, mostly Croats.<sup>7</sup> Tito (born Josip Broz) preferred to execute Ustasha war criminals on the spot, fearing that the spectacle of war crimes trials would only ignite anti-Croat rage among Serbs.<sup>8</sup> The Yugoslav communists presented all of Yugoslavia's nationalities as equal: no one nation was to be singled out for the wartime massacres or for collaborating with the Nazis, even though this flew in the face of facts.<sup>9</sup> Chetniks and Ustashas were put on the same moral plane.<sup>10</sup> In 1946, Tito turned on Mihailovic, staging a show trial for the Chetnik leader, whose forces had committed atrocities against Muslims in Sandzak and eastern Bosnia.<sup>11</sup>

The memories lingered. In the late 1980s and early 1990s, as Tito's Yugoslavia splintered, the history of the Ustasha era made easy ammunition for nationalists. Milosevic, rising to power in Serbia, whipped up ethnic hatred with speeches about the battle of Kosovo Polje in 1389, but he could more credibly scare Serbs by reminding them of the Ustashas. Franjo Tudjman, Croatia's nationalist president, was known for trying to downplay the number of deaths at Jasenovac, and revived the old fascist checkerboard *sahovnica* shield as the symbol of Croatia.<sup>12</sup> Nationalists in Serbia were quick to equate Tudjman's Croatia with Pavelic's.<sup>13</sup> Especially in the Krajina—a part of Croatia with a substantial Serb population, which would prove the flashpoint for the wars of Yugoslavia's disintegration—it was all too easy for Serb nationalists to argue that an independent Croatia would once again prove genocidal toward Serbs, that 1991 would be a replay of 1941.<sup>14</sup> It was not until 1999 that Dinko Sakic, Jasenovac's commandant, hiding out in Argentina, would be tried and convicted in Croatia.

*From the Gulf to the Balkans*

As Yugoslavia fell apart in 1991, the question of war criminals was fresh in Western minds, too, because of the Gulf War. President George Bush and Margaret Thatcher, the British prime minister, both called for a special UN tribunal for Iraqi war criminals.<sup>15</sup> In October 1990, Bush, with the image of Iraqi despot Saddam Hussein as Hitler in mind, had twice threatened Saddam with another Nuremberg.<sup>16</sup>

Bush's determination faded during the course of the crisis and war, but the idea lingered. As Milosevic stoked Serb nationalism, violence spread throughout the Balkans. First came Serbia's 1991 attacks on Slovenia and Croatia as they seceded from Yugoslavia—the latter war including the shelling of Dubrovnik and the sack of Vukovar, the first major crimes of these wars.<sup>17</sup> This was followed by the Serb onslaught in Bosnia, with devastating "ethnic cleansing" of Bosnia's Muslims and Croats. Serb paramilitary groups and the Bosnian Serb Army imprisoned and murdered local Bosnian leaders, and drove non-Serbs out of their villages, with widespread murder and rape. Western governments had a good sense of the brutal violence against civilians, and of the resulting flow of refugees: 1.1 million by the middle of July 1992. By the time the war ended in 1995, some 200,000 Bosnians had been killed.

Early in the war, Bush made it clear how low Bosnia ranked: "I don't think anybody suggests that if there is a hiccup here or there or a conflict here or there that the United States is going to send troops."<sup>18</sup> What movement there was would come from pressure from public opinion, led by the press and human rights activists. In July 1992, Human Rights Watch, a prominent group in an international human rights movement that had come of age since Nuremberg, called for an international tribunal to punish the perpetrators of war crimes and genocide.<sup>19</sup> On July 19, *Newsday*'s Roy Gutman published the first article about Bosnian Serb-run concentration camps, giving the first mention of names that would become notorious: Omarska, Keraterm, Trnopolje, and Manjaca. Bosnian Serb leader Radovan Karadzic denied that his forces were operating concentration camps. On August 6, Penny Marshall of ITN took Karadzic up on his rash offer to let journalists visit Omarska, and beamed chilling pictures around the world of emaciated Bosnian prisoners behind barbed wire.<sup>20</sup> "It looked like the Holocaust," says a senior Bush administration official. "Nobody pretended not to know."

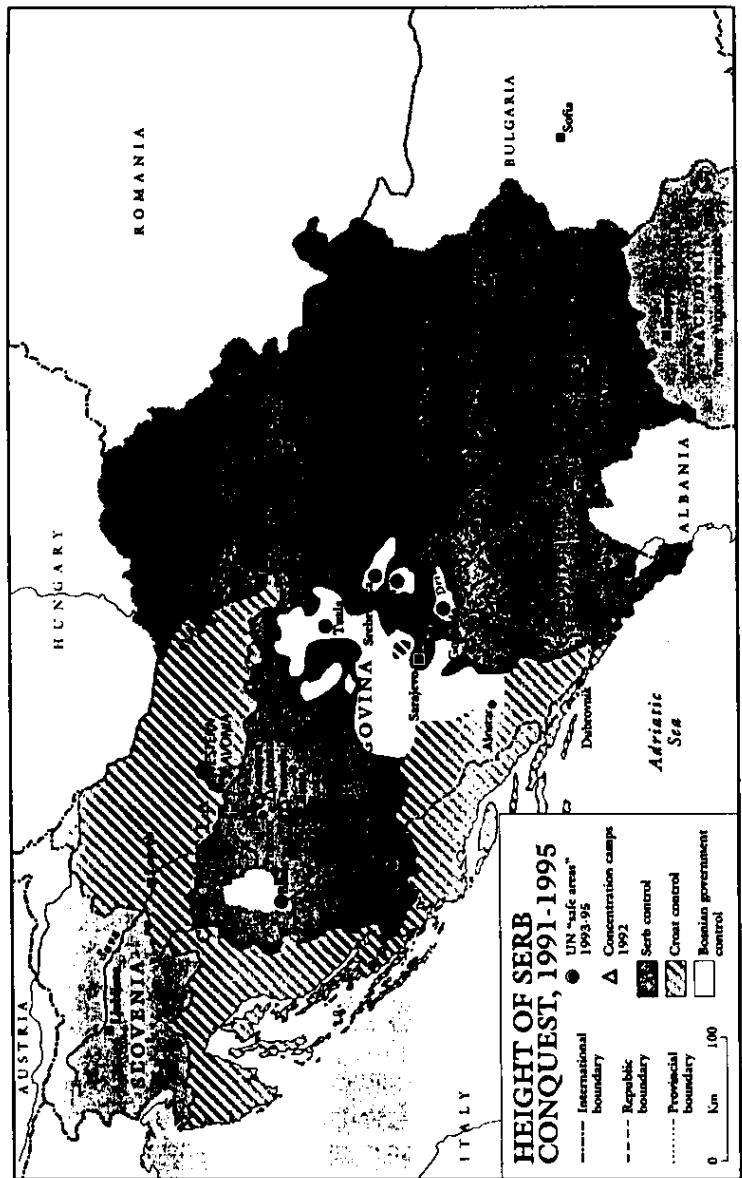
It was only after such images that the UN Security Council took the first tentative step toward creating a tribunal. On October 6, while the

killing continued apace in Bosnia, the Security Council unanimously voted to establish a "commission of experts" to gather evidence of war crimes in the former Yugoslavia.<sup>21</sup> Although France and Britain were not bold enough to vote against the resolution, they from the first saw the issue of war criminals as a potential impediment to making peace in ex-Yugoslavia, binding the hands of policymakers who might have to cut deals with criminal leaders. The UN bureaucracy in the office of legal affairs, and in particular Ralph Zacklin, a Briton, was also obstructionist, according to commission and tribunal staffers.

The commission was set up to go slow, stuffed with academic "old foyeys," as one commissioner put it. The chair, Frits Kalshoven, was an elderly retired law professor at Leiden, in Holland, who admitted he did not know why he had been picked. He was the only full-time member of the commission, which met infrequently and lacked the staff to carry out investigations. One commission member complained that the body was "a low-budget scapegoat." Kalshoven, as *Newsday*'s Gutman reported, was told by "authoritative persons" at the UN not to investigate Milosevic or Karadzic.<sup>22</sup>

Cherif Bassiouni, an Egyptian-American law professor at DePaul University who was on the commission, described Kalshoven as an "indoor scholar," and started pushing hard to make something of the commission. As time went on, Bassiouni—a human rights true believer—accumulated an impressive list of grudges against the UN bureaucracy, blaming France and Britain, with particular scorn for Zacklin as the instrument of obstructionism. Bassiouni raised \$1.4 million from the MacArthur and Soros foundations (the latter led by a sympathetic Aryeh Neier), dwarfing the UN budget of \$900,000. He stockpiled 65,000 pages of documentation, 300 hours of videotape, and a CD-ROM database. The commission had reports of 900 prison camps, about 90 paramilitary groups (mostly Serb, with ties alleged to the Yugoslav National Army and Serbia's Ministry of the Interior), 1,600 reports of rape, and 150 mass graves.

"It's never blatant," Bassiouni said of UN and European obstructionism, "unless you know how the system works." France, he says, turned over almost no evidence other than published reports to the Security Council. According to Bassiouni, when Holland offered \$300,000 for travel expenses in May 1993, it took seven months for the UN to accept the money, after Bassiouni got senior Dutch officials to complain to UN officials.



In August 1993, Kalshoven resigned, leaving the commission officially in Bassiouni's hands. By then, even Kalshoven was publicly complaining about British and French foot-dragging. Britain had not given either money or manpower, he said. When Kalshoven asked Britain to provide combat engineers for a mass grave excavation at Ovcara, outside Vukovar, Britain never bothered to respond. "Britain hasn't done anything for us—nothing at all," Kalshoven complained. "At a practical level we haven't received any help in particular from France and the U.K." he said in December 1993. "If they didn't want us to participate actively, they shouldn't have voted for us."<sup>23</sup> In April 1994, Bassiouni says, the UN bureaucracy shut down the commission, over Bassiouni's loud complaints that only the Security Council should be able to do that.<sup>24</sup> "Things did not start as a conspiracy," Bassiouni says. "But it wound up with all the characteristics of a conspiracy."

#### *Absent at the Creation*

"If there's no international will to stop the killing," said a frustrated UN Security Council ambassador in July 1993, "I don't see how there can be will to have a tribunal." By the end of 1992, Serb forces had conquered 70 percent of Bosnia, and the great powers were still refusing to stop them. "The administration's initial impulse was to cover it up," says Warren Zimmermann, Bush's ambassador to Yugoslavia, of the atrocities. Muhamed Sacirbey, Bosnia's UN ambassador, recalls that proposals for a tribunal were "all intended to defuse the call for military action then," postponing intervention now by promising justice later.

America's position at first was to talk big and carry no stick. "I know of no instance where the violence was targeted by the Bush administration as war crimes," says David Gompert, then the National Security Council staffer on Eurasia. "That would be awkward for our policy." After months of studied disinterest from the Bush administration about the Balkan "hiccup," on December 16, 1992, Lawrence Eagleburger, Bush's secretary of state and a former ambassador to Yugoslavia, gave a dramatic speech at the Geneva peace talks. Eagleburger invoked "a moral and historical obligation not to stand back a second time in this century while a people faces obliteration." He specifically called for charges against Milosevic, Karadzic, and Bosnian Serb Army chief Ratko Mladic for "crimes against humanity," as well as lower-level figures like the notorious Serb paramilitary leaders Vojislav Seselj and Zeljko Raznatovic (Arkan), and a Serb soldier named Borislav Herak who had confessed killing

scores of Bosnians to a Bosnian court.<sup>25</sup> There was “dead silence” in the room, Eagleburger recalled, and David Owen, the European Union’s mediator, “made it clear he considered my remarks unhelpful.”<sup>26</sup>

This sounded impressive, and, relative to other Western reaction to date, it was. But the speech came a month after Bush had lost the presidential election to Bill Clinton, so no one expected the lame-duck Eagleburger to deliver much of anything.<sup>27</sup> On top of that, Eagleburger billed his speech as a spontaneous outburst prompted by a conversation with Elie Wiesel.<sup>28</sup> “I don’t have the sense that there was any intention of following up,” says Zimmerman. “It was a kind of one-shot expression of irritation and opposition to Milosevic.”

Clinton had blasted Bush during the 1992 campaign for coddling tyrants in Beijing and Belgrade, calling for war crimes charges. “If the horrors of the Holocaust taught us anything,” Clinton said on August 5, “it is the high cost of remaining silent and paralyzed in the face of genocide. We must discover who is responsible for these actions and take steps to bring them to justice for these crimes against humanity.”

But when Clinton was in Bush’s shoes, Clinton shifted to the awkward position that he was against crimes against humanity but not prepared to send troops to stop them. After the Vance-Owen plan, which divided Bosnia into ethnic cantons, was proposed, Clinton read a book called *Balkan Ghosts*, which reportedly convinced him that the region was chronically violent and persuaded him to distance himself from Vance-Owen and from air strikes against Bosnian Serb forces.<sup>29</sup> In May 1993, Warren Christopher, Clinton’s secretary of state, toured European capitals to sound out America’s allies on a policy of lifting the arms embargo on Bosnia and launching air strikes against the Bosnian Serbs (known as “lift-and-strike”); when the Europeans refused to endanger their UN peacekeeping troops on the ground, the administration essentially shrugged and abandoned both lift-and-strike and Clinton’s campaign oratory. On May 18, at a congressional hearing, Christopher proclaimed Bosnia “a problem from hell,” born of ancient and therefore presumably unmanageable ethnic hatreds.<sup>30</sup> He turned Holocaust analogies against the Bosnians, not the Serbs: “It’s been easy to analogize this to the Holocaust, but I never heard of any genocide by the Jews against the German people.”<sup>31</sup> On May 21, Clinton stuck by his refusal to send American ground troops to Bosnia: “We don’t want our people in there, basically in a shooting gallery.”

What did that leave for America to do? Set up a war crimes tribunal, but one without teeth. The Clinton administration’s policy had the form

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of legalism, insofar as it preferred law over other forms of political action, but without the outrage that would be necessary to use law effectively. Law became a euphemism for inaction.

The images from Omarska and elsewhere made some kind of gesture necessary, as Klaus Kinkel, Germany’s foreign minister, admitted. In August 1992, he had suggested a tribunal<sup>32</sup>—a legalist proposal from a country that was constitutionally incapable of military intervention. According to American diplomats, France and Britain seemed to oppose a tribunal, but did not want to be seen blocking one. The cynicism of the Security Council was not complete: Madeleine Albright, America’s UN ambassador, herself a former Czech refugee from both Nazism and Communism, fought hard for a strong tribunal. It was against this background—nightmare images from Bosnia, coupled with a fundamental Western unwillingness to stop the Serb rampage—that on February 22, 1993, the Security Council unanimously passed a resolution deciding “that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.”<sup>33</sup> True to UN form, the court was born with precisely that as its mouthful of an official name, stuck on its letterhead and fax cover sheets: The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

#### Picking Goldstone

The West’s stance toward Bosnia was perfectly summed up by Clinton on April 20: “The U.S. should always seek an opportunity to stand up against—at least speak out against—inhumanity.”<sup>34</sup> So the most heated politicking was not over whether or not to have a tribunal; that could be a token gesture. The pitched debate was over the real question: what kind of tribunal?

The tribunal was evidently intended by many countries to be just another kind of reprimand, not an actual court with defendants in the dock. Even Albright did not seem confident that anyone would ever be arrested: “The Tribunal will issue indictments whether or not suspects can be taken into custody. They will become international pariahs.”<sup>35</sup>

There were two main kinds of opposition. First, more simply, those states that routinely abused human rights at home or abroad were afraid of setting a precedent that might eventually bring them into the dock.

"They fear the UN might do this to them," said a senior American official. Russia thought of its record in Chechnya, as well as its traditional ties to Serbia. Li Zhaoxing, China's UN ambassador, said that a court should rest on treaties, not Security Council fiat, and that the special ex-Yugoslavia case "shall not constitute any precedent."<sup>36</sup> After Tiananmen Square and Tibet, everyone knew what that meant.

Second, France and Britain were leading the UN Protection Force (UNPROFOR) in Bosnia, which saw its mandate as not to take sides but only to protect the delivery of humanitarian aid. Britain had 2,700 soldiers on the ground, and France 4,000.<sup>37</sup> UNPROFOR's rules of engagement did not allow it to fire on forces attacking civilians, only to return fire if UNPROFOR itself came under fire—rules that earned it the derisive Bosnian nickname of Un-Protection Force. Hoping to get their soldiers out of harm's way, Britain and France were inclined toward a quick settlement in Bosnia. A serious war crimes tribunal might indict men like Milosevic and Karadzic, who would presumably be needed for such a deal. A tribunal, which could not help but indict more Serbs than Bosniacs, might expose British and French peacekeepers to Serb reprisals. Many French and British diplomats and military officials tended to see all sides in ex-Yugoslavia as equally guilty, and dismissed Albright's pro-Bosnian rhetoric as cheap: America did not have troops on the ground.

It seemed easy enough to cripple the tribunal without attracting the kind of embarrassing headlines that would come from open opposition to it. The evidence depended largely on victim testimonials, which would be harder to gather as time went on, or if perpetrators could threaten potential witnesses. "Valuable evidence, forensic and testimonial, is disappearing by the day," said Jeri Laber, executive director of Helsinki Watch. The UN bureaucracy was slow-moving, and the usual UN budgetary debates would further hamper things. Then there were the legal complexities of drafting a statute for the tribunal, which took three months.<sup>38</sup>

The selection of eleven judges was the first hurdle. America put up Gabrielle Kirk McDonald, a talented former Texas district judge—not much of a gesture, except of Albright's wish to put a woman on the court. There were groans at the complete list, which included nominations by oppressive regimes like Zaire, Iran, and Peru, plus the breakaway ex-Yugoslav states of Croatia and Slovenia. Egypt—not America—nominated Bassiouni. Bosnia nominated Catharine MacKinnon, a feminist American law professor who would later be criticized by human rights activists for exaggerating rape statistics.<sup>39</sup> "The breakdown on judges resembles the breakdown on [Bosnia] policy," said a senior Western diplo-

mat. "Those who want to do the most have the least power in the Security Council, and those who want to do the least have veto power."

But when the UN General Assembly made its choices, the list wound up hack-free, with at least three high-profile judges: two prominent Egyptian and Canadian jurists, and, above all, Antonio Cassese, a compassionate and well-respected Italian international law professor and human rights advocate, who was named as the tribunal's president, or chief judge.<sup>40</sup> Bosnia's Sacirbey complained that there were no Muslims on the bench, showing "maybe outright bias towards Muslims."

In November, the eleven judges took office in The Hague.<sup>41</sup> It was a sobering experience. Cassese would later reckon that the Security Council had "thought we'd never become operational. We had no budget, we had nothing. Zero." The judges were being paid on an ad hoc basis until the end of 1993. They were not even sure that the tribunal would stay in The Hague.<sup>42</sup> There were a few computers, and two weeks of rent paid for a few rooms in the Peace Palace, the seat of the International Court of Justice (the other hamstrung UN tribunal in town). "Some of us were saying, 'Let's go slow,'" said McDonald.<sup>43</sup> But not Cassese, who set about finding the tribunal a headquarters in a slightly run-down building shared with a Dutch insurance firm, and starting work on a single courtroom and on a twenty-four-cell jail. The tribunal drew up rules of procedure, wrestling in particular with how to try crimes of sexual assault.<sup>44</sup> Worst of all, the tribunal had no indictments and no cases, for a simple reason: there was no prosecutor to bring them.

The selection of a prosecutor was a protracted, politicized fiasco.<sup>45</sup> It was clear that a weak prosecutor would doom the tribunal to obscurity. But because the prosecutor did not answer to anyone in making indictments, a bold prosecutor could indict Milosevic, Karadzic, or Tudjman. "That's the key," said Sacirbey. "If the office of the prosecutor is undermined for political expediency, the entire process is in jeopardy of making a mockery of the international legal system."

Bassiouni, still fuming over his fights with France and Britain, was actively lobbying to get the tribunal's top job, with backing from Boutros Boutros-Ghali, an old friend from Egypt who was now UN secretary-general. But Christopher had decided the prosecutor should not be an American, and Bassiouni quickly ran into resistance from predictable quarters. "There are certainly some members of the Security Council that are not too enthusiastic about having an aggressive prosecutor who is likely to disrupt political processes," Bassiouni said—with Britain obvi-

ously in mind. "They prefer a tame or manageable prosecutor to suit their political agenda. I'm obviously not one of those persons."

Although British officials would only call Bassiouni "controversial," Britain pointedly put forward its alternative: a Scottish prosecutor named John Duncan Lowe. Bosnia and its supporters saw this as an attempt to neutralize the tribunal. "We cannot have a European, and especially not an Englishman," said a pro-Bosnian Security Council representative. "Britain cannot negotiate and give absolution at the same time." A senior Western diplomat was more blunt: "If you're a Bosnian, do you want a *Brit* as your prosecutor? If you're France or Britain or Russia, do you want an outspoken Muslim?" Compromise candidates from Canada, Argentina, and Kenya were met with derision, says a Security Council ambassador. Later, Sacirbey went further: "Bassiouni was, behind the scenes, negated as a prosecutor because he was Muslim."

Predictably, this all blew up. Albright preferred Bassiouni over Lowe, but neither was likely to get a majority of the fifteen votes in the Security Council, and she wanted a unanimous vote to show world consensus.<sup>46</sup> (British officials would later also profess not to have wanted a split in the Security Council, which rang a little false since they had nominated the candidate that split the council in the first place.) Boutros-Ghali forced the issue in August 1993 by nominating Bassiouni, who was shot down by Britain. Boutros-Ghali then nominated India's attorney general, who was blocked by Pakistan.<sup>47</sup>

Next, Diego Arria, Venezuela's UN ambassador, a sympathizer with Bosnia who had pushed hard for Bassiouni, suggested one of his own: Ramon Escovar Salom, the attorney general of Venezuela, a figure almost totally unknown to most of the Security Council. Bosnia trusted Arria, and Boutros-Ghali nominated Escovar. No one objected, and in October, the Security Council named Escovar as prosecutor.

No one, that is, except Escovar. He accepted on the condition that he could stay in Venezuela until February 1994 to continue a corruption probe against a former president there. In mid-January, he interviewed an Australian war crimes prosecutor, Graham Blewitt, to be deputy prosecutor. "The same day he brought me before the tribunal," Blewitt recalls, "before the judges in plenary, and said, 'We've found a good deputy prosecutor, and now I'm not going to take up the position of prosecutor, and I'm out of here.' " Escovar resigned and became Venezuela's interior minister.<sup>48</sup> These were not exactly the actions of a man burning to do righteous deeds in Bosnia.<sup>49</sup> Back to square one, America suggested a former U.S. attorney. This time it was Russia's turn to object, recalling a

deal not to name anyone from a NATO country for major international Bosnia jobs, which also blocked a Canadian candidate.<sup>50</sup> Tempers were running short.

It was at this point that Nelson Mandela saved the day. By now, Cassese was considering asking his fellow judges to resign en masse in protest. At the same time, quietly taking matters into his own hands, Cassese approached his ideal choice: Richard Goldstone, a high-profile South African judge. Goldstone was interested, but wanted to safeguard the seat he was sure to get on South Africa's new Constitutional Court. Mandela, democratic South Africa's first president, encouraged by a phone call from Christopher, agreed to hold Goldstone's place open while Goldstone served as prosecutor. "He certainly encouraged me," Goldstone says, of Mandela. "He thought it was important to take what was the first offer of a major international position after South Africa ceased to be a pariah." Mandela's intervention was a pure fluke, but the Security Council dared not play games with the heroic Mandela's pick. Cassese, ecstatic, faxed his fellow judges a Latin note with the traditional Vatican message heralding a new pope: "Habemus papum!"<sup>51</sup> On July 8, the Security Council unanimously approved Goldstone. He took office the next month.

The tribunal had spent eighteen months without a prosecutor.

#### *Pope Goldstone*

Richard Goldstone, the man who was supposed to breathe life into the tribunal, does not act dynamic. He is short, stern, and almost owlish. His most striking physical characteristic is the faint beginning of jowls, which gives the incorrect impression that he is almost constantly frowning. He has a pedantic and precise way of speaking, choosing every word with care. (He and Cassese made an odd pair: the top judge with the temper of a prosecutor, and the top prosecutor with the temper of a judge.) Goldstone seems, in a word, lawyerly.

But Goldstone's reputation at The Hague was, almost from the start, quite the opposite: as a politico. A student anti-apartheid activist at the University of the Witwatersrand in Johannesburg, he had worked his way up to the Transvaal Supreme Court and then the appellate division of South Africa's Supreme Court. Although some democratic activists criticized him for taking a judicial appointment from the apartheid state, he had managed to preserve a liberal reputation, and had found in apart-

heid's patina of legality a direct challenge to his faith in law as an instrument of substantive justice.

For Goldstone, politics often lurked behind law. In 1992, Goldstone pointed out that most South African judges "applied such [apartheid] laws without commenting upon their moral turpitude. A significant number, however, did not remain silent"—a group in which Goldstone included himself, and which he thought helped the courts' credibility. With his typical precision, Goldstone said: "Frequently it is difficult to decide where moral precepts and standards end and where strictly political doctrine begins. In that area, in my view, if a judge is to err, it should be on the side of defending morality."<sup>52</sup>

Goldstone's belief in the interplay of politics and law was further shaped by the job that made his name (and bore it): chairing a government commission of inquiry into political violence from 1991 to 1994, better known as the Goldstone commission. The commission mostly criticized apartheid South Africa's police, as well as the Zulu-based Inkatha Freedom Party and Mandela's African National Congress. Goldstone later said he was shocked at how high up apartheid's brutality went. In many ways, Goldstone's task at the commission paralleled his responsibilities at The Hague. He was independent in his choice of cases; there were more cases than he could possibly investigate, so he had to choose instructive ones; his court had strictly limited powers; and he was executing a legal mandate in a highly politicized environment.

It is never clear exactly to what extent Goldstone—no naïf—saw himself as truly apolitical. On the one hand, in public he declared himself to be simply executing a mandate. "I've got no function other than to expose the causes of violence," he told *The Los Angeles Times*. "And whatever the political consequences of what we find, so be it."<sup>53</sup> On the other hand, in 1992 he had implied that the line between morality and law was not always bright, and that moral considerations should guide judges. However he resolved these tensions, it was with this background that Goldstone left South Africa for The Hague.

He arrived to find a shambles. Goldstone was appalled at the slow-moving UN bureaucracy, which he had to "beg and cajole" to do its work. "A bureaucracy made up of civil servants from 186 countries is more than 186 times worse," Goldstone would later complain. Some members of the prosecutor's staff were still figuring out the situation in ex-Yugoslavia, and the tribunal admitted it was having problems finding enough qualifi-

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fied investigators.<sup>54</sup> In December 1994, Goldstone reckoned he needed twice the number of staff he had, including lawyers and investigators.<sup>55</sup>

Blewitt had started work on fourteen investigations, often of low-level figures.<sup>56</sup> It was a daunting task. The tribunal had to excavate mass graves, find witnesses to crimes that had happened two years ago, create a witness protection unit, counsel rape victims, and cull eyewitness fact from recycled rumor. The early work relied on the commission of experts' best work, a report on Prijedor, which prosecutors would nevertheless later criticize. Some documents from the commission of experts might be forgeries by Croatian intelligence, says a former commission member. It would be enormously difficult to meet legal standards of proof.

Then there was the huge problem of money. In 1993–94, the UN at first proposed the shockingly small sum of \$562,300 for investigations—including witness travel, interviews with refugees, forensic experts, translators, and protection, according to former Bassiouni aide Tom Warrick. In December 1993, the UN General Assembly gave the tribunal \$5.6 million for the first half of 1994, so the court could only make contracts for those six months. That meant it could not sign a lease, hire long-term staff, or buy equipment for investigations. This scared away many potential staffers.<sup>57</sup> As the tribunal put it in an official report, the court "was operating with one hand tied behind its back."<sup>58</sup>

In April 1994, the General Assembly gave over another \$5.4 million to cover expenses until the end of December 1994. The tribunal could now sign a lease for its Churchillplein headquarters in The Hague, but the sum was still hopelessly inadequate. (By way of comparison, the tribunal's 1999 budget was over \$94 million.) The tribunal only had one courtroom for three chambers; the prosecutor's office was desperately trying to recruit serious staff; and the judges were still drawing their salary on an ad hoc basis.<sup>59</sup> In July, twenty prosecutors and investigators were sharing a single telephone to call outside of Holland.<sup>60</sup> It was only in July 1994 that the prosecutor's office felt capable of starting field investigations.<sup>61</sup> The UN's two budget committees tried to cut the budget by 20 percent for 1994.<sup>62</sup> Goldstone had to fly to UN headquarters in New York, cap in hand.<sup>63</sup>

Small wonder that the UN, and particularly its office of legal affairs, continued to frustrate the tribunal. "You know, I used to think that on the list of people who wanted to get Ralph Zacklin, Cherif [Bassiouni] was number one," said an official after watching Goldstone fume in a meeting. "Now he's number two." When Zacklin was mentioned, one senior tribunal official snapped, "Arrogant little shit." Asked about

Zacklin (who has since been promoted to UN assistant secretary-general for legal affairs), Goldstone chuckled: "That is below the belt."

Governments were slow to stuff Goldstone's pockets. America was the most generous, giving \$3 million for computers and, crucially, seconding twenty-two investigators and prosecutors. This was a huge shot in the arm (the total number of prosecution staffers was only sixty-seven),<sup>64</sup> although it would later cause grumbling about the dominance of the "American mafia" and UN disapproval of more American hires, plus the usual complaints about America's delinquency in paying UN dues. Major's Britain gave \$30,500 and one staffer. France gave nothing. Sweden, Denmark, Malaysia, and Pakistan were all more generous than Britain and France.

To the frustration of American officials, this European foot-dragging reflected a general European sense of the Balkans as an endless quagmire for European soldiers. France and Britain, said a senior American diplomat, were "further along the line toward reconciliation without justice." "When faced with a formal decision in the Security Council, they're helpful," said an American official, of the British. "When they have to do something voluntarily, they aren't." British Foreign Office diplomats were evasive when asked if they would use sanctions for states that rebuffed the tribunal. The problem, said a British official, was "indicting people [when] you may be negotiating with them."

America was more enthusiastic, but still underwhelming. In February, after a Bosnian Serb shell exploded in Sarajevo's Markale market, Clinton snapped, "Until these folks get tired of killing each other . . . bad things will continue to happen." Steve Walker, a Croatia desk officer and Balkans specialist at the State Department, who resigned in protest of Clinton's inaction in 1993, says that the State Department was "barely going through the motions," doing just enough to outperform America's more reluctant allies. "Saying we supported the war crimes tribunal was easy," he said. Albright was more serious, but it was clear she had no great backing in Washington. Even John Shattuck, the assistant secretary of state for human rights, kept expectations low. "Justice doesn't have to ultimately mean putting people behind bars," Shattuck said. "I would not measure [the] tribunal in terms of how many people go to jail, or top-level people, because the number is going to be very low. Success is a commitment to establish principles of accountability, getting out the truth."

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In the face of all this, Goldstone's immediate task was to show that the tribunal was viable and relevant. He insisted that no one on the political and military ladder was immune, and that he preferred to aim at the top. But his first indictments were far lower down. On November 4, 1994, the tribunal confirmed Goldstone's first indictment: of the commander of the Susica camp in Bosnia, accused of crimes against humanity in the summer of 1992.<sup>65</sup> There were no illusions that Bosnian Serbs would turn him over. On November 8, Goldstone asked Germany to defer to The Hague's jurisdiction the prosecution of Tadic, a Bosnian Serb in German custody, already indicted by Germany for crimes at Omarska.<sup>66</sup> Tadic would be the first person in the tribunal's custody.

Goldstone knew he needed to raise the tribunal's visibility, and even the judges were urging him to issue more indictments.<sup>67</sup> Although some of the early indictments are unlikely to hold up in court, they seemed necessary at the time. Not everyone agreed. "We waste our time going after these small fish," said a Goldstone staffer. Cassese was against "trying small fry." In 1997, a senior tribunal official would describe the list of indictees as "this fucking list of idiots." Some of these cases rested on a small number of witnesses; if two or three could be intimidated out of testifying, said nervous prosecutors, then the case would collapse. (In February 1998, Robert Gelbard, an American envoy, would publicly say that America thought many indictments "will not stand up in court."<sup>68</sup> Louise Arbour, Goldstone's successor, has dropped indictments against seventeen suspects.)

By far the worst problem was the unfolding bloodbath in ex-Yugoslavia. Goldstone came into office while Serb forces continued to besiege Sarajevo and other Bosnian towns, and in the aftermath of the brutal 1993–94 war between Bosnian Croat forces and the Bosnian government. Except for the Bosnian government, authorities in ex-Yugoslavia viewed The Hague with contempt. Serbia, blocking international investigations, complained that the tribunal was biased against Serbs. Against this, the tribunal could only threaten to report noncompliance with its orders and arrest warrants to the Security Council.<sup>69</sup>

To no avail. Cassese formally protested five times, and each time got roughly the same reply from the Security Council.<sup>70</sup> "We deplore their attitude, we condemn their attitude. Either deplore or condemn," Cassese said. "Maybe next time they'll find a third word." Relying on a reluctant UN and NATO to enforce its edicts, the tribunal could only inconvenience and stigmatize its suspects. Goldstone often pointed out that it

was hard to be a world leader if one could not travel. Under the tribunal's Rule 61, Goldstone could hold a public hearing on the evidence against suspects being shielded by recalcitrant Balkan authorities.<sup>71</sup> But Goldstone had no troops.

### *Protecting Soldiers*

NATO had the troops. In all of The Hague's early difficulties, the fundamental hurdle was the West's refusal to take military action against war criminals in ex-Yugoslavia.

A dread of Serb reprisals against UNPROFOR lay at the root of French and British fears of being seen as less than impartial.<sup>72</sup> UNPROFOR's guidelines made it perfectly clear that humanitarianism yielded pride of place to self-protection: "The execution of the mandate is secondary to the security of UN personnel."<sup>73</sup> David Owen later wrote, "I believe Mladic knew that UN troops were his ultimate safeguard against NATO air power."<sup>74</sup>

To the frustration of its NATO allies, America refused to send troops into Bosnia. Colin Powell, chairman of the Joint Chiefs of Staff under Bush and then Clinton, later wrote: "No American President could defend to the American people the heavy sacrifice of lives it would cost to resolve this baffling conflict."<sup>75</sup> In 1993, Clinton's choice of a lift-and-strike policy had the advantage of not embroiling American soldiers in ground combat. But it risked UNPROFOR troops, so the Europeans scotched the idea.<sup>76</sup> America's reluctance to risk troops overseas was only strengthened in October 1993, when eighteen American soldiers were killed in Somalia while trying to catch faction leader Muhammad Farah Aideed.

Such American reticence complicated the tribunal's work, as for instance in the excavation of a mass grave in a field at Ovcara, near Vukovar, where some 260 Croats from Vukovar hospital had allegedly been executed by Milosevic's Yugoslav National Army in 1991. The forensic investigators at Ovcara were led by Physicians for Human Rights, a Boston-based organization. But when the group asked for military engineers, in June 1993, the State Department and the Pentagon—to Albright's chagrin—refused, fearing Serb attacks.<sup>77</sup> (Britain, according to Kalshoven, never even replied to a similar request.)<sup>78</sup> "If you want us to deploy soldiers," said James Rubin, Albright's spokesman and confidant, "you need more soldiers to protect them, a whole 'nother level of commitment which the United States government has not reached."

The investigators had to settle for about 150 Dutch army volunteers. According to Eric Stover of the UN team, they had to beg permission from the local Serb authorities, who demanded the exhumation of a mass grave with dead Serbs. In October 1993, the UN team set out, and eerily found itself being housed in barracks that backed onto a training ground for Arkan's Tigers, a savage Serb paramilitary group. The UN team was only able to clear away the overgrowth at Ovcara before the local Serb general, Milan Milovanovic, sitting beneath a picture of Milosevic, ordered them out.<sup>79</sup>

As the war dragged on, both Britain and France lost all stomach for the UNPROFOR mission. Most of Major's cabinet wanted Britain's 5,500 troops out of Bosnia before the winter of 1995–96, and France warned that it would bring its 5,000 UNPROFOR soldiers home if America did not make a military commitment in Bosnia.<sup>80</sup>

America was no more enthusiastic. Clinton resented the media's focus on war crimes in Bosnia. "They keep trying to force me to get America into a war," Clinton once said.<sup>81</sup> "The president was being asked here to go out on a limb with an issue that had no constituency," says Dick Morris, Clinton's former pollster and strategist (who has since turned against Clinton). In May 1995, Clinton tentatively said that America "should be prepared to assist NATO" if NATO asked. The White House panicked as Clinton's approval ratings dropped and Morris warned of public perceptions of another Vietnam. Clinton backtracked, vowing to send troops to help British and French soldiers only if there was no fighting going on.<sup>82</sup>

There was a vivid example of the West's emphasis on its own soldiers in May 1995. On May 25, NATO planes finally struck at Bosnian Serb forces that had defied a NATO ban on shelling Sarajevo, a UN-designated "safe area." The Serb forces retaliated by shelling all six "safe areas" in Bosnia, including a shell that killed seventy-one people in Tuzla. This did not faze NATO. But then the Serbs took more than 350 UNPROFOR soldiers hostage, chaining one Canadian soldier to a Bosnian Serb Army ammunition dump. Holbrooke, a lone hawk, argued to Christopher that NATO should demand the release of hostages and continue bombing if the Serbs refused. Instead, the American government decided to quietly put off air strikes, fearing Serb retaliation against the hostages. Britain, France, and Canada caved in, stopping the air strikes and starting quiet talks to get their hostages back. Bernard Janvier, the UN force commander in Bosnia, requested and got a meeting with Mladic. Janvier told Yasushi Akashi, the UN special representative on Bosnia, "We are no longer able to use air power because of the obvious reason that our sol-

ders are on the ground." Akashi announced that UNPROFOR would stick to "strict" peacekeeping.<sup>83</sup> And on September 10, Janvier met with Mladic, at the request of President Jacques Chirac of France, to ask for the release of two downed French pilots.<sup>84</sup>

The nadir came with the Srebrenica massacre in July 1995. As he conquered Srebrenica, Mladic took 450 Dutch UNPROFOR troops hostage as a hedge against NATO air strikes. "Srebrenica taught us that our lives were less valuable than the lives of the UN soldiers," one survivor said later. "That, for us, was the final truth."<sup>85</sup> A Bosnian officer said that, for the West, thirty Dutch hostages in Serb hands were worth more than 30,000 Muslims. On July 10, Joris Voorhoeve, the Dutch defense minister, did decide to risk thirty Dutch lives if there were NATO bombings; but the NATO raids never came. The Clinton administration's first reaction to Srebrenica was to avoid having to risk its own troops—not by rescuing the Bosnians, but the Dutch UN troops. Akashi met with Mladic to try to free the UNPROFOR hostages and to let the International Committee of the Red Cross check on thousands of Muslim prisoners.<sup>86</sup> In an impetuous flash of Western courage, Chirac suggested to Clinton sending French and American troops to liberate Srebrenica. Clinton, incredulous, refused, as did Britain and Holland. America also dismissed Chirac's proposal that American helicopters fly French troops into the threatened enclave of Gorazde, a mission seen as too risky for the American pilots; instead, NATO threatened air strikes.

But when a single American life was on the line, America could make spectacular efforts. As American soldiers were dying in Somalia in 1993, Clinton had exploded: "We're not inflicting pain on these fuckers. . . . When people kill us, they should be killed in greater numbers. . . . I believe in killing people who try to hurt you, and I can't believe we're being pushed around by these two-bit pricks."<sup>87</sup> In Bosnia, he got his chance. Just over a month before Srebrenica's fall, a Bosnian Serb Army missile shot down an American F-16, leaving its pilot, Scott O'Grady, trapped behind Serb lines. O'Grady was rescued six days later by Marine commandos.<sup>88</sup> Clinton himself was notified in the White House residence by a midnight phone call. "He was just gleeful," remembers Dick Morris, "like he was at a basketball game." O'Grady—an American war hero, without an American war—returned home to national acclaim and a White House reception with Clinton, Vice President Al Gore, William Perry, the secretary of defense, and John Shalikashvili, chairman of the Joint Chiefs of Staff. When NATO finally started bombing Bosnian Serb forces soon after, Clinton remembered the area where O'Grady had

been downed, and wanted to strike there on principle. "Did he value American lives more than Bosnian lives?" says Morris, of Clinton. "Damn right he did. He's president of the United States."

*"An Academic Exercise"*

Even with Goldstone at the helm, the tribunal staggered through much of 1995. Its 1995 budget of \$25 million was insufficient for witness protection and investigations, and prosecutors worried they were not getting crucial intelligence from Western governments.<sup>89</sup> Goldstone, who took media relations seriously, could use his high profile to appeal directly to Western public opinion. In retrospect, Goldstone is not sure if he made enough noise or not: "[P]ossibly if one had been less gracious and less diplomatic at that point, it may have been worse. . . . We were a very new institution. We had to establish our own credibility." Goldstone could also put pressure on the West simply by issuing more indictments. On February 13, he indicted twenty-one Bosnian Serbs for running the Omarska concentration camp in 1992. Camp commander Zeljko Meakic was slapped with the first indictment ever for genocide.<sup>90</sup> But of the twenty-one, only the low-level Tadic was available for trial. "Not a terribly intelligent person," sniffed a Goldstone staffer.

The idea was to build upward from such cases. Hopes quickly faded for a "smoking gun" document that would directly implicate Milosevic in "ethnic cleansing" in Bosnia.<sup>91</sup> Instead, the prosecutors could only hope to build slowly on divisions among the nationalist Serb and Croatian leadership. During Serbia's 1993 parliamentary elections, for instance, the regime's men had accused Seselj's paramilitaries of war crimes; Seselj fired back that he would go to The Hague, but "I don't see how I could go without Slobodan Milosevic."<sup>92</sup> Seselj would later claim to have "incontestable proof" that Milosevic, not Karadzic or Mladic, was commanding the war in Bosnia.<sup>93</sup> Relations between Milosevic's regime in Belgrade and the Bosnian Serb leaders in Pale were always fractious and often poisonous. If a mid-level leader could be put on trial, he might give information on higher-ups to save himself. The cases against senior figures, if Goldstone dared, would rest on command responsibility: showing that leaders must have either ordered, or known of and not prevented, war crimes.

This was no small task. Because the Serbs were utterly uncooperative, it was easier to gather evidence from Bosnians and, to a lesser extent, Croats—ironically, the Serb accusation of bias made it more likely that

The Hague would indict Serbs. Many of the early indictments aimed low, at figures too uninvolved in the chain of command to incriminate the major leaders. It was difficult to trace the chains of command in Serbia and the Bosnian Serb power structure, and the links with paramilitary groups were particularly murky. These were some of the possible reasons why Goldstone did not publicly indict prominent thugs like Arkan and Seselj. Asked about Arkan and Seselj, Goldstone said, "The only thing I can say to anybody who thinks people should be indicted who haven't been indicted: give us the evidence. And by evidence I don't mean allegations. I mean witnesses or documents with which we can go to court." Holbrooke writes that he repeatedly pressed Goldstone to indict Arkan, but got no answer.<sup>94</sup> (In June 1997, Arkan would claim that he was exonerated because he had not been indicted.<sup>95</sup> It was not until September 1997 that Arkan was finally secretly indicted—more than five years after his war crimes made him notorious.)

How high could the tribunal dare to aim? The most obvious—and delicate—target was Milosevic, who had driven Yugoslavia into collapse and war. In the event, Milosevic would not be indicted until 1999, for atrocities in Kosovo. But as early as 1991, his JNA had committed war crimes in its war with Croatia, and Western intelligence had no doubts that Serbia was helping the Bosnian Serb Army and Serb paramilitaries. Roy Gutman, a respected journalist, argues that under Serbia's own chain of command, Milosevic bore command responsibility for Serb paramilitary groups.<sup>96</sup> But indicting Milosevic might set off a political earthquake. Goldstone insisted that he did not care. "If we get evidence, we'll give priority to higher-ups," said Goldstone in November 1995, when asked about indicting Milosevic. "I don't exclude anybody. If we haven't indicted someone by now, it's because we don't have evidence." He firmly denies that there was ever any pressure to spare Milosevic.

Other tribunal staffers admitted to more nervousness. Because the standards of proof for an indictment are lower than those required for a conviction, some staffers in the prosecutor's office figured they could indict Milosevic, but they were not sure they could get a conclusive conviction in court. People in the prosecutor's office liked to quote a proverb (although no one was sure where it was from): "If you're going to strike at the king, make sure you kill him." It would be irresponsible and mortally embarrassing to lodge a weak indictment against a major figure.

Then there were the political problems: disrupting Balkan diplomacy, and testing the limited tolerance of the Security Council. Milosevic was

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cultivating an image of himself as a useful interlocutor for the West. It is impossible to believe that Goldstone was not aware of these considerations, although he would vociferously deny that politics played any role in his decision. "I think there'll be hesitation from the prosecutor," said one Goldstone staffer. "Politically, you don't want to dislocate someone from the political process." Hague staffers might not have needed to worry; a senior Clinton administration official says that an indictment would not have prevented America from negotiating with Milosevic.

Tudjman, the other major nationalist seen as useful by the West, also seemed to be off the hook. Prosecutors, while aiming at Bosnian Croat atrocities in the Lasva Valley, said they were having difficulties definitively linking him to those operations. "I just don't think it's going to happen," said a Goldstone staffer. "Making a Greater Croatia is not a war crime." Moreover, says a Bosnian diplomat, Bosnia was somewhat circumspect in its accusations against Croatia, realizing that Croatian support was needed to balance against the Serb forces.

That left Karadzic and Mladic. The Bosnian Serb leaders had a vile reputation in the West, and Karadzic was increasingly in ill odor in Belgrade.<sup>97</sup> Marginalizing Karadzic and Mladic might help peacemaking efforts. "You have two options," said a Goldstone staffer. "A, you can indict Milosevic and be shut down. B, or you can do low-level [indictments] and do a few trials, like Mladic and Karadzic." Though not as bold as indicting Milosevic, it was still a heady prospect. Goldstone thought that the Security Council probably had never thought that creating the tribunal would lead to the indictment of Karadzic and Mladic.

"Goldstone really pushed on Karadzic and Mladic, to the point of rebellion," remembers a member of Goldstone's staff. "He wanted it sooner rather than later." The Bosnian government was also investigating Karadzic and Mladic, which helped force Goldstone's hand. On April 21, 1995, Goldstone asked Bosnia to suspend its investigation and defer to The Hague instead.<sup>98</sup> Finally, after issuing another round of lower-level indictments,<sup>99</sup> Goldstone threw his thunderbolt: on July 25, he indicted Karadzic and Mladic for genocide and crimes against humanity.<sup>100</sup>

The indictment, bringing together investigative work from several teams, was a kind of accounting for much of the Serb war in Bosnia. The charges were a grotesque litany of the cruelty Karadzic and Mladic had presided over: shelling and sniping at civilians in Sarajevo and other towns; camps like Omarska, Keraterm, Trnopolje, Luka, and Manjaca<sup>101</sup>;

the sacking of mosques and Catholic churches; murder, rape, and torture. There was also one count for taking UNPROFOR troops hostage two months earlier.<sup>102</sup>

European countries, used to negotiating with Karadzic and Mladic, were startled to have them named as pariahs.<sup>103</sup> “I never thought that that was insurmountable,” recalls Warren Christopher, “or that the tribunal shouldn’t do what it needed to do because of the negotiating process.” Other diplomats, including some at the State Department, were more alarmed. After all, America had often reached out to Karadzic. In December 1994, America had broken the Contact Group ban on meeting Karadzic by sending envoy Charles Redman to Pale,<sup>104</sup> and Jimmy Carter had met with Karadzic and Mladic at around the same time. (A British, French, and American delegation had personally met with Mladic in Belgrade two days before he was indicted, albeit to threaten him with air strikes.) One tribunal official said he feared that Goldstone’s move would be an invitation for the Europeans to “turn the heat up on Goldstone. They’ll find he’s made of asbestos.” Goldstone says he did not worry much about incurring the Security Council’s wrath: “You know, obviously it would be naive not to take into account all realities. But it was really done as, if you like, as an academic exercise. Because our duty was clear. We weren’t going to be dissuaded from doing it by any prognostications—good or bad—as to what effect it would have.” Serbia had talked of allowing the tribunal to open a one-person office in Belgrade (which Goldstone called “a slight chink in the opening of a door if one had extremely good eyesight”); that, and whatever other tiny gestures Serbia might have made, were now put on hold. Predictably, the Pale leadership denounced the tribunal as anti-Serb.

The indictment of Karadzic and Mladic was, like so much of the tribunal’s work, simultaneously revolutionary and hopelessly insufficient. Before Goldstone could issue the actual indictment on July 25, Karadzic and Mladic had made it clear exactly how seriously they took the West’s muted warnings about war crimes, and Goldstone’s moves toward indicting them. On July 11, Mladic led his Bosnian Serb Army into Srebrenica, one of six Bosnian towns ostensibly under UN protection. “In the end,” Mladic bragged, “the fate of Srebrenica’s Muslims lies in my hands.”<sup>105</sup> Bosnian Serb forces then proceeded to slaughter at least seven thousand Muslims at Srebrenica—the single worst crime against humanity in Europe since World War II. The very day that The Hague indicted

Karadzic and Mladic, Mladic’s forces took Zepa, another UN ‘safe area.’<sup>106</sup>

#### NATO Strikes

It was only after Srebrenica that the White House began to rethink its Bosnia policies, with Clinton increasingly convinced that the Bosnian Serb leadership only reacted to military force.<sup>107</sup> On August 10, Albright gave a withering denunciation of the Bosnian Serbs at a closed session of the UN Security Council, unveiling classified U-2 spy plane photographs of mass graves near Srebrenica. Holbrooke started a new diplomatic shuttle. Holbrooke was chosen for his toughness, which Christopher thought would let him deal with all the parties—including the Serb war criminals.<sup>108</sup>

Clinton and Holbrooke were horrified when three senior American diplomats were killed when their armored personnel carrier skidded off the treacherous Mount Igman road into Sarajevo, which they had to take because the Serb authorities would not let them use Sarajevo’s airport. These American deaths drove home the horrors in Bosnia to the administration in a way that untold thousands of Bosnian deaths had not. In his memoirs, which begin with a harrowing account of the fatal trip over Igman, Holbrooke wrote: “Within the Administration, the loss of three friends on Mount Igman carried a special weight; the war had, in effect, come home.”<sup>109</sup>

The balance of forces on the ground was swinging against the Serbs. In early August, Croatia reconquered the Krajina. The last straw came when, on August 28, Bosnian Serb shelling killed thirty-eight people in Sarajevo’s downtown marketplace. Unlike thousands of shells before, this one got a reaction. After the fall of Srebrenica and Zepa, with NATO careful to get UN troops out of Gorazde, with UN personnel out of Serb territory, and with Bihać secure, for the first time since 1992 there were no UNPROFOR forces vulnerable to Serb hostage-taking.<sup>110</sup> (NATO’s motivations were not altogether humanitarian; since late 1994, under a secret plan called Op-Plan 40104, NATO was committed to sending 60,000 troops—including 20,000 Americans—to extricate UNPROFOR, a mission that might be just as risky as enforcing a peace and much more ignominious.) On August 29, NATO planes unleashed a massive bombing campaign against Bosnian Serb positions. In September, a Croatian and Bosnian offensive was driving Serb forces out of northwestern Bos-