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Putting Direct Perpetrators on Trial:
the Ovcara Massacre Trial in Belgrade

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**EUROPEAN UNIVERSITY INSTITUTE
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Abstract

This paper is based on ethnographical fieldwork conducted in The Hague, Croatia and Serbia. It addresses the distinction between *command* and *individual* responsibility on the one hand, and between *individual responsibility* and *collective guilt* on the other, by focusing on the two trials related to the Ovchara massacre, the one in the International Criminal Tribunal for the former Yugoslavia (ICTY) and the one in Belgrade, and on non-judicial attempts to deal with the past in Serbia. My main question here is the following: are trials held in the territory of the former Yugoslavia more likely than the trials held in The Hague to contribute to the two major features of restorative justice, i.e. to repair the harm suffered by the victims and to reintegrate the offenders into their community. On the basis of the meetings I had with the association *Vukovarske Majke*, it seems that the victims' families expect more from local trials than from the ICTY: even though, and maybe because, the indicted are the direct killers of their relatives, they are the ones who can give details about the circumstances of the massacre, and information about the location of the still missing corpses. Yet they all underlined that local trials would never have happened without the existence of the ICTY. In addition, in a situation of such massive crimes, courtrooms are not the only spaces where justice can be dispensed. The essential work of dealing with the past outside the courtrooms, as the example of Novi Sad's *Helsinki Committee for Human Rights* presented in this paper shows, is an important step towards restorative justice.

Keywords

Vukovar; Croatia ; Serbia ; Restorative Justice, International Criminal Tribunal for the former Yugoslavia (ICTY); Anthropology; Command Responsibility; Collective Guilt.

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the Ovčara Massacre Trial in Belgrade*

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Introduction

On 18 November 1991, Vukovar, a city located in the Slavonia region of Croatia, on the banks of the Danube River, was occupied by the Yugoslav People's Army (*Jugoslovenska Narodna Armija*, hereafter JNA) and Serbian paramilitary troops, after a three month long siege. Hundreds of people (mostly civilian¹) sought refuge in the city's hospital, hoping that they would be evacuated under the control of an ICRC convoy. But on 20 November, the convoy was stopped by Army Major Veselin Šljivančanin, a JNA commander (Stover and Shigekane 2004:85). While ICRC representatives tried to negotiate with him, JNA and paramilitary troops took at least 270 men and transported them by bus to the small farm community of Ovčara, six kilometres away from the city. They were beaten over several hours and during the night at least 264 men were shot in groups of 10 and buried in a ravine. The three month siege of Vukovar became a symbol, before the Sarajevo three year siege, of the Belgrade-supported project of 'ethnic cleansing'.²

¹ But also the few Croatian defenders (*branitelji*) of the city who hadn't left the place when it was clear that the city was about to fall.

² Serbian forces and the JNA occupied a third of Croatia's territory until August 1995, when the Croatian army, supported and armed by the USA, launched the *Oluja* (Storm) operation, planned to get back Krajina and Slavonia territories occupied by the Serbian forces. All the Serbs living in Krajina and Slavonia were chased away, about 1,000 -mostly elderly people- were murdered. The ICTY has indicted many Croatian officers for their responsibility in the murders committed during the Oluja operation. All of them, including General Ante Gotovina, recently arrested, have been transferred to The Hague.

In 1992, under the Vance plan, UNPROFOR was deployed in Slavonia. In December 1992, a UN forensic investigators team in Ovčara identified a mass-grave site containing at least 200 bodies (UN Report: 4). After the International Criminal Tribunal for the former Yugoslavia (hereafter ICTY) was created in 1993, this evidence led to the indictment by the ICTY Prosecutor, on 26 October, 1995, of Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin, three JNA officers. Their trial began in The Hague in October 2005. While the ICTY investigators were preparing the trial of the commanders of the Ovčara execution, the Serbian judiciary, in co-operation with the ICTY³, started proceedings against the direct perpetrators of the crime. The Belgrade District Court's War Crimes Panel, instituted in June 2003, has charged the alleged direct perpetrators of the crime, 17 members of the Vukovar Territorial Defence Unit (*Territorialna Odbrana* hereafter TO⁴) and the "Leva Supoderica" volunteer unit for war crimes against 192 prisoners of war in Ovčara. The trial started in Belgrade on 9 March 2004. All the indictees were already in custody: several had already been detained as part of *Operation Sabre*, a police crackdown launched after the assassination of Serbian Prime Minister Zoran Djindjic in 2003. In December 2005, 14 of the indictees were found guilty and sentenced to a total of 231 years in prison. However, on December 14, 2006, Serbia's Supreme Court overturned the first instance ruling. The entire verdict, both that which found the 14 indictees guilty and that which acquitted the others, has been cancelled; the 're-trial' began again on 12 March 2007.

This paper is based on ethnographical fieldwork conducted in The Hague, Croatia and Serbia in winter 2003 and spring and winter 2004⁵. It addresses the distinction between *command* and *individual* responsibility on the one hand, and between *individual responsibility* and *collective guilt* on the other, by focusing on the two trials related to the Ovčara massacre, the one in the ICTY and the one in Belgrade, and on non-judicial attempts to deal with the past in Serbia. My main question here is the following: are trials held in the territory of the former Yugoslavia more likely than the trials held in The Hague to contribute to the two major features of restorative justice, i.e. to repair the harm suffered by the victims and to reintegrate the offenders into their community (Roche 2004, Sullivan and Tifft 2006) Indeed, the lack of visibility the ICTY has in the former Yugoslavia is sometimes seen as an obstacle to the implementation of a restorative justice: because of the distance between the scene of the crime and the tribunal, it stands in the way of integration and the memory process of the populations concerned. In addition, a relatively small number of people is being prosecuted in The Hague, and the majority of them are political leaders and high-ranking soldiers. As the victims' families say, if it is indeed important for them to see major political actors prosecuted in The Hague, it is even more crucial to see on trial

³ In May 2003, ICTY chief prosecutor Carla Del Ponte visited Belgrade and handed the Serbian authorities eight boxes of documents containing evidence that reportedly implicated others than the three JNA officers in the Ovčara massacre.

⁴ The TO played a crucial role during the wars in Croatia and BiH. The TO did not depend on the Yugoslav People's Army, even though the TO and the JNA were designed to complete each other, but directly on each of Socialist Yugoslavia's six republics. Many big factories had their own TO units, and had weapons' stores inside the factories.

⁵ With a grant from the Europa-Viadrina University in Frankfurt/Oder, Germany, where I was a post-doctoral fellow. The fieldwork was carried out together with French videoartists Florence Lazar and Raphael Grisey, who directed a documentary film about the trial, *Prvi Deo*, released in 2006. See <http://www.spoutnik.info/film.php?IDfilm=1241>

those involved who are not considered such high-level criminals, in the sense that they did not organise the crime politically but did directly participate in it: these are the ones people have seen killing or abusing their relatives, and sometimes they still live near their victims. But, most of all, they know what happened because they were there, physically, unlike the indictees in The Hague. There are about 80 people who were seen in the hospital on that day but whose corpses have not yet been identified: this is why only 192 names appear in the indictment, when the probable number of victims is 264. Dozens of corpses found in the Ovcara mass grave are stored in a specific mortuary located in Mirogoj cemetery in Zagreb. They still need to be identified, but Colonel Grujic, head of the Croatian forensic team, explains that the identification process is very long. This is what the families expect, hoping and fearing at the same time: to locate and identify the corpses.

A vast literature addresses the recent wars in the former Yugoslavia and its juridical aftermath. Hazan (2004), Scharf (1997) and Scharf and Williams (2002) have written the most detailed history of the ICTY. Social Anthropologists like Claverie (2004) and Poullard (2000) and essayist Drakulic (2004) have produced vivid ethnographies of ICTY's everyday life. On the topic of restorative justice, an important recent anthropological work was dedicated to the Commission for Truth and Reconciliation (TRC) in South Africa (Feldman 2003, Ross 2003, Scheper-Hughes 1999). Other recent contributions on restorative justice are Minow (1998), Roche (2004) and Sullivan and Tifft (2006). On the recent anthropology of the former Yugoslavia, Bringa (1995), Leutloff-Grandits (2003) and Sorabji (1995) have produced long fieldwork-based studies. However, the bitter recent debate between Cushman and Hayden in *Anthropological Theory* (2005) illustrates how difficult it is, even in the academic world, to reach an agreement on the interpretation of the recent wars. There is indeed a "conflict of interpretations" (Ricoeur 1974): until now, there is no common basis on recognition of basic facts, or to put it better, on the intention given to the facts related to the wars in the former Yugoslavia. The following historical overview is therefore necessarily partial.

The road to war in Croatia and siege of Vukovar

The war in the former Yugoslavia officially started in Slovenia on 27 June 1991, when the JNA began military operations. Slovenia had declared itself independent on the evening of 25 June 1991, together with Croatia. But hostilities stopped very quickly in Slovenia: on 7 July 1991, the JNA withdrew from Slovenia. "*Slovenia's war – to the extent that it was a war at all - was crucially different to the two that followed it in Croatia and Bosnia. It was not a war between Serbs and Slovenes, but rather a war between a federal system that was already in its death throes, killed off by a nationalism that had taken hold first in Serbia and – later - in Croatia and Slovenia*" (Silber and Little 1995:183). In Croatia however, even before independence, the situation was already explosive. Croatia's large Serbian minority (600,000 people in 1991), living along the borders with Bosnia and Herzegovina (hereafter BiH) and Serbia (Krajina and Slavonia regions) had been in a very insecure position since Frandjo Tudjman's HDZ (*Hrvatska Demokratska Zajednica*, Croatian Democratic Union) had won the first multi-party elections since WWII in April 1990. The HDZ rose to power with the backing of a strongly nationalist community of émigrés Croats living abroad (Hockenos 2003). Many of them had officially supported the HOP (*Hrvatski Oslobodilacki Pokret*, Croatian Liberation Movement), Ante Pavelić's pro-Ustashe movement, based in

Argentina. During WWII, the Croatian *Ustashe* fascists declared the Independent State of Croatia (*Nezavisna Država Hrvatska*, NDH), a Nazi regime led by Ante Pavelić, with the intention of creating a pure Croatian state by eliminating not only the Jews but also the 1.9 million Serbs who were living on NDH territory (Hockenos 2003:27). Even though the exact number of casualties remains unknown, it is certain that hundreds of thousands of Serbs were killed by the *Ustashe* troops. Under Tito's socialist Yugoslavia, this recent past was glossed over by the ideology of *bratstvo i jedinstvo* (brotherhood and unity). The idea that Serbs were in danger within the Yugoslav Federation, especially in Croatia and Kosovo, was first made explicit in 1986, six years after Tito's death, by the Memorandum of the Serbian Academy of Sciences and Arts (Milosavljevic 2000). This idea was politically exploited by Milošević in Belgrade from 1987. In 1990, the Serbs of Croatia, led by Jovan Rašković, a member of Milošević's SDS, demanded autonomy for the Serbs in Croatia. In August 1990, the Knin area was in open rebellion against Zagreb. In December 1990, the rebel Serb leaders proclaimed the Serb Autonomous District of the Krajina.

The road to war became irreversible sometime in early 1991. "*When exactly – the day, the week, the month – that war broke out in Croatia is impossible to pinpoint. But the events in Borovo Selo, an industrial suburb of Vukovar in eastern Slavonia, marked a critical juncture in the descent into full-scale armed conflict*" (Hockenos 2003:58, also see Judah 2000:175). From the beginning of 1991, armed village patrols began forming in Slavonia (Vukovar area) in both Croat and Serb-populated areas. The first direct attack came in April 1991: Gojko Šušak (a Croat *émigré* who had lived in Canada for decades and would later become Tudjman's Minister of Defence⁶) and his HDZ radical companions, fired three missiles into Borovo Selo. Even though the missiles caused no casualties, the local Serbs saw this as an intentional aggression that required revenge. On the night of 1 May, four Croat policemen from Osijek (a city near Vukovar) were attacked by gunfire in the centre of Borovo Selo: two were wounded and taken prisoner, the other two escaped. These two returned to Osijek and reported what had happened to their colleagues. In the morning, a busload of Croatian policemen set off for Osijek, to rescue their two wounded colleagues. When they entered the village, Serb militiamen opened fire. Twelve Croats were killed and twenty wounded. In July and August 1991, the *Martičevci*, the Serb territorial defence troops led by Milan Martić, a Knin police inspector, took one municipality after the other in Krajina and Slavonia. What was the reaction of the JNA towards the TO troops? The JNA was indeed originally the Yugoslav People's Army. But on 20 August 1991, when the JNA openly supported the *Martičevci* in Kijevo, a Croat village in the Krajina region⁷, surrounded by Serb-led territory, it became clear that the JNA was no longer the People's Army: it was Belgrade's Serbian Army. "*Kijevo set the pattern for the rest of the war in Croatia: JNA artillery supporting an infantry that was part conscript and part locally recruited Serb volunteers*" (Silber and Little 1995:190). Among the Serb volunteers, some were indeed recruited locally, and some came from Serbia and Montenegro. The two most feared units were the *Chetniks* or *Šešeljevci* (Šešelj's men) and Zeljko Ražnatović *Arkan's Tigers*⁸.

⁶ See Hockenos (2003), Chapter One : "Picnic in Mississauga"

⁷ Located in Western Croatia, around the city of Knin.

⁸ Vojislav Šešelj, President of the Serb Radical Party has been in custody in The Hague since 2003, indicted for crimes against humanity committed in the wars in Croatia and BiH. Zeljko Raznatovic

In August 1991, Serb paramilitaries and the JNA attacked Vukovar: the attack included artillery, mortar and air assault. The pattern of attack was the following: “*the JNA providing the heavy weapons and infantry support to the local Serb paramilitaries, together with volunteers from Serbia proper*” (Silber and Little 1995:195). The city was defended by a handful of ill-equipped Croatian policeman. However, the siege would last until mid-November 1991, causing 1700 casualties (including 1100 civilians), and when the city fell, thousands of civilians were evacuated and 264 men were murdered in Ovčara. The JNA unit with primary responsibility for the attack against Vukovar was the Belgrade-based *First Guards Motorised Brigade*. The unit was commanded by Colonel Mile Mrkšić. Subordinate to him was Major Veselin Šljivančanin, who also commanded a military police battalion which was part of the brigade. Another part of the brigade that took a direct role in the siege of the city was the special infantry unit commanded by Captain Miroslav Radić (see ICTY Second Amended Indictment, 1997, IT-95-13). The third consolidated amended indictment (2004) also stipulates that Miroljub Vujović and Stanko Vujanović, the two main TO commanders indicted in the Ovčara trial in Belgrade, “*had command over Serb forces responsible for the mistreatment and killing of non-Serbs taken from the Vukovar hospital to the Ovčara farm*” (ICTY [Third Consolidated Amended Indictment](#) IT-95-13). After the killings, some of those allegedly involved (TO, paramilitary groups) spoke about Ovčara in Vukovar’s cafes. “*They say small units of volunteers were formed that evening, were given ammunition and left drunk. They are reported to have said: we shot them from six that evening to midnight. They cried and begged for mercy claiming they hadn’t fired a single shot at us*” (Vreme News Digest Agency 1997: 3)⁹. Among the alleged perpetrators who spoke in the cafes, are Stanko Vujanović and Spasoje Petković, both indicted by the Belgrade District Court’s War Crimes Panel.

The Vukovar hospital case before the ICTY

On 26 October, 1995, Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin, three JNA officers, were indicted by the ICTY Prosecutor (at the time Richard Goldstone¹⁰). The three JNA officers were charged on the basis of individual criminal responsibility (Article 7(1)) and superior criminal responsibility (Article 7(3) of the ICTY Statute) with five counts of crimes against humanity¹¹ and three counts of violation of the laws or customs of war¹². On 26 March, 1996, the name of Slavko Dokmanović, the former mayor of Vukovar, was also included in an amended and supplementary indictment, raised by the new ICTY Prosecutor, Louise Arbour. Dokmanović was arrested in June 1997 and transferred to the ICTY. He committed suicide in custody in June 1998. The three JNA officers, however, lived in Serbia for more than a decade. Between 1992 and

“Arkan” was indicted by the ICTY in 1997 for crimes against humanity but was never transferred by the Serbian authorities to The Hague. He was gunned down in a Belgrade hotel in January 2000.

⁹ http://www.scc.rutgers.edu/serbian_digest/300/t300-4.htm

¹⁰ Former chairman of the Standing Commission of Inquiry regarding public Violence and Intimidation in South Africa, which investigated the violence and police intimidation committed during the Apartheid regime.

¹¹ Article 5 of the ICTY Statute – persecutions on political, racial, and religious grounds; extermination; murder; torture; inhumane acts.

¹² Article 3 of the ICTY Statute – murder; torture; cruel treatment.

1995, Mile Mrkšić, born in 1947, occupied several posts in the Yugoslav (Serbian) Army (VJ) General Staff. In 1995, he retired from military service. He was transferred to the ICTY on 15 May, 2002. Miroslav Radić, born in 1962, entered into private business in Serbia. He was transferred to the ICTY on 17 May, 2003. Veselin Šljivančanin was promoted to colonel of the VJ in 1996. In 1997, he was admitted to the VJ School for National Defence. He retired from military service in October 2001. He was arrested in Serbia on 13 June, 2003, and transferred to the ICTY in July 2003. Even though the first indictment against the three JNA officers was raised in 1995, the trial itself started ten years later, in October 2005, since the indictees were transferred to The Hague only in 2002 and 2003. The transfer to The Hague of the ICTY indictees has been, and still is, a major problem between the successive Serbian governments and the ICTY. During their initial appearance before the ICTY, all three indictees pleaded not guilty. In 2003 and 2004, several pre-trial sessions such as the status conference took place, in order to ensure that the rights of the defence were respected, that the defendants didn't have any complaints. I attended one status conference in June 2004. I had already attended 12 other trial sessions connected with other cases before the ICTY. Since the trial began in October 2005, I have not been able to attend the hearings connected to the Vukovar case, but I have been watching the internet transmissions on a regular basis. Before describing the hearings themselves, I will briefly present the ICTY.

The building, a former Insurance Company building, 10 minutes from the sea in Scheveningen, is rather ordinary, except for its triangular shape. Before entering the building itself, the visitor has to pass through a kind of locked chamber, and to present to the UN officer his or her ID in order to receive a one-day valid visitor ticket. S/he then has to leave bags, cellular telephone, cameras and recording devices in individual lockers, and to walk through a metal-detector device. Once in the building's lobby, the visitor can watch the day's scheduled hearings in each of the three courtrooms on several TV screens, in French, English (the two UN and ICTY official languages) and BCS (Bosnian, Croatian and Serbian). Courtrooms n° 1 and n° 3 have about 100 seats each, but courtroom n° 2 has only 3 seats, and if one wants to attend a hearing, one has to ask a UN guard in advance. After walking through a second metal-detector device, one finally reaches the first floor where the courtrooms are situated. Each visitor is invited to take a headset, in order to be able to follow the debates, which are in English, French, and BCS. Every time one language is used by one of the intervening parties, it is simultaneously translated into the other two languages (it is also translated to/from Albanian for the Kosovo-related cases). In each courtroom the public is separated from the rest of the actors by armoured glass. In Courtrooms n° 1 and n° 3, two TV screens show the hearing in each corner of the room. The accused or the witnesses can ask for a partial or total private session. Depending on the situation, the sound is turned off, or a curtain separates the public and the Court, or a curtain hides the witness, and his or her voice and face are electronically modified. In courtroom n° 2, in case of a private session, the public has to leave. When the Court arrives everyone stands up. Several UN guards stand in the room, and two sit on either side of the accused.

During the hearings there are continuous references to previous hearings, other cases within the ICTY, the rules of procedure and evidence, the political and historical context in the former Yugoslavia, etc. Each hearing I was able to watch was only a short moment in year-long processes, starting from the indictment of the person, until the sentence, and possibly the appeal. All the transcripts of the hearings, the indictments,

and the decisions taken by the court are available in French, English and BCS on ICTY's website.

On the basis of the numerous hearings I attended, four characteristics can be underlined. These general considerations apply to the Vukovar hospital case as well. The three indicted were physically present but the only moments when they spoke were when they had to answer questions. Otherwise, their representatives spoke on their behalf. The striking characteristics I observed in all the hearings I attended in The Hague are the following:

1) The very professional, UN-style, emotionless approach kept up in all circumstances by all the staff members (judges, lawyers, guards, etc). This is probably due to the very technical aspect of the procedure, i.e. a mix between common and continental law, which means that during the hearings the different parties can discuss for hours the fact of adding a document to the file. But still, given this was such a cruel war, the contrast between the atrocity of the crimes committed and the professional atmosphere is remarkable. This impression is strengthened by the absence of an audience: except for the initial appearance when the indicted plead guilty or not guilty, when the sentence is given, or during Milosevic's trial, the seats reserved for the audience are almost totally empty.

2) A second important point is the changes between *registers* during the hearings: from hyper-factual discussions (What happened during the night of 17 to 18 April 1992 between 3 and 4 a.m. in Bosanski Šamać ?), to the more philosophical definition of the nature of the war (civil war or aggressive war¹³), including elements of the conflict's global and historical context (some references are made to WW II, and even to long-term history: "due to the centuries-long dramatic and complicated history of the Balkans...").

3) A third element is the variety of materials considered as evidence by the Court: hearing of witnesses, material evidence (corpses), press articles, videotapes, books, military and civil records. An important role is given to the experts (military experts, forensic anthropologists, historians, etc.).

¹³ Cf. The Tadic case. Dusko Tadic's trial on his participation in crimes committed in the Prijedor camps during summer 1992 was the first trial held before the ICTY. What was at stake in the Tadić judgement was the possibility of trying Tadić for grave breaches of the 1949 Geneva Convention. But in order to do so, it was crucial for the Appeal Chamber to qualify the conflict in which he committed his crimes as an international one. The judgement of the Appeals Chamber established two very important points: 1) The conflict was an international armed conflict between two States, namely BiH and the FRY (Federal Republic of Yugoslavia, i.e. from 1992 Serbia and Montenegro) between 6 April 1992, when BiH was recognized as an independent State by the International Community and 19 May 1992, when the JNA formally withdrew from BiH, and 2) that even after 19 May 1992, the JNA, meanwhile redesignated as the VJ (Yugoslav Army), continued to control the Bosnia Serb Army (VRS) in BiH : "*Over and above the extensive financial, logistical and other assistance and support which were acknowledged to have been provided by the VJ to the VRS, [the Appeals Chamber recognises that] as a creation of the FRY/VJ, the structure and ranks of the VJ and VRS were identical, and also that the FRY/VJ directed and supervised the activities and operations of the VRS*" (Judgement of the Appeals Chamber of the ICTY, 15 July 1999) These two points, which have been passionately discussed by specialists, constitute however an important jurisprudence for the others cases within the ICTY. Also see Scharf (1997) and Wesselingh and Vaulerin (2005).

4) The general impression in the courtrooms is in a way *virtual*: the armoured glass and the TV screens which broadcast in the courtroom (and abroad) the reality one is watching, compresses and dilutes simultaneously the linear temporality of the action (Ricoeur 2004). Furthermore, the hearings are broadcast on the internet and all the transcripts of the hearings are available after two or three weeks on the ICTY's website in English, French and BCS. This radically changes the way the ethnologist works. The paradox here is that during certain hearings the discussions deal with the very corporal dimension of the victims, whose identity sometimes remain unknown: how many bones, corpses, ... in the mass graves?

The trial against Mrkšić, Radić and Šljivančanin lasted between October 2005 and December 2006. The closing arguments of both the Prosecution and the Defence were presented in March 2007; the Prosecution sought life sentences for the three indictees. As of May 2007, they are still awaiting judgement by the Trial Chamber. Meanwhile, another trial related to the same massacre took place in Belgrade.

The Ovcara trial in Belgrade: facing the past on the local level

Despite the fact that the ICTY is establishing an accurate historical record, which will certainly be used in the future by the citizens of the republics which stem from the former Yugoslavia, it is facing a double problem. The first of these is the lack of visibility the ICTY has in the former Yugoslavia, even though the "Outreach program"¹⁴ is explicitly conceived to reach a broad audience in the former Yugoslavia and the trials are broadcast throughout the country. But, "*despite the distance between the scene of the crime and the tribunal, situated more than 1000 km away from the former Yugoslavia, international justice made punishment possible; yet, by its distance, it has become an obstacle to the work of integration and memory process for the concerned populations*" (Hazan 2000:176). A second problem is the relatively small number of people being prosecuted in The Hague, and that the majority of them are political leaders and high-ranking soldiers. But, as many people say, if it was indeed important for them to see major political actors such as Milošević, Šešelj or Biljana Plavšić prosecuted in The Hague, what about those involved who are not considered high-level criminals, in the sense that they did not organise crimes politically, but did directly participate in the mass-murders? They have blood on their hands; they are the ones people have seen killing or abusing their relatives, and sometimes they are still living in total impunity near their former victims. What about them? Where should the line be drawn between political and criminal responsibility? Who are the fundamentally guilty persons? On a more general level than seeing specific individuals indicted, many people want to know what happened, how their brothers, husbands, sons spent their last hours, whether or not they suffered before dying. Only the direct perpetrators, not the commanders, know these things. Additionally, the families of the thousands of people

¹⁴ "In order to achieve its mandate of contributing to the restoration and maintenance of peace in the former Yugoslavia it is imperative that the Tribunal's activities be transparent, accessible and intelligible to individuals and groups from those territories. Operating primarily in the languages of the region, Bosnian, Croatian, Serbian, Albanian and Macedonian, the programme seeks to communicate the work and relevance of the Tribunal, as well as forge partnerships with key bodies in the former Yugoslavia. The programme is headquartered in The Hague and maintains four [Outreach offices](#) in the former Yugoslavia, Belgrade, Pristina, Sarajevo and Zagreb", see ICTY Website

still missing say that they need at least to locate the corpses, in order to give the dead decent funerals. Furthermore, the ICTY completed its investigations in 2004 (this means no further indictments), and intends to finish first-instance trials by 2008 and appellate procedures by 2010. It has started to transfer some cases to domestic judiciaries in BiH, Croatia and Serbia: the number of war crime trials in these three countries will certainly grow in the next few years. The Ovčara trial in Belgrade is a first attempt at such a transfer.

A new Law on the Organisation and Jurisdiction of Government Authorities in Prosecution of Perpetrators of War Crimes was enacted in Belgrade in June 2003¹⁵. This Law might provide a legal and institutional framework for the conduct of war crime trials in Serbia. Yet, “*the Law per se cannot guarantee success, unless other vital conditions are met too, [such as] higher salaries for judges, prosecutors and police involved in war crime cases, budgets to cover operational costs of war crime investigations and trials, witnesses/victim protection programs, political support and media campaigns to shape public opinion*”(OSCE Report 2003:48). An additional problem is the problem of acquiring evidence: for instance, in the Ovčara case, the trial started thirteen years after the crime was committed. To avoid the key witnesses’ testimonies becoming the only evidence, the important work of exhumation of the bodies contained in mass graves has been conducted by teams of forensic anthropologists: in the Ovčara case, to date, 260 bodies have been dug up, the cause of death has been determined as shooting and many bodies have been identified. The evidence has been used both by the ICTY and by the Belgrade Prosecution.

The District Prosecutor in Novi Sad filed a request on 5 June 2003 for the investigation of eight people for the criminal offence of “crimes against prisoners of war”, under Article 144 of the Basic Criminal Law in Serbia and Montenegro. The investigation began on 6 June 2003, based on individual responsibility. Special Prosecutor Vladimir Vukčević issued the indictments against eight men in early December 2003, charging them with killing 192 Croat and other non-Serb prisoners at the Ovčara farm. The men indicted were Spasoje Petković, Stanko Vujanović, Jovica Perić, Mirko Voinović, Ivan Atanasijević, Predrag Madžarać, Mirosljub Vujović and Milan Vojinović. All the suspects were already in custody: several had already been detained as part of *Operation Sabre*, a police crackdown launched after the assassination of Serbian PM Zoran Djindjić on 12 March, 2003. Under Serbian legislation, the crimes alleged to have been committed at Ovčara carry a maximum penalty of 40 years.

The trial started on 9 March 2004. However, on 8 March 2004, Mirko Voinović died in a prison hospital of the injuries sustained two months before when he jumped from a hospital window. Another indictée became a prosecution witness. The two major figures in this trial are Mirosljub Vujović, who was the commander of the TO detachment called Petrova Gora in Vukovar in 1991, and Stanko Vujanović, who was the commander of a TO unit in Vukovar. Both men’s names appear in the ICTY indictment against Mrkšić et al. In late March 2004, presiding Judge Vesko Krstajić decided to interrupt the trial, since new evidence had been found. 11 additional persons have been charged for their participation in the Ovčara massacre: Milan Lancuzanin, Marko Ljuboja, Predrag Milojević, also known as Kinez, Bozo Latinović, Boro Krajišnik, Vujo Zlatar, Goran Mugosa, Djordje Šošić, Miroslav Djanković, Slobodan

¹⁵ Before the new Law was enacted, seven cases concerning war crimes had been open in Serbia and one in Montenegro: see Humanitarian Law Centre website.

Katić, Nada Kalaba¹⁶ and Milan Bulić. The prosecutor has proposed to the War Crimes Council that proceedings should be integrated as the six men indicted earlier are already undergoing trial.

The Belgrade District Court's War Crimes Panel (*Okružni sud u Beogradu- Veće za ratne zločine*) is located in the former Military Court building in Belgrade (Ustanicka street no. 29), in a peripheral area of the city. As in the ICTY, the visitor also has to walk through a metal-detector device, give his or her passport and mobile phone at the entrance desk. There are three courtrooms in the building. At the time I attended the hearings two other important trials were being held in the other courtrooms: PM Dzindzic and Milosevic's former mentor Ivan Stambolic's assassinations. The courtroom itself is large, with seating for up to 60 lawyers, due to the number of indictees. There are two floors, even though at the beginning there was only one room, but the victims' families complained that they had to sit with the indictees' families. On the ground floor the indictees' families sat, and they were separated from their relatives only by armoured glass. They laughed, they tried to chat, and it was very informal. On the first floor, the atmosphere was quite different, one of careful sorrow, sometimes bitter reactions when one of the indictees insisted he couldn't remember anything. This kind of statement occurred often, especially when JNA members, who constituted the large majority among the witnesses, were giving detailed accounts of the last days before the fall of Vukovar (often called by them the "liberation" of the city) but wouldn't say a word about the day of 20 November 1991, the day of the massacre. In the audience there were also some NGO representatives monitoring the trial¹⁷. After hearing each witness, the indictees were allowed to ask questions and they came out of the armoured cell. The two main indictees, Vujovic and Vujanovic, often asked as many as thirty questions, like "what was the colour of the hat of this person you said you saw in Ovcara" or "are you sure you know me?" and sometimes openly threatened witnesses, if not in words, in their behaviour. There were a lot of questions related to uniforms. Indeed, what was at stake was to establish whether or not some paramilitary units were present in the hospital and in Ovcara. Each unit had indeed distinctive marks (such as hats or caps). The atmosphere was rather informal. The president, Judge Vesko Krstacic, was very present, often interrupting the indictees or the attorneys, saying: "now you stop, this is not relevant". Each hearing would last from 9.00 am until 3.00 pm, with one coffee break. There is only one room for the coffee break; the indictees, the victims' families and the witnesses were sharing the same space but not interacting. Although all indictees had pleaded not guilty on all counts, a *coup de theatre* occurred a few weeks before the end of the trial. Defendant Ivan Atanasijevic admitted that he had participated in the killings and recognized that he, under direct orders, had killed one prisoner in Ovcara¹⁸. He added that he hadn't made this statement before because he had received direct threats to his life and to his family. On the last days of the trial, the prosecutor urged the other indictees to admit their guilt. Otherwise, "*nothing but the maximum*

¹⁶ Stanko Vujanović's wife, the only women amongst the indictees.

¹⁷ See <http://www.yucom.org.yu/EnglishVersion/Izvestaji/sudjenja-ovcara.htm> for transcripts of the hearings

¹⁸ Atanasijevic was actually the second defendant to admit committing the crime. Earlier, witness-associate Boza Latinovic had recognized his participation, but he wasn't sitting with the other defendants. Therefore, Atanasijevic's statement had more impact.

sentence fits that hate, rage, arrogance and cruelty"¹⁹. None of them followed his advice, and 14 of the indictees were sentenced to heavy prison terms.

Both the defence and the prosecution made appeals to the Supreme Court, which overturned the first instance ruling on December 14, 2006. Special prosecution spokesman Bruno Vekarić said that this was a very unpleasant surprise and that *"someone did kill over 200 people there and someone must be held accountable for that, and I do believe we have the people who did it"*²⁰. The Supreme Court's decision means that the entire verdict was cancelled²¹, concerning both the indictees who were found guilty and the ones who were acquitted. Therefore, a new trial had to start. Even though the whole trial has begun over again, the first trial held in Belgrade was considered an important step by many in Belgrade, especially the families of victims, represented by the *Vukovarske Majke* (Vukovar Mothers) association.

Which conditions are best for a restorative justice: comparing the two tribunals

In order to answer my initial question, i.e. is the trial held in Belgrade more likely than the trial held in The Hague to contribute to the two major features of restorative justice, I will compare the two trials, and place a specific emphasis on the attitude of the *Vukovarske Majke* (Vukovar Mothers) association, which groups together both families of the persons who died in Ovcara and families of the missing persons. A group of at least five would travel from Zagreb, where the majority of them live, to Belgrade. Of course, when I conducted my ethnographical research, the trial in The Hague had not yet begun and I have therefore a more detailed account of the Belgrade trial. Nevertheless, since the procedure had begun so long ago in The Hague, they had an opinion about the ICTY in general and the Vukovar hospital trial in particular.

A first distinction between the two institutions concerns the idea of command responsibility. The ICTY's authority is to prosecute and try four clusters of offences: grave breaches of the 1949 Geneva Convention, violations of the laws or customs of war, genocide, crimes against humanity. The ICTY geographic and temporal authority concerns any of the four clusters of offences mentioned committed on the territory of the former Yugoslavia since 1991²². Unlike the Nuremberg Tribunal (Scharf 1997: 16), the ICTY has authority only over people and not over organizations, political parties, administrative entities or other legal subjects. Indictees can be charged on the basis of individual criminal responsibility but also on the basis of superior criminal responsibility. The ICTY admits indeed the principle of command responsibility as a charge, and therefore recognizes the political dimension of the crimes committed, namely *"the fact that the atrocities committed by Serbian forces were part of a planned, systematic, and organised campaign that constituted a central means of pursuing an*

¹⁹ Cited by Dusan Stojanovic, Associated Press.

²⁰ http://www.b92.net/eng/news/society-article.php?yyyy=2006&mm=12&dd=14&nav_category=113&nav_id=38615

²¹ This is actually the third time war crimes ruling were overturned by the Supreme Court. Nataša Kandić, Executive Director of the *Humanitarian Law Center*, reminds that it had earlier overturned the judgement in the case of kidnapping and murder of 16 Muslims in Sjeverin as well as for the murder of 19 Albanian civilians during the NATO bombing in Kosovo (see http://www.hlc-rcd.org/english/War_Crimes_Trials_Before_National_Courts/index.php?file=1568.html)

²² Including – in theory - war crimes allegedly committed by NATO during its air campaign against FRY and Kosovo in 1999. But ICTY Prosecutor Carla Del Ponte eventually gave up the idea of indicting NATO (Scharf and Williams 2002 : 133-135)

official goal of territorial expansion and its corollary of making areas "ethnically pure." (Williams and Cigar 1997:2). On the contrary, the Serbian government has only put on trial direct perpetrators with charges of individual responsibility, and only for crimes against prisoners of war. Indeed, the doctrine of command responsibility is not directly codified in the Criminal Code of Serbia and Montenegro. But it was clear during the hearings that the victims' representatives wanted to address the issue of the chain of command, and they systematically asked questions about the rules of war, about who was responsible for what, who gave the orders for the killing, as in this exchange between a victim's representative (VR), a witness (W, a former JNA officer) and the President (P) :

“VR: According to the Military Rules, who was responsible for the wounded and the prisoners? Under which command were they?

W. This is a theoretical question.

VR. No, it is a practical one.

P. I don't understand why you are asking this question.

VR. What was the status of those who were in the hospital? Were they prisoners?

P. You are not entitled to ask this question

VR. (to W) Did you discuss the status of those who were in the hospital with Colonel Mrkšić

P. The witness already talked about that”.

During the hearings, I noticed several similar exchanges. The victims' representatives almost systematically asked questions about the chain of responsibility (an important number of witnesses were former JNA members), but they were dismissed by the President, who otherwise had a very sober and professional attitude. But he obviously didn't want any questions about the chain of command, since the doctrine of command responsibility is not codified in Serbian Law. This is one of the problems with this trial: Serbia-Montenegro is the successor to the Republic of Yugoslavia²³. If command responsibility were to be considered, it would mean that the tribunal, which represents the State, would be both judge and jury at the same time. But this gave the feeling to the victims' families that the indictment was somehow too smooth, compared with the organised nature of the massacre. But many of them were presented with the argument that otherwise, i.e. with an indictment of crimes against humanity, the trial wouldn't have taken place.

Another major difference is connected with the status of the victims in the two tribunals. Indeed, the ICTY was not created primarily for the benefit of the individual direct victims of the conflicts in the former Yugoslavia (Rydberg 2004). Rather than focusing on the individual victims, the Security Council created the ICTY with a broader, more general goal, namely the restoration of peace. And actually, there is no specific role or special place for victims in the proceedings before the ICTY other than as witnesses. Since the procedure is a mix of common law and continental law, there is no *partie civile* for victims or people acting on their behalf. The situation is quite different in Belgrade. First, the victims have representatives who act on their behalf. One of them, Natasa Kandic, director of the Humanitarian Law Centre in Belgrade, is extremely active and organises their stay when they come to Belgrade. Secondly, for pragmatic reasons, it is easier for them to attend the hearings in Belgrade than in The

²³ Meanwhile, on 21 May 2006, Montenegro voted to leave the State Union and proclaimed its independence. From June 2006, Serbia is the legal successor of Serbia-Montenegro.

Hague, even though they have to drive five hours every time. Additionally, all the actors speak BCS, and the rhythm of the hearings is uninterrupted by translation. During the hearings I attended in The Hague, I had the feeling that the victims who came to testify were somehow lost in the weighty UN procedure, even though a specific office is in charge of the victims during their stay in The Hague. In Belgrade, even though the proximity with the defendants' families was sometimes seen as shocking (some of the association's members couldn't cope with it and decided not to return), at least the members of the association formed a group, they stayed together in a hotel in Belgrade and spent all their time together.

My general impression during the meetings I had with the victims' families was that they were expecting more from the Belgrade trial than from the ICTY trial. This can be seen as a paradox because during the trials before the ICTY, the indictees appear much more harmless than in Belgrade, where one has the feeling that they still get official and unofficial support²⁴. Former paramilitary units which fought in Croatia and Bosnia are indeed still embedded in the Serbian State, particularly in the Army and the State Security (Nikolic-Ristanovic 2006:369). But still, they express the importance the trial in Belgrade has for them, when compared with the trial in The Hague. First, the JNA officers were not physically in Ovcara. And even though the indictees in Belgrade are more likely to be the killers, they are also the ones who could report on the last hours of their loved ones. The confession of Atanasijevic could therefore be a first step on the way to restoration.

Indeed, restorative justice places a premium on the cooperation of the offenders. And what the families of victims that I met most wanted to hear was what exactly happened in Ovcara: more than seeing the murderers of their relatives sentenced, they expressed the need to locate the still missing corpses. They expressed another important idea: the indictees in Belgrade are Serbs from Croatia, they belong to the category of their former neighbours. And even though the people I met didn't want to come back from Zagreb, where they now live, to Vukovar, many refugees have returned to Vukovar. They expressed their bitterness about their former neighbours who knew what would happen, left Serbia before the war broke out or enrolled in the paramilitary units. Therefore, the fact that a trial is being held in Belgrade is for them an encouragement to hope for a possible further reconciliation, both at the local and the regional level. As Mr. Psenica, who leads the "Vukovarske Majke"²⁵, said:

"For us it is very important to be there during the trial, even though many people in Croatia have reservations about the way the trial is being held, some even said that they would never go to Belgrade. I myself had said that I would never go to Serbia again, but one should never say never. I go to Belgrade on a regular basis and it is very important for the members of our association that this trial is taking place. It brings us a certain consolation, a certain feeling of calm, at least for the moment, even though we will never forget what happened. (...) For us it is very important that the trial is taking place in Belgrade, because when trials are held in Croatia, it is *in absentia*, because Serbs are not there. And it is very important as well for the families of the still missing persons in Ovcara, who are still looking for those

²⁴ The relationship between the indictees and their guards reinforces this impression: in The Hague, they have no apparent interaction in the courtrooms. In Belgrade, they chat and laugh with the guards before and after the hearings. Of course, the fact that none of the UN guards speak BCS (Bosnian, Croatian, Serbian) can explain this distinction.

²⁵ Who otherwise, as their names indicate, are mostly women.

missing. For them it is extremely important to know exactly what happened, and to see what's happening during the hearings, what the indictees say, what their lawyers say, what the witnesses say, and to feel the atmosphere during the hearings. It is a small consolation for us”.

The Ovcarra trial in Belgrade was considered a test for the Serbian authority's seriousness in respect to war crimes allegedly committed by Serb citizens. The Humanitarian Law Centre, an NGO which for years now has tried to establish the responsibilities of the FRY and Serbia and to implement the critical work of facing both individual and collective responsibility within Serbian society, has confirmed that even though the indictment was mistaken, the Ovcarra trial met the standards of a professional trial. I have concentrated so far on one aspect of restorative justice, i.e. repairing the harm suffered by the victims. But, as Mr. Psenica underlines it, the fact that the trial was being held in Serbia, the country of the offenders, might serve to meet the second aspect of restorative justice, i.e. to reintegrate the offenders into their community. I will finish this paper by addressing the interrelation between individual responsibility and collective guilt about Serbia. This question is indeed of crucial importance, not only in terms of the future cooperation between the countries which stem from Yugoslavia, but inside Serbian society itself. The Ovcarra trial didn't receive intense media coverage. In addition, one might ask, following Nikolic-Ristanovic (2006), whether an exclusively judicial perspective, which has been so far a strong trend in Serbia, is the best way to deal with the past. Several NGOs have indeed started to conduct activities connected with the country's recent past and explicitly address the question of *collective guilt* for the crimes committed in the name of the Greater Serbia.

Non-judicial spaces: dealing with the recent past in Serbia

During my field research in April 2004, I spent several days in Novi Sad, Voivodina's largest city. Between 12 and 15 April 2004, the *Helsinki Committee for Human Rights* organised a workshop called “School for Democracy”. I took part in this, together with 20 participants, mostly high-school and university students. Novi-Sad born Dr. Janja Beć-Neumann, a Sociologist now settled in Sarajevo, gave a lecture titled “*prevladavanje prošlosti*” (to overcome the past) on 13 April 2004. She first presented herself: she was born in Serbia, but she settled in the UK in 1991. She said that although she doesn't have any direct responsibility for the crimes committed in Croatia and BiH she, as a Serb, feels concerned about crimes committed in the name of Serbia. She told the participants:

“I was not living in Serbia during that period, and you are too young to have any direct responsibility, but we all have to confront the same question: are we guilty because we are Serbs?”

She then asked all the participants to explain to the others why their parents had given them their first name. The aim of this informal introduction was to stress the mixed origins of the participants: it appeared that no one was 100 % Serb. She briefly presented Karl Jaspers' book *Die Schuldfrage* (Jaspers 1978), and the four categories of guilt he describes in his book, i.e. *criminal*, *political*, *moral* and *metaphysical* guilt. After that, she read an interview she had conducted in a refugee camp in Slovenia with a Srebrenica-born woman, Emira, whose husband and sons were killed in July 1995 by the VRS troops. The narrative mentions as actors the VRS (Bosnian Serb Army)

soldiers, the UNPROFOR Dutch soldiers, Serbian neighbours, bus drivers, and Emira's husband and sons. Janja Bec-Neumann then asked the participants to divide into small groups and, for each category of actors, to discuss and decide which of Jasper's categories of guilt was the most relevant. I followed the discussion of one small group of two boys and four girls. They first all agreed on the fact that Emira's husband and sons were victims, and therefore not responsible for anything. The group also agreed that the UNPROFOR, the bus drivers and the neighbours had a moral responsibility. However, some of them (three girls) considered that the UNPROFOR also had a political responsibility. But they disagreed when they started discussing the VRS (the army). For T., an 18 year old boy, the VRS has "*a criminal, political, moral, metaphysical (and even intergalactic) responsibility*": they were the direct executioners, and as such, they bore the primary responsibility for the murder. But two girls wanted to distinguish the responsibility of the army as such from the individual responsibility of each soldier. Even though they agreed on the criminal responsibility to be given to the army as an institution, they considered that the soldiers had only a moral responsibility. The arguments presented were the following:

"It was a regular army, they were not paid for what they were doing", "it was a defensive war, and they had seen their own people murdered" and "they were soldiers, they had to obey orders".

Finally, since they didn't reach agreement, Janja Beć-Neumann suggested that they present their opinion individually and not as a group. She then asked the participants to meet in the main room and commented on their discussions. She first underlined the fact that all the participants had considered Emira and Emira's family as victims: during other similar workshops, some participants found that Emira had a moral responsibility because she had not been able to protect her family. She then proposed theoretical perspectives, such as Browning's *Ordinary Men* and Arendt's *Eichmann in Jerusalem*. After the discussion a BBC documentary film on Srebrenica was shown. The Novi Sad workshop appears as a distinct but complementary space to investigate my initial question; i.e. who are the fundamentally guilty persons. In a situation of such massive crimes, courtrooms are not the only spaces where justice can be dispensed.

Conclusion

In this paper, I have addressed the possibility of dealing with the recent past in the former Yugoslavia by analyzing the case of the Ovčara massacre in November 1991. My initial question was whether or not a local trial like the one held in Belgrade was more likely to contribute to restorative justice than the trial held in The Hague. On the basis of the meetings I had with the association *Vukovarske Majke*, it seems that the victims' families expect more from local trials than from the ICTY: even though, and maybe because, the indictees are the direct killers of their relatives, they are the ones who can give details about the circumstances of the massacre, and information about the location of the still missing corpses. Yet they all underlined that local trials would never have happened without the existence of the ICTY. This is also obvious in the Ovčara case: Carla Del Ponte personally brought the files to the prosecutor in Belgrade. Many indictees in The Hague did (and some still do) occupy high-ranking positions both in the army and in the Serbian government and they would never have let the trials happen if the tribunal didn't exist. Many people say that PM Džindžić was assassinated because he wanted to transfer top-ranking generals, who surrendered, to The Hague.

However the ICTY, and it is not its role, doesn't prosecute the direct perpetrators of crimes. And this is where local trials can play an important role in terms of restorative justice. But some conditions are still missing to fulfil the requirements of restorative justice. First, the victims and the offenders are not living in the same country (the first in Croatia, the second in Serbia). The offenders don't need to be reintegrated into their community because they were never excluded from it, at least in Serbia where for a long time they were considered war veterans or even heroes (this equally applies in Croatia²⁶). The important work of dealing with the past outside the courtrooms, as the example of Novi Sad shows, is an important step towards restorative justice.

Secondly, it is hard to conceive of restorative justice without the confessions of the offenders. This is why Atanasijevic's confession was so important, but it was not followed by any other confessions. Moreover, the whole verdict was cancelled by Serbia's Supreme Court in December 2006: therefore, a new trial started on 12 March 2007. This decision created disappointment among the prosecution and the victims' association. Mr Psenica declared that sad that no one from the association intended to appear in the retrial and take part "in the show only to suit the needs of the Serbian political setting". Transnational Justice in Serbia has shown its limits in the Ovcara trial. This is where NGOs play an important role, for instance by organising workshops with war veterans from the entire former Yugoslavia. But again, these individual initiatives take place in the context of the trials and the historical record now established by the ICTY.

²⁶ See Drakulic (2004) on the reactions to the indictment of Croat General Norac when he was indicted for the killing of Serbian civilians in Gospic in 1991. A similar campaign was organised to support ICTY indicttee General Gotovina, with the slogan: "Heroj a ne zlocinac" (a hero and not a criminal).

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