

## Still Slandering Serbia

Manufacture of news, faithful service on behalf of powerful interests

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New York Times' firing of Judith Miller, allegedly for bad reporting, served the same purpose as the paper's daily "Corrections" column: It suggested that everything else in the newspaper of record is pretty bloody good. It isn't of course. Manufacture of news, faithful service on behalf of powerful interests, editorializing masquerading as reporting, mischievous misinterpretations and double standards pepper the pages much as they did when Judith Miller was on board. A classic case of the Times molding the news to make it fit to print was its recent coverage of the International Court of Justice's ruling on Bosnia-Herzegovina's suit against Serbia, charging genocide and demanding billions in reparations.

This was a suit in which the Times had a huge stake. The Balkan wars were halcyon days of U.S. journalism. Times reporters like John F. Burns and David Rohde collected Pulitzers reporting horrors, op-ed columnists like Anthony Lewis and Leslie Gelb weekly worked themselves up into a lather calling for bombs, all parroting the familiar line: The Serbs were to blame for the breakup of Yugoslavia; the Serbs were responsible for the wars in the former Yugoslavia; the Serbs alone committed genocide, as a matter of state policy and because they are a uniquely wicked people; and were it not for U.S. determination to bomb, the Serbs would have wiped out every ethnic group and realized their ancient dream of Greater Serbia. Not coincidentally, tales of Serb horrors, replete with photos of women wailing and girls lighting candles, serve the purpose of reassuring readers that, contrary to what they may see or hear, it is U.S. adversaries, and not the United States, that commit atrocities.

Thus the ICJ ruling that came down on Feb. 26 could not but have been a severe disappointment to the Times. The court ruled, first, that the atrocities in Bosnia did not amount to genocide. And, second, that the government of Yugoslavia not only did not commit genocide, but that it was not responsible for the killings in Bosnia because it didn't exercise effective control over the armed forces of the Bosnian Serbs. To be sure, the court, following the International Criminal Tribunal for the Former Yugoslavia (ICTY), did rule that genocide took place on one occasion—in July 1995 in Srebrenica. However, even in this case the government of Yugoslavia bore no responsibility. There was no evidence, the court said, that the attack on Srebrenica was ordered by, or was undertaken in collusion with, Belgrade. Though the ties between the Yugoslav army and the Bosnian Serb army "had been strong and close in previous years...they were, at least at the relevant time, not such that the Bosnian Serbs' political and military organizations should be equated with organs of the FRY." Thus, the court said, the massacres at Srebrenica were not "committed by persons or entities ranking as organs of [Yugoslavia]. It finds also that it has not been established that those massacres were committed on the instructions, or under the direction of organs of

[Yugoslavia], nor...that instructions were issued by the federal authorities in Belgrade, or by any other organ of the FRY, to commit the massacres, still less that any such instructions were given with the specific intent...characterizing the crime of genocide." Therefore, the court ruled, Serbia did not owe Bosnia-Herzegovina any reparation payments.

The Times' strategy was to mischaracterize the ICJ's ruling and at the same time to attack it for its ruling. The triumphant headline on next day's story, written by Marlise Simons, made it seem as if the ruling was a vindication of the Times line: "Court Declares Bosnia Killings Were Genocide." Now of course this was not what the court declared. Nor, incidentally, was this one of the issues on which the court had been asked to issue a ruling. The issue was Serbia's responsibility for the alleged genocide. Simons admitted that the court had determined that Serbia was not guilty of genocide. But, she immediately added, the court "faulted Serbia, saying it 'could and should' have prevented the genocide." The court said no such thing. The words Simons quotes are not to be found anywhere in the ruling. They come from statement made to the press by the ICJ's president, Judge Rosalyn Higgins of Great Britain. She said: "The Court has found that [Yugoslavia] could, and should, have acted to prevent the genocide, but did not. [Yugoslavia] did nothing to prevent the Srebrenica massacres despite the political, military and financial links between its authorities and the Republika Srpska and the VRS." However, Higgins, for whatever reason, was mischaracterizing the ruling. The court said, "In view of their undeniable influence and of the information, voicing serious concern, in their possession, the Yugoslav federal authorities should, in the view of the Court, have made the best efforts within their power to try and prevent the tragic events then taking shape, whose scale, though it could not have been foreseen with certainty, might at least have been surmised."

There is a world of difference between saying that a person didn't do everything in his power to prevent a crime and saying that that person could and should have prevented the crime. In fact, it was precisely because the court was unable to say Belgrade could have prevented the killings at Srebrenica that it ruled that no reparations were owed to Bosnia. "Reparations to Bosnia would be appropriate if the Court were able to conclude...that the genocide at Srebrenica would in fact have been averted if [Yugoslavia] had acted in compliance with its legal obligations. However, the Court clearly cannot do so....Since the Court cannot therefore regard as proven a causal nexus between [Yugoslavia's] violation of its obligation of prevention and the damage resulting from the genocide at Srebrenica, financial compensation is not the appropriate form of reparation for the breach of the obligation to prevent genocide."

Despite her show of bravado, Simons knew the ruling was a major disappointment. So she began mumbling darkly about political pressures that may have been exerted on the court. The ruling, she said, "even if strictly based on the law, hews close to the political wishes of Western countries that want to pull Serbia into a wider Western European community, rather than see it isolated as a pariah state, possibly accused of genocide, with its extreme nationalists growing in strength." So Simons who reports uncritically, not to say awe, on the doings of the ICTY—a court established, financed and staffed by NATO, and whose rules of procedure and evidence are carefully crafted to ensure preordained outcomes—now has the gall to suggest that the ICJ judges, who really are international, are obeying diktats from certain unnamed "Western countries."

Simons concluded her report by asserting that "the last word on the role of the Serbian leadership in the Bosnian war has not been said." Based on the word anonymous ICTY

prosecutors, she said, “The tribunal has part of the war-time records of the Supreme Defense Council, which included the former Yugoslavia’s military and political leaders....Tribunal officials have said part of the minutes of the meetings were blacked out and some whole sections were missing. But the minutes still provided much information on how the Serb leaders ‘ran their proxy army’ in Bosnia, one tribunal official said.” According to Simons, Serbia made a deal with the tribunal that only its judges and lawyers could see the records, but not those of the ICJ. In their ruling, she noted, “the judges made the point that they had been prevented from seeing them.” True, they did do that, but they ascribed no great significance to this, given the vast array of material that Bosnia did present.

So there we have it. According to Simons, the court ruled that genocide took place in Bosnia and that Serbia violated the Genocide Convention. But its failure to rule that genocide in Bosnia was orchestrated from Belgrade, which Simons knows to be the case, can only be explained by some kind pressure applied to the court by unnamed Western countries and because some documents had been blacked out.

To be sure, the ICJ ruling was problematic, to say the least. The court said no genocide took place in Bosnia, other than in Srebrenica. But this makes no sense. Genocide, if it means anything, is an attempt to destroy an entire nation or an entire ethnic group. If you kill many members of an ethnic group in one village, but leave them alone in the next village, and, indeed, in every other village, you may, if they are unarmed, be committing a war crime, but you are not committing genocide. Raphael Lemkin, drafter of the 1948 Genocide Convention, defined genocide as “a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves.” Thus, in ruling that the killings in Bosnia didn’t amount to genocide, but that the killings in one small town—Srebrenica—did amount to genocide, the court was hardly in accord with the convention.

Moreover, the court, again following the ICTY, held that the Bosnian Serb forces had no intention even to capture Srebrenica, merely to reduce it in size. According to the court, “at some point...the military objective in Srebrenica changed, from ‘reducing the enclave to the urban area’...to taking over Srebrenica town and the enclave as a whole.” Thus, the supposed “plan” to kill all of the military-age men in Srebrenica wasn’t even conceived until after the capture of the town. “The necessary intent was not established,” the ICJ said, “until after the change in the military objective and after the takeover of Srebrenica, on about 12 or 13 July.” In addition, the court accepted that this “intent” didn’t encompass the entire Muslim population of Srebrenica. The court, like the ICTY, didn’t dispute that the Bosnian Serb forces transported Srebrenica’s women, children and old men to safety.

Since, according to the ICJ, the takeover of Srebrenica was an improvised plan, since there was no intention on the part of the Bosnian Serbs to carry out executions until after the change in the military objectives, since Belgrade had no effective control over the Bosnian Serbs, since Belgrade didn’t know ahead of time about the intention to capture Srebrenica, since Belgrade had no armed forces of its own in Bosnia, it is hard to see what it “should have” done to prevent the alleged massacres. The United Nations, which actually had forces stationed in Bosnia, was in a far better position to do something to prevent them.

In addition to Simons’ front-pager, the *Times* ran another story the same day in the inside pages, written by Nicholas Wood, bitterly complaining about the ICJ, under the headline

*"Bosnian Muslims View Ruling as Another Defeat."* The ruling, Wood wrote, "greatly disappointed relatives of the mainly Muslim victims of the conflict." The verdict "marked the second setback in a year." What was the first setback? The death of Slobodan Milosevic. "His death forestalled a decision on whether Mr. Milosevic was guilty of committing war crimes and possibly genocide. The Milosevic trial pointed to the substantial involvement of the Serbian state in helping to finance, equip and plan the war in Bosnia." By "decision," Wood of course meant a decision that Milosevic and Serbia were guilty as charged. He wasn't expressing fury that Milosevic's death cheated the Serbs of an acquittal.

Like Simons, Wood took the tack of both attacking the ICJ and mischaracterizing its ruling. He blithely declared that the court "found a clear link between Serbia and the Bosnian Serb military. According to the court, Serbia had been in a position to stop the genocide of close to 8,000 Muslim men and boys at Srebrenica." The first statement is misleading, since the crucial finding was not the existence of a "link," which no one ever doubted, but that the Bosnian Serb armed forces were not de jure or de facto "organs of the FRY." Wood's second statement is an outright lie. The court didn't say that Serbia was "in a position to stop the genocide." It said that Serbia had failed to show "that it took any initiative to prevent what happened, or any action on its part to avert the atrocities which were committed." In other words, it could and should have done more.

Six days later the *Times* weighed in with an editorial, declaring smugly that the ICJ had "established the official complicity of the former Serbian government" in the Srebrenica genocide. This again is a flat-out lie, and a particularly stupid one. The court had explicitly ruled "that Serbia has not been complicit in genocide, in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide." Next day, on March 6, Simons returned to the matter of the ICJ ruling. She again repeated the lie that the court found that but found that Serbia " 'could and should' have prevented the [Srebrenica] killings as the Genocide Convention requires." The court's findings, she wrote "variously described by international law experts as timid, ambiguous or a tactful compromise, have caused anger in Bosnia and relief in Serbia, which was absolved of having to pay the war reparations that Bosnia had demanded. Bosnian Muslims, who were a majority of the victims of the 1992-1995 war driven by Serbia, called the ruling a disgrace." This is classic *New York Times*: intimidate readers by reference to unnamed "experts." One international law expert Simons didn't consult was Ian Brownlie, one of the world's most distinguished international law experts, Chichele Professor of Public International Law at Oxford and author of the standard text on international law. Brownlie was one of the attorneys who represented Serbia before the ICJ.

This time around Simons sounded more satisfied: "Serbs in Bosnia expressed anguish at seeing their forces explicitly accused of genocide. At the same time, the court strengthened the hand of Ms. Del Ponte, the chief prosecutor of the Yugoslavia war crimes tribunal, who has unceasingly called for the arrest of Mr. Mladic, Mr. Karadzic and three other Bosnian Serb leaders." On top of that, she happily reported, "the ruling associates Serbia's present government with the scourge of genocide, even if it happened under the past government of Slobodan Milosevic."

One month later, on April 9, Simons could not hold her fury back any longer. In an 1800-word article, under the title "Genocide Court Ruled for Serbia Without Seeing Full War Archive," she asserted the existence of a massive conspiracy involving both the ICJ and the ICTY to whitewash Serbia's crimes. In 2003, she wrote breathlessly, Serbia handed over to the ICTY hundreds of documents that "contained minutes of wartime meetings of

Yugoslavia's political and military leaders, and promised the best inside view of Serbia's role in the Bosnian war of 1992-1995." However, the Serbs outwitted the ICTY, "Citing national security, [Serbia's] lawyers blacked out many sensitive—those who have seen them say incriminating—pages. Judges and lawyers at the war crimes tribunal could see the censored material, but it was barred from the tribunal's public records." 2003! Four years ago, and we're only finding about this now?

Now, Simons continued, Belgrade has "made its true objective clear: to keep the full military archives from the International Court of Justice, where Bosnia was suing Serbia for genocide." Belgrade attained its objective when the ICJ "absolved it from paying potentially enormous damages." As Simons tells it, these minutes of Supreme Defense Council meetings, or rather just the blacked-out sections, constitute the "smoking gun"—the final, undeniable proof of Serbia's guilt. "Lawyers who have seen the archives," Simons said, "and further secret personnel files say they address Serbia's control and direction even more directly, revealing in new and vivid detail how Belgrade financed and supplied the war in Bosnia, and how the Bosnian Serb army, though officially separate after 1992, remained virtually an extension of the Yugoslav Army. They said the archives showed in verbatim records and summaries of meetings that Serbian forces, including secret police, played a role in the takeover of Srebrenica and in the preparation of the massacre there." Wow! Amazing stuff! All of that can be found in archives that the ICTY has had in its possession since 2003, but which for some reason it kept to itself!

When these minutes handed over, "the lawyers said, a team from Belgrade made it clear in letters to the tribunal and in meetings with prosecutors and judges that it wanted the documents expurgated to keep them from harming Serbia's case at the International Court of Justice. The Serbs made no secret of that even as they argued their case for 'national security,' said one of the lawyers, adding, 'The senior people here knew about this.'...When Belgrade's lawyers met with tribunal judges to request secrecy for their archives, they produced a letter of support from Carla Del Ponte. " Simons then quotes del Ponte as saying " 'It was a long fight to get the documents, and in the end because of time constraints we agreed,' she said. 'They were extremely valuable for the conviction of Slobodan Milosevic.' " Conviction? That's odd. Didn't Milosevic die before his trial ended? But then at the ICTY, "trial" is synonymous with "conviction" unless, of course, the defendant is an agent of the United States.

Simons' claims are baffling. If the ICTY has had these documents since 2003, why didn't it make use of them? The Milosevic trial was notable for the prosecutors' total failure to present any serious evidence that the war in Bosnia was instigated and orchestrated from Belgrade. The claim that they had to be kept out of the tribunal's public records is utter nonsense. The ICTY has innumerable mechanisms at its disposal, which it puts to frequent use, to keep testimony, evidence and the identity of witnesses secret. Trial transcripts are replete with the redacted testimony of anonymous witnesses. In none of the smug analyses during the past year and beyond, often proffered in the *Times*, about the inevitable guilty verdict that awaited Milosevic had there been any mention of crucial evidence being missing.

Let's see then. After more than 15 years of blaming everything in the Balkans on Serbia in general, and Milosevic in particular; and after more than 10 years of trials at the ICTY, bluster from prosecutors Louise Arbour and Carla del Ponte, not to mention tens of millions of dollars of U.S. taxpayer money and billions of dollars of free publicity, courtesy of Marlise

Simons, *New York Times*, CNN and the BBC, everything continues to hang on some documents in some “archives” in some Belgrade ministry that only a few people have seen, but which definitively prove whatever needs to be proven—that the Bosnian Serb army, under Belgrade’s direct command, carried out genocide in Bosnia in accordance with orders from Belgrade. And now the conspiracy to absolve Serbia of guilt has succeeded in recruiting del Ponte.

The ICTY prosecutors who had clearly spoon-fed this story to Simons have every incentive to shift the blame from themselves for their meager success. Within days of Simons’ story appearing, her key source, Geoffrey Nice, the chief prosecutor in the Milosevic trial, publicly lashed out del Ponte. In a letter to a Croatian daily, *Jutarnji List*, he accused del Ponte of making a deal with Belgrade to “place part of the archive under protective measures” without consulting him. The deal, Nice declared, “had no legal grounds and served only to conceal evidence of Yugoslavia’s involvement in the wars in Croatia and Bosnia-Herzegovina.” Why Nice chose to write this letter to an obscure Croatian newspaper rather than the *New York Times* or the *London Times* is a mystery, the answer to which we will no doubt learn at some point. Del Ponte immediately fired back and issued a statement declaring “The Office of the Prosecutor of the ICTY rejects in the strongest terms allegations that the OTP is in any way involved in ‘concealing documents’ from the International Court of Justice or in any ‘deal’ whatsoever with the Belgrade authorities.”

What all this shows is how ready the *New York Times* is to entertain bizarre conspiracy theories and to impute malign motives to others in its loyal service to the U.S. war machine.

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