From the Victims' Point of View
The Ovčara Massacre and its Aftermath: Trials in The Hague, Belgrade, and Outside Courtrooms

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DRAFT – NOT FOR CITATION

Introduction

2009 represents a turning point in the recent history of Croatia. A few weeks ago, it was announced that the country might enter the EU as of 2012[1]. This marks the end of a process started more than eighteen years ago with the war that broke out when newly independent Croatia was attacked by the Yugoslav People's Army (*Jugoslovenska Narodna Armija*, hereafter JNA, controlled by Belgrade) and Serb paramilitaries. Vukovar, a city located in the Slavonia region of Croatia, on the banks of the Danube River was heavily bombed. On 20 November 1991, after a three month siege that left 1700 –mostly civilians– dead and ten thousands refugees, the JNA and paramilitary forces took 264 men from Vukovar's hospital, where they had sought refuge, hoping to be evacuated, and gunned them down in the farm of Ovčara, a few kilometers away from the city.

2009 also saw the end of two war crime trials related to the Ovčara massacre: the first one, started in 2005, before the International Criminal Tribunal for the former Yugoslavia (hereafter ICTY) in The Hague, where three members of the JNA (Mile Mrkšić, Veselin Šljivančanin, and Miroslav Radić) were prosecuted; and the second one, started in 2004, before Belgrade District Court's War Crimes Panel, where 17 members of paramilitaries, the alleged direct perpetrators of the massacre, were put at trial.

[1] http://www.eubusiness.com/news-eu/croatia-france.xh/ (Accessed 27 October 2009)

This paper[2] focuses on the Ovčara (Vukovar hospital) massacre and its judicial and non-judicial aftermaths, by putting a special emphasis on the point of view of the victims' families, brought together in the *Vukovarske Majke* (Mothers of Vukovar) association. It compares the two trials, the one in The Hague and the one in Belgrade, and analyses a non-judicial attempt of dealing with this massacre, the film *Prvi Deo*. By focusing on three different platforms, it suggests some elements to the debate on whether it is more important for the victims' families to see on trial the commanders or ideologues of the mass atrocities, or the "small fry" who directly committed the crimes, and also on the debate on whether war crime trials are the most suitable platform for the victims, when compared to non-judicial spaces.

The creation of the ICTY was seen as a major step further towards the end of impunity for mass crimes (Scharf and Williams 2002). Yet, its location is sometimes seen as an obstacle: 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 has been prosecuted in The Hague; 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 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 have been leaving near their victims. But, most of all, they know what happened because they were there, physically, unlike the indictees in The Hague. In the Ovčara case, 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

[2] Based on ethnographical fieldwork conducted in The Hague, Croatia and Serbia in winter 2003, spring and winter 2004 with a grant from the Europa-Viadrina University in Frankfurt/Oder, Germany, where I was a post-doctoral fellow, and regular shorter stays in Croatia and Serbia between 2005 and 2009

appear in the indictment, when the probable number of victims is 264[3]. This is what the families expect, hope and fear at the same time: to locate and identify the corpses.

An emerging literature on the role and status of victims before war crime trials, as well as a general questioning on the healing effects of war crime trials on the victims has developed in the last years. In an article focusing on the Krstić trial before the ICTY, based on the transcripts of the victims-witnesses' testimonies, Dembour and Haslam (2004) argue that war crime trials silence, rather than hear, victims. The problem is that, besides the task of establishing or not the guilt of the defendants, the tribunal "must also establish 'what happened', leading it to produce something akin to 'history'. Competition between the dual tasks of establishing individual criminal responsibility and contributing to the development of collective memory gives rises to (…) tension" (Dembour and Haslam 2004:152). The aim of establishing the facts, and more generally, of establishing a historical record, is so crucial that it might have as an –unwanted but real–consequence a lesser attention paid to the victims. Stover (2004) also suggests that "war crime trials are generally ill-suited for the sort of expansive and nuanced storytelling so many witnesses seek" (Stover 2004:106). In addition, some authors claim that, contrary to conventional wisdom, in the case of the former Yugoslavia, "truth-telling has had neither the positive, nor the negative psychological effects that are claimed" (Mendeloff 2009: 609)[4].

Those claims might seem too radical: as many of the victim's families of the Ovčara massacre and many observers stress it, the trial in Belgrade would not have been possible without the one started before the ICTY. But all the authors I quoted underline that these critiques probably stem from a misunderstanding about what can be expected from war crime trials. Quoting Arendt's *Eichmann in Jerusalem*, Dembour and Haslam remind that

[3] 184 of the Ovčara victims had been identified by the Croatian forensic team lead by Davor Strinović (Stover and Shigekane 2002:852). Dozens of corpses found in the Ovčara mass grave are stored in a specific mortuary located in Mirogoj cemetery in Zagreb. They still need to be identified, but Colonel Grujić, current head of the Croatian forensic team, explained during the interview I had with him that the identification process is very long.

[4] Mendeloff quoting a study by Basoglu et al. (2005) on 1358 war survivors in the former Yugoslavia

a trial should not promise more than it can deliver. For Stover, "legal proceedings should not be designed to tell a historical narrative" (Stover 2004:116), and it would be naïve to believe that the ICTY can forge a vision of the recent history recognized in all the countries that stem from the former Yugoslavia. It is asking too much from a tribunal, at least on the short term. About the curative effect of witnessing to a trial, Dembour and Haslam argue, considering the nature of law, that it might be misguided to create a space for victims within the legal arena. All authors question the view that in the particular case of the war in the former Yugoslavia, an exclusive judicial perspective, which has been so far a strong trend, is the best way to deal with the past. Dembour and Haslam claim that "witnesses have far more to say than will ever be heard in court" and suggest that other forms of such as "film-making, art production, literature, history research and school textbooks" (Dembour and Haslam 2004: 156) should be fostered.

I will suggest some element of answer to this debate, by following the aftermath of the Ovčara massacre in three spaces: two judicial ones (the ICTY, where the alleged commanders have been put on trial, and the Special Chamber in Belgrade, where the alleged direct perpetrators of the massacre have been prosecuted) and a non-judicial one, the film *Prvi Deo*. I will put a special emphasis on the point of view of the victim's families, through the ethnographical fieldwork I conducted with the association *Vukovarske Majke*. I will first present some brief factual elements about the massacre and its judicial aftermath.

The massacre

In August 1991, the JNA and Serb paramilitaries 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). The three month siege of Vukovar became a symbol, before the Sarajevo three year siege, of the

Belgrade-supported project of *'ethnic cleansing'*[5], where "violence against the civilian population was part of an organized, systematic strategy of using terror tactics against civilians in order to make them flee their home" (Bouchet-Saulnier and Dubuet 2007: 10).

On 18 November 1991, Vukovar fell to the JNA and Serbian paramilitary troops. Hundreds of people (mostly civilian[6]) sought refuge in the city's hospital, hoping that they would be evacuated under the control of an ICRC convoy[7]. On 20 November, a first convoy left with 200 patients. As the convoy was advancing through the suburbs, an anti-tank mine was set off and many people wounded; the convoy nevertheless reached Zagreb ten hours later (Bouchet-Saulnier and Dubuet 2007: 10). As a result of the attack, a second 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 kilometers away from the city. They were beaten over several hours and during the night at least 264 men were shot in groups of ten in a place called Grabovo and buried in a ravine[8].

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[9]. But paramilitaries also (and perhaps mostly) have

[5] 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, arrested in 2005, have been transferred to The Hague.
[6] 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.
[7] See MSF's reports and Bouchet-Saulnier and Dubet (2007:10)
[8] For a more detailed description of the massacre, see Todorović 2007
[9] ICTY Second Amended Indictment, 1997, IT-95-13

responsibility: Miroljub Vujović and Stanko Vujanović, the two main indictees before the Belgrade District Court's War Crimes Panel in the Ovčara trial, "had command over Serb forces responsible for the mistreatment and killing of non-Serbs taken from the Vukovar hospital to the Ovčara farm"[10].

Judicial Aftermath of the Massacre in The Hague and Belgrade

In February 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), but it was not properly investigated until 1996, when the ICTY launched its first investigation (Stover and Shigekane 2002:851). In the subsequent years, 184 of the Ovčara victims would be identified, mostly on the basis of DNA analysis and returned to relatives for burial.

After the ICTY was created in 1993, this evidence led to the indictment by the ICTY Prosecutor, on 26 October, 1995, of Mile Mrkšić, Veselin Šljivančanin, and Miroslav Radić. 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 ICTY[11], started proceedings against the alleged direct perpetrators of the crime. The Belgrade District Court's War Crimes Panel, instituted in June 2003, has charged 17 members of the Vukovar Territorial Defence Unit (*Territorialna Odbrana* hereafter TO[12]) 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

[10] ICTY Third Consolidated Amended Indictment IT-95-13

[11] 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 Ovcara massacre.

[12] The TO played a crucial role during the wars in Croatia and Bosnia and Herzegovina. 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.

Minister Zoran Đinđić in 2003. Before presenting and comparing the two trials, I will briefly present the context and the genealogy of the research.

Genealogy of the Research

This research, primarily based on ethnographical research, deals with several sub-fields of anthropology, as well as with other disciplines, mostly law and political science. 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. The anthropological study of Law is a very old field of the discipline (Black and Metzger 1965), but it has mostly focused on cultural differences and aboriginal claims litigation (Thuen 2004). Yet, 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 and transitional 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: presenting it as a "war against civilians" does not equate with the view that it was a "civil war". There is a "conflict of interpretations" (Ricœur 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 same applies to the ICTY itself: the authors abovementioned support its existence, but some authors have criticized the "humanrightism ideology" on which it is based (Hayden 1999). It seems inevitable that any analysis of the wars in the

former Yugoslavia has a –even implicit– normative dimension, and I am not claiming here to be an exception in that respect.

The Ovčara case proved to be of specific interest to me for a set of reasons. It was the first large-scale massacre to happen in the Yugoslav wars. After the fall of Vukovar and the Ovčara massacre, it became clear that "terror against civilians was not a secondary effect of the conflict in the former Yugoslavia, but was employed deliberately as a method of war" (Bouchet-Saulnier and Dubuet 2007: 10). The same pattern would be used a few months later in Bosnia and Herzegovina, on a much bigger scale.

Concerning the investigation on the massacre itself, and the evidence found, the Ovčara case also presents peculiarities. According to Stover and Shigekane (2002), unlike subsequent cases in Bosnia and Kosovo, where bodies were removed to "secondary mass-graves", and killings were perpetrated during a longer period, the Ovčara case involves a single crime; in addition, the mass grave was left untouched after the massacre and protected by UN troops. There were many direct witnesses, both survivors of the massacre and perpetrators who eventually recognised their participation in the massacre. In addition, there has been a close cooperation between the Croatian government, the ICTY and the victim's associations. The indictment by the ICTY was therefore straightforward (Stover and Shigekane 2002:852). But the main reason why I choose to focus on the Ovčara case is the fact that it was the first case prosecuted both before the ICTY and before a domestic court, in this case Belgrade District Court's War Crimes Panel. In 2003, together with French anthropologist Elisabeth Claverie[13], I had started conducting fieldwork in The Hague. When I heard about the Ovčara trial was about to begin in Belgrade, I started a joint project with French video artists Florence Lazar and Raphael Grisey. Their film, *Prvi Deo*, was released in 2006. The film lasts 85 min and

[13] She as published a very important article based on ethnographical fieldwork with the association of the missing persons in Hadžići (Bosnia and Herzegovina) and on the transcripts of three trials before the ICTY. See Claverie (2004)

has been presented in numerous film festivals[14]. It is focused on the Ovčara trial in Belgrade, through the eyes of the Victim's families, the *Vukovarske Majke* association.

The material used in this paper is mostly based on interviews (conducted in Belgrade and Zagreb[15]), transcripts from the ICTY and from the Belgrade trials, as well as the film and its 80 hours of rushes. The paper has three parts: it first analyses the trial of the JNA officers in The Hague before the ICTY, then the trials of the Paramilitaries in before Belgrade District Court's War Crimes Panel, and finally it presents one non-judicial attempt to deal with this massacre: the film *Prvi Deo*.

The Vukovar hospital case before the ICTY

On 26 October, 1995, Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin, the three JNA officers, were indicted by the ICTY Prosecutor (at the time Richard Goldstone[16]). 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 humanity[17] and three counts of violation of the laws or customs of war[18]. 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

[14] At the FID Marseille http://www.fidmarseille.org/dynamic/index.php?option=com_content&task=view&id=279&Itemid=62&lang=french), at the centre Georges Pompidou http://www.cnac-gp.fr/Pompidou/Manifs.nsf/2f6d2a49fa88f902c1256da5005ef33f/112d11ba529a2977c125738300559382!OpenDocument,

[15] Were the Victim's families mostly live. No one had returned to Vukovar at the time.

[16] 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.

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

[18] 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. 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. Miroslav Radić, born in 1962, entered into private business in Serbia. He was transferred to the ICTY on 17 May, 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 respectively. The transfer to The Hague of the ICTY indictees has been 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 defense were respected. 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 and have studied the transcripts of the trial.

After more than one year of hearings, the judgment of the trial chamber was released on 27 September 2007. The Trial chamber recognized Mile Mrkšić and Veselin Šljivančanin "responsible for the JNA's withdrawal from Ovčara, which opened the way for the murder of prisoners of war", in the sense that they were aware of the "intense feelings of animosity harboured" by the TO and did not take measure to improve the security of the prisoners, despite being informed of the beatings. But the trial chamber did not find that there were direct evidence which established the joint criminal enterprise of murder and mistreatment of the prisoners. Mile Mrkšić was sentenced to twenty years' imprisonment, for murder, torture and cruel treatment (violation of the laws or customs of war), Veselin Šljivančanin was sentenced to five years' imprisonment for murder and torture (violation

of the laws or customs of war), while Miroslav Radić was found not guilty. This lenient sentence provoked harsh reaction from the victims' families, who qualified the sentence as "shameful and humiliating"[19] and from the Croatian government. A letter was sent to the Secteraty-general and the President of the UN Security Council by then-Prime Minister Ivo Sanader, to express the "disappointment and astonishment" after the verdict by the ICTY[20]. Both the Defense and the Prosecution filed notices against the judgement. On 5 May 2009, the Appeals Chamber confirmed the sentence of Mile Mrkšić and increased the sentence of five years' to seventeen years' imprisonment for Veselin Šljivančanin. In its judgment, the Appeal Chamber stated that "the sentence of five years' imprisonment was so unreasonable that it could be inferred that the Trial Chamber must have failed to exercise its discretion properly and that [the sentence] did not reflect the gravity of the crimes committed by M. Šljivančanin"[21]. Meanwhile, another trial related to the same massacre took place in Belgrade.

The Ovčara trial in Belgrade: putting direct perpetrators on trial

The ICTY has reached many of its initial goals: it has indicted 161 persons and all (but one) high ranking politicians and army chiefs such as Slobodan Milošević, Radovan Karadžić, Biljana Plavšić, Vojislav Šešelj or Ante Gotovina have been transferred to The Hague. Among them, as of October 2009, proceedings have been concluded against 120 persons, proceedings are ongoing for 41 accused and among them, two accused remain at large: Ratko Mladić and Goran Hadžić. The ICTY has in addition established an accurate historical record, which will certainly be used in the future by the citizens of the republics which stem from the former Yugoslavia.

From The Hague to National Judiciaries

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[19] See http://www.javno.com/en-croatia/shameful-verdicts-again-kills-ovcara-victims_242210 (Accessed 12 October 2009)

[20] http://seagrass.goatchurch.org.uk/~undemocracy/cgi-bin/web2/trunk.py/A-62-378.pdf (Accessed 18 October 2009)

[21] http://www.icty.org/x/cases/mrksic/acjug/en/090505.pdf

Nevertheless, 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"[22] 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 compared to the hugeness of the crimes committed, and that the majority of them are political leaders and high-ranking soldiers. As many people say, if it was indeed important for them to see major political actors such as Slobodan Milošević or Radovan Karadžić 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, and perhaps most of all, the families of the thousands of people still missing say that they need at least to locate the corpses, in order to give the dead decent funerals.

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[22] "*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".*
see ICTY Website: http://www.icty.org/sections/Outreach/OutreachProgramme

Furthermore, the ICTY has announced in 2003 its completion strategy: this means that is has completed its investigations in 2004. Estimates as of autumn 2009 suggest that "all but four of the ICTY's trials will conclude in 2010, three more in early 2011, and the final trial, that of Karadžić, in early 2012. Most appellate work is scheduled to be completed by mid-2013"[23]. As a consequence, the ICTY has started to transfer some cases to domestic judiciaries in Bosnia and Herzegovina, Croatia and Serbia (Zoglin 2005). The Ovčara trial in Belgrade is a first attempt at such a transfer, even though many expressed their doubts about the relevance of such transfers. For Zoglin, "domestic legal systems are unable to handle run-of-the-mill criminal matters, much less emotionally charged war crimes prosecutions. The lack of political will is even more problematic" (Zoglin 2005:42). Nevertheless, the Ovčara case was considered as a test of the Serbian legal system's ability to prosecute suspects for war crimes.

The first trial in Belgrade (2004-2005)

A new Law on the Organisation and Jurisdiction of Government Authorities in Prosecution of Perpetrators of War Crimes was enacted in Belgrade in June 2003[24]. 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 first 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 192 bodies have been identified. The evidence has been used both by the ICTY and by the Belgrade Prosecution. In addition to forensic evidence and witness evidence (including

[23] http://www.icty.org/sid/10016

[24] 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.

two confessions of the defendants and the statements of the 4 surviving prisoners), the Trial Chamber would also used video footage broadcast by Belgrade TV on 20 November 1991, as well as the War Diary and the Operations Diary of the Kragujevac Brigade (Todorović 2007:149)

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 Vukcević 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[25]. 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 Đinđić 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[26]. The two major figures in this trial are Miroljub 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. Eleven additional persons have been charged for their participation in the Ovčara massacre[27]. The prosecutor proposed to the War Crimes Council that proceedings should be integrated as the six men indicted earlier were already undergoing trial. The second part of the trial started on 28 April 2004.

[25] The men indicted were Spasoje Petković, Stanko Vujanović, Jovica Perić, Ivan Atanasijević, Predrag Madzarać, Miroljub Vujović and Milan Vojinović. One indictee, Mirko Voinović, died one day before the trial strated and another indictee became a prosecution witness: only six men were present at the first part of the trial.

[26] For a complete moniroting of the trial, see http://documenta.hr/eng/index.php?option=content&task=category&sectionid=3&id=8&Itemid=30

[27] Milan Lancuzanin, Marko Ljuboja, Predrag Milojević, Bozo Latinović, Boro Krajišnik, Vujo Zlatar, Goran Mugosa, Djordje Šošić, Miroslav Djanković, Slobodan Katić, Nada Kalab (Stanko Vujanović's wife, the only women amongst the indictees) and Milan Bulić

The hearings took place between July 2004 and November 2005. Although all indictees had pleaded not guilty on all counts, a *coup de theatre* occured a few weeks before the end of the trial. Defendant Ivan Atanasijević admitted that he had participated in the killings and recognized that he, under direct orders, had killed one prisoner in Ovčara[28]. 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 sentence fits that hate, rage, arrogance and cruelty"[29]. None of them followed his advice, and 14 of the 16 indictees were sentenced to heavy prison terms. In December 2005, 14 of the indictees were found guilty and sentenced to a total of 231 years in prison.

The Ovčara 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 Ovčara trial met the standards of a professional trial, "ensuring maximal objectivity and impartiality" (Todorović 2007 :145). The defendants had a faire trial, and the War Crimes Chamber ensured respect for the dignity of the victims. Yet, the Prosecutor´s Office was heavily criticized for shielding JNA officers from criminal responsibility.

Overturn by the Supreme Court and the new trial (2007-2009)

Both the defence and the prosecution made appeals to the Supreme Court, which overturned the first instance ruling on December 14, 2006, because of alleged procedural irregularities. Special prosecution spokesman Bruno Vekarić said that this was a very

[28] Atanasijević was actually the second defendant to admit committing the crime. Earlier, witness-associate Boza Latinović had recognized his participation, but he wasn't sitting with the other defendants. Therefore, Atanasijević's statement had more impact.
[29] Cited by Dusan Stojanović, Associated Press.

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"[30]. According to the Humanitarian Law Centre (HLC) in Belgrade, Serbia's Supreme Court "carries on its practice of overthrowing every judgment made in war crimes trials and returning it for retrial" (HLC report 2007:150)[31]. More significantly, the HLC states that the Supreme Court's decision was not based on legal facts, but that it set aside the judgment for political reasons. For instance, "contrary to procedural law provisions and applicable case-law" (HLC 2008:95) the Supreme Court, ordered a psychiatric evaluation of one witness-collaborator. It also ordered that a defence attorney be heard in order to determine whether he had been present at interrogation of one defendant, when it actually appeared in the interrogation minutes that the attorney was indeed present (HLC report 2007:150).

Even though it was contested inside and outside Serbia, the Supreme Court's decision meant that the entire verdict was cancelled[32], concerning both the indictees who were found guilty and the ones who were acquitted. Therefore, a new trial had to start. The 're-trial' of 18 defendants[33] opened on 13 March 2007. During the retrial, none of the objections of the Supreme Court proved well-founded; all verifications confirmed the conclusions of the overruled first-instance judgment (HLC 2008:96). After 56 hearings, the sentence was published on 12 March 2009. Miroljub Vujović, Miroljub Vujović and five others were sentenced to 20 years imprisonment for the murder of at least 200 people at the farm in November 1991. Another six were handed prison terms ranging from five to 15 years. Five defendants were acquitted. Defence attorneys said they would appeal

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

[31] Three previous first instance judgments in war crimes cases were overturned and sent back for retrial. See HLC report:150

[32] 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-rdc.org/english/War_Crimes_Trials_Before_National_Courts/index.php?file=1568.html

[33] Two more defendants, Saša Radak and Milorad Pejić were judged together with the 16 defendants of the first-instance judgment, since the trial chamber considered that their cases were related to the same criminal offense.

before the Supreme Court and the Prosecution said an appeal would be lodged against the acquittals, but expressed satisfaction with the 13 convictions. The Victims Families remained unhappy with the outcome; both because many indicted were acquitted and because the trial did not led to elements which would enable, as they had hoped it, the identification of the still missing persons.

But nevertheless, the year 2009 is a turning point in the aftermath of the massacre, in the sense that the judicial time seems over. The important question is: what comes next for the relatives of the families? Before addressing this issue in the third section of this paper, I will draw some elements of comparison between the two tribunals.

Comparing the two tribunals

I will 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 Ovčara 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.

Locations

The ICTY building, a former Insurance Company building, 10 minutes from the sea in Scheveningen (The Hague), 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. 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. What is striking is 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 indictees 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.) 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 (Ricœur 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 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 Đinđić and Milošević's former mentor Ivan Stambolić'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 trial[34].

After hearing each witness, the indictees were allowed to ask questions and they came out of the armoured cell. The two main indictees, Vujović and Vujanović, often asked as many as thirty questions, like "what was the colour of the hat of this person you said you

[34] See http://www.yucom.org.yu/EnglishVersion/Izvestaji/sudjenja-ovcara.htm for transcripts of the hearings

saw in Ovčara" 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 Ovčara. Each unit had indeed distinctive marks (such as hats or caps). The atmosphere was rather informal. The president, Judge Vesko Krstaić, 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.

Command Responsibility

A salient distinction between the two institutions concerns the idea of command responsibility[35]. 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 1991[36]. 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 official goal of territorial expansion and its corollary of making areas "ethnically pure."" (Williams and Cigar 1997:2).

[35] See Humanitarian Law Center (2004)
[36] 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)

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 is the successor to the Republic of Yugoslavia[37]. 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

[37] In the mean time, and when the trial started, Serbia-Montenegro. 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.

that the indictment was somehow too smooth, compared with the organised nature of the massacre. Yet 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.

Status of the Victims

Another major difference is connected with the status of the victims in the two tribunals, which is at the heart of this paper. 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. The Rules of Procedure and Evidence draws from both common law and civil law, but is mostly adversarial. There is no *partie civile* for victims or people acting on their behalf. According to Walleyn (2002), adversarial procedure is harsher to victims than inquisitorial procedure in the case of war crimes trial. Nonetheless, the ICTY has made effort to give victims a broader role, trough the Victims and Witness Support Unit. But Dembour and Haslam stress, in the Krstić case, the frequent inappropriateness of judges' responses to the victims' accounts. In addition, Stover underlines that little attention is being paid to the fate of the victims-witness after they testify before the ICTY.

The situation is quite different in Belgrade. First, the victims have representatives who act on their behalf. One of them, Nataša Kandić, director of the Humanitarian Law Centre in Belgrade, is extremely active and organises their stay when they come to Belgrade. This was of major importance for them. At numerous occasions, they underlined that the financial, but most of all, emotional support given by Ms Kandić and her team significantly contributed to their presence during the hearings. After one of the victim's relative had felt faint during the first hearing, she also arranged the presence of a psychologist during and after the hearings. Secondly, for pragmatic reasons, it is easier for them to attend the hearings in Belgrade than in The 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, albeit 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 observations during my meetings 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 support[38]. 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 Ovčara. 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 Atanasijević could therefore be a first step on the way to restoration.

Restorative justice places a premium on the cooperation of the offenders (Sullivan and Tifft 2006). And what the families of victims that I met most wanted to hear was what exactly happened in Ovčara: 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

[38] 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.

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"[39], 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 Ovčara, who are still looking for those 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".

This quotation expresses the different levels of expectation put in the trial by the victims' families: the will, already expressed in the paper, to know exactly what happened, the hope to find new elements that would help identifying the missing persons, but also a conscience on the broader dimension of the trial. For them, Justice has a much larger sense than the trials connected to the massacre. It has to do with their current life, with their situation in the country in which they live. Almost two decades after the war, they still see themselves (and are considered by the others) as *izbeglice*, refugees. Except at the very beginning, the Ovčara trial didn't receive intense media coverage, neither in Croatia, nor in Serbia. The victims' family often expressed their disappointment of being

[39] Who otherwise, as their names indicate, are mostly women.

abandoned even by the Croatian government. Justice also has to do with property restitution, and with the possibility to come back one day to Vukovar and live together again with their former neighbors (also see Stover 2004:115). Of course, all these expectations cannot be fulfilled by a tribunal. As Stover reminds us, "tribunal justice should never be regarded as a panacea for communities divided by genocide and ethnic cleansing" (Stover 2004:115). Other authors, such as Nikolic-Ristanovic (2006), also ask whether an exclusively judicial perspective, which has been so far a strong trend, is the best way to deal with the past. Dembour and Haslam (2004) go even further by claiming that "both lawyers and non-lawyers must stop thinking that judicial proceedings are the most important way of remembering war crimes". They suggest a displacement away from tribunals to other platforms. I will now illustrate such a displacement and analyze how the Ovčara massacre has been treated outside courtrooms, by presenting the film *Prvi Deo*.

Non-judicial spaces: dealing with the past outside the courtrooms

Being a social anthropologist and not a lawyer, I subscribe to the claims made by the authors abovementioned that an exclusive judicial approach can be misguided when it turns to the aftermath of mass atrocities. Nonetheless, and maybe because I am not a lawyer, at the end of this research I think war crime trials are an essential step that allows other platforms such as social sciences, literature or film-making. This view is suggested by the title of the film *Prvi Deo* ('first part') I will present now. It is a non-judicial (in this case artistic) attempt to deal with the Ovčara massacre: the title suggests that the trial in Belgrade is a first step, the first part of a much longer process which continues after the trial (and even after the film) is over. There have been countless artistic attempts to engage with mass atrocities. In the field of documentary film-making, two recent films have drawn the attention. The first one, Cambodian director Rithy Panh's *S21: The Khmer Rouge Killing Machine* (2003[40]), put together two of the very few surviving prisoners and more than a dozen jailers in Phnom Penh's S21 prison. The second one,

[40] http://www.erratamag.com/archives/2004/03/s21_the_khmer_r.html

Bosnian director Sabina Subasić's *Earth Promised Sky* (2003)[41], focuses on the work of the forensic team working on the discovery of mass graves and the identification of remains for the *Bosnian Commission for Missing Persons*. Both films are constructed against the backdrop of war crimes trials, they focus on the attempts made by the victims and survivors to restore a sense of Justice broader than the trials themselves. The film by Lazar and Grisey belongs to the same vein.

Prvi Deo is part of joint project on the Ovčara massacre trials, initiated in 2003, I had with French video artists Florence Lazar and Raphael Grisey. It was released in 2006. The filming took place between April 2004 and August 2005 in Belgrade, the Hague, Zagreb, Vukovar and Ovčara. In total, there are more than 80 hours of rushes. The first idea was to film the trial. But since it was not allowed to film the hearings, they chose to film members of the *Vukovarske Majke* association in their impersonal hotel room in Belgrade after each hearing, bring up their observations, recounting and discussing the hearings. What seemed at the beginning as a problem actually became the heart of the film. It should be stressed here that the prohibition of filming the hearings was addressed to everyone: no journalist was allowed to enter the courtrooms with a camera. According to Todorovic (2007), this prohibition seriously diminished the credibility of the War Crimes Chamber to make the trail transparent, especially when compared with the ICTY, where almost all the proceedings are accessible on line. Nevertheless, since it filming the hearings was not possible, the authors decided to focus on the comments made by the *Vukovarske Majke* about the trial. They also filmed them during the breaks in the corridors of the tribunals, where filming was allowed.

Another important part of the film was made in Vukovar itself, where Liljana, a young woman who lost her brother and her boyfriend in Ovčara, drives in the night and comments on the traces of the siege, on everything which has vanished: relations of neighborhood, peace and trust. As a counterpoint, the authors filmed two places where the bodily reality of the massacre is shown: the mortuary located in Mirogoj cemetery in

[41] http://www.kinosvetozor.cz/en/program/filmy/79/Earth-Promised-Sky/

Zagreb, where the corpses of dozens of the Ovčara victims wait to be identified by colonel Grujić and his forensic team, and Ovčara itself, on 20 November, where there was a celebration on the *Spomen Dom*, the memorial built on the location of the massacre.

The film is constructed along different ranges, different voices. It shows the contrast of the victims' families between their attitude during the hearings and their attitude when commenting on them. In the corridors of the tribunal, they are focused on one goal: finding out new elements which will enable them to know "what happened". In the hotel room, the switch from one range to another, from the past to the present, from these few dark days in November 1991 when their lives changed forever to their current existence, often very sad. The members of the *Vukovarsje Majke* express what they think about the trial, comment on the attitude of the indictees and their families, but also recall what happened, try to imagine how their beloved ones spent their last moments. They also comment on the attitude of the Croatian and Serbian governments, on the current situation in Vukovar, on the difficulty to understand how this was made possible, on their hope that people will know about what happened. The film also shows contemplation and grieving during the commemoration on the place of the massacre.

This is a first answer to the multi-platform approach advocated by Dembour and Haslam: the format of the film indeed allows a much more nuanced, polyphonic view on the situation than a courtroom. The camera has a much broader understanding of facts than law, which considers facts "only those that are precise, pedantic, quantifiable" (Dembour and Haslam 2004:163). The discussions filmed in the hotel room are not based on a question/answer mode, leaving therefore much more space for doubt, emotion, digression, statements, personal opinions and claims. But, perhaps because our access to the association *Vukovarske Majke* was made through Ms Kandić**,** my observation are that what mattered the most for them was the opportunity to have a benevolent audience, less than the format of their speech. Of course, the very existence of the film, the fact that it has been shown "abroad", "in the West", is of tremendous importance for the victim's

families. It gives strength to their struggle. A recurrent motto came back: the will to let the world know "what happened". As Mira expressed it during the interviews:

> « Can anyone judge such acts? This is the question I am asking. There are records, tapes. The only thing I want is that they should be shown on TV, that these images would be shown on TV, and that those who say today that they enjoy watching them [our relatives] dying, that they could imagine their own children in the same situation, at least, half a second, to feel the same grief than we feel".

This quotation shows that the quest for Justice is much broader than what a tribunal can state. The victims's relatives clearly distinguished the kind of expectations they have about the trial in Belgrade, about the film and more generally about their quest for recognition. Yet, maybe because of the genealogy of the film, it is difficult here to differentiate so clearly judicial from non-judicial arenas. What mattered the most was the relation of trust established both with the HLC team and the videoartists. In addition, NGO´s like the HLC in Belgrade operates at several levels: a strictly judicial one by representing war crimes victims before Serbian courts; they also monitor the hearings of Serbian war crime trials; finally a more general program on memory and dealing with the past which includes social sciences research, workshops, oral history interviews with victims and witnesses. Similar initiatives exist in Bosnia and Herzegovina (*IDC- the Research and Documentation Centre* in Sarajevo[42]) and in Croatia (*Documenta - Centre for Dealing with the Past*[43]). All these institutions take actions at the interface of law and other arenas.

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, and its judicial and non-judicial aftermath. My initial question was: it is more important for the

[42] http://www.idc.org.ba/
[43] http://documenta.hr/eng/

victims' families to see on trial the commanders of the mass atrocities, or the direct perpetrators the crimes? I also addressed the debate on whether war crime trials are the most suitable platform for the victims, when compared to non-judicial spaces: an emerging literature claims that the current former of war crime trial might leave victims bitter and silenced, and that other –non-judicial– platforms might be more appropriated to hear them.

On the basis of the fieldwork I conducted 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. Another possible explanation about this differentiated level of expectations is that they had little illusions about the Serbian judiciary's ability to conduct a fair and independent trial before it started (and this was partly confirmed when the Supreme Court overturned the first trial), but perhaps this paradoxically influenced what they expected from the trial in Belgrade. It seems that the level of expectation put in the ICTY is too high: it was created to stop the war and restore the dignity of the victims and establish a historical record that will be used in the future. This is probably too much, and Arendt's famous statement about Eichmann's trial seems very accurate in this case. For the victim's families, the ICTY trial was not really their trial. The fact that they received an important financial and emotional support from the Humanitarian Law Centre certainly made a huge difference on the way they perceived the trial in Belgrade.

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 Đinđić was assassinated in March 2003 because he wanted to transfer top-ranking generals, who eventually surrendered, to The Hague. Transitional Justice in

Serbia has also shown its limits in the Ovčara trial, when the Supreme Court overturned the first trial.

This is why claiming that war crime trials (and the ICTY in particular) are not the most appropriate arena to hear victims seems to me exaggerated. Non-judicial arenas do certainly provide a very important platform for the victims. The film *Prvi Deo* gave the victims' relatives a crucial space to express themselves. The fact that it was shown in many film festivals *abroad* was also crucial for them. Many expressed their fear about being forgotten and abandoned, that the deceased, especially the ones who have not been identified yet, are gone again. This fear could become more acute now that both trials (before the ICTY and Belgrade's Court) have reached an end in 2009. This is why the film *Prvi Deo* (and the current project I have with Florence Lazar to follow the history of some of the victims' relative now than the trials are over) certainly is of crucial importance for them. But this arena is not opposing the judicial one: as I have suggested, what matter the most was the relation of trust established between the *Vukovarske Majke*, the HLC team and the filmmakers, more than the platform in which they express themselves. In addition, both the trial in Belgrade and the film took place in the context of the trials and the historical record now established by the ICTY.

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