Linguistic Justice at the International Criminal Tribunal for the Former Yugoslavia

"This book is about the first tribunal of its kind to be established since the tribunals that tried the war criminals of World War Two. It has broad implications for both academics and practitioners in the humanities and social sciences in a wide range of fields extending beyond law and language to every area of human relations. Dr Fidahić has addressed both legal and linguistic fields, and, at the same time, has done an admirable job summarizing complex historical and practical issues. He has used his first-hand experiences and academic training to produce a work of important insight into the workings of the United Nations and the need to learn from these insights."
—Victor A. Friedman
Andrew W. Mellon Distinguished Service Professor Emeritus in the Humanities, University of Chicago; Honorary Associate, La Trobe University, Australia

"This is a meticulous, comprehensive study, a real eye-opener on how dysfunctional the UN is. A vast bureaucratic apparatus failed to provide appropriate interpretation and translation services for witnesses and victims of ethnic atrocity crimes. Nor has it promoted reconciliation between Serbs, Croats, and Bosnians. The book explains how judicial practice can be undermined. Besmir Fidahić has performed a service that the UN should learn from."
—Robert Phillipson
Professor, Copenhagen Business School, Denmark

"For international (criminal) lawyers, the work and jurisprudence of the ICTY is indispensable. While the ICTY's decisions and related primary and secondary sources are accessible via mostly English and French texts, those legal researchers with a desire for a deeper understanding of the original testimony in proper context, inevitably encounter various linguistic barriers. Besmir Fidahić's book provides the solution. The book is first and foremost a resource: it is a compilation of materials (including primary sources) made more accessible by the author. This is not yet another book on the ICTY, its cases and institutional and political background, but rather concerns an aspect that is very inaccessible for most international criminal lawyers and others interested in the work of the ICTY. The author should thus be commended for the terse and very clear explanation of the sometimes dry and inaccessible primary data and sources. Fidahić's book is required reading for all international (criminal) lawyers interested in a proper understanding of the legal, cultural and historical legacies of the ICTY; legacies that can only be appreciated with the help of a proper understanding of the role of language and translation at the ICTY."
—Gerhard Kemp
Professor of International and Transnational Criminal Justice, University of Derby, UK

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By

Besmir Fidahić

Cambridge Scholars Publishing

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My first engagement with the ICTY was early in 1996 when the mass graves containing the bodies of Srebrenica men and boys were discovered. I was working at the mass graves sites, interpreting for the spokesperson. I felt a strong connection with the Srebrenica cause from the very beginning of my engagement at the ICTY and have stayed with the ICTY Srebrenica Team ever since, mainly because of their inspiring legal and investigatory leadership. No matter what other investigation team I was assigned to, I made sure to make time whenever the ICTY Srebrenica Team needed me.

In the late 2010s, I was called by the ICTY Srebrenica Team to interpret for the drivers who had taken the Srebrenica men and boys to the execution site and who were now appearing as witnesses for the prosecution. One of the drivers said he took a liking to a small boy aged about 13-14. He took him aside and put him on the front seat with him in the truck. "Together" they transported many other Srebrenica men and boys from detention locations to the execution site where they were all killed. Their journey lasted all day and all night and consisted of about 10-12 different rounds. They passed the time by talking and singing together. The driver described this boy as beautiful, happy, engaging, and chatty.

Once the transports and executions were completed, the driver found the boy sleeping on the front seat. He sneaked off and got into contact with the Main Staff Office of the Army of Republika Srpska Drina Corps. There he woke up the Army of Republika Srpska Drina Corps Duty Officer, a Major. This Duty Officer got into a car and drove to the location of the driver's truck. He pulled the sleeping boy out and shot him dead in the bushes. He then returned to the headquarters. The driver said he didn't know what else to do.

I am dedicating this book to the children of all those in Bosnia and Herzegovina who "didn't know what else to do."

TABLE OF CONTENTS

List of Tables ix

Appendices x

Note on Topic and Sources xi

Introduction 1
May We Have the Appearances, Please

Chapter 1 13
May the Local Context Take the Stand, Please
1.1. Pre-Yugoslavian B&H 14
1.2. B&H in Yugoslavia 30
1.3. The war against B&H 48
1.4. Linguistic justice: the situation country towards the working institution 52

Chapter 2 61
May the Legal Institution Take the Stand, Please
2.1. Normative procedural due process language-related rights, obligations, and requirements in the ICTY laws 62
2.2. ICTY language- and language professionals-related case law 72
2.3. Procedural linguistic equality of arms between the ICTY prosecution and defense 86
2.4. Linguistic justice: the working institution towards the parties to the proceedings 97

Chapter 3 104
May the Language Professionals Take the Stand, Please
3.1. Legal background to the engagement of language professionals at the ICTY 106
3.2. ICTY language professionals 114
3.2.1. The CLSS 119
3.2.2. Seven ICTY units employing language professionals 131

3.3. Linguistic justice: the working institution towards language services providers 144

Chapter 4 158
May We Consult the Court Record, Please
4.1. Linguistic justice: overall production in translation and interpretation 160
4.2. Linguistic justice: overall ethnicity- and nationality-based provision of language services 168
4.3. Linguistic justice: translation of evidence, exhibits, and court documents 180
4.4. Linguistic justice: court interpreting 185
4.5. Linguistic justice: court transcripts 200

Conclusions 209
All Rise

Appendices 217

References and Bibliography 363

LIST OF TABLES

Table 1. Tenure of the ICTY permanent judges and ad litem judges....67

Table 2. Languages of the ICTY defense counsel teams 93

Table 3. Approximate duration of trials between initial appearance of an individual and the reading of the final sentence.....95

Table 4. CLSS translation outputs as reported in ICTY ARs 159

Table 5. Minimum, upper median, lower median, and maximum output in translation for UN System language professionals..... 162

Table 6. Minimum, upper median, lower median, and maximum output in translation for CLSS 163

Table 7. Minimum, upper median, lower median, and maximum output in translation for CLSS vs. expected and found output in translation by the UN OIOS 163

Table 8. CLSS output in interpretation as reported in the ICTY ARs ..165

Table 9. Documents pending translation after the completion of the English-speaking trial (Stanišić and Župljanin).....182

Table 10. Documents pending translation after the completion of the French-speaking trial (Šešelj) 184

Table 11. Interpreting during testimony of a fact witness 190

Table 12. Interpreting during the initial appearance of a defendant.. 194

Table 13. Total number of trial days vs. the days available in B/C/S transcripts 202

Table 14. The ICTY Registry B/C/S transcription team output: produced vs. minimum, median, and maximum output (in hours).. 208

LIST OF APPENDICES

Appendix 1. The pre-trial, final, and appeal briefs: the word/ page count and status of translation into B/C/S and French..... 217

Appendix 2. Decisions on requests for time and/or word extension to submit the pre-trial, final, and appeal briefs.....223

Appendix 3. Ethnicity of defendants vs. language of interpreters during the initial appearance of defendants..... 229

Appendix 4. Language of interpreters vs. location of crimes and ethnicity of victims during the reading of trial, appeals, sentencing, and revised judgments 235

Appendix 5. The ICTY Registry B/C/S transcript team times, ERN ranges, and ERN pages..... 244

Appendix 6. The situation country and the ethnicity of testifying witnesses vs. language of interpreters and language of the transcript 326

NOTE ON TOPIC AND SOURCES

This study only has time, space, and patience to dedicate to the effects of Serbian nationalism in B&H. It does not have ample time, space, or patience to delve into the minutest details of the many conflicts between the Croatians and the Serbians throughout the First and Second Yugoslavias.

As to documentary sources, I used the UN Official Document System. Unfortunately, it proved imperfect. When I was checking links, at the end of the project, I discovered the links to documents from the system had expired. Apparently, as UN authorities explained, one must have a username and password to prevent such expiry and one cannot get a username and password unless one is a UN staff member on a fulltime contract. I went back and rewrote the footnotes linking to documents on the Official Document System to include the searchable symbol (for example, A/RES/71), thus enabling researchers to find the referenced documents on their own. The same goes for vacancies: they no longer exist at UN sites, so I linked them to a third party, UNJobs.org, a Bhutan-based association that pioneered the aggregation of vacancy announcements from multiple UN System organizations in 2000.

As to the ICTY sources, I used the official site of the ICTY Court Records and the official ICTY site. This proved enabling because it prevented me from unintentionally discussing classified documents I remembered from my work. Unfortunately, the ICTY videos were posted in such a botched way that it impacted the entire visual presentation of my study: those that could have been uploaded as a single file have been broken down into at least two and at most nine different video segments (*Popović et al.*, trial judgment, 01:26:12) regardless of their duration. Links to these videos could not have been left in the original form because they would have significantly added to the length of the entire study as some of them were two or three lines long. I had to resort to shortening them. This proved a success: my study looks much cleaner and neater, and it is much shorter than if I posted the original links. However, when I was checking links before submitting a

final version of my book to the publisher, I discovered most of these shortened links do not work, either. This is the reason why all the ICTY Court Records sources have the ERN number after them; the reader can make a username on that site and check them. The links to other ICTY documents and videos are linked to the individual page where the accused to which they refer is first mentioned: "ICTY, Cases, *Trial name*, T. transcript page/Name and year of the document: link."

Discussion of the ICTY and its language-related rules and regulations and the case law, UN rules and regulations relating to language staff, and ICTY language arrangements and services was informed both by Annual Reports (ARs) produced by the UN and the ICTY, and inspection reports made by the UN System's Joint Inspection Unit (JIU), the UN Office of Internal Oversight Services (UN OIOS), and the UN Board of Auditors (UN BoA). The ICTY ARs could not have been used alone to give a realistic picture of the ICTY and its language services. However, financial and audit reports are straightforward because they mostly deal with the organizational and financial realities of the organization concerned and are geared toward straightening out that organization's shortcomings.

Finally, my colleagues from the ICTY and the International Association of Conference Translators (AITC) have been consulted for their understanding of practices and experiences in translation, interpreting, and transcription, and overall UN policies and practices relating to language professionals across the UN System. These discussions were conducted over email, were semi-structured, and followed the basic principles of qualitative research where a problem was discussed from the perspectives of practitioners whom it involved. Permissions to quote were obtained from all participants in the research (on file with the author). It is hoped that these three groups – internal, external, and freelancer sources – will provide a balanced, holistic analysis of the ICTY's language services.

The UN does not sing “Kumbaya” in all its languages looking up to the skies with a faint smile on its face all day long. The UN is the most important organization in the world and has a final say on everything that goes internationally on the planet Earth and in the entire known universe. We are all a part of human family and this is why it is important to involve as many people in the UN’s work as possible. We have a duty to react to the UN’s work results so that the UN can receive feedback, fix, if needed, and, ultimately, deliver its services properly and in time to its audiences. Otherwise, the UN will turn into an out-of-tune, self-singing, and audienceless “Kumbaya” singer *cum* silent and powerless collector of world unhappiness and misery. So, I thank you for reading and informing yourself about the following small snippet of the UN’s work, kind reader. I hate to put you on the spot, but some things you will read here happened because you did not react. But, now that you have been informed, as French would say: *á toi*!

INTRODUCTION

MAY WE HAVE THE APPEARANCES, PLEASE

This book is a result of years of research and 25 years of practical experience as a legal translator, interpreter, and editor in the conflict-, post-conflict-, humanitarian-, development-, and international criminal tribunals'-context. It deals with the delivery of linguistic justice at the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 – commonly known as the International Criminal Tribunal for the Former Yugoslavia (ICTY). The ICTY was an *ad hoc* tribunal established for specific purposes by the United Nations (UN) Security Council Resolution 827 on 25 May 1993 as an impermanent UN body to prosecute perpetrators of serious crimes committed during the wars in the former Yugoslavia which were waged in Croatia, Bosnia and Herzegovina (B&H), and Kosovo between 1991 and 1999. The ICTY was the first international criminal tribunal to emerge after the closure of the International Military Tribunal at Nuremberg (IMT) in 1946 and the International Military Tribunal for the Far East at Tokyo (IMTFE) in 1948.

The UN presents the main venue where the prevention of war and protection of human rights are discussed and is the only institution that can set up an international criminal tribunal with limited or universal jurisdiction. The ICTY was established under the auspices of the UN and falls under the Subsidiary Organs of the UN Security Council. However, the UN mission, management, powers, and programs are plagued by a set of problems revolving around the absence of clear leadership, the flux created by the power of veto in the hands of the UN Security Council permanent members, and the lack of clear mandates governing the work performed by UN entities which makes it plausible to question how adapted the UN administration was for such a task as establishing an international criminal tribunal.

Heads of states, politicians, former staff, and the media have never stopped criticizing UN efficiency when it comes to maintaining international peace and security, hinting at flaws in its internal structure and a sheer pointlessness to its existence. As to scholars, Weiss word-played on the self-appointed UN's attributes and likened the UN membership structure and its bureaucracy to a feudal kingdom and dysfunctional family. Weiss reminds the UN is the state-centric organization and sees continuity in the relationship between the UN System organizations and the world policies. Weiss criticizes UN administration for its bureaucracy and the lack of central authority with the power to make decisions on organizational mandates and resource allocation. He warns that all this leads to a situation in which many UN entities have overlapping goals and compete against each other for patronage, putting more emphasis on protecting their turf than service delivery to their audiences.[1]

In response to criticism, the UN engages in series of reforms. But it seems the mainstream ignores the fact that the UN administration has been involved in active reforms since its inception in 1946. The most recent – Kofi Annan's 1998 staff reforms – turned the UN into a self-protective bureaucratic machine run by managers. Annan's reforms centralized all actions in the UN around a single manager with subordinate managers merely providing some checks and balances.[2] Unfortunately, this approach to management could be described as the main contributor to the creation of a self-protective managerial environment where top managers refrain from acting against their subordinate managers because misconduct of their subordinates implies their own misconduct. Warah documented just a few of the many post-1998 Annan reforms sex scandals, corruption scandals, and kickback scandals, as well as the poor protection of the whistleblowers who revealed them.[3]

Amidst all this, five permanent members of the UN Security Council have a free run of the UN and the world. Indeed, the 255 vetoes (14 by China, 16 by France, 29 by the UK, 81 by the USA, and

[1] Weiss, Thomas G. (2012), What's wrong with the UN and how to fix it. Polity Press: Cambridge.
[2] UN, Secretary-Generals' Bulletin: Building the future (ST/SGB/1998/6) (1998).
[3] Warah, Rasna (2016), UNsilenced: unmasking the United Nations' culture of cover-ups, corruption and impunity. AuthorHouse: UK.

115 by the USSR/Russia) passed by the UN Security Council permanent members between 1946 and 2020 affected the functioning of the world in many ways.[4] They stretched the limits of language, starting to describe the pressing problems that countries and their peoples were facing as mere "questions" and "situations", but offering no solutions or answers. The UN's verbosity turned all those "questions" and "situations" into veritable political buzzwords for every generation from 1946 onwards: the 1946 Spanish question, the 1947 Greek question, the 1954, 1956, 1963, 1964, 1966, 1976, 1980, 2001, 2002, 2003, 2004, 2006, 2011 Palestinian question, the 1974, 1977, 1981, 1986, 1987, 1988 South Africa question, the 1982 Falkland Islands question, the 1980 Iran hostages question, the 1963, 1970, 1971, 1972, 1973 Southern Rhodesia question, the 1957, 1962, 1971 India-Pakistan question, the 1974 Cyprus "situation" – where two NATO Allies, Greece and Turkey – fought each other, etc.

Once tabled, all these "questions" and "situations" put international peace and security and international human rights in a state of flux where one permanent member of the UN Security Council would rise to take charge of the issue and others would criticize. Eventually, after a lot of back and forth, all permanent members of the UN Security Council would join the efforts of the veto-issuing country and reach a collective understanding on the issue with the emphasis on what works best for their own countries, dependent territories, and dominions. After major media outlets announced that the "breakout of the Third World War has been prevented," humanity would let out a deep sigh of relief. In the meantime, the situation in the country over which the permanent members of the UN Security Council disagreed in the first place would remain largely unchanged.

Enter the ICTY in 1993, right after the end of the Cold War and in the afterglow of Western triumphalism.

There had been pressure for the establishment of a permanent international criminal tribunal, one that could investigate and judge all equally, for such a long time that, once something remotely resembling it was set up, the international community either did not know what to make of it or they found

[4] UN, Security Council veto list: https://bit.ly/2xC8jNo.

solace in parroting the similar arguments that prevented the establishment of an international criminal tribunal right after the IMT and IMTFE closed their doors. The media in the five permanent members of the UN Security Council described the ICTY as an innovative method of intervention in government affairs or an unlucky project incapable of solving an armed conflict. Some claimed that the blending of international courts, judges, and legal systems had never worked before and that there was a lack of international cooperation with the ICTY, some considered it the impossible new Nuremberg, some hoped it would finally put a stop to inhumane acts and widespread massacres, and some saw the establishment of the ICTY as a new milestone in international criminal justice, hailing it as an unprecedented move.

The UN administration may have been ill adapted for the task of establishing an international criminal tribunal, but the ICTY staff was not. The ICTY was the first of its kind: an international, independent, non-military tribunal. Once the first investigators, the finders and collectors of facts, went into active warfare and soon returned from the former Yugoslavia, things started moving so quickly that the fact the ICTY was established in such a short time could freely be described as a triumph of UN administration. Nevertheless, the ICTY still had some very big legal and mindset lacunae to fill.

Right after the First World War, a special tribunal foreseen by the Treaty of Versailles never materialized due to political reasons: American President Woodrow Wilson insisted that, in order to achieve the “honorable peace” with Germany, Kaiser Wilhelm II must abdicate, because his punishment would only destabilize peace further. So, Kaiser Wilhelm II only abdicated and spent the rest of his life in the Netherlands. The Allied and Associated Powers allowed Germany to prosecute a limited number of war criminals at a local Supreme Court in Leipzig. The Commission on the Responsibilities of the Authors of War and on Enforcement of Penalties which was established at the Preliminary Peace Conference at Paris in 1919 as an investigative body identified 895 individuals believed to have committed war crimes, but only 12 military officers were convicted, and the maximum sentence imposed was three years. These 12 military officers were cheered by the crowds attending the courtroom trials and outside the courtrooms and instead of being recognized and punished as war

criminals were celebrated as national heroes and martyrs to foreign oppression.[5]

The Treaty of Sèvres, Article 143 authorized the first great ethnic cleansing of the twentieth-century in the shape of a population exchange between Turkey and Greece in 1923. The Treaty – imposed by the Allies of the First World War on the Ottoman Empire – also provided for Turkey's surrender of persons accused of having committed acts contrary to the laws and customs of war. However, the Allies changed their minds due to the political considerations. The Ottoman Empire ceased to exist, with the new national hero Mustafa Kemal Atatürk toppling the sultan and the sultanate, thereby establishing a brand-new country. Whereas the most notorious leaders (Enver Pasha, Talaat Pasha, and Djemal Pasha) fled to Germany and were never tried, several Istanbul-based leaders, including many regional leaders, were tried between 1919 and 1920. The momentum fell apart as the Greeks invaded Turkey and the nationalists took over, ending these trials.[6] Each of the three Pashas was killed by exiled Armenians while abroad.

The denazification process which the Allies started after the Second World War cannot be said to have been comprehensive or to have extended uniformly outside post-Nazi Germany. In France, for example, some domestic Nazi collaborators were left intact until the then French President Chirac purged them in 1995.[7] The US government is said to have attracted Nazi scientists to come to the USA and work on weapons development programs.[8] In the former Yugoslavia, the winning troops rounded up escaping Nazi remnants and domestic Nazi collaborators when they failed to surrender to the Allies in the border town Bleiburg and executed them *en masse* while escorting them back into the country. Those who remained in the country were encouraged to defect by a declaration of amnesty issued before the Bleiburg events and, once they did, they simply

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[5] Bassiouni, Cherif (1994), Former Yugoslavia: Investigating Violations of International Humanitarian Law and Establishing an International Criminal Tribunal. Fordham International Law Journal, 18/4, p. 1194.

[6] Dadrian, Vahakn and Akçam, Taner (2012), Judgment at Istanbul: the Armenian genocide trials. Berghahn Books: New York.

[7] Carrier, Peter (2006), Holocaust monuments and national memory cultures in France and Germany since 1989. Berghahn Books: New York.

[8] NPR book reviews (2014), The secret operation to bring Nazi scientists to America: https://bit.ly/2RMGAjR.

put on the uniforms of the victorious Yugoslav People's Army. These and similar examples of disproportionality in the prosecution of Second World War crimes include the fact that suspected events and individuals on the side of the Allies were never even investigated.

The IMT and IMTFE trials unequivocally established that the gravest international crimes and crimes against peace would not go unpunished, that celebrating war criminals would no longer be acceptable, that human rights were inalienable, and that states' claims about the violation of their sovereignty and prerogatives had limits. The ICTY continued a tradition whereby the celebration of war criminals is objectionable and international crimes are not to be allowed go unpunished. The biggest achievement of this collaboration is the rejection of impunity. The legal successes of the ICTY paved the way for the establishment of many other international criminal tribunals, such as: the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, between 1 January 1994 and 31 December 1994 (ICTR), the Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Special Tribunal for Lebanon (STL), and, most importantly, the first permanent international criminal tribunal, the International Criminal Court (ICC), which, after having been established in 2002, saw the beginning of its first trial in 2009. The ICTY was and remains the most successful of all. The ICTY closed its doors on 31 December 2017.

Substantially, the ICTY dealt with ethnic crimes committed with a cruelty unseen in Europe since the Nazis. Operationally, most ICTY cases adjudicated on crimes committed against Bosnian Muslims by the Serb(ian)s and/or Croat(ian)s in B&H. The official site of the ICTY, Cases lists 114 individuals who stood trial before this institution: 74 of them stood trials for crimes committed against Bosnian Muslims in B&H. Of these 114, 77 have been released, 18 have died, and 19 are still serving their sentence.[9] Unfortunately, most of those 77 who have been released have

[9] ICTY, Cases: https://bit.ly/2xBEH2E.

merely continued with their philosophies of hate, picking up right where they stopped before their arrest.

The Trial Chamber acquitted Vojislav Šešelj of three counts of crimes against humanity and six counts of violations of the laws or customs of war. On his release, Šešelj declared: "I exposed all sham testimonies and uncovered all fake documents [...] I escaped without punishment, but, in hindsight, I should have received at least a short sentence, so that the internal and external enemies of the Serbs would not be as furious."[10]

"There are still many innocent people in [the UN Detention Unit]," said Zoran Kupreškić. "A part of me is still there with Drago Josipović and the others. Please, continue to pray for all the innocent people to be released," said Mirjan Kupreškić. "We cannot forget our Serb friends who were brave enough to go there. They defended me," said Vlatko Kupreškić, a B&H Croat.[11]

After his early release, Dario Kordić exclaimed: "This is a victory for the Croat people. But this victory will not be complete until the last Croat hero from The Hague, from all the prisons in Croatia, Bosnia, Sweden, and Serbia touches the ground of our Croatian homeland."[12]

Continuing with the theme of homeland, Momčilo Krajišnik had this to say: "It is very important to preserve one's country, as a poet Petar Kočić once said: *Without a country, all is nothing*."[13]

After having been released early, Duško Tadić, the concentration camp warden, said: "I never stepped into the Omarska detention camp. I left Kozarac before the conflict. I was informed, by the Serb Army, that Kozarac was about to be bombed and I left."[14]

The executor of Srebrenica boys and men, Ljubomir Borovčanin said: "Once the defense reacted when it became obvious that witnesses were not credible, that they manipulated the facts, or

[10] Statement on release, Vojislav Šešelj: https://bit.ly/2K94H8a.
[11] Statement on release, Zoran Kupreškić, Mirjan Kupreškić, and Vlatko Kupreškić: https://bit.ly/3abF94U.
[12] Statement on release, Dario Kordić: https://bit.ly/2z3Mbf3.
[13] Statement on release, Momčilo Krajišnik: https://bit.ly/3anbBBC.
[14] Statement on release, Duško Tadić: https://bit.ly/2xqGXd7.

simply lied, the Chambers waited to respond until the end of the trial. Even when it was obvious that one was lying, one was not discredited right then and there."[15]

After what was seen as a heartfelt confession in court, Biljana Plavšić had this to say after having been released: "I sacrificed myself. I have done nothing wrong. I pleaded guilty to crimes against humanity, so I could make a deal on other charges. If I hadn't, the trial would have lasted three, three and-a-half years. Considering my age that wasn't an option."[16]

And, finally, after hearing his sentence, in the aftermath of Muslim fundamentalist attacks in Paris and Brussels in 2015, Radovan Karadžić, the chief executor of Serb crimes in B&H, switched premises on everyone one last time and exclaimed: "Even after Paris and Brussels, Europe still cannot see who we had to combat?"[17]

What went wrong?[18]

Legal professionals who worked at the Office of the Prosecutor (OTP) at the ICTY wrote the pages of the nascent international criminal law and moved mountains in the fields of impunity, rape, enslavement, etc. Their colleagues from defense put up a fair fight and fought them tooth and nail at every corner like lions although with inferior resources, staff numbers, and time constraints. The facts about crimes as found by the ICTY OTP and defense investigators, argued by these parties to the proceedings, corroborated by the victims and witnesses they called and by the documents they tendered, enabled the ICTY judges to establish undeniable legal truths about the events in the former Yugoslavia.

In order for this whole process to be complete, somebody needed to package all the ICTY legal truths in a timely, user

[15] Statement on release, Ljubomir Borovčanin: https://bit.ly/3biO4mp.
[16] Statement on release, Biljana Plavšić: https://bit.ly/3cnL6NC.
[17] Statement on release, Radovan Karadžić: https://bit.ly/3ev81bK.
[18] From the formal legal point, it was only in 2019 that the International Residual Mechanism for Criminal Tribunals, the legal successor to the ICTY, issued what could be called a gag order barring the released from discussing his case, contacting the victims, or being harmful to the public. ICTY, Cases, *Čorić*, Decision on motions related to Valentin Čorić's request for variation of early release conditions: https://bit.ly/2wZGfDo.

friendly, and comprehensive manner to the audiences in the former Yugoslavia in a language and manner they understood. As to them, the audiences in the former Yugoslavia had a job to engage in critical thinking, with an ultimate goal of, if not preventing the history from repeating itself, then at least refraining from the denialism which is rampant even 25 years after the war ended. And that job was supposed to be done by the representatives of the UN administration at the ICTY: the ICTY Registry. It was their job to make sure linguistic justice was served, as well.

The very concept of linguistic justice is not originally mine. Although the concept was around since Herder in one way or another, the term was coined by van Parijs who proposed the first normative theory of linguistic justice that rests on two normative pillars: an argument for English as a global *lingua franca*, and an argument that each language group be entitled to a policy of official multilingualism within its territory.[19]

I am also not the first scholar to discuss the concept of linguistic justice in the realm of international law. Mowbray brought the concept in and concluded there is no generally accepted theory explaining prevailing intuitions in terms of linguistic justice or a set of normative guidelines for realizing and institutionalizing linguistic justice in the realm of international law.[20]

I am the first scholar to discuss the concept of linguistic justice in the realm of international criminal law. I took it upon myself both to set some normative guidelines for the delivery of linguistic justice and to set the criteria for translation, interpretation, and transcription at international criminal tribunals. I am very much in a position to do that both owing to my education in languages and the law and, of course, my professional career spent entirely in the UN.

All international agreements and treaties on communication with defendants during criminal proceedings deem linguistic justice has been served if s/he has been communicated with in "his/her language". The same overarching criterion in the examination of

[19] Van Parijs, Phillipe (2011), Linguistic justice for Europe and for the world. Oxford University Press: Oxford.
[20] Mowbray, Jacqueline (2012), Linguistic justice: international law and language policy. Oxford University Press: Oxford.

linguistic justice has been used for this study, as well, as I go on to explain what this formula entails in the context where language is the tool in conflict.

The main purpose of language is communication and as soon as one enters an international criminal tribunal, one discovers that there are strict rules about communication revolving around the languages that may be used to address the court, when one can talk and write, what one can talk and write about, how long one can talk and write, to whom and how one can talk and write, and to what end. This entails examining the following lines of communication at judicial institutions:

- First line: the situation country towards the working institution
- Second line: the working institution towards the parties to the proceedings
- Third line: the working institution towards the language services providers
- Fourth line: the working institution towards the situation country.

Linguistically speaking, the ICTY legal professionals had big shoes to fill to prosecute speech atrocity crimes like their predecessors at IMT or, at least, to alert to the devastating effects of philosophy of hate against Bosnian Muslims which led to ethnic crimes and genocide. In that, they relied on the ICTY and its language services provider, the Conference and Language Services Section (CLSS). The CLSS, the main subject of this research, had to fulfil their legal obligations under ICTY laws to deliver specific documents in translation, and in time to enable proper defense. The CLSS also had to fulfill their legal obligation under ICTY laws to inform all ICTY language policies and other recruitment- and service delivery-related lacunae. Seeing that the UN had standing language services, that legal and language professionals had worked together since Hammurabi, and that they had colleagues working in police investigation contexts all over the world and in every language imaginable, the CLSS had their work cut out for them.

In Chapter 1, I am going to present a very brief history of language quarrels in the former Yugoslavia and point to a series of examples where language, and underlying ethnic and national

identity, was used as a tool for a conflict. Then I am going to test whether linguistic justice has been served along the first line of communication with the judicial institution: the situation country towards the working institution. I will do this by examining whether the ICTY and the CLSS, the ICTY language services provider, were aware the language spoken in the former Yugoslavia was vested with ethnic and national affiliations and used as a tool in the conflict.

In Chapter 2, I am reviewing ICTY language laws, language-related case law, and procedural linguistic equality of arms between the ICTY prosecution and defense. Then I am going to examine whether linguistic justice has been served along the second line of communication with the judicial institution: the working institution towards the parties to the proceedings. I will do this by cataloguing the lacunae in the language laws and examining whether the CLSS, the ICTY language services provider, informed any language-related laws or took stock of ICTY language-related case law. As an example, I am introducing the concept of procedural linguistic equality of arms between the parties to the proceedings and testing whether it was served.

In Chapter 3, I am reviewing the history, the recruitment, the professional criteria and standards, and the training of all ICTY language professionals. Then I am going to test whether linguistic justice has been served along the third line of communication with the judicial institution: the working institution towards the language service providers. I will do this by examining the position in which the CLSS has put the ICTY language professionals within the realm of international criminal law and the ICTY laws.

In Chapter 4, I am examining whether linguistic justice has been served along the fourth line of communication with the judicial institution: the working institution towards the situation country. Did the ICTY deliver language services? I will show in practice first overall outputs in translation and interpretation as well as overall ethnicity- and nationality-based language service delivery. Then I will analyze the permanent court record: translation of evidence, exhibits, and court documents; court interpreting; and court transcripts.

Finally, I am concluding in the last chapter.

I am an insider to the UN and the ICTY practices, so most situations and documents you read in this book come from my practice, unless otherwise stated. As to the situations, I must say right at the beginning, genuinely hoping you have already bought the book, that the kind reader will not read any stories where names are dropped. The client is the king, even if a suspected or convicted war criminal.

My topic of research seems simple and easy enough, you say. Delivering translation on time is not that hard, you say. Tell us now, did the UN, the ICTY Registry, and the ICTY CLSS deliver, you ask? Well, there is much more to provision of language services at an international criminal tribunal adjudicating on ethnically motivated war crimes than submitting a translated document. And all those other things are exactly what my book is about. Let us imagine a Bosnian Muslim lady who came to seek justice from the ICTY after being gangraped by Croatian or Serbian soldiers who, as was the practice, kept her in the rape camp until abortion was no longer possible. She took a deep breath before embarking on this immense task, put on her headphones, looked at the panel of judges smiling at her, and heard the judges address her in the language of her rapists through interpreters. That is how the UN, the ICTY Registry, and the ICTY CLSS deliver its language services to victims. And there is more.

The first tenet of the international criminal law established in one of the IMT judgments is “these international crimes have not been committed by abstract entities.” This book aims to set the second tenet of the international criminal law to say: “these international crimes have not been committed *against* abstract entities” but living creatures who cannot wait decades to be served with actual cashable justice or the bodies of their loved ones to finally put to rest. Until that happens, this is a book that will keep on screaming: *timeo Danaos et dona ferentes*.

CHAPTER 1

MAY THE LOCAL CONTEXT TAKE THE STAND, PLEASE

Language has always been used as a basis for discrimination. In the best-case scenario, the majority makes fun of those who do not properly speak the language. The Old Testament, Judges 12:6, also tells a story about the word "shibboleth" which was used as a password by the Israelites because their enemies could not pronounce it: 42,000 Ephraimites were killed because they said "sibboleth," instead.

Speaking the language of the majority of the country has always been important. Albanian language, for example, has a word for a Romany who speaks Albanian and a word for a Romany who does not. And then, if there are several majorities in the country, the so-called cultural elites, the language they speak becomes but a political nominal concoction, like the former Serbo-Croatian.

It is considered that ethnic groups are identifiable by – and discriminated against on account of – a common language, culture, spirit, history, and geography. In Omarska concentration camp, active in the Serb-held part of B&H between approximately May and August 1992, a guard came up to a group of Muslim prisoners sitting on a bench eating and casually told them to enjoy their meal. One of these Muslim prisoners automatically answered *bujrum*. This is a Bosnian word meaning *come join us*, a loan word from Ottoman Turkish used widely throughout the former Yugoslavia, but associated with Muslims. The guard took him up from the bench, ordered him to stand up against the wall, raise three fingers – the symbol of Serbian Orthodoxy – and stretch out his legs. He then beat him for about five to ten minutes.[21]

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[21] ICTY, Cases, *Kvočka et al.*, T. 4501-4502 (31 August 2000): https://bit.ly/2Vt3tdi.

In Chapter 1, I am going to present a very brief history of language quarrels in the former Yugoslavia and point to a series of examples where language, and underlying ethnic and national identity, was used as a tool for a conflict. Then I am going to test whether linguistic justice has been served along the first line of communication with the judicial institution: the situation country towards the working institution. I will examine whether the ICTY, the international criminal tribunal adjudicating on ethnic crimes committed in the former Yugoslavia, and its language services, by extension, were aware the language spoken in the former Yugoslavia was vested with ethnic and national affiliations and used as a tool in the conflict.

1.1. Pre-Yugoslavian B&H

In medieval times, Europe was divided between the Catholic and the Orthodox churches. The line of demarcation between these two churches ran along the river Drina on the eastern border of Bosnia and was established, albeit for a different purpose at the time, by the Roman Emperor Theodosius when he divided the Roman Empire into the East and the West in 395.

Until it fell to the Ottomans, Bosnia was surrounded by the Hungarian Empire and its tributaries on the north and failing Serbian states on the east. Both wanted its territory. The medieval times in the whole of Europe were times of religious fanaticism, so belonging to the proper religion was a burning issue in/around Bosnia, as well. The sources of religious and, therefore, political legitimacy, were either Rome, the seat of the Pope and the Catholic church, or Constantinople, the capital of the Byzantine Empire and the seat of Orthodox church. In that climate, Bosnia decided it did not want to belong to any of the offered churches and established its own: the Bosnian Church.[22]

This was a largely unorganized church in a classical territorial sense. The members of the Bosnian Church called themselves simply "Christians" (*Krstjani*) or "Good Bosnians" (*Dobri Bošnjani*). Naturally, both the Catholic and Orthodox churches considered

[22] Fine, John V. A. (1985), The Bosnian Church: A new interpretation: A study of the Bosnian Church and its place in state and society from the 13th to the 15th centuries. East European Quarterly.

them heretics and waged several crusades against Bosnia without much success. The peoples of Bosnia of that time seem to have promised the Catholic enforcers that they would denounce their heretical ways but, once they left, the Good Bosnians seem never to have done what they had promised.[23]

Although present in the area since the mid-1300s, the Ottomans took full control of Bosnia in 1464, Herzegovina in 1482, and Serbia in 1521. Although never gaining full control over the whole of Croatia, they kept a presence in various towns and cities, mostly in Dalmatia and Slavonia. In their expansion, the Ottomans took full advantage of the weakness of Byzantium, the extreme discord between the Bosnian and Serbian gentry that led to feudal anarchy in those countries, and, more or less, the passive control by the Catholic states of that time. In 1462, the last Bosnian king, Stjepan Tomašević, the son of Stjepan Tomaš, wrote the following letter to Pope Pious II.

> I have been informed that the Turkish Emperor Mohamed [*sic*] plans to strike against me with his armies next summer and that he has already mobilized the troops and the cannons. I cannot resist such a force alone. I have already requested assistance from the Hungarians, the Venetians, and Juraj Arbanas. Now, I am requesting it from you. I am not asking for the impossible, but I would be glad if my enemies and my compatriots knew that they will not come short of your keenness. [...] Should the Bosniaks learn I won't be left alone in the war, they would become braver, and, in turn, the Turks wouldn't dare strike against my lands because the entry points are difficult, and the cities are almost unconquerable in many places, as it is. [...] Your predecessor Eugene offered a crown to my father and wanted to build churches in Bosnia. My father was reluctant because he did not want to bring the Turkish wrath on himself. He was a new Christian who has not expelled Manicheans from the Kingdom. However, I have been baptized as a child, have studied the Christian book, have firmly accepted the Christian faith, and do not share my father's fears. I wish you would send me a crown and holy bishops as a sign that you won't leave me if the war breaks out. Your crown on my head shall instill confidence in my subjects and fear in my enemies. [...] The Turks erected several forts in my kingdom and are showing themselves to the peasants as kind. They are promising freedom to each who defects. The simple mind

[23] Škegro, Ante (2005), Bilino polje: primjer jedne historiografske kontroverze in Fenomen 'krstjani' u srednjovjekovnoj Bosni i Humu. Institut za istoriju: Sarajevo; Hrvatski institut za povijest: Zagreb.

> of a peasant does not see through their deceitful ways, thinking the freedom will last forever. Should they not see me protected by your authority, once tricked, they will easily defect from me. The gentry did not remain long in the cities left by the peasants, either. […] This letter is sent to you by Stjepan. Father of Christianity: send me advice and help [author's translation].[24]

Although Stjepan Tomašević hoped the Pope would send him troops to salvage whatever was left of Bosnia, the Pope just sent him a crown. Indeed, this symbolically put him in the ranks of Catholic countries that deserved help with defense against the Ottomans, but the Catholic armies never came to his rescue. Having caught him for the second time and having trounced his resistance, the Ottomans killed the last Bosnian king, Stjepan Tomašević, in 1463. His forced conversions and the related violence took its toll: the local populace, fed up with all sorts of Catholic, Orthodox, and royal persecutions, under the strong influence of Ottoman spies present in the country, offered little, if any, resistance to the Ottomans, giving rise to the popular expression "Bosnia was subdued in a whispering campaign" (*Bosna je šapatom pala*). The Ottomans and Islam became a force to be reckoned with. Bosnia remained at the border between the two worlds.

The medieval B&H populations, like all Slavic speakers, wrote in the Glagolitic script (*glagoljica*), which was invented specifically for translating the Scriptures and other religious works into Slavic. The language itself is now known as Old Church Slavonic. In the Orthodox Slavic-speaking world, Glagolitic script was replaced by the Cyrillic script, which was based on Greek and named for St Cyril, but probably invented by St Naum in Ohrid.[25]

In Bosnia, a variant of chancery Cyrillic developed into the Bosnian Cyrillic script, known as *Bosančica*. Although based on the Cyrillic that developed originally to the south of Bosnia, *Bosančica* became a distinct form of Cyrillic. The *Bosančica* script was used in various trading agreements Bosnian rulers concluded with surrounding countries, in religious texts, in other written documents, and on the medieval Bosnian Church tombstones called *Stećak*, the

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[24] Klaić, Vjekoslav (1899), Povijest Hrvata. Knjižara Lav Hartmana (Kugli i Deutsch): Zagreb.
[25] Lunt, Horace (1974), Old Church Slavonic grammar. Mouton: The Hague.