

## “Grasping the opportunities of criminal jurisdiction”

“Academic Network South East Europe”: [www.academicnetwork-see.net](http://www.academicnetwork-see.net)

### Objectives:

- Researching the opportunities of (international) criminal jurisdiction in the reconciliation process in former Yugoslavia
- Discussing the advantages of the institutions of international criminal justice, truth commissions, and national tribunals

### Participants:

*Dr. Patricia Schneider*, German

#### *MPS students:*

- |                              |                   |
|------------------------------|-------------------|
| 1. Badeva, Rajna             | Macedonian        |
| 2. Dudaš, Boris              | Croatian          |
| 3. Giotaki, Marina           | Greek             |
| 4. Hadžić, Ermin             | Bosnian-Herzegov. |
| 5. Hinz, Anne                | German            |
| 6. Ivković, Marko            | Serbian-Mont.     |
| 7. Pajic-Rickerts, Bojana    | Bosnian-Herzegov. |
| 8. Paunović, Dragan          | Serbian-Mont.     |
| 9. Petković, Milena          | Serbian-Mont.     |
| 10. Popović, Djordje         | Serbian-Mont.     |
| 11. Tudorache, Ovidiu-Adrian | Romanian          |
| 12. Wagner, Sabine           | German            |

#### *Others:*

- |                            |                   |
|----------------------------|-------------------|
| 13. Brcic, Ivan            | Croatian          |
| 14. Coli, Arben            | Kosovar/Albanian  |
| 15. Dudas, Slavica         | Croatian          |
| 16. Gashi, Valdet          | Kosovar/Albanian  |
| 17. Glavas, Zoran          | Bosnian-Herzegov. |
| 18. Gratz, Dennis          | Bosnian-Herzegov. |
| 19. Mehmedbegovic, Naida   | Bosnian-Herzegov. |
| 20. Mujkic, Elvira         | Bosnian-Herzegov. |
| 21. Pervan, Gordana        | Croatian          |
| 22. Pietz, Tobias          | German            |
| 23. Santic, Izabela        | Serbian-Mont.     |
| 24. Trivunic, Jelena       | Serbian-Mont.     |
| 25. Zdravkovic, Aleksandra | Serbian-Mont.     |
| 26. Müller-Wolf, Tim,      | German            |

#### *Speakers:*

1. Stefan Waespi, ICTY (Den Haag), Swiss
2. Frau Wintgen, ICTY (Den Haag), German
3. Milan Kosanovic (Michael-Zikic-Stiftung, Bonn), German
4. Enver Hasani, PhD, Professor of Int. Law and Int. Relations (Prishtina), Kosovar/Albanian
5. Dr. Günther H. Tontsch, Southeast Europe Association, German

**Program: Workshop VII (RI-Seminar, Part 1) MPS/DAAD SS 2004**

<b>Date</b>	<b>Time</b>	<b>Title</b>	<b>Speaker(s)</b>
Mon, April 5	10.00-10.30	Welcome and introduction	Dr. Patricia Schneider
	10.30-11.00	“The ICTY: More than just a court?”	Stefan Waespi, ICTY
	11.00-11.40	Discussion	
	11.40-12.00	Coffee break	
	12.00-12.30	"The Witness Protection Section of the ICTY"	Frau Wintgen, ICTY
	12.30-13.00	Discussion	
	13.00-14.15	Lunch in the Falkenstein restaurant	
	14.15-14.40	“The Role of Serbian Elites in the wars in former Yugoslavia” (The Role of the ICTY in Serbia)	Milan Kosanovic, Michael-Zikic-Stiftung, Bonn
	14.40-15.10	Discussion	
	15.10-15.30	Coffee break	
	15.30-16.20	Human Rights Chamber for Bosnia and Herzegovina, Presentation and Problematization	M. Giotaki, E. Hadzic, B. Dudas, S. Wagner
	16.20-16.40	Discussion	
	16.40-17.00	Coffee break	
	17.00-17.30	Website of the Academic Network Southeast Europe: Presentation and Discussion	Naida Mehmedbegovic
	17.30-18.00	Impressions of the day/ Official photograph	Dr. Patricia Schneider
	From 19:00	Attendees who wish are invited to meet socially in the “Linde” Bar /Restaurant	
Tue, April 6	10.00-10.15	Welcome	Dr. P. Schneider
	10.15-10.45	“The Role of the ICTY in the Process of Reconciliation”	Prof. Enver Hasani, Prishtina
	10.45-11.30	Discussion	
	11.30-11.50	Coffee break	
	11.50-12.30	Southeast Europe Association: Presentation and Q&A session	Dr. Günther H. Tontsch
	12.30-13.00	Academic Network SEE: developments	Dr. P. Schneider
	13.00-14.15	Lunch in the Falkenstein restaurant	
	14.15-15.30	Video: “The triumph of evil”	(Produktion: Mirko Klarin, N. Vidakovic)
	15.30-15.50	Coffee break	
	15.50-16.50	- The case of Radislav Krstic: Genocide or ethnic cleansing? - followed by discussion	Djordje Popovic
	16.50-17.30	Proposals for shaping multi-ethnic living together after Srebrenica	Marko Ivkovic/ Milena Petkovic
	17.30-17.50	Coffee break	
	17.50-18.50	Conclusions: Advantages of international criminal justice, national tribunals and truth commissions	A. Tudorache, B. Pajic-Rickerts, A. Zdravkovic
	18.50-19.00	Feedback and Farewell	Dr. P. Schneider

# MINUTES

**Minute-takers:** April 5, 2004: Hinz, Anne; Badeva, Rajna; Pajic-Rickerts, Bojana  
April 6, 2004: Paunovic, Dragan  
Revised minutes: Bojana Pajic-Rickerts, Dr. Patricia Schneider

## **Minutes of the workshop from Monday, April 5, 2004**

### **Title: “The ICTY – more than just a court?”**

*Speaker: Stefan Waespi, ICTY*

After a few welcoming words from Dr. Schneider and introductions of the conference attendees, Mr. Stefan Waespi spoke about the International Criminal Tribunal for the former Yugoslavia (ICTY). First, he underlined the importance of the Tribunal as a foundation for the restoration of normality and co-existence in the former Yugoslavia and drew comparisons with the Nuremberg tribunal. Then he explained that his main theme would be the great expectations vis-à-vis the Tribunal. Acceptance by the people in the region is the key. According to its mandate, the UN Tribunal calls war criminals to account. It intends to serve as a deterrent but doesn't wish to pronounce a whole people or ethnic group guilty. The main aims of the Tribunal are to avoid acts of vengeance and to reveal the truth. The judges, public prosecutors and the staff working in the chambers come from more than 70 nations. Mr. Waespi went on to speak about the normal work of the court and described a typical weekly schedule. Afterwards he mentioned the difficulties in proving the individual responsibility of the perpetrators and underlined that the scale of the massacre in Srebrenica had been denied again and again. The court relied heavily on aerial photographs of the crime scene in order to reconstruct the exact sequence of events and to prove the intention of mass murder. Taking the case of Drazen Erdemovic as an example, Mr. Waespi spoke about the challenge of connecting peace and justice. Mr. Erdemovic was personally responsible for 70 executions but was sentenced to just 5 years, as he handed himself in and pleaded guilty. In order to avoid accusations that the Tribunal represents victor's justice, it is extremely important that the court work to the highest international standards and also allows the accused to have their say. Finally, Mr. Waespi explained that the Tribunal has an outreach program at its disposal and referred to the main problems as being the lack of efficient funding and its own enforcement capacity. A short discussions followed Mr. Waespi's presentation.

### **Title: “The Witness Protection Section of ICTY”**

*Speaker: Ms. Wintgen, ICTY*

Ms. Wintgen gave a short introduction on the importance of testifying before the ICTY. She pointed out that witness testimony is crucial for the proper functioning of the Tribunal in giving a fair and equitable judgment to those responsible for serious violations of international humanitarian law. Witness testimony is not only important because it enables the judges to reach a fair judgment, it also significantly helps the international community to learn the truth about the crimes committed in the former Yugoslavia and deters persons from committing similar crimes. Ms. Wintgen described three types of testimony: oral testimony, deposition and evidence in the form of a written declaration. In the case of oral testimony, the witness is physically present in the courtroom and tells the Court what he or she saw or heard, or what

he or she knows about the accused person or other events upon which he or she is being questioned. In exceptional circumstances, a witness may be asked by the Court to give evidence by way of deposition. Finally, the Court may, in certain circumstances, admit evidence in the form of a written declaration.

Ms. Wintgen then spoke about the Victims and Witnesses Section, which is an independent and neutral body within the Registry of the Tribunal. The aim of this section is to help ensure that the giving of testimony is experienced by witnesses as a positive and not a painful experience. The Victims and Witnesses Section has been established to ensure that all witnesses can testify in safety and security. The staff of the Victims and Witnesses Section treats all information relating to witnesses with the strictest confidentiality.

As a result, three units have been established in the Victims and Witnesses Section: the Operations, Protection and Support Units.

The Protection Unit co-ordinates responses in line with security requirements; the Support Unit provides social and psychological counseling and assistance to witnesses; and the Operations Unit is responsible for logistical operations and witness administration.

During her presentation, Ms. Wintgen showed a short documentary movie on the special confidentiality, security and protection measures that the ICTY has in place as part of its witness protection program. In this context, the Court may authorize measures such as: voice and image altering devices to alter witnesses' appearance on court television screens and/or the sound of witnesses' voices. Evidence may be also given by one-way closed-circuit TV, so that the witness is not visible to the accused. Name, address and other information that may identify the witness can be withheld from the public and the media. The Judges may also order closed sessions. These are closed to the public and the only people present in the courtroom are the accused, the Judges, lawyers and court officials.

After the presentation followed a short discussion.

**Title: “The Role of Serbian Elites in the wars in former Yugoslavia,  
(the role of the ICTY in Serbia)”**

*Speaker: Milan Kosanovic, “Michael-Zikic-Foundation“, Bonn*

After a short break, Milan Kosanovic, the vice-president and director of Milan-Zikic-Foundation in Bonn, spoke about the collapse of the SFRY from the perspective of Serbian intellectual elites. His presentation concentrated on the historical internal divide between Serbs and the rest of the Yugoslav peoples. The Serbian intellectual elite consisted of two ideological mainstreams: the modernists and traditionalists. Mr. Kosanovic explained the influence of their different positions regarding the SFRY on the country's politics. The modernists regarded Serbian involvement in the SFRY as part of Serbia's modernization process (in which the question of a multiethnic society played a key role). In contrast, for the traditionalists, the SFRY represented another instance of giving up part of their national identity. According to Kosanovic, the elites realized their lack of influence and their loss of their constructive political role in Serbia during and after the war in Yugoslavia. There still remain a lot of problems to be solved, including the status of Kosovo, the relationship between Serbia and Montenegro and neighboring countries, and the problem of “personalizing” guilt for the war crimes. After his presentation, Mr. Kosanovic responded to several questions from the audience: Did Serbian elites take on some of the responsibility for the war? What would the admission of Serbia into the EU mean for the country? What is the opinion on the status of Kosovo in Serbia? How do the provinces of Vojvodina and Kosovo compare to each other?

## **Title: “Human Rights Chamber for Bosnia and Herzegovina, Presentation and Problematization”**

*Speakers: Sabina Wagner, Marina Giotaki, Ermin Hadzic, Boris Dudas,  
MPS students 2003/04*

Sabina Wagner, Ermin Hadzic, Marina Giotaki und Boris Dudas, students on the Master’s program in “Peace Research and Security Studies”, gave a presentation on the Human Rights Chamber for Bosnia and Herzegovina, which is based on Annex 6 of the Dayton Peace Agreement. First, Ms. Wagner spoke about the historical legal situation that influenced the institution’s work, specifically the Vance-Owen Plan, the Invincible Plan und the Washington Agreement. Mr. Hadzic then explained the relations between the Human Rights Chamber and other institutions dealing with human rights. He demonstrated the importance of other human rights institutions like the Ombudsman of the Human Rights Commission, the Constitutional Court, the Office of the High Representative and the Ombudsman of the Federation of Bosnia and Herzegovina.

Marina Giotaki focused on the practice of the Chamber, specifically its appeals, means of evidence, process and decision-making. She briefly spoke about some of the Chamber’s rules of procedure, e.g. the choice of the official languages, the involvement of *amicus curiae* and the right to present evidence. Most of the evidence submitted consists of documents and eyewitness testimony. Finally, Mr. Dudas spoke about some of the case law of the Chamber as it relates to questions of substantive law. He described the right to life and freedom and the respect for a person’s residence and contrasted these with the actual discrimination in Bosnia, e.g. in the workplace. Their presentation was followed by questions from the audience: What does the practice of this Chamber look like? How effective is this institution in practice? What is the relationship between the Chamber and the Constitutional Court?

## **Minutes of the workshop from Thursday, April 6, 2004**

### **Title: “The role of the ICTY in the process of reconciliation”**

*Speaker: Prof. Enver Hasani PhD., Prishtina University, Kosovo*

After a short introduction by Dr. Wolfgang Zellner, Prof. Hasani spoke about the mission of the ICTY, individual criminal responsibility and the dilemma between choosing the Hague Tribunal or Truth Commissions as a means of restoring justice. According to Prof. Hasani, the topic on which he spoke is one of the most contentious issues in the former Yugoslavia: In each former Yugoslavia Republic, the Hague Tribunal is assumed to operate according to the principle of impartiality. Thus, for instance, Serbian public political discourse argues that denial of the Court’s jurisdiction is based on *jus ad bellum* (the right to wage war), while the other former Yugoslav republics and the rest of the world argue that the crimes in the former Yugoslavia had a negative impact on peace and security in other countries in the neighborhood, that they adversely affected human security and that the victims of Serbian aggression (other republics) should not be held responsible. After concluding that reconciliation is impossible without justice, Prof. Hasani presented the methods of “truth telling” – a very important aspect of the reconciliation process. In the former Yugoslavia, this method of reconciliation could have the same impact as it has in Africa. In this connection, Prof. Hasani quoted Hannah Arendt to the effect that if you are not collectively guilty you can be collectively responsible through silence. The Truth Commissions in the context of the former Yugoslavia can address questions of historical truth, restore the past at the level of the individual, work with national courts to bring about reconciliation, and so on. In Serbia, the

Commissions have failed because of the impact of the former regime. Because reconciliation is a very long-term process (5-10 years), this method is important for bringing the facts to light.

After his presentation, Mr. Hasani had to answer questions such as: Should new and better truth commissions be established in place of the failed ones? Is it helpful to organize these commissions at the level of the individual republics? What is it necessary to change to enable the various ethnicities of the former Yugoslavia to live together? Would the population, which needs reconciliation, accept the findings of a truth commission or would it rather accept a government policy statement which might be different both from that of the truth commission and the explanations of other political groups?

**Title: “Southeast Europe Association: Presentation and Question and Answer Session”**

*Speaker: Dr. Günther Tontsch, Southeast Europe Association/  
Südosteuropa-Gesellschaft (SOG)*

Dr. Tontsch introduced the Southeast Europe Association, Germany ([www.suedosteuropagesellschaft.com](http://www.suedosteuropagesellschaft.com)). Founded about 25 years ago, its task was and remains that of maintaining links with states in South Eastern Europe despite this region’s sometimes-cold relations with the West. As he explained, the Southeast Europe Association performs research in the region of SE Europe and promotes academic and economic contacts, while transmitting German culture abroad. The Southeast Europe Association is politically and ideologically independent and receives the bulk part of its budget from the German Ministry of Foreign Affairs (Auswärtiges Amt). It has 800 members (academics, students, politicians, diplomats, and others with expertise or interest in this area). Its objective is to build links in the region and to perform historical research or research on states by engaging in dialogue at three levels (international, national and interdisciplinary). It also aims to provide advice for politicians. Its area of coverage encompasses not just the former Yugoslav states, but also Cyprus, Turkey, Greece, Albania, Bulgaria, Moldova, Romania, Hungary and Slovakia. The society organizes seminars and conferences and runs its own projects focusing on issues such as interethnic coexistence and dialogue in the Western Balkans. It also offers scholarships for German nationals and people from the region and supports short study visits to Germany. Financial support is granted to persons of less than 40 years of age.

This organization publishes the review: *Südosteuropa Mitteilungen* and a periodical issued every two months.

The scientific council is led by Prof. Anton Sterbling and by the Deputy Chairman of the parliamentary group of the German Social Democrat Party (SPD) in the Bundestag – Gernot Erler.

**Title: “The case of Radoslav Krstic- Genocide or Ethnic-cleansing?”**

*Speaker: Djordje Popovic, MPS student, 2003/04  
(including 15 min. for the film “The Triumph of evil”, produced by: Mirko Klarin, N. Vidakovic)*

Mr. Popovic first defined genocide and ethnic cleansing. *Genocide* is committed “with intent to destroy, in whole or in part, a national, ethnic, racial or religious group”. Any of the following acts combined with this intention can be defined as genocide: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in

whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group. *Ethnic cleansing* “is designated a crime against humanity in international treaties, such as that which created the International Criminal Court (ICC). The International Criminal Tribunal for the Former Yugoslavia (ICTY) was set up in a similar spirit, and prosecutes these crimes under more generic names – murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds, other inhumane acts.).

Mr. Popovic presented some reasons why in his opinion, in the case of Srebrenica, the acts of General Krstic can best be described as ethnic cleansing rather than acts of genocide.

His arguments were that:

The Statute of the Tribunal characterizes genocide by two constitutive elements: the *actus reus* of the crime, which consist of one or several acts described in the Convention; and *mens rea* of the crime, which is described as the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such. Bosnian Muslims in Srebrenica were not a specific national, ethnical, racial or religious group because those groups cannot be created regionally, and therefore, the target group that can be protected by the Convention could only be Bosnian Muslims. When it comes to the victims who are military men, the question is whether these people represent sufficient part of Bosnian Muslim group in order for us to say that there was intent to destroy the group in part. The question here is whether the Bosnian Muslim men in Srebrenica constitute a substantial part of Bosnian Muslims as a group. The number of 7,000 to 8,000 from almost two million Muslims in Bosnia before the war is not a substantial part of the Bosnian Muslim population. The Prosecution and the Defense agreed that the victims of genocide must be targeted by reason of their membership of a group. However, mere knowledge that the victims were members of a certain group is not sufficient to establish an intention to destroy the group as such. The International Law Commission noted that there must be an “intention to destroy the group and not merely one or more individuals who are coincidentally members of that particular group. The act must be committed against an individual because of his membership in a particular group and as an incremental step in the overall objective of destroying the group”. This is the element which differentiates genocide from “ethnic cleansing,” and which characterized not only the whole conflict in Bosnia, but also the previous conflict in Croatia as well as the following conflict in Kosovo. The Prosecution said that another proof of the genocidal intention was killing of all military men, because of the patriarchal society in which the Bosnian Muslims in East Bosnia used to live. Additional proof that there was no genocidal intention is the fact that the women, children and elderly were transferred from Srebrenica without suffering criminal treatment. This detail establishes the difference from other cases of genocide in history, because if a genocidal intention had existed, there would have been no selection between the members of the group. The transfer of the women and children, who, as they were already under Serbian control and quite powerless, were easy victims, evidently proves that the main goal of the Serb forces was to force the Muslim population to leave the town. Even some wounded men were spared from the execution. One of the arguments against General Krstic’s guilt is also that there was a parallel command structure in the troops of Bosnian Serbs which organized the massacres and worked around Krstic, thus leaving him unaware of the slaughter. This group was described as Mladic’s “Knin clan”. The members of this group were picked out by Ratko Mladic himself from the officers of former Yugoslav People’s Army, and he had the greatest confidence in them. They reported directly to him and had *de facto* command over the operation in Srebrenica. Krstic said that they were “the untouchables” and that he didn’t oppose them out of fear for his own life and the lives of his family members.

At the end of his presentation, Mr. Popovic concluded that the Krstic case is one of the most significant in modern history: by sentencing General Krstic, the Tribunal actually proved that the genocide over Bosnian Muslims in the town of Srebrenica in July 1995 took place. Mr.

Popovic also stated that the fact whether General Krstic was the man responsible for this crime, or merely a participant who agreed to this evil, as the Trial Chamber said, is much less important for history than for his own destiny. The fact is that three generations of men were executed in cold blood. Whether it is genocide or not will probably be an object of discussion for a long period of time. For the people who lost their loved ones this is entirely irrelevant and no sentence will bring the victims back. The sad fact remains that the masterminds behind this crime are still free.

The presentation which included the film made by the ICTY finished with questions to Mr. Popovic from the floor and a discussion among participants.

**Title: “Proposals for shaping multi-ethnic living together after Srebrenica”**

*Speakers: Marko Ivkovic and Milena Petkovic, MPS students 2003/04*

Mr. Ivkovic and Ms. Petkovic helped the participants to present their ideas of possible ways of organizing multi-ethnic living in Bosnia and Herzegovina (and throughout the former Yugoslavia) that could contribute to reconciliation after Srebrenica. The participants suggested political processes such as organizing local public truth commissions, placing the truth commission under international control, proving the existence of a genuine political will, punishing those who committed the crimes and may be recompensing those who suffered and hope for their forgiveness, and – on the part of the Serbs – admitting their guilt and apologizing for genocide. Some of the participants had an indifferent attitude on the establishment of truth commissions. Many participants suggested activities based on cooperation, such as joint youth projects to identify common interests, book or arts projects, etc. Others suggested the return of refugees as the best way to reconciliation, and one person suggested that punishment was the best way of dealing with the past.

**Title: “Conclusions: Advantages of international criminal justice, national tribunals and truth commissions”**

*Moderators: Bojana Pajic-Rickerts, Adrian Tudorache (MPS students 2003/04) and Aleksandra Zdravkovic*

After a coffee break, Adrian Tudorache, Bojana Pajic-Rickerts and Aleksandra Zdravkovic formed three groups to research the advantages of truth commissions, international criminal justice, and national tribunals.

Adrian Tudorache presented the results of the working-group “international criminal justice” which proposed as the following advantages of the international courts: objectiveness, legitimacy, witness protection, neutral ground, international standards, historical reasons, better approach to evidence, financial independence.

Aleksandra Zdravkovic presented the results of the working group “national tribunals” which recognized as the advantages the following: It is less expensive; sentences would not be seen as being politically motivated by the international community; a functioning state needs a judicial system to which it is responsible; the question of ownership (a sign of successful peace building). Bojana Pajic-Rickerts presented the results of a working group “truth commissions”, pointing out the advantages of this institution such as the possibility of opening a public discussion, the victim-victim orientation (not accused-victim), and the establishment of relations between communities. Among the other advantages of truth commissions, they leave no space for untold stories and they are the most appropriate means of affecting the roots of a conflict. Moreover, they are organized on a voluntary basis and

generate wider media coverage than the activities of international courts. Finally, from the point of view of finances, truth commissions are easier to organize. After the presentation, Ms. Pajic-Rickerts moderated the discussion on finding the best solution for the reconciliation process involving all three components. Afterwards the participants took part in a feedback-round where suggestions and results from the workshop were presented.