

DNA Testing and the Srebrenica Lobby

By Stephen Karganovic

The aggressive Srebrenica lobby has been having some difficulties lately. It is not used to its demands being ignored or – worse yet – defied. But it seems that its attempts to force-feed the world its version of events in Srebrenica in July of 1995, and to impose permanent global grief on people who had nothing to do with them, are finally arousing some long overdue resistance. A case in point to what absurd lengths the lobby is prepared to go were its infantile demands for the final World Cup soccer game in South Africa, scheduled for July 11, to be suspended to honor Srebrenica “genocide victims.” When that did not work, Bosnian Moslem lobbying groups signaled their readiness to settle for one minute of silence. But the World soccer association, FIFA, would not even have any of that, either. In a polite, but firm response, Srebrenica lobbyists were told that game will go on as scheduled, without the injection of any Balkan political overtones. Sarajevo was furious, but there was not much that it could do about it.

An equally unexpected and “disappointing” development was Canadian Prime Minister Stephen Harper’s refusal to endorse a Srebrenica resolution. Since his coalition has a majority in parliament, notwithstanding the impotent fulminations from Sarajevo and its local Canadian outfit, “Institute for Genocide Research,”[1] that effectively took the proposal off the table as far as parliament was concerned, at least for now. Again, the lobby was dealt a setback it is not used to and it does not quite know how to handle it.

The course of the Ganić extradition case in London may also cautiously be regarded as a sign of increasing ennui in the West with the Srebrenica lobby’s campaign to make everyone march to its tune. Serbia’s pro-Western client government did not really expect its pro forma Interpol arrest warrant for Ganić’s arrest to be honored anywhere and it was therefore caught by surprise when British authorities took Ganić into custody at Heathrow airport a few weeks ago. The amateurishly prepared evidence to back the extradition request, that was initially submitted by Belgrade, bore eloquent witness to that. Not that the charges were frivolous. Ejup Ganić, a member of Bosnia’s wartime Presidency, stands accused of organizing and ordering the lethal attack on a column of unarmed Yugoslav National Army soldiers who were evacuating their barracks in Sarajevo on May 3, 1992, after safe passage guarantees were solemnly given. Forty-two soldiers, mostly conscripts, were killed in murderous cross-fire and seventy were wounded. Two hundred and seven were taken prisoner and subsequently released, many after being subjected to humiliation and torture.

The fact that the British court is giving the matter lengthy and thorough review, notwithstanding Belgrade’s confused reaction, belies Sarajevo’s original expectations that the matter would be resolved quickly with Ganić’s complete vindication and triumphant return home. Regardless of the ultimate ruling in the case, the mere fact that Belgrade’s extradition request was not summarily discarded and that the Bosnian „statesman“ must undergo the lengthy rigours of a court procedure to sort out his responsibility for some rather grave offences, like General Pinochet before him, or any other similarly situated mortal, sends a clear signal that the free ride for the West’s favorite victims may be over.

This string of bitter reverses in the fields of sports, politics, and jurisprudence was ameliorated just in time by the long-expected ICTY judgment in the Popović et al. Case, made public on June 10. Not that there were any major surprises in the court’s findings: Serbian officers guilty, genocide, 7.000 to 8.000 victims, and all the rest. There is, however, one important

novelty in the judgment. It is the shift from standard forensics[2] to the cutting edge technique of DNA analysis as the primary tool for dealing with the identification and quantification of exhumed human remains which constitute the corpus delicti of the Srebrenica case. In the Popović verdict, the chamber offers the following conclusions:

“Based on the evidence, the Trial Chamber has found that at least 5.336 identified individuals were killed in the executions following the fall of Srebrenica. However, noting that the evidence before it is not all encompassing, the Trial Chamber is satisfied that the number of identified individuals will rise. The Trial Chamber therefore considers that the number of individuals killed in the executions following the fall of Srebrenica could well be as high as 7.826.”[3]

The actual number of victims is a key aspect of the Srebrenica controversy and it goes also to the issue of genocide. It is manifestly incorrect to argue that provided the genocidal *dolus specialis* is demonstrated, even a handful of victims will do, so what is all the fuss about whether 8.000 or some other number were executed? In fact, it was precisely in the Krstić case that the chamber accepted the thesis that the “scale of killing,” i.e. numbers, was germane to genocidal intent.[4]

The real issue never was the courts’ attempts, provided they were in good faith, to determine the number of victims, but rather the methodologies they used in going about it. In both Krstić and Popović cases no attempt is made to disguise the fact that the “7.000 to 8.000” number of victims is sacrosanct and that evidence must be adjusted to fit that numerical target, rather than vice versa. It is thus that in Krstić the chamber claims, falsely as it turns out, that 2.208 Srebrenica bodies had been found at the time of judgment, and adds, quite absurdly, that in the opinion of unnamed experts 4.805 additional bodies supposedly relevant to the case lay in yet unexhumed mass graves. In relation to the critically important issue of numbers, it thus follows that the Krstić judgment was based not on a fact, but on a prognosis. Needless to say, ten years have passed since then but the predicted additional bodies have failed to materialise.

In testimony to the fact that nothing is new under the sun, or at least at ICTY, we now see the Popović chamber engaging in the same type of legal soothsaying in an attempt to gloss over the critical lack of executed bodies. The chamber notes that „the evidence before it is not all encompassing“ but since the magic figure of 8.000 must be reached by hook or by crook, it simply proclaims its conviction „that the number of individuals killed in the executions following the fall of Srebrenica could well be as high as 7.826.”

It would be useful to first review the grounds upon which that “conviction” is based and, indeed, the entire fabric of the chamber’s reasoning in this segment of its verdict before deciding whether to take its conclusions too seriously. For starters, it would be a good idea to ask where the data on which the chamber’s conclusions are based comes from. The answer is in par. 638 et passim of the Popović judgment. The data come from the International Committee for Missing Persons [ICMP], an NGO based in Tuzla, Federation of Bosnia and Herzegovina. ICMP’s website projects the image of a benign humanitarian organization whose mission is to apply science, in this case DNA, to identify dead victims of the Bosnian conflict and to provide solace and closure to surviving relatives. All fine and good. But there may be more to ICMP than meets the eye.

ICMP’s independence is debatable. It was formed in 1996 at the G-7 Summit in Lyon, France, at the initiative of US President Bill Clinton. The list of its chairmen so far reads like a US establishment Who is who. Its first chairman was former secretary of state Cyrus Vance,

1996-1997, followed by Bob Dole, 1997-2001. ICMP's current chairman, „philanthropist“ James Kinsey, used to be the chairman of America Online. But is that meticulously nurtured humanitarian profile realistic, or is it but another Srebrenica illusion? The probability of the latter option is enhanced when one considers that the chairman of ICMP is appointed by none other than the Secretary of State of the United States. As we learn from State Department press release of May 11, 2001:

„Secretary Powell has appointed Jim Kinsey as the new US chairperson of the International Committee for Missing Persons (ICMP), the leading organisation involved in the identification of remains of people killed in recent conflicts in the Balkans. Mr. Kinsey is the Founding CEO and Chairman Emeritus of America Online Inc.“

Though ICMP's public image projects the impression of a classical NGO with purely humanitarian objectives, based on the mechanism whereby its management is appointed at least a conflict of interest issue could be raised. Not only that, but while fulfilling its mission it would seem that ICMP is not accountable to any scientific or juridical body. In the opinion of US political analyst George Pumphrey:

„It is a wing of the US State Department and publishes a 'nimport quoi' to serve the propaganda interests of its masters. Many of their reports are so ambiguously worded that even if someone would attempt to verify their announcements, it would be impossible, because one is not sure if they are speaking of whole corpses or of pieces of corpses.“

Lack of accountability and its corollary, unverifiability, are indeed the salient features of ICMP's work. ICMP's data have never been seen or tested by independent experts, even in court settings where they were officially presented in evidence, such as in the Popović case. That took place in closed session and under severely restrictive conditions which did not allow the defence either the time or the resources for a comprehensive expert review of ICMP's results. But as we learn, if true, those results are in fact quite sensational: 6,481 Srebrenica victims currently identified, and enough evidence leading ICMP to support an estimate of altogether around 8,100 individuals missing from the fall of Srebrenica in July 1995.[5] That is practically on the mark. In short, according to this, ICMP has cracked the Srebrenica case and put skeptics out of business.

If ICMP's word is all that is required to show that, it may well be true. All requests for DNA profile matches and other pertinent data to be disclosed to be reviewed by independent experts are politely but firmly declined by ICMP. Its secretiveness is justified on the grounds that allowing public access to the data would be an insensitive act that would result in great indignity to the victims and compound the pain of the survivors. It claims that its hands in the matter are tied and that it can release the data only if the survivors would give their written permission. How likely is it in the Balkans that they ever would?

It seems that ICMP's penchant for guarding the „privacy“ of its data does go excessively far, even absurdly so. When Radovan Karadžić asked to be given access to their data for verification purposes, it came to light that in fact he was not precisely being discriminated against because the prosecution revealed that they, also, were denied proper access. Prosecutor Hildgard Uertz-Retzlaff made the astonishing statement that „ICMP did not share DNA data with us, either. So it is not correct that they gave it to us, but not to others.“[6]

Reliance on ICMP findings is, therefore, little better than faith-based jurisprudence. But even if protestations of privacy on behalf of family members who donated blood samples are to be

accepted at face value, now that the 5,336 identified victim figure has been enshrined in the official judgment, it would seem simple and convenient to allay doubts by publishing at least the first and last names of all the 5,336 individuals involved. The publication of such a list is indispensable to verify, first of all, if the persons in question ever existed: if they did, whether they are really dead: and if they are dead, whether their deaths had anything to do with the execution of war prisoners in Srebrenica in July of 1995.

That ought not to offend anyone's sensibilities because thousands of names of alleged Srebrenica victims have already been carved onto a huge slab of stone at the Potočari Memorial Centre, to be seen by everyone. The publication of these names of victims supposedly identified by DNA would not only be quite sensational, it would also make further forms of verification possible. Unfortunately, no such list is appended to the judgment or seems to be forthcoming.

But the Chamber's biggest problem in this regard is not its failure to name the identified individuals (identification, it should be recalled, means assigning a first and last name rather than a number to each individual.) Nor is it even its cavalier prediction, reminiscent of the failed forecast in the Krstić judgment, that "the number of individuals killed in the executions following the fall of Srebrenica could well be as high as 7.826. It is, rather, that the Chamber is apparently ignorant of how DNA works and of what it can and cannot do.

That ignorance is reflected in the Chamber's mystifying finding that "at least 5,336 identified individuals were killed in the executions following the fall of Srebrenica", which is a scientific impossibility. By matching samples taken from the deceased person to biological material donated by the potential blood relative, DNA procedure can establish, with various degrees of certainty, the deceased's probable identity. But in terms that are relevant to criminal liability it can do nothing more than that. It cannot help determine the time and manner of death. The deceased, whose first and last name might indeed be established as a result of a successful match, could have been killed in combat, in an accident, or could have died of natural causes, and it could have happened in Srebrenica or someplace else. The casual suggestion made by the Chamber, that the 5,336 identified individuals "were killed in the executions following the fall of Srebrenica" is scientifically unwarranted and, as any biology student could inform the Chamber, it is absurd on its face. No one can make such a determination based on DNA data without exposing themselves to enormous ridicule.

But this is exactly the determination which the Chamber was obliged to make, because without the time and manner of death claim to go with it, the pompously announced DNA identification evidence is quite useless for conviction purposes. It may be argued that the Chamber acted most unwisely by embracing the DNA approach without at least consulting a biology student about its usefulness before doing so. Once this segment of the judgment is subjected to thorough critical analysis, ICTY will discover that it will get even less in terms of evidence that can withstand critical analysis than was the case with the apparently jettisoned standard forensic approach. The standard approach at least had yielded 947 potential execution victims (442 with blindfolds and ligatures, plus 505 with bullet injuries). The methodology shift to DNA is incapable of demonstrating a single culpable death in terms of legally relevant criteria. It seeks to impress with the aura of high tech, but like any bluff it can last only as long as it remains unchallenged or, in this case, unexamined.

"ICMP's identification techniques directly undermine revisionist attempts to deny mass atrocities," crowed ICMP's Director-General, Kathryn Bomberger. "By providing irrefutable evidence on victims' identities, the ICMP helps judicial institutions bring war crime pepe-

trators to justice, restores victims' humanity and dignity and brings a sense of closure for their surviving family members. These family members have a right to information concerning the fate and whereabouts of their loved ones".[7]

One can only feel sad for international justice as long as it is stuck with astute legal minds of the caliber of those who composed the laughable Popović judgment, and as long as in evidentiary matters they continue to be assisted by charlatans such as Kathryn Bomberger.

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[1] The autonomy of this institution on Canadian soil, not to mention its academic pretensions, may well be questioned. It turns out that the Canada-based Institute for the Research of Genocide was founded by an act of the Institute for the Research of Crimes Against Humanity and International Law at the University of Sarajevo as recently as August 2009 (<http://www.instituteforgenocide.ca/about/>).

[2] In the previous Srebrenica trials, Krstić and Blagojević and Jokić, the forensic evidence consisted of autopsy reports based on the examination of exhumed post-mortem remains. A critique of the Tribunal's interpretation of that data was published by Dr. Ljubiša Simić, <http://www.srebrenica-project.com/DOWNLOAD/post%20mortem/Forensic%20analysis%20of%20post-mortem%20reports.doc>

[3] Prosecutor v. Popović et al., see par. 793, par. 837, and footnote 2862.

[4] Prosecutor v. Krstić, Appellate judgment, par. 35.

[5]<http://www.instituteforgenocide.ca/6481-srebrenica-genocide-victims-identified-through-dna-science>

[6] ICTY, Prosecutor v. Karadžić, Status conference, July 23, 2009, Transcript p. 364, lines 21-23.

[7] Radio Netherlands Worldwide, July 9, 2010: <http://www.rnw.nl/english/bulletin/over-6400-dead-srebrenica-muslims-identified>

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