

The Karadzic Case: Fair Trial or Show Trial?

Written by Peter Robinson

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<https://www.e-ir.info/2012/03/01/the-karadzic-case-fair-trial-or-show-trial/>

PETER ROBINSON, MAR 1 2012

Radovan Karadzic, the former President of the Bosnian Serb Republic, finds himself on trial at an international tribunal established to prosecute him, staffed with judges who have already convicted his subordinates, at a time when the United Nations is demanding that the tribunal close its doors. Can he receive a fair trial?

I defend Radovan Karadzic, or, more accurately, I help him defend himself.

Radovan Karadzic arrived at the International Criminal Tribunal for the former Yugoslavia (ICTY) in 2008 after a decade in hiding. During that decade, the Tribunal handed down judgments finding that President Karadzic headed a joint criminal enterprise designed to expel Muslims from Serb-held territories in Bosnia by the commission of crimes against humanity, war crimes, and, in the case of the events in Srebrenica in 1995, genocide.

President Karadzic watched the trial of another Serb leader, Slobodan Milosevic, on television while holed up in his Belgrade apartment. When it was his turn in the dock, he was determined to act as his own lawyer, as Milosevic had done. He calculated that his chances of an acquittal in that court were slim, and that whatever could be accomplished by such a trial could best be accomplished in the court of public opinion. He wanted to at least tell his side of the story.

Radovan Karadzic is a medical doctor by training, a writer, and a politician. He is not a lawyer. He knew the facts of what happened in Bosnia better than any lawyer could ever hope to learn them, but had no legal training or experience. President Karadzic reached out for an experienced lawyer in international courts to act as his Legal Advisor and help guide him through the Tribunal's substantive law and rules of procedure. That is where I came in.

The first challenge we faced was the "Holbrooke Agreement". President Karadzic told me that he had been promised by U.S. Ambassador Richard Holbrooke, in July 1996, on behalf of the international community, that he would not be prosecuted at the ICTY if he resigned from public office and withdrew from public life. Karadzic had kept his end of the deal, and now he wanted the international community to honor its part.

Despite Holbrooke's denials, we found 22 witnesses who provided statements supporting the claim that he had indeed made such a promise to President Karadzic. But the Tribunal denied even a hearing at which the evidence of the agreement could be presented and debated. Instead, it held that any such agreement would be irrelevant since Holbrooke was not authorized to speak for the United Nations.

Our next hurdle was the Tribunal's active use of judicial notice. In an effort to implement its "completion strategy", the Tribunal took judicial notice against Karadzic of 2300 facts that they had already decided in earlier trials. Among these facts were that the Bosnian Serbs had fired the mortar shells that killed and wounded hundreds of civilians in a market in downtown Sarajevo, that the Bosnian Serbs had engaged in widespread ethnic cleansing, and that thousands of prisoners had been executed at Srebrenica. This relieved the prosecution of having to prove those facts in Karadzic's trial.

The Tribunal also ruled before the trial that Karadzic would not be allowed to question 148 prosecution witnesses whose statements or prior testimony were admitted into evidence against him. It reasoned that since these

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witnesses established only that the crimes had occurred, but not that Karadzic had personally committed them, there was no need for him to challenge their evidence.

Before the first witness at his trial was called in April 2010, this mountain of 2300 adjudicated facts and 148 witness statements had already been admitted against President Karadzic. While the Tribunal was quick to assure President Karadzic that he would be given the opportunity to rebut those facts during his defence case at the trial, it steadfastly denied that it was establishing a presumption of guilt before the trial even began.

The Tribunal permitted President Karadzic to defend himself at his trial, but appointed a British barrister as “standby counsel” to lead a shadow defence team ready to step in if Karadzic disrupted or obstructed the proceedings.

To his credit, President Karadzic has defended himself with dignity during his trial. He has determinedly dug out favorable evidence from the 2.1 million pages of documents that the prosecution piled at the doorstep of his prison cell. He has questioned the prosecution’s witnesses relentlessly, all the while being unfailingly polite and respectful. He has learned the rules of evidence and the technique of putting questions to witnesses in a courtroom. He has filed more written legal challenges than any other defendant at any international tribunal.

To the Tribunal's credit, its judges have allowed President Karadzic to elicit his side of the story from the witnesses during the trial, and have ruled in an even-handed manner. The President of the Tribunal has repeatedly chided the Tribunal’s Registrar for underfunding the defence and has ensured that Karadzic has had adequate resources to defend himself.

My role in this process has been to champion the right of an accused, no matter how vilified, to a fair trial, and to challenge the Tribunal to live up to the lofty principles espoused in its rules and jurisprudence. The precedents being established in the Karadzic case will be relied upon by the International Criminal Court, regional war crimes courts, and national courts, for many years.

Helping defend President Karadzic is alternately exhilarating and frustrating. I am energized when believing I am on the side of David facing Goliath, and depressed when hearing the stories of the victims who suffered immensely during the war in Bosnia. It is satisfying to participate in a trial before hard-working judges, and facing a group of dedicated prosecutors, but unsettling to be working in a legal system influenced by world politics.

The trial is in its third year now, and the prosecution has almost finished calling its 200 witnesses. President Karadzic, undaunted by the process, and with energy that belies his 66 years, is readying to call hundreds of witnesses in his defence case.

Fair trial or show trial? We’ll have to wait for the judgement to know for sure. But meanwhile, the trial goes on in Courtroom 1 of the ICTY’s premises in The Hague. And I am proud to be in that courtroom every day, standing with President Karadzic, fighting for his right to a fair trial.

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Peter Robinson, www.peterrobinson.com, is an American lawyer and author of a novel, *The Tribunal*. In addition to President Karadzic, he has also represented the former President of the Rwandan National Assembly at the International Criminal Tribunal for Rwanda, and the lawyer for Liberian President Charles Taylor at the Special Court for Sierra Leone.