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International Criminal Law:
The Case of Serbia and the ICTY**

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The Case of Serbia and the ICTY**

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Our national, nationalistic values have a function only in relation to the nationalism of others: *we are* nationalists, but so are they, and worse; we murder (when necessary), but they do so even more; we drink a little too much, they are alcoholics; our history is correct only *in relation* to theirs, our language is pure only *in relation* to theirs. Nationalism lives off relativism.

—Danilo Kis, *The Anatomy Class*¹

What explains Serbian antipathy to the International Criminal Tribunal for Yugoslavia (ICTY)? Slobodan Milosevic was finally ousted in a popular uprising in 2000 after his policies had contributed to brutal wars in Croatia, Bosnia-Herzegovina, and Kosovo; massive corruption; economic ruin; and international sanction. One would suspect, then, that Serbians would be only too happy to relinquish him to an international court.² This, however, has not been the case. Four-fifths of the public surveyed by the Serbian polling agency Strategic Marketing felt that the tribunal was biased against Serbs in general.³ Nearly forty percent believed that Milosevic was acting in defense of Serbia and the Serbian people at his trial in the Hague.⁴ Most Serbians appear to agree with Ivica Dacic, the party secretary of Milosevic's Socialist Party of Serbia, who has argued: "This is not a trial against Milosevic but a trial against the whole country. The consequences of this trial could be catastrophic for the Serbian nation because it will be written in history that the Serbs are responsible for genocide."⁵

In analyzing this reaction, this paper proposes that social identity and self-categorization, as elaborated primarily by Henri Tajfel and John Turner, are intervening mechanisms that help explain this negative social reaction to international criminal law. I use this pair of social psychological theories to argue that it is the belief in a group threat, directed against a social identity that an individual feels incapable of escaping, which produces a strong self-categorization as a group member and predicts the function of social identity mechanisms—that

is, a feeling of oneness with the other members of a particular in-group and distance from a particular out-group. The direction of these unified social attitudes, and the orientation of the state-level decision-maker, will then vary depending on the content of the self-stereotype. In the Serbian case, this paper argues that there was far less social identification at the national level, and greater diversity of national political opinion, before the NATO bombing in 1999. However, the NATO bombing constituted an inescapable threat at the national level, creating an atmosphere in which Serbians felt they were all treated alike regardless of their political opinion; this group-level, inescapable threat produced a greater sense of in-group homogeneity and identification. Rather than differentiating themselves primarily against the Milosevic regime, previously dissident Serbs changed their salient out-group and began differentiating themselves primarily against the Western countries participating in the bombing. The significance of notions of rebelliousness and victimhood in the Serbian self-stereotype helped further define an international stance that rejected the kind of post-war solution offered by the ICTY.

THE 1990s AND DEVELOPMENTS IN THE INTERNATIONAL CRIMINAL LAW PARADIGM

Understanding Serbian perceptions of the ICTY requires some contextualization of the reemerging international criminal law paradigm. After lying dormant for nearly fifty years, the concept of the international criminal court is once again becoming an established feature of the international system. At the most general level, this is often attributed to major systemic-structural change in terms of the end of bipolarity: during the Cold War, fulfilling the norm of humanitarian justice for individual civilians presented too much of a threat to national sovereignty interests.⁶ Meanwhile, the varied international reactions to the revival of this idea—in particular, the heated resistance of the US to the idea of the permanent international criminal court—suggests that this is not the only relevant variable.

The 1992 establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) nonetheless represented a major turning point in international perspectives on violence

against civilians in the context of war. Though the Genocide Convention and the Geneva Conventions, which spell out the responsibilities of states towards civilians during war, had been in existence since 1949, they contained no international enforcement mechanism. Therefore, while they were commonly referenced in the period between their founding and 1990, they were not used as a justification to prosecute massive violations of humanitarian law, even though this period witnessed enormous war-time loss of civilian life in Cambodia, Vietnam, Uganda, Argentina, East Timor, Iraq, and El Salvador. The 1992 creation of the court and prison systems to enforce humanitarian law at the individualized command level was thus a serious advance of the legal ideal, representing the first significant return to the post–World War II norm that violence against civilians in the context of war is not merely tragic, but criminal.

This shifting norm meant that as of 1992, the Yugoslav wars of secession existed within a relatively new international frame. The countries of the former Yugoslavia conceptually became not only a war zone but also an enormous crime scene. The differences between these two pictures—war vs. crime—have extremely different implications for the countries’ residents. Within the “war” frame, problems can be ascribed to such extra-agent factors as ancient ethnic hatreds, economic crisis, crowd madness, or irrational bloodlust. The defined causal chains are less than specific or accurately predictive. Causalities are simplified in the popular media and in the public imagination; victims and villains are painted in broad strokes. Within the “criminal” frame, meanwhile, problems are all caused by specific agents, acting in either intentional or neglectful ways to produce certain outcomes. Prosecuting authorities necessarily cast causal chains as both precise and complete. Media and the public are directed to view the set of events in terms of the responsibility of individual actors.

The “criminal” frame can thus be seen to create a certain benefit for most individual residents of war-torn countries. Under this paradigm, responsibility should not be assigned to a large group but rather focuses narrowly on particular leaders. The “war” frame, meanwhile, assigns responsibility broadly. Most individual residents will be tarred with the same conceptual brush. The only possible escape from accepting this group-level guilt is through a group strategy

of calling the attribution false—to cast doubt on the reasoning behind the imprecise accusation. Though social identity theory provides the theoretical grounds for questioning this, we will for the moment assume that most individuals at the society level—who would not be indicted by international justice mechanisms—should rationally prefer the criminal frame and to avoid guilt altogether. However, in the Serbian case, we do get the counterfactual outcome that many more individuals cast doubt on the criminal mechanism than accept it.

At the government level, meanwhile, we would predict just the opposite as being strategically rational: that government officials would attempt to diffuse responsibility away from themselves and underscore the “war” interpretation wherever possible. However, this also appears not always to be the case. The government of the Federation of Bosnia and Hercegovina was the first to respond to ICTY indictments by extraditing Bosnian Muslims to the court in May 1996. Croatia followed suit in April 1997. The governments of these states chose and maintained cooperation with the Tribunal despite the fact that Bosnian Muslims and Croats have been indicted by the ICTY for violations of the Geneva Conventions. Meanwhile, Serbia has been extremely resistant to the ICTY even though a recent popular movement has already toppled all of the indictees from positions of power, making the new government a coalition of entirely different actors. Though the new government could fully cooperate with the ICTY without personally endangering any of its own members, the question of whether or not to give the indicted former president Slobodan Milosevic to the Hague embroiled Serbian politics for over a year—even after it seemed the popular verdict on Milosevic was clear, given his ejection from power by popular movement. The failure to deliver Milosevic was initially somewhat surprising to Western policymakers, who in the end forced Serbia to deliver the toppled Milosevic by conditioning monetary aid on cooperation with ICTY demands. The decision to deliver Milosevic to the Hague in June 2001 became a monumentally difficult subject for the Serbian governing coalition and resulted in the breakdown of cooperation between top leaders Yugoslav President Vojislav Kostunica and Serbian Prime Minister Zoran Djindjic.⁷

THE POWER EXPLANATION

Within the world of academic analysis, it is traditional to look at macro-level explanations for state attitudes towards international organizations. One long-pedigreed perspective, the realist/neorealist view of international relations, interprets governmental action as consistently driving towards the objective of enhancing state power. A Marxist-derived perspective would hold that international action will be determined by elites intent on self-preservation. However, international criminal law may be perceived to have many different implications for power and cost to states. Rather than using an unqualified definition of “power,” therefore, the specific social interpretation of “power” in individual states must be examined. This interpretation, at least partially determined by characteristics of the national social identity, is a critical guide for any power-oriented choice. This suggests at least one reason we need to continue to focus on social-level phenomena.

Looking at the Serbian rejection of the ICTY’s legitimacy, we might apply neorealist or elite self-interest theories to explain the state’s reluctance to cooperate with the international criminal law mechanism. The neorealist perspective asserts that the state’s sole motivation is the accumulation of sovereign power. A related rationale rests on the perception that cooperation would not be in the self-interest of elites; according to both classical Marxist and econometric theories, the state’s first interest is to preserve elite prerogatives.⁸

However, both of these explanations lose explanatory power when we look at the range of responses to the international criminal tribunals: these theories alone fail to explain why other former Yugoslav countries would cooperate. I would propose that this is so because these perspectives overlook the reality that power may be differently constituted and sought in different ways, depending on context, events, and social interpretation. In general, because the nature of the power sought (or retained) remains unexamined within these paradigms, we cannot really predict cooperation or rejection. Power-based explanations alone are insufficiently precise; in fact, they leave open a great deal of variation in outcome.

The traditional realist vision holds that power is a zero-sum game that boils down to military power. The strategy for acquiring power lies in stockpiling resources and weaponry. Meanwhile, other visions of power emphasize the importance of ideas like “interdependence,” where a country can really only be said to hold power over another to the extent that it has something that the other country needs.⁹ This interpretation of power suggests that greater points of contact and bargaining, enabled by international institutions, enhance state positions relative to each other because they increase the likelihood that states will come to hold power over each other.

When Croatian government members opposed full cooperation with the ICTY in 2000, Croatian President Stipe Mesic defined the state’s power as lying in interdependence when he accused Croatian government members of looking to harm Croatia: “To attack international institutions, to oppose The Hague tribunal and the UN means to lead Croatia back into isolation.”¹⁰ As opposed to the US view that the International Criminal Court unacceptably compromised America’s sovereignty, the UK voted to ratify the terms of the International Criminal Court. Foreign Secretary Robin Cook explained the decision in interdependent terms:

We work for international order because we believe in human rights and because it is in Britain’s national interest to do so. A more stable, democratic world is safer to live, travel and trade in. Establishing an International Criminal Court will be a major contribution towards deterring crimes against humanity.¹¹

Meanwhile, power is also routinely defined in terms of independence. In determining its position towards the ICC, the US definitively announced a preference for the power in independence stance when President George W. Bush revoked the US signature on the ICC founding treaty in May 2002. In the Serbian case, Kostunica has leaned more towards this position than the other successors of the wartime ex-Yugoslav leaders. From the beginning of his presidency, Kostunica claimed that the international tribunal was biased against all Serbs and insisted that Milosevic must be tried in Serbia.¹² He initially shunned early meetings with ICTY Chief Prosecutor Carla Del Ponte and then finally used them as an opportunity to list ways in which the ICTY operated with questionable legality.¹³

THE CONTRIBUTION OF SOCIAL IDENTITY AND SELF-CATEGORIZATION THEORIES

If state action is linked to considerations of state power, it is clear that understanding which interpretation of power states hold is important for predicting the specific course of action state actors will choose. As noted at the beginning of the paper, I believe that social identity theory and self-categorization theory provide us with critical understanding of the mechanisms that underlie the decision to interpret power as interdependence or power as independence. The interpretation of power chosen at the elite level—and supported at the society level—is inevitably filtered through a self- and world-view created by the national social identity.

The theory of social identity, as originally developed by Henri Tajfel, is its recognition of the significance of social identity as a core factor in an individual's self-concept. A social identity is "that part of the individual's self-concept which derives from his knowledge of his membership of a social group (or groups) together with the value and emotional significance attached to that membership."¹⁴ Just as an individual strives to maintain a positive self-concept as an individual, they will attempt to achieve or maintain a positive social identity—an evaluation of the in-group as worthy, positive, high in prestige.¹⁵ Social groups, as collections of individuals all striving to maintain a positive self-concept, perform a similar evaluative function by seeking to compare themselves positively against other groups. They typically do this by choosing a set of categories that allow them to compare themselves favorably as against the out-group.

Social comparison produces a variety of possible outcomes. Tajfel's minimal group paradigm experiments famously proved the realities of in-group favoritism and out-group derogation: in general, the same mechanism that allows an individual to evaluate their own group positively and a competing group negatively also leads an individual to treat their own group more favorably and a competing group more negatively.¹⁶ In-group favoritism results from a desire to see "positive group distinctiveness" due to individual in-group members' need to view themselves, as a group member, in positive terms.

When the group is not comparing favorably, group-identified individuals may gravitate to one of several strategies to preserve their self-images. An individual may practice individual

mobility, in which they leave their negatively-evaluated social group to reaffiliate with a more positively-evaluated one. Another way is through downward comparison, in which the group selects a less-competitive group to compare itself against. However, there are situations in which members remain inextricably linked to a negatively-evaluated in-group, with a clear and inescapable comparison to a positively evaluated out-group. Social Identity Theory (SIT) theorists call these “social change” environments. In this type of situation, out-group derogation (discriminating against members of the comparison group), higher levels of in-group identification, and social conflict are likely to be the result.

Self-categorization theory (SCT), elaborated by John Turner and his colleagues, adds another dimension to our understanding of individuals’ identification with groups. SCT starts from a hypothesis that individuals think relationally. An individual’s self-concept, including their social identity, isn’t a permanent construct but rather gets reconstituted in every new situation based on what parts of themselves best fit the new situation. Individuals have multiple social identities that are routinely accessible in their minds (e.g., daughter, Berkleyan, American). Specific identities will be triggered as potentially salient for an individual based on its relevance in a particular situation. Then, once an individual has self-categorized, they will begin to self-stereotype—think about themselves more in terms of the features of the group—and depersonalize—focus less on their individual, idiosyncratic features. Meanwhile, researchers have shown that the self-stereotyping process is accompanied by increasing perceptions of in-group homogeneity: not only does the individual perceive themselves as being a more typical group member, but they perceive all other group members as being more typical as well.¹⁷ Finally, in line with SIT, the rising salience of the social identity causes them to enhance the difference between their in-group and out-group.¹⁸

So what is it that makes certain identities meaningful and salient to individuals? SIT predicts that social identity mechanisms will come into play when the status of an identity is under threat, among other potential activators. “Threat” is meaningful—it might be seen as the ultimate cue to the individual trying to identify their proper category. However, it has two

potential outcomes. In many cases, threat decreases identification. Given the motivational aspect of social identity (that individuals will attempt to maintain a positive self-concept through it), we presume that the individual would prefer to engage in strategies to “cut off reflected failure” (CORF) if the social identity is threatened.¹⁹ The individual will attempt to downplay the identity and join another social group. However, if the individual strongly believes that it is impossible for him to disassociate from the group, the individual will be “prepared not to CORF” and will instead give evidence of even stronger identification.²⁰

Further, “social change” environments work to prevent people from engaging in individualist strategies. These environments continually push the individual back into the social identity from which they are trying to escape by treating them the same as their fellow group members. Tajfel and Turner identify a three-way link between this type of environment, the intensity of intergroup conflict, and the “degree of opprobrium attached to the notion of ‘renegade’ or ‘traitor.’”²¹ Individuals in social change environments are prevented from disidentifying with the social group both by external (environmental) pressures and pressure from fellow group members not to betray them.

FITTING THE THEORY AGAINST THE SERBIAN CASE

The contribution of these theories is to emphasize the importance of events and their order in determining the activation of social identities and the play of mechanisms arising from their activation. Following the Serbian case, we unearth a varying level of pressure on individuals to identify with a specific version of the national identity.

The Milosevic era began in an atmosphere of fear and uncertainty, with rising levels of nationalist identification. The Yugoslav federation was in serious political and economic crisis when Milosevic and other Communist Party officials opened its voting to multi-party elections in 1990. In the morass of many new, unknown parties (ranging from the Democratic Party to the Rock and Roll Party), Milosevic’s Socialist Party of Serbia offered continuity from the previous

system—not so vilified in Serbia as in the northern republics of Croatia and Slovenia—and emphasized its threat-reducing ability with the campaign motto, “With Us, There Is No Insecurity.”²² Despite this, the SDS won only a plurality of votes—enough to secure the Serbian presidency but not an indication of firm consensus on Milosevic’s platform.

However, it was patently not the case that a vote for Milosevic was a vote for security. Milosevic strongly supported the development of secessionist Croatian Serb movements in Croatia and led the Yugoslav National Army into fighting in Croatia and Bosnia and Hercegovina—ostensibly in the name of all citizens of the Yugoslav Federation, though the JNA in reality only responded when Serb interests were in question. War, the media-fueled identification with Serbs in other parts of the former Yugoslavia, and the horror expressed by the rest of the world at the brutal tactics unleashed by Serb paramilitary fighters against civilians led to a distinct atmosphere of threat around the Serbian social identity. This threat was underscored by the UN’s imposition of economic sanctions on Serbia and Montenegro in May 1992, which led to further economic decline.

However, the diversity of Serbian response reveals that the threat was low enough, or the identity permeable enough, that escape, as an individual-level strategy, and redefinition of the group, as a group-level strategy, were still available as options. While Milosevic entered the presidency, younger Serbs were developing a substantial protest movement based around opposition politicians. This movement represented a mass-level effort to change the course of Serbian action at a critical moment in regional history. The protests of 1991–1992 were multi-vocal and pro-democratic, with many nationalist elements—but strongly anti-Milosevic.²³ The latent conflict between the pro-democratic and pro-nationalist sentiments were well captured in one protest attendee’s report on the only negative moments within the otherwise uplifting, month-long teach-in at Belgrade University in 1992:

Unfortunately, twice, and for different reasons, there were non-democratic models of behavior. Once, when physical violence almost occurred, they were directly provoked when a speaker accused them of “kneeling before the killers of the Serbian people.” The second incident occurred during the visit of two French philosophers

and pacifists, A. Glucksman and B.H. Levi. They tried to explain their views on what was really going on in Bosnia. They depicted a war between nationalists, executors of ethnic cleansing policy and those who were liberal cosmopolitans, irrespective of their ethnic affiliations. Some students were not yet ready for truth put so bluntly.²⁴

After violent clashes between 50,000 opposition supporters and police on March 9, 1991, students formed a sit-in style “Student Parliament” around Belgrade’s Terazije fountain. Democratic Party members collected 800,000 signatures on a petition to remove Milosevic and invalidate elections.²⁵ The protest movement developed through July 1992, culminating in a mass protest in front of the National Assembly building of around 500,000 people.²⁶ Milosevic responded to the protests in an address to the parliament, identifying the protestors as traitors:

Serbia and the Serbian people are faced with one of the greatest evils of their history: the challenge of disunity and internal conflict. This evil, which has more than once caused so much damage and claimed so many victims, more than once sapped our strength, has always come hand in hand with those who would take away our freedom and dignity...All those who love Serbia dare not ignore this fact, especially at a time when we are confronted by the vampiric, fascistic forces of the Ustashas, Albanian secessionists, and all other forces in the anti-Serbian coalition which threaten the people’s rights and freedoms.²⁷

Demonstrations were then violently crushed in the summer of 1992.

This appeared to be the end, for some four years, of mass-level efforts to change the national identity. Rather, at this point people began primarily exercising the strategy of individual exit. As the wars in Croatia and then Bosnia and Hercegovina progressed, many Serbs, as well as Serbian residents of other ethnicities, began actively avoiding the draft. Only 17 percent of men called up in Belgrade responded to the draft, and one third of even these were taken by force.²⁸ 200,000 people are believed to have left in this period, many of them men leaving to avoid the draft. By 1995, the Canadian embassy in Serbia was receiving 100,000 immigration applications annually.²⁹ This should be considered meaningful opposition in a country with a population of 12 million.

Mass protests erupted again in November 1996, when members of the “Zajedno” opposition coalition won in most urban municipalities but were prevented from claiming their seats by the Milosevic government. This was viewed by the electorate as being deeply humiliating and resulted in three solid months of protests in which hundreds of thousands of people participated. The group strategy for combating negative social identity was once more triggered into being.

As in the early 1990s, though the protests were strongly anti-Milosevic, we once more witness the uniting of two fairly different perspectives: “nationalists who blamed the communist Milosevic for Serbia’s decay, and anti-nationalists who blamed the nationalist Milosevic for bringing war and poverty to the whole of former Yugoslavia.”³⁰ Again, regardless of this difference, protestors viewed themselves as expressing a single alternate vision of Serbian identity. Sociologist Stef Jansen characterizes the 1996–1997 demonstrations as relying heavily on “a discourse of historical-moral righteousness” in which protestors’ rhetoric expressed that though they were “weak in the face of overwhelming oppression, history was on their side.”³¹ Separating Milosevic from Serbia and associating him with the out-group—rather than the individualist strategy of isolating themselves from Serbia and choosing a new in-group—demonstrated the perception that Serbianness was distinct from Milosevic.

This greater identification appeared to lead to greater awareness of self-stereotyping. According to SCT, after an individual categorizes themselves within a social group they will begin to self-stereotype and begin to emphasize traits shared with the group over unique ones. Jansen’s study of the protests of 1996–1997 and 1999 note the heavy presence of motifs that are traditionally present in the Serbian self-characterization. Protest banners that read, “Those were good times under the Turks!” simultaneously expressed a strong affirmation of Serbian nationalist mythology and associated Milosevic with the wrong side of the national equation. Other strategies emphasizing protestors as victims and underdogs brought these relevant aspects of the Serbian self-stereotype into the public eye—as appropriated by the anti-regime protestors.³²

The period from 1991–1997 can thus be seen to have had a great deal of variability with regard to how people dealt with the threatened identity. Based on public behavior (protesting, voting, emigrating) Serbs variably maintained the positivity of their social identity by categorizing themselves either as individuals or members of a flexible Serbian social identity. In general, though the strong individual mobility option of emigration does exist with regard to national identity, it can only be exercised at high cost. Nonetheless, during this period many people chose this option. Further, the protest behavior—and the continued alignment of national and nationalist themes with protest—suggests that individuals also looked to reconfigure their identity while acknowledging their continued commitment to it. During a period of time in which the Serbian identity was publicly defined by the internationally-stigmatized policies of Slobodan Milosevic, individuals attempted to redefine the “real” Serbian position as being democracy-loving and righteous.

The NATO bombardment from March through May of 1999, however, created a different environment within the country. While bombing originally focused on military targets within Kosovo, it spread to all parts of Serbia, and certain targets in Montenegro, by the end of the three month period. No longer focused mainly on Milosevic, domestic opinion was strongly affected: the reality of being bombed changed the direction of the protest and the sense that the national identity was open to reinterpretation. If the only dimension on which the Serbs were to be compared was Milosevic’s decision to continue or end military action in Kosovo, this was not something that ordinary Serbs could do anything about. Citizens felt entirely voiceless, calling up, for some, the violent implementation of Yugoslavia’s authoritarian Communist state.

When asked whether there was any chance for Serbia and Yugoslavia to avoid bombardment, [Holbrooke] said: “They have the telephone numbers in Brussels and Washington, so...” Seselj was simply gloating in Parliament - state of war, mobilisation, those who do not accept mobilisation, who spread defeatism, who say that we should not fight, who in any way damage the fighting morale, who do not share his opinions - they should be locked up, and, if possible, physically terminated I presume (he could not say that, but I have the feeling he had every intention to ;-)
So, we have a repeat of 1945 - all we need is nationalisation of private property, and we can forget the pensions and wages....³³

This environment—in which being a Serb who lived in Serbia meant that you were the target of bombing—represented a highly impermeable, stratified set of identities characteristic of the “social change” environment. The most likely response to this sort of environment, according to Tajfel and Turner, is for individuals to identify more strongly, to perceive greater in-group similarity and greater differentiation from the out-group and to derogate the out-group.

Though NATO spokesmen repeatedly stated that the Serbian military was the alliance’s only target, this was not perceived to be the case on the ground. This was particularly so when NATO bombing intentionally targeted national electricity sources (shutting down power for as much as 70 percent of Serbian homes), bridges linking parts of major cities like Novi Sad, and the RTS television building—in which people were still working—killing fifteen and wounding seventeen. NATO spokesperson Jamie Shea justified the attacks by articulating how NATO viewed those people as non-civilians:

RTS is not media. It’s full of government employees who are paid to produce propaganda and lies. To call it media is totally misleading. And therefore, we see that as a military target. It is the same thing as a military propaganda machine integrated into the armed forces. We would never target legitimate, free media.³⁴

This interpretation was evidently not shared among even liberal Serbs, who perceived it to be an attack on civilians.

In addition, a number of NATO bombings within civilian areas killed civilians and destroyed homes, schools, and businesses. While the numbers of civilian casualties are disputed, PBS NewsHour on May 14, 1999 (the day that poor NATO intelligence led to bombing that killed approximately 100 refugees in Korisa) listed those publicly acknowledged by NATO:

A week ago, precision-guided missiles ripped into the Chinese embassy, killing three Chinese journalists. Earlier that day, cluster bombs were dropped on the city of Nis, hitting a hospital and a marketplace, killing 15. NATO acknowledged that a stray missile struck a bus near Pristina on May 1st, killing 47, many of them children. Two weeks ago, a missile struck this housing area in Surdulica, killing 20. In mid-April, NATO admitted mistaking a convoy of ethnic Albanians in Kosovo for a convoy of military forces; 75 people died. And a strike on a railroad bridge inadvertently hit a passenger train twice, resulting in 17 deaths.³⁵

Though these were understood within the NATO context to be mistakes and not intentional, they were not understood this way within Serbian society. Rather, they were perceived as a deliberate and intentional threat. The change in how Serbs perceived the threat from the West can perhaps best be seen from the section of society that was protesting Milosevic as a “nationalist” throughout the 1990s, the group of individuals who had the closest ideological connection with the West.³⁶

Right now, majority of people in Serbia blames NATO alone for bombing them every day. Why? They see only NATO playing with joysticks, killing them and destroying their country, not Milosevic. If Milosevic signs anything that will bring peace to Serbia, he will become “hero” and “peacemaker” once again, just as he did after Dayton agreement. Only the politically aware people will know who is to blame, and politically aware people have been removed every day by arrests, murders, mobilization, and threats.

Fall of dictator is not a romantic Hollywood movie, as seen from the international community point of view. It requires much more than simple “overthrow him.” In countries that were fortunate to see their dictators leave, people have suffered a great deal more than people in Yugoslavia have. Also, their ordeal was result of their dictator’s acts alone. In case of Yugoslavia, suffering of people is now caused by NATO’s destruction of the country. Only result of such action so far is counter-effect. People tend to concentrate on survival, they minds are occupied with uncertain future of devastated country. As time goes by, Milosevic will be the last thing on their minds.³⁷

Right up until the evening NATO launched its offensive against Yugoslavia, the country had never been entirely behind its president. But this is no longer the case. Today Serbia is cast in the image of one man: Slobodan Milosevic. This is not to say that Milosevic has succeeded in persuading all Serbs that his is the true path. Rather, overnight, he acquired a most potent ally, namely fear. It is all-pervasive and has silenced every dissenting voice.³⁸

Meanwhile, it is also interesting to note developments in the positions of individuals protesting Milosevic as a “communist” from the nationalist perspective. While these individuals had less of an ideological connection with Western liberals, they nonetheless originally shared many of their concerns before the NATO bombing. Journalist (and later media advisor to President Kostunica) Aleksander Tijanic wrote an article in 1998 that resulted in his magazine being fined \$240,000:

In case you are refusing to accept the balance sheet of your decade-long rule, we can assure you that your efforts are in vain. Historical accounts and the archives of facts have already been assembled. Each Serb, dead or alive, has become an accountant and a witness: Everything that the Serbs created in this century has become thoughtlessly wasted: state and national boundaries; the status of an ally in two world wars; national dignity; membership in all international institutions; the European identity of Serbs has eroded; Serbs withdrew from their ethnic territories and in parts of Bosnia; the nation has developed a complex of being an aggressor, genocidal, vanquished, and a keeper of the last frontiers of European Communism...³⁹

About six months later, one month into the bombing, Tijanac's ire had clearly turned away from Milosevic and towards the West—Milosevic, bad as Tijanac considered him, was suddenly part of the in-group.

This... first source of mental strength: bitterness at the world's lack of objectivity. The other source, equally important, is the Serbian prevailing conviction that we - despite being labeled as aggressors - in all the conflicts following the division of Ex-Yugoslavia, in fact, were victims... The second source of the Serbian strength lies in the awareness that the victim was portrayed as aggressor. It speaks, of course, of the period of 25 years when, even in Serbia itself, there was a conviction that we have no business in Kosovo considering the numerical disproportion with Albanians and their, sometimes sophisticated, sometimes knife pressure, to move out. A nation that is, on one hand in large part convinced in the lack of objectivity from the West, and on the other proclaimed 'redundant' in Kosovo, could not have done anything else but - faced with the ultimatum of the Rambulliet paper of the type 'take it or leave it' - choose the role of a conscious victim. No matter what I resent Milosevic for, he really does know where the majority of Serbia stands and was convinced in the willingness of the nation to pay for what we owe. The bill is terrifying. I don't know if there is anything in Serbia that General Clark has not shot down? But, on NATO's bill, on the other hand, there is not one single profit. Sloba won't sign Rambulliet; no other Serbs would, either, especially now.

There is a shortage, they say, of 500,000 Albanians in Kosovo. The Serbian public, why conceal it, takes that fact as a sufficient payback for the demolishing debt. Yugoslav army has regained self-confidence, generals who have been searching for a commander in chief for two years, have finally found him, and are not hiding their joy over it. Perseverance of the Serbian people, that historically, goes as far as 'at any cost,' seems illogical to the whole world. Essentially, the world is right; Serbs will, eventually, face a ruined land, in the world where dollar, deutsche mark, Clinton and NATO will still rule. I still find it hard to imagine ruble as the number one currency in the world. But, from Serbian point of view, nobody here doubts that the world is stronger, and that it is capable of leveling Sumadija. It is a different kind

of competition: the world can never bring as much evil to the nation whose majority is convinced that it is suffering for the right cause, and is therefore accepting the role of a victim...⁴⁰

From both sides of the opposition, therefore, the bombing elicited a greater willingness to view Milosevic as “one of us” and NATO as the new out-group. Further, the extremity of the threat and the fact that it did not discriminate based on political position (the bombing of the opposition city of Nis was viewed with particular confusion from the Serbian opposition perspective) made it clear that Serbs had entered a social change environment in which they were all treated the same.⁴¹ As the theories suggest, a distinct threat against the entire group, coupled with the group identity being inescapable, creates greater identification. Greater identification leads people to “stereotype themselves and others in terms of salient social categorizations, and this stereotyping leads to an enhanced perceptual contrast between in-group and out-group members.”⁴² This trend was no doubt reinforced by the Milosevic government’s heightened attacks on domestic dissenters during the period of the NATO bombing.

THE RESULT FOR PERCEPTION OF INTERNATIONAL CRIMINAL LAW

While the rational individual was predicted to prefer the international criminal law paradigm, and the pre-1999 protestor might especially be predicted to prefer it, it may just have been the increased collective threat under the NATO bombing that led to negative views of the ICTY at the social and governmental levels. Though the subsequent surrender of Kosovo to United Nations oversight and the dramatic ejection of Milosevic from power unquestionably affected the domestic dynamic, the NATO bombardment left a significant residual effect. Destruction of infrastructure in cities—previously the bastion of opposition support—made for a permanent reminder of the threat posed by the West; destroyed bridges and buildings also offered an opportunity for Milosevic to prove his dedication to the Serbian people by overseeing their reconstruction.

In addition to the physical impact, the psychological impact at the social level may have played a role in the opposition's choice of the relatively nationalist Kostunica for presidential candidate in 2000 over more liberal elements. Concerning the anti-communist, anti-nationalist split, it is easy to see that it was the "anti-communist" preference that won out: Kostunica's most-referenced attraction was his lack of corruption, rather than his liberalness. With a campaign motto of, "No to the White Palace [Milosevic's residence] and No to the White House," Kostunica's Democratic Party of Serbia well represented a Serbia with high national identification, strongly differentiated from the perceived out-group, but also seeking to transform itself away from the negative associations of the Milosevic regime.

Milosevic's attempt to invalidate the September 2000 elections resulted in massive protests ending in a non-violent coup; Milosevic was then left in possession of the presidential palace under a type of house arrest. The question of whether or not to send him to the Hague became increasingly salient over the next six months. US officials insisted on his delivery to the ICTY. However, Kostunica, who had run on a mildly anti-US platform, made frequent statements about the ICTY's anti-Serb bias—thereby identifying Milosevic, through emphasizing his Serbness, as one of the in-group.

By tying approximately \$1 billion in reconstruction aid to Milosevic's extradition, a US-led group of international donors essentially forced Yugoslavia to choose between reconstruction and keeping Milosevic in the country. Once more, material benefit was being counterposed to an issue of identity, and once more it proved to be an intensely difficult decision. The issue dragged within the Yugoslav government for many months, painfully inching towards compliance, until finally the matter erupted as a personal battle between Kostunica and Serbian Prime Minister Zoran Djindjic. Djindjic was ultimately the official to oversee the transfer, stating that, "Any other solution except cooperation [with the tribunal] would lead the country to disaster."⁴³ Meanwhile, Kostunica reviled the hand over as being illegal and claimed that it happened without his knowledge.⁴⁴

Kostunica used Serbian identity to express separation from the ICTY and publicly identified the tribunal with NATO. Though this equation, Milosevic, however little he is liked, was once more fundamentally cast as in-group, while the ICTY was more and more emphasized as a differentiated out-group. This is the perception that is shared by Serbs responding negatively to the ICTY: while some of them may genuinely support Milosevic, there is a good chance, based on the theories elaborated here, that they are merely identifying with him and against the international community as an aspect of heightened social identity.

Meanwhile, the in-group differentiation option, as offered by Djindjic, suggests that the apex of social identification has indeed passed. As evidenced by the September 29, 2002 presidential elections in which (mainly) urban centers once more expressed some degree of support for the internationalist candidate, in this case Democratic Party candidate Miroslav Labus (winning 27 percent), individuals are once again expressing more variation of opinion. Nonetheless, the implication of a serious hangover of strong identification remains. The surprise of increased support for strongly nationalist parties like Vojislav Seselj's Radical Party (winning 23 percent) suggests a continued sense of differentiation from the West, despite the more positive relations that developed between Serbia and the NATO countries.

* * * * *

The impact of social identity can thus be seen to have an implication for support of an international criminal law mechanism. If individuals have been made to feel more homogeneous as a result of a threat perceived to be inescapable, there is a good chance they will carry this feeling over to the post-threat environment and continue to identify with the nationalist position. They can be seen to do this directly, as measurable by public opinion polls, and indirectly, in terms of the popularity of candidates who choose identity-appropriate positions. The country's expression of "power in independence" over "power in interdependence" at the level of national decision-making can thus be seen as an indirect result of the heightened differentiation of strong social identification. In addition, the use of Serbian self-stereotypes like rebelliousness and

victimhood supports, rather than confounds, the tendency towards valuing independence over interdependence.

The reinforcing of a national perspective of “power in independence,” as well as a social identity–enhanced tendency to identify with the individual target of international criminal law, is not helpful from the perspective of international criminal law supporters. The purpose of international criminal law is to find individuals, not collectivities, guilty, which will not occur if the collectivity nonetheless perceives themselves to be tried simultaneously with the individual. This perception that the international criminal mechanism produces collective guilt is entirely counterproductive to the aims of international criminal law, which include stopping the cycle of violence and retaliation by identifying the problem with responsible individuals, rather than collectivities. Moreover, the accomplishment of other aims, like establishing a common historical record of events and achieving reconciliation on the basis of them, are bound to be hampered because the defensive collectivities are less likely to see the mechanism as legitimate. To the extent that there is a high degree of social identification with the national in-group and that the content of the self-stereotype conforms to an ideal of independence, we can predict a strategy of “power in independence” rather than “power in interdependence,” which suggests hostility towards international criminal mechanisms. However, these are clearly manipulable conditions, based on the high degree of variation among in-group members in every country. The important policy consideration lies in avoiding heightening those conditions.

FURTHER QUESTIONS

What of the idea that the majority of Serbs do not separate themselves from Milosevic because they may have shared his vision of creating a greater Serbia at the expense of the neighboring republics? Veljko Vujacic, among others, has pointed to the public belief that the wars and their political consequences have resulted in a fundamental loss of Serbian territory, including the Krajina region, western Bosnia, Kosovo, and Montenegro.⁴⁵ This interpretation of the 1990s

would inevitably place Serbian public opinion at odds with most observers outside of the region, who almost invariably opposed Serbian (or Croatian) state expansion beyond Yugoslav republican borders. Further, what of the fact that most Serbian residents failed to protest Milosevic's involvement of Serbian soldiers in the very bloody wars in Croatia and Bosnia and Hercegovina? Though Serbian media during that time was undoubtedly manipulated and slanted to create a pro-regime public opinion, it nonetheless provided information about what was happening in these wars.⁴⁶ If Serbian television viewers were aware that Serbian villages were being attacked in western Bosnia, they were also aware of the siege of Sarajevo—a place that should also have inspired positive, familiar associations. The general public silence, and the implicit, unconscious weighting of Serbian villages over Sarajevo, cannot, therefore, be justified except on the basis of a most-salient ethnic identification.

Both of these questions point to the general significance of national identity in the years of the early 1990s, about which much has been written—though little from the micro-foundational perspective of SCT and SIT. What will be significant in the future is understanding precisely how it is that national-level identities are made so relevant that individuals will overlook their other relevant levels of identity—as former Yugoslavs, neighbors, city-dwellers, Serbo-Croat speakers, human beings—that would lead to different attitudes and behavior. I here collect different theories to argue that it is the belief in a group threat, directed against a group identity that is for some reason inescapable, that produces the strong self-categorization as a group member and predicts the function of social identity mechanisms, which may then vary in hostility depending on the content of the self-stereotype. However, it is understanding how this belief is generated that should allow us to predict the identification underlying group action.

The sociologist Stef Jansen observes that:

The 1999 protest shows how the rather exclusive preoccupation with the victimization of innocent citizens of Serbia, mentioned above, reflects a wider phenomenon, crucial to Serbian nationalism. In the laments of Serbian suffering, the pain of others is often denied or, more frequently, ignored.⁴⁷

Though Jansen, like this paper, has focused on the Serbian example because it is an excellent demonstration of socially expressed antagonistic victimhood, social identity and self-categorization theory suggest that this phenomenon is far from unique to the Serbian people. We might, therefore, note that this “exclusive preoccupation” with the in-group has great impact on perpetuating cycles of mutually perceived victimization. So, how is the preoccupation triggered? How do we come to understand and believe in an inescapable group-level threat? These are important questions to investigate if we wish to understanding cycles of mutual defensive hostility.

NOTES

¹ Author's translation from Danilo Kis, *Cas Anatomije*. (Belgrade: Nolit, 1978), 33.

² A few Serbian activists seem clear that Serbia's problems lay with its leadership, not the people. As one activist from the OTPOR resistance movement noted, "We knew that he was politically responsible for all that happened in the last ten years and we proved that by overthrowing him." Michael Brissenden, "Reaction to Milosevic Trial" *Australian Broadcasting Corporation News Online*, February 13, 2002. This would suggest that some Serbs feel distanced enough from Milosevic to differentiate between international judgment of Milosevic and international judgment of them.

³ Bojan Tonicic, "Serbia: Milosevic Trial Grips Nation," *IWPR Balkan Crisis Report # 318*, 15 February 2002.

⁴ Other responses included: 22 percent of those polled felt that Milosevic was trying to pass his own crimes onto the people and 17 percent partially shared both of those opinions (the remaining polled did not choose either opinion.) Nebojsa Bugarinovic, "Beograd: 37 posto gradana smatra da Milosevic u Hagu brani Srbiju i srpski narod." *Danas*. 20 February 2002.

⁵ Michael Brissenden, "Reaction to Milosevic Trial."

⁶ Michael Scharf, "The Politics Behind the U.S. Opposition to the International Criminal Court," *New England International and Comparative Law Annual* (1999). Available online at <<http://www.nesl.edu/intljournal/vol5/scharf.htm>>.

⁷ The fundamental complication over which the battle was fought was not actually Milosevic's extradition directly. Rather, the issue rested on the legal requirement to go through the country's Constitutional Court, which is dominated by Milosevic appointees, to achieve an extradition order, as against an argument that delivery to a UN body does not require true extradition.

⁸ Anthony Giddens, *A Contemporary Critique of Historical Materialism, Volume II: The Nation-State and Violence* (Cambridge: Polity Press, 1985).

⁹ Robert Keohane and Joseph Nye, *Power and Interdependence* (New York: Harper-Collins, 1989).

¹⁰ "Row within Croatia's leadership over cooperation with ICTY," *Agence France Presse (AFP)*, 14 December 2002.

¹¹ Foreign & Commonwealth Office, London, "International Criminal Court." *Website of the British Foreign and Commonwealth Office*, 2002. Available from <http://www.fco.gov.uk/text_only/news/keythemepage.asp?PageID=158>.

¹² Jolyon Naegele, "Yugoslavia: Kostunica Still Opposes Milosevic's Extradition to the Hague," *RFE/RL Dateline*, 4 April 2001. Available online at <<http://www.rferl.org/nca/features/2001/04/04042001122408.asp>>.

¹³ "Kostunica to meet war crimes head," *CNN.com*, 18 January 2001. Available online at <<http://www.cnn.com/2001/WORLD/europe/01/18/belgrade.kostunica/>>.

¹⁴ Henri Tajfel, *Human group and social categories: Studies in social psychology* (Cambridge: Cambridge University Press, 1981), 251.

¹⁵ Henri Tajfel and John Turner, "An integrative theory of intergroup conflict," in S. Worchel and W. Austin, eds. *Psychology of intergroup relations* (Chicago: Nelson-Hall, 1986).

- ¹⁶ Henri Tajfel, *Human group and social categories*.
- ¹⁷ Bertjan Doosje, et al., "Perceived Intragroup Variability as a Function of Group Status and Identification," *Journal of Experimental Psychology* 31 (1995): 410–436.
- ¹⁸ John Turner and Riina Onorato, "Social Identity, Personality, and the Self-Concept: A Self-Categorization Perspective," in Tom Tyler, ed. *The Psychology of the Social Self*, (Mahwah, NJ: Erlbaum, 1999).
- ¹⁹ R. B. Cialdini, et al., "Basking in Reflected Glory: Three football field studies." *Journal of Personality and Social Psychology*, 34 (1976): 366–375.
- ²⁰ Russell Spears, et al., "Self-Sterotyping in the Face of Threats to Group Status and Distinctiveness: The Role of Group Identification." *Personality and Social Psychology Bulletin*, 23 (1997): 551.
- ²¹ Henri Tajfel and John Turner, "An integrative theory of intergroup conflict," 10.
- ²² Misha Glenny, *The Fall of Yugoslavia: The Third Balkan War*, 3rd ed. (New York: Penguin, 1996).
- ²³ Ibid.
- ²⁴ Mirjana Prosic-Dvornic, "Enough! Student Protest '92: The Youth of Belgrade in Search of 'Another Serbia.'" *Anthropology of East Europe Review* 11:1-2 (1993). Available online at <http://condor.depaul.edu/~rrotenbe/aeer/aeer11_1/prosic-dvornic.html>.
- ²⁵ Ibid.
- ²⁶ Numbers were reported as ranging from a group of "accidental passers-by," according to state media, to 700,000, according to independent Studio B. *Website of the City of Belgrade*. <<http://www.beograd.org.yu/english/upoznaj/istorija/raspad/>>.
- ²⁷ Misha Glenny, *The Fall of Yugoslavia*, 57.
- ²⁸ Bojan Aleksov, "Draft evasion and desertion," in *Conscientious objection and asylum in Europe*. (Offenback: Connection e. V., 1998).
- ²⁹ Tim Judah, *The Serbs: History, Myth, and the Destruction of Yugoslavia* (New Haven: Yale University Press, 1997.)
- ³⁰ Stef Jansen, "Victims, Underdogs and Rebels: Discursive Practices of Resistance in Serbian Protest," *Critique of Anthropology* 20 (2000), 395.
- ³¹ Stef Jansen, "Victims, Underdogs and Rebels," 407.
- ³² Stef Jansen, "Victims, Underdogs and Rebels."
- ³³ Posted comment from "Dragan," *Free Serbia: Other Voices From Serbia Website*, 23 March 1999. Wartime archive maintained at <<http://db1.inform.dk/~freeserb/arhiva/comments/e-index.html>>.
- ³⁴ "Off The Air," *PBS NewsHour*, 4 May 1999. Available online at <http://www.pbs.org/newshour/bb/media/jan-june99/serbtv_5-4.html>.
- ³⁵ Lt. General Thomas McInerney later commented on the fact that though these killings were considered mistakes, they nonetheless constitute an increasing proportion of the people killed in modern-style warfare. "What's occurring in warfare is a secular trend toward an increasing proportion of civilian casualties. The turn of the century was about 10 percent. Now it's running 80 to 90 percent. And I think the means that we're employing to try to achieve a humanitarian objective are contributing to what is an increased proportion of civilian casualties and warfare. And I think we need to take a hard look at

employing our forces in that manner.” “Civilian Casualties,” *PBS NewsHour*, 14 May 1999. Available online at <http://www.pbs.org/newshour/bb/europe/jan-june99/casualties_5-14.html>.

³⁶ The wars of the former Yugoslavia were known as the world’s first “internet wars” because so much information about them was posted on the internet by participants and observers. Similarly, the Serbia/NATO war produced a number of websites, many especially dedicated to expressing the feelings of those inside the conflict to the outside world. One such website was “Free Serbia”, made up of “a group of people from Serbia who have been struggling in the past decade for democracy and a better future through various political parties, non-governmental organizations, student organizations and other means of political activity.”

³⁷ Posted comment from “Cancer Woman,” *Free Serbia: Other Voices From Serbia Website*, 20 May 1999. Wartime archive maintained at <<http://db1.inform.dk/~freeserb/arhiva/comments/e-index.html>>.

³⁸ Posted comment from “Journalist from Belgrade,” *Free Serbia: Other Voices From Serbia Website*, 5 April 1999. Wartime archive maintained at <<http://db1.inform.dk/~freeserb/arhiva/comments/e-index.html>>.

³⁹ Aleksandar Tijanic and Slavko Curuvija, “What’s Next, Milosevic?” *Evropljanin* (Belgrade), 19 October 1998.

⁴⁰ Posted comment from Aleksandar Tijanic, *Free Serbia: Other Voices From Serbia Website*, 20 April 1999. Wartime archive maintained at <<http://db1.inform.dk/~freeserb/arhiva/comments/e-index.html>>.

⁴¹ Those who were able to maintain the dual perspective—identifying both as Serb and as internationalist—increasingly spoke from outside of the country. Zivoslav Miloradovic, self-exiled to Italy, movingly expressed both opinions in, “Letter to a Serb Patriot” on the *Free Serbia* website, <http://db1.inform.dk/~freeserb/arhiva/comments/e-per_28031999b.html>.

⁴² John Turner and Riina Onorato, “Social Identity, Personality, and the Self-Concept.”

⁴³ “Handover Shakes Belgrade,” *PBS NewsHour*, 29 June 2001. Available online at <http://www.pbs.org/newshour/updates/june01/yugo_6-29.html>.

⁴⁴ Analysts’ interpretation of the legality of the extradition turned on the question of whether an extradition to a UN body is truly an extradition, since Yugoslavia is a member state of the UN.

⁴⁵ Veljko Vujacic, “Two Years After Milosevic: The State of Democracy in Serbia,” presentation sponsored by the Institute for Slavic, East European, and Eurasian Studies, University of California, Berkeley, 2 October 2002.

⁴⁶ However, media programming is commonly viewed as playing a critical role in creating and reinforcing national identity, not least by subliminally influencing thought patterns that will later cause individuals to reject cognitively dissonant information. Writer Tim Judah’s description of the specific nature of Serbian state media manipulation fits neatly with the discussed threat-social identity interaction. During the late 1980s and early 1990s, he reports that state TV programming was marked by the “constant screening of documentaries about the Ustashas [WW II–era Croatian nationalists] and Jasenovac,” (171) and a documentary about Serbian soldiers lost on Corfu in the Balkan Wars. Tim Judah, *The Serbs: History, Myth, and the Destruction of Yugoslavia*, (New Haven: Yale University Press, 1997). Images of past group-level threat were intended to prime viewers to preferably see similar images in the current political environment; as a secondary effect, individuals would then be less likely to view evidence to the contrary as credible.

⁴⁷ Stef Jansen, “Victims, Underdogs and Rebels,” 403.

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