

STUDENT NOTE

**IS POETRY A WAR CRIME?
RECKONING FOR RADOVAN KARADZIC
THE POET-WARRIOR**

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I. INTRODUCTION—THE WORLD’S
DEADLIEST POETRY READING

*Karadzic is a poet of holocaust. He is a poet who places
death in people’s irises.*

—Akgun Akova, Turkish Poet¹

The sky is pale blue. Trees turn on whispers of breeze, showing their silver bellies in the gusts. The tall man, a poet, is reciting his work from memory to his bespeckled visitor, also a poet. The poem is about the white and ochre city they gaze at from their aerie. Wind grabs and lifts tousles of brown and silver from the top of the taller poet’s great head. The shorter poet mutters agreement after each line; there is something worshipful in the intonation of his voice, the reverent gaze at his handsome friend in the art. The poet finishes his poem and peers down at the beautiful old city through a looking glass and invites his friend to have a

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1. Akgun Akova, Speech delivered at the opening of the Thirty-Fifth Annual Poetry Days of Sarajevo, available at <http://www.turkishlit.boun.edu.tr/work.asp?CharSet=English&ID=1229>.

peek too. His companion glances for a long moment and blindly reaches for something. His soft fingers hug a trigger, sending shells into the thickness of an apartment building.

The tall poet is indicted war criminal Radovan Karadzic.² The city is Sarajevo—besieged for forty-four months by the Bosnian Serb forces

2. Radovan Karadzic was born on June 19, 1945 in the Savnik municipality of Montenegro. Before entering politics, Karadzic was a psychiatrist and a poet. One commentator writes, “[i]f anything, Karadzic was seen as a bit of an oddball, having dabbled in everything from chicken farming to poetry in a fruitless quest for wealth and glory.” TOM GJELTEN, *SARAJEVO DAILY: A CITY AND ITS NEWSPAPER UNDER SIEGE* 63 (1995). Karadzic’s thirst for poetic greatness was intense. He once told the chief psychiatrist at the mental health clinic where he worked that he was fated to be “one of the three most important poets writing in the Serbian language.” *Id.* at 64. For positive assessments of Karadzic’s work by his peers, see the website for the International Committee for the Truth About Radovan Karadzic at <http://www.karadzic.org>. Karadzic has also received prominent literary prizes in Russia and Montenegro, but commentators speculate on the politics of these awards. *See, e.g.*, SABRINA RAMET, *BALKAN BABEL: THE DISINTEGRATION OF YUGOSLAVIA FROM THE DEATH OF TITO TO THE FALL OF MILOSEVIC* 214–15 (2002). Ramet writes, “[i]n bestowing these prizes on Karadzic, the prizegivers were engaging in the diplomacy of cultural symbology . . .” *Id.* at 215. Karadzic was a founding member of the Serbian Democratic Party (SDS) of Bosnia and Herzegovina which was formed on July 12, 1990. He served as party leader until his post-Dayton resignation on July 19, 1996. Karadzic became a member of the Presidency of the Republika Srpska on May 12, 1992 and was made the President of the three member presidency. *Prosecutor v. Karadzic, ICTY Case No. IT-95-5/18, Amended Indictment*, ¶¶ 1–5, available at <http://www.un.org/icty/indictment/english/kar-ai000428e.htm> (Karadzic Indictment). Karadzic and his top General Ratko Mladic were indicted by the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY) on July 24, 1995. PAUL R. WILLIAMS & MICHAEL P. SCHARF, *PEACE WITH JUSTICE? WAR CRIMES AND ACCOUNTABILITY IN THE FORMER YUGOSLAVIA* 52 (2002). Karadzic is indicted for eleven counts: genocide, complicity in genocide, extermination, murder, willful killing, persecution, deportation, other inhumane acts (forcible transfer), and taking of hostages. These crimes all fall under the umbrella terms of genocide, crimes against humanity, violations of the laws or customs of war, and grave breaches of the Geneva Conventions of 1949. Karadzic Indictment, *supra*. Perhaps Karadzic’s most infamous crime during the wars is the massacre at Srebrenica committed under the noses of Dutch United Nations troops. Approximately 7,000 people, mostly men, were slaughtered despite the “safe area” designation. CAROLE ROGEL, *THE BREAKUP OF YUGOSLAVIA AND ITS AFTERMATH* 36 (2004). It was the largest massacre Europe had seen since the Holocaust. General Mladic was filmed comforting the herded Muslims before their slaughter: “All who wish to go will be transported, large and small, young and old. Do not be afraid, just take it easy. Let the women and children go first. Thirty buses will come and take you in the direction of Kladanj. Nobody will harm you.” It was a cruel lie. The climax of this vast killing was in Bratunac on July 16, 1995. Roger Cohen records the recollections of a twenty-three year old member of the Bosnian Serb army, Drazen Erdemovic. His unit had “dispatched more than fifteen busloads of Muslims:”

[He] has provided a detailed account of this particular massacre: how the cowed Muslims, their hands bound behind their backs, were brought from buses and lined up about ten yards from the executioners; how Kalashnikov rifles and an M-84 machine gun were used to shoot them; how some Muslims screamed and pleaded and some were silent and some railed at their killers to the last; how, true to form, the Serb executioners cursed the victims’ “Turk” mothers and joked about sparing those who had enough German marks (but the Muslims’ valuables had already been taken); how the field steadily filled with corpses; how a pistol shot to the head dis-

during the second war in the Former Yugoslavia, the breakup of Bosnia and Herzegovina.³ 12,000 died below the “wild woods” of the Sarajevo hills during this campaign conducted in “Montenegrin mountaineer fashion.”⁴ People were shot every single day during the vicious and horrifying siege.⁵ Through such unrelenting violence Karadzic sought to make the city Serbian, or at least a walled city like Berlin.⁶ 1,600 of the victims were children.⁷ Water, gas, and electricity were severed. Cultural icons and symbols of Yugoslav unity were razed, such as the National Library which was destroyed, its books incinerated.⁸ Civilians were picked off one by one as they sought water and other bare living essentials—civilians who were mere months before living peacefully side-by-side⁹ whether Serbian, Muslim, or Croat.¹⁰ Bullets and mortars also struck civilians hiding in their homes.¹¹ Children were cut down even as

patched those in agony from the first volley of fire; how the bus drivers themselves were made to shoot somebody so that everyone present was implicated; how the unit, having killed perhaps one thousand Muslims, later got drunk.

Roger Cohen, *Hearts Grown Brutal: Sagas of Sarajevo* 422–27 (1998).

3. Karadzic had for years called Sarajevo home, arriving in the city at the age of fifteen “lured into the Bosnian capital by Tito’s urbanisation programme.” ED VULLIAMY, *SEASONS IN HELL: UNDERSTANDING BOSNIA’S WAR* 48 (1994). He attended medical school as well as practiced psychiatry there at the state hospital. DAVID OWEN, *BALKAN ODYSSEY* 186 (1995). Before Karadzic set up his capitol at the ski resort of Pale, his headquarters had been in the Sarajevo Holiday Inn, a yellow building which housed many a winter Olympian in 1984 and which was across the street from the Bosnia Parliament building. GJELTEN, *supra* note 2, at 1–2.

4. ROGEL, *supra* note 2, at 114–15.

5. Bill Schiller, *War crimes facts pile up on Karadzic: Court hears of Bosnian Serb’s devious past*, *TORONTO STAR*, July 2, 1996, at A2.

6. Rogel, *supra* note 2, at 115.

7. Kevin Sim, *Frontline: The World’s Most Wanted Man* (PBS television broadcast, May 26, 1998). A transcript is available at: <http://www.pbs.org/wgbh/pages/frontline/shows/karadzic/etc/script.html>.

8. For an account of this cultural atrocity; see MATTHEW BATTLES, *LIBRARY* 184–91 (2003).

9. THE ROAD TO WAR IN SERBIA: TRAUMA AND CATHARSIS 134 (Nebojsa Popov ed., 2000). A Sarajevan commentator wrote: “An enormous red-hot cloud of hate stands over my city. The city, in which for centuries four of the five largest world religions have lived in parallel, is melting under a burst of heat.” *Id.*

10. Sim, *supra* note 7.

11. Karadzic Indictment, *supra* note 2, at ¶¶ 49–50. The paragraphs of the indictment chronicling the shelling of Sarajevo are included to illustrate the stark contrast of this prolonged atrocity with the fatal poetry reading:

48. For forty-four months, the Sarajevo Romanija Corps implemented a military strategy that used shelling and sniping to kill, maim, wound and terrorise the civilian inhabitants of Sarajevo. The shelling and sniping killed and wounded thousands of civilians of both sexes and all ages, including children and the elderly.

49. The Sarajevo Romanija Corps directed shelling and sniping at civilians who were tending vegetable plots, queuing for and collecting water or bread,

they were sledding in the Balkan snow.¹² The former mayor of Sarajevo has said of the shelling: “by a long siege they wanted to make life in the city impossible, so that the inhabitants of the city could feel hopelessness, to abandon their city so that the city as such would die.”¹³ *New York Times* reporter and war correspondent Roger Cohen writes that “Sarajevans, throughout the war felt they were living in the telescopic sights of a gun. They were the wildlife in a city-cum-sniper-safari-park: pay a dollar, take a shot.”¹⁴ But instead of a carnie barking, a poet recited verses before the shots rang out.

One of the most infamous atrocities of the wars in the former Yugoslavia was the Marketplace Massacre. This scene is a variation of the kind that would have been on the receiving end of the two poet-warriors enjoying a reading of their works and some casual artillery fire in the afternoon:

[I]n an eye-blink a thick forest of chattering, gossiping, bartering people had been cut down. . . . we passed through the bloody topography, tracing our way slowly past torsos and parts of torsos; past arms and hands and bits of limbs and unidentifiable hunks of flesh, all mixed with blackened metal and smashed vegetables. . . .

Turning back I saw a big, mustached man weeping, his hands raised and grasping the air as he struggled to reach a blood-soaked bundle of cloth and flesh on the ground; two smaller men held him. . . . I realized that I had chatted with him the day before, that he had been selling . . . what? Yes, lentils, that was it,

attending funerals, playing and watching football, shopping in markets, riding on trams, gathering wood, or simply walking with their children or friends. People were injured and killed, even inside their own homes, hit by bullets targeted through their windows. The attacks on Sarajevo civilians were often unrelated to military actions and were designed to keep the inhabitants in a constant state of terror.

50. Because of the shelling and sniping against civilians, the life of every Sarajevo inhabitant became a daily struggle to survive. Without gas, electricity or running water, people were forced to venture outside to find basic living necessities. Each time they did, whether to collect wood, fetch water or buy some bread, they risked death. In addition to the sheer human carnage that the shelling and sniping caused, the endless threat of death and maiming caused extensive trauma and psychological damage to the inhabitants of Sarajevo.

Id.

12. Mark Danner, *Bosnia: The Turning Point*, THE NEW YORK REVIEW OF BOOKS, Feb. 5, 1998 (book review). For a chilling personal account of the attack on the sledding children, see ADAM LEBOR, *MILOSEVIC: A BIOGRAPHY* 323–24 (2004).

13. WILLIAM A. SCHABAS, *GENOCIDE IN INTERNATIONAL LAW* 381 (2000).

14. COHEN, *supra* note 2 at 137.

lentils and potatoes, and his wife, now eviscerated at his feet,
had stood at his side. . . .¹⁵

This gruesome scene, multiplied many times over was at the heart of the conflict in Bosnia a decade ago. And it is more often than not a poet-warrior who stands accused of masterminding the slaughter of innocents such as these Sarajevans going about the simple business of survival in a war-battered capital. What is to be made before the law of this “poet-warrior” activity of the fugitive Bosnian Serb leader and the “poetic-military complex”¹⁶ of Serbian religious-ultranationalism where poets are far from gentle folk, but rather part of a “self-romanticizing macho fantasist”¹⁷ aesthetic and way of life?¹⁸

This Note will suggest that the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) can use Karadzic’s texts and affectations to warrior poetry in the pretrial brief and in admitted evidence, if and when Karadzic ultimately appears for trial. The violent nationalism of radio broadcasts, political journals, speeches, interviews, and manifestos¹⁹ have been fair game for the Office of the Prosecutor to make their cases in the last decade in both the Yugoslavia and Rwanda Tribunals. Why should poetry, perhaps the most powerful maker of myth and in the Yugoslavia context, a great mover of dangerous men and women, be any different in the eyes of international law? Even beyond providing background proof for rabid nationalism, the texts, videos, and other testimonies relative to Karadzic as poet-warrior could have value in demonstrating mens rea for crimes Karadzic is accused of orchestrating. This Note will suggest in particular that the materials at least have evidentiary value in the mens rea determination for genocide, the most significant crime Karadzic has been indicted for²⁰

15. Danner, *supra* note 12.

16. Slavoj Zizek, *Saturday Review: Commentary: What Lies Beneath: Slovenia’s Greatest Artists Have Been Exiles, Says Slavoj Zizek, so What Will the Country Bring to the EU?*, THE GUARDIAN, May 1, 2004, at 7.

17. Paul Hoggart, *The Wanted War Criminal with the Wavy Hair*, THE TIMES, July 31, 1998, at 51.

18. Serbs have used their poetry for many years in the sculpting of their nationalism. See REBECCA WEST, BLACK LAMB AND GREY FALCON 519 (1982) (1941); MISHA GLENNY, THE BALKANS: NATIONALISM, WAR AND THE GREAT POWERS 1804–1999, 11 (1999). Of note, Karadzic has called the Serbs “a warrior race:” “You have to understand Serbs . . . They’ve been betrayed for centuries. Today they can’t live with other nations. They must have their own separate existence. They’re a warrior race and they can trust only themselves to take by force what is their due.” WARREN ZIMMERMAN, ORIGINS OF A CATASTROPHE 203 (1996).

19. The most famous manifesto in evidence before the Tribunal is the Memorandum of the Serbian Academy of Arts and Sciences, written in 1986. It would become the manifesto of the Serbian nationalists. MICHAEL P. SCHARF & WILLIAM SCHABAS, SLOBODAN MILOSEVIC ON TRIAL: A COMPANION 18 (2002).

20. Karadzic Indictment, *supra* note 2.

and the offense that has been branded the “ultimate crime.”²¹ The videotape of the world’s deadliest poetry reading as well as Karadzic’s poems and incitements with poetry at the front lines should be a part of the Prosecution’s case just as these other evidentiary and context-building rhetorical texts.

Part II sets out the highly flexible rules of evidence admissibility as well as the current evidentiary standards for genocide at the Tribunal. Part II also considers the window of opportunity afforded by ICTY Rule 93 which allows for the introduction of “character” evidence that proves a “consistent pattern of conduct relevant to serious violations of international law.”²² Part III chronicles Karadzic’s poet warrior activity and the broad contours of his “poetic-military complex.”²³ Part IV illustrates how the poet warrior activity fits into a mens rea determination for genocide and the Rule 93 character evidence rule. The Conclusion considers some ways the admission of Karadzic’s poet-warrior activity would change international law at the ad hoc Tribunals and possibly their permanent successor court, the International Criminal Court.

II. CURRENT EVIDENTIARY STANDARDS

The Tribunal’s main rule of evidence, Rule 89(C), is quite broad as to what evidence is deemed admissible before the ICTY to prove genocide or other violations of international law: “A chamber may admit any relevant evidence which it deems to have probative value.”²⁴ This Rule is “arguably the most frequently used provision in the Rules.”²⁵ Rule 89(A) complements 89(C) and explicitly confirms the broadness of Rule 89(C) by ordering that “The Chambers shall not be bound by national rules of

21. SCHABAS, *supra* note 13, at 380 (quoting ICTY prosecutor Eric Ostberg during the confirmation of the Karadzic and Mladic indictments pursuant to ICTY Rule 61).

22. ICTY Rules of Procedure and Evidence, Rule 93, available at http://www.un.org/icty/basic/rpe/IT32_rev34.htm#93 [hereinafter ICTY Rules].

23. It is worth noting at the outset that Karadzic is not the only writer leading the “poetic-military complex.” The novelist and one time president of Yugoslavia, Dobrica Cosic also perpetrated genocidal ideas. Brian Nally, *A War Planned and Led by Writers*, IRISH TIMES, Sept. 28, 1995, at 12. Karadzic’s vice president Nikola Koljevic was also an essayist and a Shakespeare scholar. COHEN, *supra* note 2, at 251.

24. ICTY Rules, *supra* note 22, at Rule 89 (C).

25. Patricia V. Sellers, *Rule 89(C) and (D): At Odds or Overlapping with Rule 96 and Rule 95?* in *ESSAYS ON ICTY PROCEDURE AND EVIDENCE 277* (Richard May et al. eds., 2004) [hereinafter *ICTY PROCEDURE & EVIDENCE*]. Until the spring, of 2004 Richard May was the presiding judge in the Milosevic case. An Englishman, he had experience both as a prosecutor and a defense lawyer before being made a judge in 1987. He was appointed to the Tribunal in 1997 and participated in several “landmark cases” including those of Furundzija and Kupreskic. SCHARF & SCHABAS, *supra* note 19, at 74. He died on July 1, 2004, shortly after being knighted by Queen Elizabeth II.

evidence.”²⁶ One Trial Chamber has explicitly and forcefully spoken to the “wide scope”²⁷ of evidence that is admissible: “[t]his Trial Chamber believes that it should not be hindered by technical rules in its search for the truth, apart from those listed in Section 3 of the Rules.”²⁸

The Tribunal’s standard practice when deciding the admissibility of evidence is “extremely open” and has been termed the “flexibility principle.”²⁹ The liberal admissibility rule enshrines the French legal system’s principle of *la liberte de la preuve*.³⁰ The Rule and its flexible application are in part justified because the triers of fact are professional judges who may exclude evidence at their discretion if the evidence’s authenticity is in doubt, it is not relevant, or if the probative value is “substantially outweighed by the need to ensure a fair trial.”³¹ Thus “the damage that is often contemplated” by rules of evidence in common law jurisdictions is not a danger.³²

Rule 93 also simultaneously captures the flexibility of evidence allowed. Rule 93 allows the admission of evidence before the Tribunal “in the interests of justice” that proves a “consistent pattern of conduct relevant to serious violations of international humanitarian law.”³³ This rule, which in essence allows for “character evidence,”³⁴ derives from civil law traditions; it is prohibited in common law jurisdictions.³⁵ The rule is broad, and as two commentators note, it seems in practice to be broader than the common law concept of “striking similarities.”³⁶ Karadzic’s poet-warrior activities would cleanly fit within the terms of this rule, as Part III will show in more detail.

The major opening where poet-warrior evidence might specifically be admissible is proving the intent involved in the crime of genocide—the most important charge Karadzic faces.

26. ICTY Rules, *supra* note 22, at Rule 89 (A).

27. ILIAS BANTEKAS & SUSAN NASH, INTERNATIONAL CRIMINAL LAW 298 (2003).

28. *Id.* (quoting the Trial Chamber in Prosecutor v. Brdanin and Talic, Case No. IT-99-36-T, Admission of Evidence Order, Feb. 15, 2002, ¶ 10).

29. ICTY PROCEDURE & EVIDENCE, *supra* note 25, at 264.

30. *Id.* at 265. Also expressed as *le principe de la liberte des preuves*. BANTEKAS & NASH, *supra* note 27, at 295, n.31. The principle translates as “apart from cases where the law provides otherwise, offences may be proven by any means of evidence, and it is for the judge to decide according to his ‘intimate conviction’ (i.e., inner conviction).” *Id.*

31. *Id.*

32. *Id.* at 273.

33. ICTY Rules, *supra* note 22, at Rule 93.

34. For a brief discussion of the admissibility of character evidence before the Tribunal, see BANTEKAS & NASH, *supra* note 27, at 306–07.

35. *Id.* at 296.

36. *Id.* at 306.

In practice, proving genocidal intent is an “all encompassing” inquiry.³⁷ This is chiefly because the specific intent needed for genocide, the “intent to destroy, in whole or in part, a national, ethnic racial or religious group” is difficult to prove.³⁸ Lacking a confession or concrete documentary evidence of a plan, inferences on mens rea are drawn case-by-case from whatever evidence is presented at trial.³⁹ In determining proof of discriminatory intent, “the Trial Chamber takes account of not only the general context in which the acts of the accused fit but also, in particular, his statements and deeds.”⁴⁰ Such evidence may include previous statements and acts of the defendant⁴¹ and the “general political doctrine that gave rise to the acts.”⁴²

Karadzic’s poetry and the context of a “poetic-military complex” could certainly fall under this wide evidentiary umbrella contemplated by the Tribunals for Yugoslavia and Rwanda. Language from the International Criminal Tribunal for Rwanda’s (ICTR) *Kayishema* judgment fills out the picture of this broad and searching inquiry:

Regarding the assessment of the requisite intent, the Trial Chamber acknowledges that it may be difficult to find explicit manifestations of intent by the perpetrators. The perpetrator’s actions, including circumstantial evidence, however may provide sufficient evidence of intent. The Commission of Experts in their Final Report on the situation in Rwanda also noted this difficulty. Their Report suggested that the necessary element of intent can be inferred from sufficient facts, such as the number of group members affected. *The Chamber finds that the intent can be inferred either from words or deeds and may be demonstrated by a pattern of purposeful action.* In particular, the Chamber considers evidence such as the physical targeting of the group or their property; *the use of derogatory language toward members of the targeted group*; the weapons employed and the extent of bodily injury; the methodical way of planning, the systematic manner of killing. Furthermore, the number of victims from the group is also important.⁴³

37. David L. Nersessian, *The Razor’s Edge: Defining and Protecting Human Rights Groups Under the Genocide Convention*, 36 CORNELL INT’L L.J. 293, 314 (2003).

38. MICHAEL P. SCHARF, BALKAN JUSTICE 101 (1997).

39. Nersessian, *supra* note 37.

40. Prosecutor v. Jelsic, ICTY Case No. IT-95-10, Judgment, ¶ 73.

41. Prosecutor v. Kayishema, ICTR Case No. ICTR-1-1T, Judgment, ¶¶ 531–39.

42. Prosecutor v. Karadzic and Mladic, ICTY Case Nos. ICTY-95-5-R61 and ICTY-95-18-R61, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, ¶¶ 94–95.

43. Kayishema, *supra* note 41, ¶ 93 (emphasis added).

As will be discussed in Part III, evidence comprised of words, deeds, and derogatory language to prove genocide has come to include nationalist speeches and manifestos, words used to incite and indoctrinate, and radio broadcasts and hateful publications.⁴⁴ It is worth noting that the Tribunal's definition of what constitutes documentary evidence is also "wide" and "interpreted broadly."⁴⁵ One Chamber has spoken to this issue squarely: "'document' is interpreted broadly, being understood to mean anything in which information of any description is recorded. This interpretation is wide enough to cover not only documents in writing, but also maps, sketches, plans, calendars, graphs, drawings, computerized records, mechanical records, photographs, slides, and negatives."⁴⁶ So the poet-warrior evidence that would take the form of texts and video would likely be covered. Part III will examine how the evidentiary standards for genocide and character would be an opening for evidence of Karadzic the poet-warrior.

III. KARADZIC'S POET WARRIOR ACTIVITY

He dreamed his future into being.

—Omer Hadziselimovic meditating on
Radovan Karadzic the poet-warrior

[T]his was a man obsessed by the imagery of violence.⁴⁷ Words like "war," "genocide," "annihilation," and "hell" speckled his language. The world of his imagination and politics was a world of conflict in which Serbs were the eternal victims.⁴⁸

44. See *infra* Part III.

45. BANTEKAS & NASH, *supra* note 27, at 301.

46. *Id.* (quoting the Musema judgment, Prosecutor v. Musema, Case No. ICTR-96-13-T, Judgment, ¶ 53).

47. Karadzic's affinity for violent words in poetry and personal conversation also spilled over to his public speeches. Perhaps his most famous public words were exemplified by his threat in the Bosnian parliament relative to the referendum for Bosnian independence: "If the Republic of Bosnia votes for independence the Serb paramilitaries will 'make the Muslim people disappear, because the Muslims cannot defend themselves if there is war.'" WILLIAMS & SCHARF, *supra* note 2, at 43.

48. Warren Zimmerman, *Impressions of Karadzic*, at <http://www.pbs.org/wgbh/pages/frontline/shows/karadzic/radovan/impressions.html>. Ambassador Zimmerman expanded on this list in his recollection of Yugoslavia's breakup: "[Karadzic] habitually used the language of confrontation. 'Boycott,' 'war,' 'violence,' 'demand,' 'unacceptable,' 'genocide,' 'hell,' and 'annihilation' peppered his vocabulary." WARREN ZIMMERMAN, *supra* note 18, at 174–75.

—Warren Zimmerman, Former Ambassador to Yugoslavia,
on first meeting Radovan Karadzic in the fall of 1990.

A Polish documentary filmmaker⁴⁹ captured the moment of Karadzic and the Russian nationalist poet Eduard Limonov reciting poems and firing down on Sarajevo from Mount Trebevic.⁵⁰ In their afternoon of culture and war, the poets brought brutal art and murder together, chillingly personifying the reality of a late twentieth century “poet-warrior.”⁵¹ Karadzic enjoys prominence in the former Yugoslavia as a lifelong poet. His name alone invokes Serbia’s greatest maker of myth, the nineteenth century philologist, writer, translator, and nationalist Vuk Karadzic.⁵²

49. Paul Pawlikowski is the documentary maker that produced the film for BBC television’s Bookmark series. Derek Raymond & Pauline Harris, *Diary; Books*, THE TIMES, Sept. 6, 1992. The episode actually aired the same day that U.S. officials publicly speculated on Karadzic’s status as a suspected war criminal. *Missing the point; Diary*, THE TIMES, Dec. 18, 1992. The *Times* of London was unsettled in its review of the great emphasis on Karadzic the poet in Pawlikowski’s documentary. It quoted Fred Barschak of the Holocaust memorial committee of the Board of Deputies of British Jews: “It is rather like getting Heinrich Himmler to discuss the merits of vegetarianism or Adolf Hitler to discuss the influence of German nationalism on his early paintings. They both had other sides to their characters.” *Id.* One of the more telling moments in the documentary is recorded by Paul Bailey: “There was a puppy in Pawlikowski’s film, running around the warrior poet’s feet. Asked by Limonov what breed it was, Karadzic replied ‘Serb.’” Paul Bailey, *Second Opinion: Butchness and Butchery: Are Serbia’s So Called Warrior Poets Anything More Than Thugs Intent on Terrorizing the Innocent?*, THE GUARDIAN, Dec. 21, 1992.

50. Roger Cohen writes on Mount Trebevic:

Trebevic, rising so steeply from a point so close to the city center, was the most troubling peak. Such untamed beauty close to the heart of urban life had been an inspiration; now the mountain was a wall. It had been turned on its head by Karadzic, like so many things.

COHEN, *supra* note 2, at 116.

51. Zizek, *supra* note 16.

52. Christopher Merrill writes on Vuk Karadzic (1787–1864):

It was the elder Karadzic who created a literary language out of the Serb vernacular, writing down the epics of the battle of Kosovo. He introduced phonetic spelling, completed the Cyrillic alphabet, produced the first Serbian grammar, and translated the New Testament into Serbian. Collecting poems, riddles, proverbs, spells, curses, and songs from Bosnia, Croatia, Dalmatia, Montenegro, and Serbia proper, the folklorist concluded from his office in Vienna, that all South Slavs were Serbian. In 1849, he published “Serbs All and Everywhere,” the first modern articulation of Greater Serbia

CHRISTOPHER MERRILL, *ONLY THE NAILS REMAIN: SCENES FROM THE BALKAN WARS*, 155 (1999).

Vuk Karadzic and his assistants traveled Serbia and the diaspora between 1813 and 1841 collecting about three thousand poems, one thousand of which saw publication. *THE SERBIAN EPIC BALLADS: AN ANTHOLOGY* 31 (Geoffrey N. W. Locke, trans., 1997). None other than Goethe, Jacob Grimm, and Pushkin helped Karadzic with his efforts at crafting a Serb vernacular. *THE BATTLE OF KOSOVO* 18 (John Matthias & Vladeta Vuckovic trans., 1987). Milne Holton and Vasa Mihailovich note that “it was Vuk Karadzic who shaped—for his own Euro-

Ivan Colovic writes: “What guarantees the political and poetic success of Radovan Karadzic from the very beginning, and what explains and legitimizes his success at the same time, is the alleged fact that he has inherited the patriotic and artistic genes of his great namesake and national poet, Vuk Karadzic, although the two names are not related.”⁵³ Karadzic has exploited the imagery of his supposed forebearer in a wartime documentary: “[I]n the birth house of his famous namesake. . . Karadzic draws viewers’ attention to a detail in the portrait of the old Karadzic which reveals the remarkable effects his genes have had upon him: the double chin of the old Karadzic is exactly the same as his alleged successor.”⁵⁴

Karadzic’s poetry is described as “a psychic landscape of eerie and illogical violence” and as embodying a “paramilitary surrealism.”⁵⁵ In Greece, it flies off the shelves.⁵⁶ “It’s selling like crazy,” the publisher said at the time about sales of a 1996 edition of Karadzic’s work in translation entitled *Of Unmentioned Years and Other Poems*.⁵⁷ The Russian Writer’s Union awarded Karadzic one of their highest literary prizes, the Mikhail Sholokhov Prize in 1994.⁵⁸ A spokesman for the Union said at that time: “We have studied two volumes of his verse and believe that he is a worthy recipient. The prize is in honour of the humanity and Slavic spirit which permeates his poetry.”⁵⁹ Being on the run from the entire Western world has not dampened Karadzic’s literary career. Indeed, new editions of poetry have been put out after his indictment,⁶⁰ a novel *Miraculous Chronicles of the Night* was released in November of 2004, and at the time of this writing there are plans to stage his first play in Bel-

pean literary world, but, more importantly, for many Serbs—a new sense of nationality.” SONGS OF THE SERBIAN PEOPLE: FROM THE COLLECTIONS OF VUK KARADZIC 11 (Milne Holton & Vasa Mihailovich eds., 1997). Vuk Karadzic’s career also neatly paralleled the nineteenth century Serb uprisings against the Turks.

53. Ivan Colovic, *The Renewal of the Past: Time and Space in Contemporary Political Mythology*, OTHER VOICES (Nenad Stefanov and John Abromeit trans., 2000), available at <http://www.othersvoices.org/2.1/colovic/past.html>. Though it should be noted that the actual connection between the two Karadzics is unclear. Some sources claim a lineage, others claim it is propaganda. For a source that supports the relation, see MERRILL, *supra* note 52, at 155. For a source that strongly denies the relation, see COHEN, *supra* note 2, at 357.

54. Colovic, *supra* note 53.

55. Andrew Rubin, *The Executioner’s Song*, LINGUA FRANCA, July/August 1995, at 8.

56. Associated Press, *Alleged Serb War Criminal Turns Poetic: Book by Karadzic is a Big Seller in Greece*, CHI. TRIB., December 25, 1996, at 20 [hereinafter AP].

57. *Id.*

58. Alan Philps, *Writers to Honour Karadzic the Poet*, THE DAILY TEL., June 7, 1994, at 14.

59. *Id.*

60. Indeed, the sales of one edition OF UNMENTIONED YEARS AND OTHER POEMS sold “like crazy” within months of the hearing the Tribunal held to confirm the Karadzic indictment. AP, *supra* note 56.

grade. The play is entitled *Situation* and centers around an autobiographical leader-to-be, a gay waiter, a United Nations official, and a Muslim translator.⁶¹ Karadzic is also rumored to be writing a two-volume work about Serbs.⁶²

Karadzic's frenzied poems are read by commentators as nationalist and prophetic of the butchery he would lead against "the Turks"—Bosnian Muslims living in the way of Serb cravings for "living space."⁶³ "Exile, destruction, death, and return to a forsaken homeland" as well as "hatred" are themes that repeat throughout Karadzic's books.⁶⁴ The titles alone of his "mordant"⁶⁵ poems are evocative of their twisted marriage to violence: *A Morning Hand Grenade*, *Goodbye, Assassins*, *Sarajevo*, *A Man Made of Ashes*, and *War Boots*. Other untitled works capture tense and violent moments in their first lines—instants of action and fatal reckoning: "Convert to my new faith crowd;" "This fateful hour stiffened and reached the sky;" "Half the morning's gone;" and "I surmise the sun is wounding me."⁶⁶

Next snippets of the poems are presented to evoke language this poet-warrior calls beautiful. The interpretation is light-handed, the aim is to present the fact of the works, their atmosphere.

Themes of violence, weaponry, and nationalistic struggle abound in Karadzic's poems. Bullets are beautiful:

His world turned upside down
And through his memory like a honeycomb
A bullet,
A slender bullet, majestic bullet.⁶⁷

A hand grenade is another subject, though the darker presence in the poem is the speaker who will laugh as the grenade is hurled in the "ambush of dawn":

61. Nick Hawton, *Fugitive Karadzic Makes Stage Debut*, Wired News Blog, Dec. 1, 2004, at http://wiredblogs.tripod.com/sterling/index.blog?entry_id=544189.

62. Alex Todorovic, *No Surrender as Karadzic Launches Play*, THE SCOTSMAN, Apr. 24, 2002, at 11.

63. Prosecutor v. Karadzic and Mladic, ICTY Case Nos. ICTY-95-5-R61 and ICTY-95-18-R61, Confirmation of the Indictment Pursuant to Rule 61, hearing transcript at 941. The phrase "living space" is reminiscent of the German National Socialist term *lebensraum* which has the same meaning.

64. BARBARA KELLERMAN, *BAD LEADERSHIP: WHAT IT IS, HOW IT HAPPENS, WHY IT MATTERS* 202 (2004).

65. LEBOR, *supra* note 12, at 174.

66. *Frontline: The World's Most Wanted Man: Karadzic: Karadzic's Poems* at <http://www.pbs.org/wgbh/pages/frontline/shows/karadzic/radovan/poems.html>.

67. Rubin, *supra* note 55 (quoting Radovan Karadzic, *A Morning Hand Grenade* (1983)).

I am finally lost,
 I am glowing like a cigarette
 On a neurotic's lip:
 While they look for me everywhere
 I wait in the ambush of dawn

 A great chance
 To abandon once
 All that my times offer to me,
 And to throw a morning hand grenade
 Loaded with the laugh
 Of a lonesome man
 With a dark character.⁶⁸

Another poem focusing on the trappings of war is *War Boots*. Again, the language has a gentle longing for the warrior life, as well as a distinct nationalist strain:

When the time comes for gun barrels to speak,
 For heroic days, valorous nights,
 When a foreign army floods your country,
 And wreaks havoc and causes damage in it,
 That condition must be righted:
 Then you roam your homeland on foot,
 And your boots fight side by side with you.

 They help you a lot in war,
 To play your splendid role:
 To drive half away,
 To take half prisoner,
 Like a hunter when he finds good game,
 To defend your mom, to defend your dad,
 Your Dragana, Anka, Jovanka, Sonja,
 Zorica, Rada, to defend your school,
 And your playgrounds,
 In a word, to defend your fatherland.⁶⁹

A poem worth quoting in its entirety is *Goodbye, Assassins*. The poem has notes of a strange longing for the killer's life. Professor Richard Jackson observes the lack of irony, that there are "no counter statements, no sense in the poem that the poet knows more than the

68. *Id.*

69. Radovan Karadzic, *War Boots* (trans. Omer Hadziselimovic), *CHRISTIAN SCIENCE MONITOR*, Jul. 19, 1995, at 19.

speaker, no context with which to understand the poem as anything other than a simple statement of propaganda, a remorse at not being able to be a direct killer with a mythological dagger.”⁷⁰ The voice of the speaker is rather remorseless and brazen, Jackson adds: “The speaker even acknowledges from the start that the victims will be innocents: “The gentlefolks’ aortas will gush without me./The last chance to get stained with blood/I let go by.”⁷¹ Is this the mind of a poet-warrior? Arguably yes.

Goodbye Assassins, it seems from now on
The gentlefolks’ aortas will gush without me.
The last chance to get stained with blood
I let go by.

Ever more often I answer ancient calls
And watch the mountains turn green.

Goodbye, assassins, a rare thought of
genesis enters my mind. Of knowing the heaven.
And blood, that ugly word, violent and dark,
Angers Milutin, the ancestor asleep,
gentle even in death, as if in times of fasting.

From the grave, as if from the primeval beginning,
Innocent and simple,
His love rises toward streams,
A piece of bread,
Which sufficed him.

His thoughtful gaze at the streams,
The heavens, unbroken, total,
Takes in me as well.
I cannot share your madness!

Lost brothers, time puts us to the proof.
Shoot the heads of the world without me!
Insane mates. The century’s ravens.
The world travels a narrow path,
Without strength or belief, a target or a bullet.
The papers ooze the age lymph;
Confused the devils get married.

70. Richard Jackson, *One Word Against Another: Political Poetry in the Former Eastern Block*, at <http://www.utc.edu/Academic/English/pm/polpoet.htm>.

71. *Id.*

I detect forebodings, fear excessively
For the heavens' light and the rare summers.

Goodbye, assassins, the boundaries between
The worlds are trampled
Instead of the heart, a hornet drones in vain.
History turned its back on us.
What should one shoot at?
Like an octopus, the age hides its vertebra,
And the winter approaches
With white drifts.⁷²

On a pure literary criticism level, it is arguably too facile to elide Karadzic the poet-warrior and the speakers of his poems. Critics might caution about the danger of too easily equating Karadzic and the dubious protagonists of his poems. This criticism is fair. An elementary rule of poetry is that the author of a poem and the speaker are quite distinct. This criticism might be overturned merely on context. The visceral similarities between art and life, the fact that this poet has blood on his hands, cannot be ignored. This debate need not even be reached. Karadzic himself has acknowledged that his “many” poems are “something of [a] prediction.”⁷³ When he was holding forth high above Sarajevo with Limonov, Karadzic spoke in English for Limonov and the Polish filmmaker; the sense of one of his poems and his violent themes is matter-of-factly conveyed in rough English. And it ends with the admission of his poems coming true:

There is a poem of mine about Sarajevo. The title was “Sarajevo,” and first line was “I can hear disaster walking. City is burning out like a *tamyán* in a church.” In this smoke, there is our conscious of that. And a squad of armed *topola*—armed trees. Everything I saw armed, everything I saw in terms of a fight, in terms of war, in terms of—in army terms. That was 20, 23 years ago, that I have written this poem, and many other poems have something of prediction, which frightens me sometimes [laughter].⁷⁴

Additionally, a psychiatrist who has studied Karadzic reflected during a panel discussion in 1997 that “Karadzic saw himself as a brilliant poet

72. *Id.* (quoting Radovan Karadzic, *Goodbye Assassins*).

73. A transcript of this footage is available at <http://www.pbs.org/wgbh/pages/frontline/shows/karadzic/etc/script.html>.

74. *Id.*

and called his own poetry ‘prophetic.’”⁷⁵ And chronicler of the Yugoslavia breakup Christopher Merrill writes: “it was foolish to deny that in one of his couplets he had foreseen the future: “Take no pity let’s go/kill the scum down in the city”—a future he himself had invented.”⁷⁶ Merrill also notes the “prophetic” nature of Karadzic’s poem *A Morning Hand Grenade* calling it “a faithful self portrait.”⁷⁷ The poet Christos Halazias who supervised the translation of Karadzic’s work into modern Greek says “though Karadzic himself cares little about British literature, his works are what T.S. Eliot meant about poetry—a second sight, a prophecy.”⁷⁸

In addition to the poems themselves and the deadly poetry reading caught on film high above Sarajevo, Karadzic would use poetry to incite his troops. During frequent visits to the frontline, Karadzic would recite “blood-curdling passages from ancient epics.”⁷⁹

The old poems of Serbia revived for war time purposes by Karadzic and others are worth some brief exploration. A chief classic is *The Mountain Wreath* by a nineteenth century bishop prince of Montenegro called Njegos. Published in 1847, it “celebrates the Christmas Eve extermination of Muslims carried out by Serbian warriors dedicated to cleansing the Slavic lands of the Turkish ‘spitters on the cross,’ converts to Islam.”⁸⁰

The work is based on a campaign in Montenegro prosecuted in the 1700s.⁸¹ The campaign was called *Istraga Poturica*—“extermination of the Turkifiers.” Michael A. Sells gives a chilling synopsis of the poem’s opening scene: “The drama opens with Bishop Danilo. . . brooding on the evil of Islam, the tragedy of Kosovo, and the treason of Vuk Brankovic.”⁸² Danilo’s warriors suggest celebrating the holy day (Pentecost) by ‘cleansing’ (*cistiti*) the land of non-Christians. The chorus chants: ‘The high mountains reek with the stench of non-Christians.’”⁸³ At this point, one of the Bishop’s men exclaims that the battle will not end until one side or the other is exterminated. Sells continues his synopsis of the genocidal

75. Richard Karel, *Panelists Ponder Role of Psychiatrists, Intergenerational Memory in Fueling Ethnic Atrocities of Serbo-Croatian War*, PSYCHIATRIC NEWS, Jul. 18, 1997, available at <http://www.psych.org/pnews/97-07-18/ethnic.html>.

76. MERRILL, *supra* note 52, at 155.

77. *Id.* at 156.

78. AP, *supra* note 56.

79. KELLERMAN, *supra* note 64, at 204.

80. MERRILL, *supra* note 52, at 189.

81. RELIGION AND THE WAR IN BOSNIA 43 (Paul Mojzes ed., 1998).

82. Vuk Brankovic is the Serbian “Judas.” He is said to have abandoned twelve thousand men at the Battle of Kosovo and this led to the death and defeat of Tsar Lazar—the greatest of Serbian heroes. COHEN, *supra* note 2, at 211.

83. *Id.* at 198–99. Parenthetical notations in the original.

epic: “Abbot Stefan persuades the Serbian nobles and clerics that they must follow the example of Milos Obilic⁸⁴ and avenge themselves against ‘the Turks.’” The drama concludes with the triumphant extermination of the Slavic Muslims—man, woman, and child—and the razing of their buildings and towers.⁸⁵ A commentator has written that “Njegos wanted to eradicate this ‘domestic evil’ in life as well as poetry.”⁸⁶ Verses from his blood drenched poem are memorized by Montenegrin children and had enjoyed a new popularity in Serbia.⁸⁷ Former Yugoslavian President Slobodan Milosevic has even invoked *The Mountain Wreath* in his war crimes trial at The Hague.⁸⁸ There is some modest irony in the fact that the type from the printing press which was used to publish *The Mountain Wreath* was melted down for bullets to use against the Turks.⁸⁹

The foremost subject of Serbian epic poetry is *The Battle of Kosovo*.⁹⁰ The poems celebrate the Serbian defeat before the Turks in 1389. They commemorate the watershed historical moment that defines Serbian national identity.⁹¹ The climax of the poems is Tsar Lazar’s Christ-like⁹² choice of an eternal kingdom in heaven over mortal life.⁹³ In defeat there is a spiritual transcendence, as one modern Serb poet has written it: “A field like no other/Heaven above it/Heaven below.”⁹⁴ The Kosovo mythology of disastrous earthly defeat and heavenly triumph “. . . has lived for centuries in Serbian literary and oral traditions with the elusive vividness of a hallucination.”⁹⁵ Olga Zirojevic writes that “folk poems, particularly the poems about Kosovo, in the richness of their mythical consciousness and ethical principles, represented a support in the struggle for liberation and the preservation of the national character.”⁹⁶ A preface to a 1920 edition of Serbian lyrics quotes a Scottish patriot to introduce the significance of Serbian poetry: “Give me the making of a

84. Milos Obilic is another hero of the Battle of Kosovo. Legend has it that he snuck into the tent of Sultan Murad I and stabbed him to death. A Serb expression persists to the present day, inspired by this assassination: “How shall we meet our Milos?” which is used “to ask how an individual can rise to become a paladin of Serbian honor.” *Id.*

85. *Id.* at 198–99. Parenthetical notations in the original.

86. MERRILL, *supra* note 52, at 189.

87. *Id.*

88. Prosecutor v. Milosevic, ICTY Case No. IT-02-54, trial transcript at 13755, *available at* <http://www.un.org/icty/transe54/021203ED.htm>. The reference came during Milosevic’s questioning of the star witness against him, Croatian Serb leader Milan Babic.

89. MERRILL, *supra* note 52, at 193.

90. THE ROAD TO WAR IN SERBIA, *supra* note 9, at 193–94.

91. *Id.* at 189.

92. *Id.* at 191.

93. *Id.* at 194–95.

94. THE BATTLE OF KOSOVO, *supra* note 52 at 12.

95. *Id.* at 11.

96. THE ROAD TO WAR IN SERBIA, *supra* note 9, at 202.

nation's songs, and let who will make their laws."⁹⁷ Later in her preface, Dr. Beatrice Stanoyevich reflected on the nature of Serbian poems which contain "a keen thirst for the fight which smacks of the men who lived with the Moslems around them."⁹⁸

At the end of the twentieth century, the Bosnian Serb troops sang folk lyrics to Muslims during battle. The gunners taking aim at Sarajevo are reported to have sung to their victims below such lines as these: "Oh, beautiful Turkish daughter,/Our monks will baptize you./Sarajevo, in the valley,/The Serbs encircle you."⁹⁹ One commentator goes so far as to say that the troops heeded the admonition in *The Mountain Wreath*: "Destroy the seed in the bride" . . . there was evidence that JNA troops and Serbian paramilitaries were taking [Njegos] at his word, systemically raping¹⁰⁰ thousands of Muslim women, confirming Djilas's¹⁰¹ assertion in his study of Njegos that 'Art is action.'¹⁰²

Modern Serb political leaders also used poetry liberally. Zirojevic writes: "Militant speeches were adorned by quotes from folk poems and proverbs and citations from the works of Vuk Karadzic and Njegos."¹⁰³ Zirojevic quotes Ivan Colovic on the nefarious use of poetry and the revival of the epic decasyllabic line, what he calls "war-propaganda folklore" where there is a savvy transference of "conflicts from the sphere of politics, economy and history into the extrapolated sphere of myth." And, "in the temporality so conceived, the present day wars fought by the Serbs are only a continuation of the former ones, or, to be more precise, their repetition . . ."¹⁰⁴

Geoffrey N. W. Lock writes on the importance of poetry to four long centuries of Serb struggle and war: "[O]nly an exceptionally robust people, with a strong sense of identity even in diaspora, and with a powerful cultural tradition based on deep religious faith, could have sustained such behaviour for so long: their epic ballads undoubtedly played a major part in maintaining as well as reflecting their courage and endurance."¹⁰⁵ American Pulitzer prize winner Charles Simic, who spent

97. AN ANTHOLOGY OF JUGOSLAV POETRY: SERBIAN LYRICS 7 (B. Stevenson Stanoyevich, ed., 1920).

98. *Id.* at 10.

99. *Id.* at 156.

100. Over a thousand cases of rape as an ethnic cleansing tool are documented against Bosnian Muslims and Croats, many of which occurred in the camps set up by Bosnian Serbs. WILLIAMS & SCHARF, *supra* note 2, at 49-50.

101. A cold war era Montenegrin writer. See MERRILL, *supra* note 52, at 66, 188, and 197.

102. *Id.* at 196.

103. THE ROAD TO WAR IN SERBIA, *supra* note 9, at 208.

104. *Id.*

105. THE SERBIAN EPIC BALLADS, *supra* note 52, at 26.

his childhood in Yugoslavia and now lives and teaches in New Hampshire, notes that at the age of ten he had read a weighty anthology of Serbian Folk Poems.¹⁰⁶ He writes, “I read the whole volume and some of the poems in it at least a dozen times. Even today I can still recite passages from my favorite ballads.”¹⁰⁷ Simic comments on the centrality of poetry to Serbs by reflecting that his devoted readings were not “in any way unusual. Every Serbian loves these poems.”¹⁰⁸

Lock also notes, significantly, that one whole half of Serbian poetry as defined by the premier Serbian philologist Vuk Karadzic, are “men’s songs . . . largely concerned with battles, single combat, and heroic deeds . . .”¹⁰⁹ A Balkan intellectual recently expanded on the notion of a “poetic-military complex” in the Former Yugoslavia— “[w]hen militaries get in contact with poets, you have war; you have ethnic cleansing and so on . . .”¹¹⁰ Another commentator writes: “war was a logical outcome of a literature and politics founded in kitsch . . .”¹¹¹

This Note argues that the poems and the poet-warrior actions be considered in crafting the case against Karadzic as part of a broader argument about what he has done and what he should be punished for. The next Part explores an evidentiary opening for the poetry, the frontline incitements, and the Mount Trebevic video.

IV. MAKING USE OF KARADZIC’S POET-WARRIOR ACTIVITY

This Part will show that under the ICTY Rules and precedents, poet-warrior activity may be introduced to help prove mens rea for genocide, as well as under the guise of character evidence. The video of Karadzic and Limonov reciting poetry and firing at Sarajevo was entered into evidence before the tribunal and cited on July 8, 1996 during a procedural hearing.¹¹² The prosecutor spoke about this incident for mere seconds, and, it was in the context of a larger rhetorical point about the names and ages of specific victims:

You may recall the film that we introduced into evidence showing Dr. Karadzic standing with the Russian poet Limonov above

106. THE BATTLE OF KOSOVO, *supra* note 52, at 7.

107. *Id.*

108. *Id.*

109. *Id.* at 31.

110. Slavoj Zizek, On (Un-) Changing Canons and Extreme Avantgardes, Lecture at the Museum of Modern Art Symposium East of Art: Transformations in Eastern Europe (Mar. 23, 2003), available at <http://www.artmargins.com/content/moma/zizek.html>.

111. MERRILL, *supra* note 52, at 155.

112. The hearing was held under the auspices of ICTY Rule 61 for the purpose of confirming the indictment.

the city like a Lord proudly surveying his domain. His utter and complete disdain for the lives of the people of Sarajevo was shown when he, like a proud father showing a son a new toy, invited the poet Limonov to fire a high-powered sniper weapon into the besieged city and Limonov did so. Perhaps, your Honours, it was one of Limonov's shots that killed one of the victims named in this indictment.¹¹³

This seems inadequate. The Office of the Prosecutor should make more of Karadzic the poet-warrior. Karadzic's poet-warrior activity is quite analogous to the fervent expressions of virulent and hateful nationalism that have been cited in evidence throughout the work of the Yugoslavia Tribunal.

In particular, the Trial of Vojislav Seselj will be a virtual cinema of the violent rise of Serbian nationalism and the cleansing of Croatian and Bosnian towns. The indictment details the totality of the hateful program run by the man known as "the Duke."¹¹⁴ An organizer of the Serbian volunteer Chetniks, "[Seselj] made inflammatory speeches in the media, during public events, and during visits to the volunteer units and other Serb forces in Croatia and Bosnia and Herzegovina, instigating those forces to commit crimes."¹¹⁵ One chilling example was his visit to Vukovar, Croatia in November of 1991: "Seselj . . . publicly pronounced 'Not one Ustasha¹¹⁶ must leave Vukovar alive,' thus instigating the killing of Croats."¹¹⁷ In his many public speeches he vigorously advocated the creation of a homogeneous Greater Serbia "by violence, and thereby participated in war propaganda and incitement of hatred towards non-Serb people."¹¹⁸ In his speeches he specifically demanded that Croats be ex-

113. Prosecutor v. Karadzic, ICTY Case No. IT-95-5/18, trial transcript at 902, *available at* <http://www.un.org/icty/transe5&18/960708IT.htm>.

114. The indictment discusses the origin of this title:

In 1989 he travelled to the USA and met the chairman of the "Movement of Chetniks in the Free World", Momcilo Dujic, who on the day of the 600th anniversary of the Battle of Kosovo—28 June 1989—appointed him a Chetnik "Vojvoda", meaning a "Duke" or leader. Following this appointment, Vojislav Seselj traveled [sic] in the USA, Canada, Australia and Western Europe collecting funds to support his nationalistic activities.

Prosecutor v. Seselj, ICTY Case No. IT-03-67, Indictment, ¶ 3, *available at* <http://www.un.org/icty/indictment/english/ses-ii030115e.htm> (Seselj Indictment).

115. *Id.* ¶ 10. *See also* Prosecutor v. Seselj, ICTY Case No. IT-03-67, Transcript of Initial Appearance, at 10, 12–13, 19, 21, 27, 33, and 42, *available at* <http://www.un.org/icty/transe67/030226IA.htm>.

116. "Ustasha" is a derogatory term for a Croatian. The Ustasha were Croatian fascists during World War II.

117. Seselj Indictment, *supra* note 114, at ¶ 20.

118. *Id.* at ¶ 10.

pelled from parts of the Vojvodina region. He advocated a campaign of persecutions to achieve this end.¹¹⁹ His speeches also came in handy after recruiting Serb volunteers. He “indoctrinated them with his extreme ethnic rhetoric so that they engaged in the forcible removal of the non-Serb population in the targeted territories through the commission of crimes as specified in this indictment with particular violence and brutality.”¹²⁰ Seselj’s speeches were not only for capture on the occasional home video. As Milan Milosevic writes in a chapter of a collection on the Yugoslavia break-up, “[t]he Chetnik leader Vojislav Seselj was second to none regarding the TV time he received in 1991, 1992, and the first half of 1993 . . .”¹²¹ There is a veritable treasure trove of footage from the Serbian nightly news.

The Office of the Prosecutor will doubtless make much of the wealth of public comments made by Seselj during his hateful campaigns, and they have already mentioned the hateful rhetoric in the indictment and elements of that indictment were cited in early court hearings in the young trial. Such evidence will paint a total picture of the man and his milieu of Serbian radicals. The Office of the Prosecutor should similarly use Karadzic’s poet-warrior activities to paint a total picture of the criminal miasma he operated within. Karadzic himself was conscious of the power his nationalist speeches and other such communications had. In a speech in November of 1991 Karadzic chillingly spoke to the power of taking over the rhetorical goldmine of local radio and newspapers: “I am, therefore, asking you to oust this week, through an Executive Committee decision, all radio chairmen and editors-in-chief who do not listen to you and who do not respect the official policy. In all municipalities where we have the radio, we have power.”¹²²

Another precedent for the introduction of poet-warrior evidence comes from a recent and revolutionary decision of the ICTY’s sister court, the ICTR which sits in Arusha, Tanzania. In December 2003, the trial chamber in the so-called *Media Case* held three newspaper and radio executives liable for genocide, direct and public incitement to genocide, conspiracy to commit genocide, and the crimes against humanity of persecution and extermination.¹²³ This decision “thus signal[ed] that hate speech can constitute international law’s most hei-

119. *Id.*

120. *Id.*

121. BURN THIS HOUSE 177 (Jasminka Udovicki & James Ridgeway eds., 1997).

122. Prosecutor v. Karadzic and Mladic, *supra* note 63.

123. *UN Tribunal Finds That Mass Media Hate Speech Constitutes Genocide, Incitement to Genocide, and Crimes Against Humanity. Prosecutor v. Nahimana, Barayagwiza, and Ngeze (the Media Case), Case No. ICTR-99-52-T (Int’l Crim. Trib. for Rwanda Trial Chamber I Dec. 3, 2003)*, 117 HARV. L. REV. 2769 (2004).

nous crimes.”¹²⁴ Ferdinand Nahimana was the creator of Radio Télévision Libre des Mille Collines (RTLM) which he used as a tool to incite genocide against Tutsis.¹²⁵ The radio served “essentially as a ‘radio dispatcher for murder’ by manipulating and revealing the movements of Tutsis to facilitate their slaughter at the hands of the Hutu populace.”¹²⁶ The radio was given the nickname “Radio Machete.”¹²⁷ The Tribunal made note of the testimony of Alison Des Forges of Human Rights Watch “who received ‘urgent telephone calls [during the genocide] . . . from people in Rwanda, desperately seeking to ‘stop that radio.’”¹²⁸ Another witness cited by the court said being named on RTLM was a “death sentence.”¹²⁹

Hassan Ngeze was the editor-in-chief and owner of the hateful newspaper *Kangura*,¹³⁰ which “published pieces ‘brimming’ with ‘contempt and hatred for the Tutsi ethnic group,’” sometimes “calling for the extermination of the Tutsi.”¹³¹ The newspaper was so effective in stirring up violence in part because of oral retelling to those great numbers in the population that are illiterate.¹³² The Tribunal made special mention of two pieces in *Kangura* in its judgment, the “Appeal to the Conscience of the Hutu” and its “Hutu Ten Commandments,” and the cover of the 26th issue that showed a machete next to the rhetorical question “What weapons shall we use to conquer the Inyenzi¹³³ once and for all?”¹³⁴ Ngeze was very active in producing articles for *Kangura*, gave interviews on the radio, and even drove around with a megaphone handing out weapons and ordering the killing of Tutsis.¹³⁵ Jean-Bosco Barayagwiza, the third man convicted by the Tribunal “was the ‘lynchpin’ between Ngeze and Nahimana: second-in-command at RTLM, Barayagwiza helped found and direct an exterminationist political party in which Ngeze was also involved.”¹³⁶

The Tribunal found that the language of RTLM, *Kangura*, and the individual defendants met the bar for genocidal intent, noting while “[t]he nature of media is such that causation of killing and other acts of

124. *Id.* at 2769.

125. *Id.* at 2770.

126. *Id.*

127. *Id.* n.12.

128. *Id.*(brackets in the original).

129. *Id.*

130. The name “Kangura” means “to wake up others.” *Id.* n.5.

131. *Id.* at 2769–70.

132. *Id.* n.5.

133. “Inyenzi” means “cockroach” and is a reference to Tutsi fighters and by extension all Tutsis. *Id.* n.7.

134. *Id.*

135. *Id.* n.5.

136. *Id.* at 2770–71.

genocide will necessarily be effected by an immediately proximate cause in addition to the communication itself,” this fact “does not diminish the causation to be attributed to the media, or the criminal accountability of those responsible for the communication.”¹³⁷

In terms of direct and public incitement to genocide the Tribunal enunciated “central principles . . . that serve as a useful guide to the factors to be considered in defining elements” of the crime of incitement to genocide “as applied to mass media.” The *Harvard Law Review* sums these up in its *Recent Cases* section in the June, 2004 issue: “In determining a communication’s purpose. . . relevant factors include its accuracy, its tone, and the context (both actual and perceived) of its transmission. . . a communication’s likely impact similarly calls for a highly contextual inquiry [including] actual circumstances, the scope of the impact, and the particular importance of protecting political expression.”¹³⁸ The Tribunal decided that certain broadcasts and articles “were sufficiently exhortatory to meet these criteria.”¹³⁹

On the conspiracy to commit genocide count, the ICTR determined that the defendants acted as a “common media front.”¹⁴⁰ In terms of the crimes against humanity, the hate speech at issue was deemed to be a form of persecution including “certain publications that fail to qualify as incitement.”¹⁴¹ Extermination was also proved in a similar fashion.¹⁴²

The nationalist poems, the stirring up of troops with blood curdling poetry, and the video footage on Mount Trebevik are no different from films of Seselj indoctrinating and inciting crowds and the genocidal and hateful speech of *Kangura* and RTLM Rwanda. Both the ICTY and ICTR precedents in these cases illustrate the kind of rhetorical machinery essential to the crimes at the grisly heart of the Yugoslav wars. Poetry played a major role and the criminal miasma of the poet-warrior merits as much attention in the legal determinations in the Karadzic case as these other hateful materials.

Additionally and as a complement to the task of proving mens rea for genocide, the Prosecution would be able to advance evidence of Karadzic the poet-warrior under the auspices of Rule 93. As briefly discussed in Part II, Rule 93 provides for the admission of evidence before the Tribunal that proves a “consistent pattern of conduct relevant to serious violations of international humanitarian law.”¹⁴³ This rule is a wide

137. *Id.* at 2771.

138. *Id.* at 2771–72.

139. *Id.* at 2772.

140. *Id.* at 2773.

141. *Id.*

142. *Id.*

143. ICTY Rules, *supra* note 22, at Rule 93.

open opportunity for the prosecution to show that Karadzic's poet-warrior activities are part of "consistent pattern of conduct" relevant to the "serious violation[] of international humanitarian law" that is genocide.

V. CONCLUSION

*Though much can be forgiven a poet, he must not become a seducer,
not use his gifts to make his reader into a believer in some inhuman
ideology.*

—Czeslaw Milosz¹⁴⁴

How would the introduction of poet-warrior evidence impact international law? Why should the Tribunal go down this evidentiary path? This Conclusion considers possible impacts on both theory and the practical reality of admitting such evidence at the ICTY and possibly by extension, the International Criminal Court—the permanent successor court to the ICTY which has been heavily influenced by the procedures of the Tribunal.¹⁴⁵ Introduction of poet-warrior evidence would broaden the pool of evidence available to prosecutors, ensure the accuracy of the historical record of the conflict in Bosnia, and contribute to deterrence of future poet-warrior contributions to genocide and other grave international crimes.

A. Broader Pool of Evidence

In practical terms, the use of poet-warrior evidence would expand the growing list of texts that may shed light on mens rea for genocide. This would be useful for the Office of the Prosecutor to meet the "demanding"¹⁴⁶ task of establishing mens rea for genocide. Additionally, at present the whole element of Karadzic's criminal intent is starkly ne-

144. The Nobel Laureate Polish poet is quoted in MERRILL, *supra* note 52, at 155.

145. See ICTY PROCEDURE & EVIDENCE, *supra* note 25, at 559–72. Current ICTY Legal Officer Ken Roberts notes "it is apparent that the ICTY contribution to the criminal procedure of the ICC has been substantial." *Id.* at 572. For an account of the transition from ad hoc tribunals to the ICC, see YUSUF AKSAR, IMPLEMENTING INTERNATIONAL HUMANITARIAN LAW: FROM THE AD HOC TRIBUNALS TO A PERMANENT INTERNATIONAL CRIMINAL COURT (2004). For a discussion on the lessons of the ICTY and ICTR for the ICC: see PHILIPPE SANDS, FROM NUREMBERG TO THE HAGUE: THE FUTURE OF INTERNATIONAL CRIMINAL JUSTICE (2003). For more on the makeup and workings of the ICC, see JENNIFER ELSEA, INTERNATIONAL CRIMINAL COURT: OVERVIEW AND SELECTED LEGAL ISSUES (2003); LEILA NADYA SADAT, THE INTERNATIONAL CRIMINAL COURT AND THE TRANSFORMATION OF INTERNATIONAL LAW (2002); WILLIAM SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT (2001).

146. SCHABAS, *supra* note 13, at 222.

glected by the Office of the Prosecutor.¹⁴⁷ Not only is poet-warrior evidence an additional source for argument, it also makes the judicial reckoning more complete. The admission of this evidence is another tool for prosecutors to use—it is relevant evidence that “form[s] part of the story,” as the late Judge May of the ICTY wrote on the nature of relevant evidence.¹⁴⁸ The poet-warrior materials serve to complete the criminal picture.

B. Accuracy of the Historical Record

The admission of poet warrior evidence is positive for the resulting influence this would have on the history of the conflict in Bosnia as it is shaped by the Tribunal.¹⁴⁹ The activities going on in the 1950s style converted insurance building a few miles from the Scheveningen shore¹⁵⁰ are the grist of history. Here, “the ICTY quietly conducts its ground-breaking business.”¹⁵¹

The historical accounts of the war in Bosnia would be more complete, richer, and nuanced if they include the poet-warrior activity of Karadzic. This Note has shown that a poetic-military complex operated during the conflict. This fact must become part of the collective record if that record is to be the fullest and most accurate possible.

C. Deterrence Value

The romance of war for poets is longstanding. In Karadzic’s poet-warrior world, Horace’s *dulce est decorum est* survives Wilfred Owen’s bitter take on the “sweetness” of death for country.¹⁵² Professor Fletcher

147. Prosecutor v. Karadzic, *supra* note 2.

148. ICTY PROCEDURE & EVIDENCE, *supra* note 25, at 277.

149. See generally Michael R. Marrus, *The Holocaust at Nuremberg*, 25 YAD VASHEM STUDIES 5 (1998).

150. DAVID HIRSH, LAW AGAINST GENOCIDE: COSMOPOLITAN TRIALS 76 (2003).

151. *Id.* at 78.

152. World War I poet Wilfred Owen’s poem *Dulce et Decorum est* concludes:

*If in some smothering dreams you too could pace
Behind the wagon that we flung him in,
And watch the white eyes writhing in his face,
His hanging face, like a devil’s sick of sin;
If you could hear, at every jolt, the blood
Come gargling from the froth-corrupted lungs,
Obscene as cancer, bitter as the cud
Of vile, incurable sores on innocent tongues,—
My friend, you would not tell with such high zest
To children ardent for some desperate glory,
The old Lie: Dulce et decorum est
Pro patria mori.*

cites Nancy Rosenblum's argument that "identifying with an ideology worth dying for, accepting a place in the hierarchy of command, becoming part of the fighting collective—these are actions and commitments that lift men out of the quotidian and enable them to feel that their lives express a deeper meaning."¹⁵³ Fletcher continues, noting that the "Greek war of independence captured Byron's imagination. The War of 1848 brought Francis Lieber¹⁵⁴ face to face with the glory of battle. The Spanish Civil War had a similar appeal. . . 1914 unleashed. . . not an enthusiasm for killing . . . but for something far more uplifting and worthy."¹⁵⁵ The poetic writings of Rupert Brooke—in particular his *War Sonnets*,¹⁵⁶ and Walt Whitman on the Civil War¹⁵⁷ also come to mind as containing elements of longing woven into the titanic struggles of war. Lord Tennyson's *The Charge of the Light Brigade* is a well-known classic.¹⁵⁸ Other poets that have written on the noble beauties of war include Shakespeare,¹⁵⁹ Homer, John Masefield,¹⁶⁰ Vachel Lindsay,¹⁶¹ Rudyard Kipling,¹⁶² and Walter de la Mare.¹⁶³ Limonov has defended his trips to battlefields in the Former-Yugoslavia observing that a writer's place is in war. He believes he is following in Lord Byron's footsteps.¹⁶⁴ And

THE NEW DRAGON BOOK OF VERSE 180 (Michael Harrison & Christopher Stuart-Clark eds., 2003).

153. George P. Fletcher, *The Storrs Lectures: Liberals and Romantics at War: The Problem of Collective Guilt*, 111 YALE L.J. 1499, 1501 (2002).

154. Early U.S. political scientist. See *Dictionary of American Biography* 236 (1933).

155. Fletcher, *supra* note 153, at 1501–02.

156. Of these the most famous is doubtless the one that would serve as Brooke's own elegy after his death in Greece – "The Soldier" that begins with the famous lines: "If I should die, think only this of me: That there's some corner of a foreign field/That is for ever England." Available at <http://www.english.emory.edu/LostPoets/Sonnets.html>.

157. Among Whitman's elegiac and bittersweet Civil War poems are: *The Wound Dresser*, *Dirge for Two Veterans*, *Over the Carnage Rose Prophetic a Voice*, *Ethiopia Saluting the Colors*, *O Captain! My Captain*, *Pensive on Her Dead Gazing*, and *A Twilight Song*. WALT WHITMAN, *THE COMPLETE POEMS* 333, 339, 340, 343, 359, 507, 560, (Francis Murphy ed, 1975).

158. THE NEW DRAGON BOOK OF VERSE, *supra* note 152, at 177–78.

159. Henry's speech before the Battle of Agincourt is sometimes regarded as a poem. *Id.* at 162.

160. John Masefield, *The Island of Skyros* is an example—a poem that actually serves as a eulogy in verse for Rupert Brooke. Brooke rests under a simple white cross and stones on the Greek isle of Skyros, available at <http://www.bartleby.com/266/125.html>.

161. Vachel Lindsey, *Abraham Lincoln Walks at Midnight* is of note. In the poem, the ghost of President Lincoln is moved by the First World War, available at <http://www.bartleby.com/271/129.html>.

162. Rudyard Kipling, *The Choice* is an example, available at <http://www.potw.org/archive/potw277.html>.

163. Walter de la Mare, "How Sleep the Brave" is representative, available at <http://www.bartleby.com/266/128.html>.

164. Milan Milosevic, *Serbia in a Broken Mirror: Family Ties*, VREME NEWS DIGEST AGENCY, March 29, 1993, available at http://www.scc.rutgers.edu/serbian_digest/79/t79-4.htm.

Karadzic very self-consciously sees himself as part of a Serbian tradition of poet-warriors, as his actions during the wars and afterwards have shown.

There is a deterrence value for the international community in not ignoring Karadzic the poet-warrior. Brian Havel writes “The memory work of constructing and reconstructing the past takes many forms...[it] is the work of officialdom, of democratic and of authoritarian governments whose Hegelian mission is to shape a sanctioned (and sanctified) collective national remembrance of things past.”¹⁶⁵ Professor Mark Osiel writes that “many have thought . . . that the best way to prevent recurrence of genocide, and other forms of state-sponsored mass brutality, is to cultivate a shared and enduring memory of the horrors—and to employ the law self-consciously toward this end.”¹⁶⁶ The “shared and enduring memory” that is being forged at The Hague should include a chapter on poet-warriors gone awry. Havel notes that the construction of memory is also achieved by “historians, writers, and even poets.”¹⁶⁷ Here, the story told by the poet is one of death and ethnic hatred. If the International Tribunal were to recognize and admonish a prominent poet killer, a strong signal could be sent to the dewy-eyed nationalist poets and psychiatrists who would be inclined to genocide in conflicts not yet born. The deadly poet-warrior mythology can be challenged and de-romanticized in The Hague proceedings.

An old Bosnian joke during the war about the Russian poet Limonov’s visit to Karadzic and his helpful turn at the sniper’s gun went like this: “there were only two kinds of poets, those who were shooting at them and those who were trying to help.”¹⁶⁸ If the Tribunal makes something of the poet-warrior angle of Karadzic and his crimes, perhaps this grisly truth will not be repeated.

165. Brian F. Havel, *Public Law and the Construction of Collective Memory*, in POST-CONFLICT JUSTICE 383 (M. Cherif Bassiouni ed., 2002).

166. Mark J. Osiel, *Ever Again: Legal Remembrance of Administrative Massacre*, 144 U. PA. L. REV. 463, 466 (1995). Osiel notes that a fine line must be walked between Stalinesque show trials and dispassionate and fair justice. *Id.* For a fuller discussion of the many pitfalls of trials crafting memory after mass atrocity, see generally DONALD BLOXHAM, *GENOCIDE ON TRIAL: WAR CRIMES TRIALS AND THE FORMATION OF HOLOCAUST HISTORY AND MEMORY* (2001); MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* (1998); MARK J. OSIEL, *MASS ATROCITY, COLLECTIVE MEMORY, AND THE LAW* 207–92 (1997). For mostly positive assessments of the power of law to contribute to fruitful collective memory, see Marrus, *supra* note 149 and Havel, *supra* note 165.

167. Havel, *supra* note 165.

168. MERRILL, *supra* note 52, at 316.