

# Review article<sup>1</sup>

*La caccia: Io e i criminali di guerra* by Carla Del Ponte with Chuck Sudetic, translated by Bruno Amato, Feltrinelli, 2008, 416 pages. The English version, *Madame Prosecutor*, will be published in January 2009 by the Other Press: New York.

## Memoirs of a snake hunter

Beyond the hints of horrific organ trafficking, Carla Del Ponte's memoirs reveal her true mettle as a prosecutor.

2005 was a special one for Carla Del Ponte: it was ten years after the genocide and crimes committed in Srebrenica; ten years after the indictments of Radovan Karadžić and Ratko Mladić; and ten years after the Dayton peace agreement brought the Bosnian war to an end. It might also have been a special year for the victims of organised terror and murder during the wars in the former Yugoslavia.

Sarajevo, 1 February 2005: in a discussion with the then-high representative in Bosnia, Paddy Ashdown, Del Ponte, then the Chief Prosecutor of the Yugoslav war crimes tribunal, strongly denounced the lack of political will to arrest the two most-wanted war crimes suspects – Karadžić and Mladić – and threatened publicly to condemn the inefficiency of the western powers in this regard. She also made it clear that she would address this issue in her speech to the UN Security Council scheduled for the year's end.

The Americans, British and a few other governments feared public attacks by the Prosecutor and started counter-manoeuvres. NATO laid down a smoke screen, setting up a task force in Sarajevo exclusively focused on the arrest of Karadžić, and working relations between NATO and the International Criminal Tribunal for the Former Yugoslavia (ICTY) were finally instituted. Neither impressed nor convinced by these ultimately ineffective measures, Del Ponte addressed the Security Council on 15 December of that year:

For ten years, we have been facing grave systemic deficiencies in the efforts made to capture Karadžić and Mladić. There is no co-ordination mechanism, there is not even the desire to co-ordinate the various activities, not to speak of sharing the most basic information,

she stated. The coda of her speech intended both to denounce the absence of political will and to give a new approach a last chance:

For ten years, the international community has been playing cat-and-mouse with Karadžić and Mladić. And for much of this time, the cats chose to wear blindfolds, to claw at each other, and to allow the mice to run from one hole to another. It is time now for the cats to remove their blindfolds. It is time now for the cats to stop suffering the ridicule of the mice.

- 1 Christophe Solioz reviews Carla Del Ponte's memoirs in the light of the press coverage of them, which was somewhat inaccurate and which took certain events out of the context of the chapter in which they were discussed. The review was first published in English by *Transitions Online*, the leading news magazine covering central and eastern Europe, the Balkans and the former Soviet Union, and is reproduced here with TOL's kind permission. <http://www.tol.org>.

Since then, nothing has happened. Karadžić and Mladić are still at large and, more worrying, despite the absence of Serbia's full co-operation with the ICTY, the country was welcomed into NATO's Partnership for Peace in 2006 and signed a pre-membership deal with the European Union at the end of April this year.

Del Ponte handed over her position to newly-appointed Prosecutor Serge Brammertz at the end of 2007, so the time was ripe for her to address public opinion as she had promised. This she has now done in her book, co-authored with Chuck Sudetic. So far available only in Italian, *La caccia: Io e i criminali di guerra* (*The Hunt: War Criminals and Me*) will be published in English as *Madame Prosecutor* early in 2009. The reader will find there, Del Ponte writes modestly:

Depictions of successes and failures of my team and me.

These are memoirs, most certainly, but also insights from her notebook and, on top of this, a detailed reconstruction of key events in the lives of the ICTY and the International Criminal Tribunal for Rwanda, which she also served as Chief Prosecutor until 2003. Focusing on lessons (not) learned by the international legal institutions and revealing what happened behind the scenes, the book must be seen as a way for the former prosecutor, now the Swiss ambassador to Argentina, to pursue her quest:

The hunt must continue. Criminals must never sleep quietly.

In some of the most telling passages, Del Ponte relates her youth, education and early career, her strong relationship with her mother, and a memorable and highly symbolic story from her childhood when, together with her two older brothers, she would capture live venomous snakes for sale to a laboratory. Years later she recalls:

I am, to this day, more snake hunter than legal scholar. After a quarter century in prosecution, my eyes see more black and white than shades of grey, and I consider this an asset. I make no apologies for being assertive or for speaking my mind.

Thus, Del Ponte does not need to choose between politics and justice. For the rest, her collaboration with Giovanni Falcone, the Italian anti-mafia judge assassinated in 1992, and with the Attorney-General of Milan, Antonio Di Pietro, clearly indicated the path that she would follow.

The bulk of the book relates her years as Chief Prosecutor at the ICTY between 1999 and 2007. The Prosecutor's mandate of independence is pure science fiction; at this level, international criminal justice obviously cannot be abstracted from politics. Indeed, politics regularly interferes. As a result, the numerous discussions that she had with senior officials could only be heated. Meetings with foreign ministers Hubert Vedrine, Massimo D'Alema and Miguel Angel Moratinos, not to forget Giovanni Lajolo of the Vatican, CIA boss George Tenet and Pierre-Richard Prosper, the American ambassador-at-large for war crimes issues from 2001 to 2005, were particularly explosive. Del Ponte does not spare Prosper for his strategy of making secret deals with Belgrade and avoiding any real co-operation with the ICTY. Worse, she writes, Prosper's methods failed to produce any results. UN Secretary-General Kofi Annan;

the chief of EU foreign policy, Javier Solana; and the EU's enlargement Commissioner, Olli Rehn, receive better marks, but their respective powers appear to have been very limited. Only the assassinated Serbian Prime Minister Zoran Đinđić and, to a lesser extent, Colin Powell, US Secretary of State at the time, were really supportive of Del Ponte's work. Thanks to Đinđić's efforts, Slobodan Milošević was transferred to the Netherlands and charged with the commission of crimes against humanity, war crimes and genocide.

Del Ponte denounces those who have, and are still, blocking the arrest of indicted war criminals as well as access to key documents and sensitive archives. She also reveals that the ICTY got poor, if any, support in the field in Kosovo for its investigative activities and highlights the counter-productive effects of the tight timetable imposed on the Tribunal, another obstacle that undoubtedly undermines efforts to achieve accountability for war crimes.

Forget about 'iron Carla.' A strong character – someone willing to make undiplomatic moves, take risks and cross lines – is a necessity for anyone who confronts evil. In some cases, the problem was that the prosecutor was a woman, but mostly that she was highly motivated to achieve her personal 'mission impossible' of combating impunity:

Defeating the culture that allows powerful persons to commit any outrage and not be held accountable is a matter of will that often demands impatience more than patience.

The tone of the book overall is, despite its status as a memoir, quite objective. Del Ponte does not hide her disappointment over her mistakes and failures, and she also convincingly highlights the many structural deficiencies of the Yugoslav and Rwandan war crimes tribunals. The book also reminds us that most war crimes suspects were brought, if not to justice, then at least to court and insists that no former Yugoslav community could proclaim itself only a victim. This explains why the prosecutor also investigated members of the Kosovo Liberation Army. Here again, the Americans avoided any co-operation and UNMIK, the UN administration in Kosovo, gave scant assistance, preventing the ICTY from properly scrutinising alleged crimes by Kosovo Albanians.

Based on a few highly-selective extracts from the book, the international press bore down on the allegations of organ trafficking. It turns out that the press reports, firstly, described this admittedly sensitive episode inaccurately and, secondly, discussed it outside the internal logic of the chapter concerned, which focuses on the difficulties of conducting investigations and obtaining witness testimony by highlighting the intimidation of witnesses and the overall atmosphere of intimidation in post-war Kosovo. Some journalists went so far as to transform the former prosecutor's hypothesis into a statement of fact, while the text itself is very cautious in this regard. Most journalists had not even read the book, so they were, of course, unable to grasp the relation of this particular incident to the rest of the memoirs. Del Ponte describes the allegations that she began to look into – and which she uses also as a case study of the investigation's complications – in this way:

[D]uring the summer months of 1999, Kosovo Albanians had trucked 100 to 300 abducted persons across the border from Kosovo into northern Albania. These captives were initially locked inside warehouses and other facilities, including locations in the towns of Kukës and Tropoje.

In this section, Del Ponte quotes an ICTY memo. Considering the ‘extremely serious nature of these cases,’ the memo recommends that:

They should definitely be investigated as properly as possible by professional and experienced investigators.

The alleged crimes were most probably committed after the NATO air campaign in the spring of 1999, so they are not covered by the ICTY mandate, whose temporal jurisdiction ended in June 1999. Del Ponte proceeds very carefully: she mentions the jurisdictional obstacles and that the investigators’ findings were very circumspect:

So, in the end, the attorneys and investigators on the KLA cases decided that there was insufficient evidence to proceed. Without the sources or a way to identify and find them, without bodies, and without other evidence linking high-level accused to these acts, all avenues of investigation were barred.

Subsequent to the Italian publication of the memoirs, Human Rights Watch has obtained independent information and documentation that provides credible corroboration of much of Del Ponte’s allegations of abductions and cross-border trafficking from Kosovo to Albania after the 1998-1999 Kosovo war. This should motivate the authorities in Albania and Kosovo – including UNMIK – to open serious investigations, which is precisely what Del Ponte wanted.

Of course, the decision to mention in the same book both incidents that have been proved and those that have been merely alleged – yet to be established and proven – may be questionable, especially if one forgets the book’s overall coherence. But the book’s mission is to inform public opinion in equal measure on what the Prosecutor both could and could not do, to press the various authorities concerned to pursue the hunt further and, regarding this case, to undertake credible investigations into the allegations of kidnappings of hundreds of people, most of them Serbs, from Kosovo, the disappearances and probably deaths of these people, and of trafficking in human organs.

The hot air over these startling allegations has tended to distract attention from more appealing sections of the book. In several places, Del Ponte reveals how she came into possession of documents that proved absolutely crucial to the ICTY’s case against Milošević. Based on the Minutes of the Supreme Defence Council of the Federal Republic of Yugoslavia, the Prosecutor was able to establish clearly the direct responsibility of Milošević and of the Republic of Serbia with regard to the war in Bosnia and Herzegovina and the carrying out of genocide against that country’s Muslims. Del Ponte accurately reconstructs how the ICTY was permitted to have access to those Minutes and to use them. When informed of the verdict of the International Court of Justice (ICJ) last year exonerating Serbia from the charge of genocide brought by Bosnia, Del Ponte was outraged because the ICJ judges had not requested

the uncensored Minutes directly from Serbia as they were entitled to do. Her account of the many meetings with Serbian authorities explains how the ICTY gained access to the Minutes only under extreme – in her eyes, excessive – conditions. The Serbian side did not hide its belief that Serbia's national security was at stake as the ICJ verdict was pending. Running the risk of being accused of contempt, Del Ponte not only criticises the ICJ decision but also summarises the content of the Minutes, as well as of other secret documents.

*La caccia* clearly presents evidence of how impunity grows when political considerations – in the former Yugoslav republics and in the 'western world' – prevail over and prevent justice. As a strategy, the western powers chose to collaborate with and support weak governments in the Balkans that compromise on justice. Achieving justice for victims of impunity was and is the only motive of Del Ponte's work and, in this context, the very last words of her memoir are worth quoting:

[V]ictims are extraordinarily courageous, strong and resilient,

she writes, and they:

Deserve justice for the crimes so needlessly and ruthlessly committed against them.

Too often, though:

Diplomats, world leaders, military officers and intelligence chiefs, bankers and businessmen, and even United Nations officials, are willing to regard such criminals as legitimate interlocutors and partners.

If the victims are ever to receive justice, and if humanity is ever to end state-sponsored crime on this scale, Del Ponte concludes, those working for justice must take bigger risks and exert more effort than the risks and efforts:

Made by the worst among us, by those who would have us believe they are above the law.

The person who writes this can only be described as one of the finest incarnations of European values because of whose presence, in the words of Albert Camus, 'One must imagine Sisyphus happy.'