The unfinished trial of Slobodan Milošević: Justice lost, history told
Tromp, N.

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Copromotor: prof. dr. N. D. Adler

Overige leden:
- prof. dr. M.J. Wintle
- prof. dr. L.A. Bialasiewicz
- prof. mr. dr. H.G. van der Wilt
- prof. dr. M.J. Osiel
- prof. dr. R. Detrez

Promotiecommissie: Universiteit van Amsterdam

Overige leden:
- prof. dr. M.J. Wintle: Universiteit van Amsterdam
- prof. dr. L.A. Bialasiewicz: Universiteit van Amsterdam
- prof. mr. dr. H.G. van der Wilt: Universiteit van Amsterdam
- prof. dr. M.J. Osiel: University of Iowa
- prof. dr. R. Detrez: Universiteit van Gent

Faculteit der Geesteswetenschappen
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Notes on Language and Translation

This text is based on and frequently includes quotations from transcripts of proceedings, evidence presented in the courtroom, and materials collected as part of the criminal investigation in the Milošević case. These materials and courtroom testimonies originated in various languages, and in variants of languages (for example, in Bosnian/Croatian/Serbian or UK/US English), and many have been translated. Non-English primary materials tendered as evidence in court were translated into English and make up the official court record. Yet, many of these first translations went through a later audit process – in which meaning was clarified and syntax corrected – that produced a second revised version. Every attempt has been made to quote these revised translations when possible. But for materials that were not tendered as evidence, a revised version is unlikely to exist, and even revised translations sometimes contain errors. In this text, quotations from translated sources that do not read well in English have for the most part been paraphrased; or, if need be, edited in only the slightest ways to add clarity – using ellipses or brackets – but never to alter meaning.

As a researcher on the Milošević case, the author dealt with primary documents in both local languages (B/C/S) and in English, but where her original research was done with local language materials, the official English translation of those materials is presented in this text. In other words, the author did not translate those materials herself in the process of writing this text. Still, as a native B/C/S speaker fluent in English, the author had the advantage of being able to identify when official English translations were in some way inaccurate. One example of this is in the English transcript of the testimony of Stjepan Mesić. Mesić discussed Franjo Tuđman having compared the shape of Croatia to a *kifla*, the B/C/S word for a crescent-shaped roll that is traditional in Eastern Europe. In the English trial transcript, a slip-up in homophones resulted in this being translated as “oblong role” instead of “oblong roll” – a confusing error. In the courtroom, translations were also sometimes corrected on the spot by participants in the trial. In one such instance, an English translation of a letter written by Milošević was found online and referred to in court by the Prosecutor; it was corrected by the courtroom interpreter who explained the word “rats” was an inaccurate translation for the B/C/S word *hulje*, which means “scoundrel” and has a more sinister connotation. Milošević himself subsequently addressed the court to concur that “scoundrel” was the more appropriate translation.
Translation is a challenging task because languages not only have different vocabularies, but different personalities, cultural influences, and structures. Translating any text, but especially materials that deal with complicated political concepts and contain a number of linguistic subtleties, requires finding the balance point between what are known as ‘faithful’ and ‘idiomatic’ translations. A faithful translation is a literal rendering of a source text, without revisions that accommodate the nuances of the target language. An idiomatic translation is more focused on producing a text that conforms to the syntax and idiomatic character of the target language, so that a reader feels the text was originally written in their language. Sometimes, word-for-word translations simply do not convey meaning because idioms are a common way of communicating within languages but are not universal. Where translations are paraphrased in this text, attention has been paid to honouring the idiomatic meaning of the original.

Finally, this text is written in UK English – for example, “Defence” instead of “Defense” and “analyse” instead of “analyze” – but direct quotations of materials originally written in US English are used verbatim. This text also uses diacritical marks for words or names drawn from B/C/S, which clarifies their pronunciation (see the Pronunciation Guide for what these marks indicate). Because ICTY trial transcripts and some materials from the trial record do not include diacritics, they have been added in this text, even to quoted testimony, for consistency. Also, words that originated in B/C/S and are now widely used in their English transliteration – such as “Chetnik” (in B/C/S, “Četnik”) – appear in their English form.
Pronunciation Guide

Bosnian, Croatian, and Serbian are closely related but subtly different languages, all variants of a common pluricentric language. Though Bosnian and Croatian use the Latin alphabet, and Serbian uses the Cyrillic alphabet, the languages are sometimes referred to as one and abbreviated as B/C/S. Unlike in English, vowels in B/C/S are pronounced consistently and some consonants are marked with diacriticals to indicate their pronunciation. Diacritical marks are used in this text and so their pronunciation, as well as that of vowels, is indicated below.

a  a, as in bar

c  ts, as in cats

c̆  ch, as in much

c̕  ch, as in chosen (this sound is softer than č)

dž  ķ, as in gin

d  j, as in jewelry (this sound is softer than dž)

e  a, as in pen

i  ee, as in meek

j  y, as in yes

o  o, as in omen

r  the ḳ is rolled

š  sh, as in push

u  u, as in rule

ž  zh, as in vision
Previously published portions of this manuscript

There are several places in this manuscript where the author has cited her own previously published work; and in one case, a co-authored chapter. As a specialist in the field, she has written frequently on issues related to the ICTY, including in the midst of research for this manuscript. Inevitably, this has led to similarities between the arguments expressed in some of that writing and those expressed in this manuscript. Therefore, the author’s previously published works are cited where this text significantly reflects thoughts expressed in those publications.


Pages 47-48 of the original correspond to page 7-8 of this text (see: Introduction).


Pages 151-152 of the original correspond to page 3-4 of this text, pages 154-155 to pages 6-7, and pages 156 to page 9 (see: Introduction); pages 156-157 correspond to pages 25-26, page 160 to page 34, page 161 to pages 38-39; and pages 162-163 to pages 29-30 (see: Chapter I).


Page 28 of the original is similar to page 49 in this text; page 29 corresponds to information on pages 39,42, and 44; page 30 to pages 43- 44 of the manuscript; page 31 to page 92; and page 32 to pages 26, 28, 40, and 42 (see: Chapter I).

Pages 306-314 and 316 of the original more or less correspond to pages 214, 236-238, and 241-248 of this text (see: Chapter VII).

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*Note on co-authorship*

Geoffrey Nice contributed to the writing of this chapter, authoring pages 288-294 and 317-319. These pages are not referred to in this text.
List of Acronyms

BiH  Bosnia and Herzegovina (*Bosna i Hercegovina*)
DB   FRY/Serbian State Security (*Državne bezbednost*)
DEPOS Democratic Movement of Serbia (*Demokratski pokret Srbije*)
FRY  Federal Republic of Yugoslavia
HDZ  Croatian Democratic Union (*Hrvatska demokratska zajednica*)
IC   International Community
ICR  ICTY Court Record
ICTY International Criminal Tribunal for the Former Yugoslavia
JATD Unit for Anti-terrorist Operations (*Jedinica za anti-teroristička dejstva*)
JNA  Yugoslav People’s Army (*Jugoslavenska Narodna Armija*)
JSO  Unit for Special Operations (*Jedinica za specijalne operacije*)
JUL  Yugoslav United Left (*Jugoslavenska ujedinjena levica*)
KLA  Kosovo Liberation Army
KOS  Military Counterintelligence Service (*Kontraobveštajna služba*)
MUP  Ministry of Internal Affairs (*Ministarstvo Unutrašnjih Poslova*)
NATO North-Atlantic Treaty Organisation
NIOD Netherlands Institute for War Documentation
OSCE Organisation for Security and Cooperation in Europe
PJP  Special Police Units (*Posebne jedinica policije*)
PSFRY Presidency of the Socialist Federal Republic of Yugoslavia
RS   Republika Srpska
RSK  Republika Srpska Krajina
SAJ Special Anti-terrorist Units (*Specijalna Antiteroristička Jedinica*)
SANU Serbian Academy of Sciences and Arts (*Srpska akademija nauka i umetnosti*)
SAO Serbian Autonomous Region (*Srpska autonomna oblast*)
SBSW Slavonia, Baranja and Western Syrmia (*Slavonia, Baranja i Zapadni Srem*)
SDA Party of Democratic Action (*Stranka demokratske akcije*)
SDC Supreme Defence Council (*Vrhovni savet odbrane*)
SDS Serb Democratic Party (*Srpska Demokratska Stranka*)
SFRY Socialist Federal Republic of Yugoslavia (*Socijalistička Federativna Republika Jugoslavija*)
SIV Federal Executive Council (*Savezno izvršno veće*)
SPOK Serbian Resistance Movement of Kosovo (*Srpski Pokret Otpora Kosovo*)
SPS Socialist Party of Serbia (*Socijalistička partija Srbije*)
SRS Serbian Radical Party (*Srpska radikalna stranka*)
SVK Serbian Army of Krajina (*Srpska Vojska Krajine*)
TO Territorial Defence (*Teritorijalna odbrana*)
UN United Nations
UNPROFOR United Nations Protection Force
UNSC United Nations Security Council
V-K-K Virovitica-Karlovac-Karlobag
VOPP Vance-Owen Peace Plan
VRS Army of Republika Srpska (*Vojska Republike Srpske*)
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Figure 1: Facsimile of page from Obrad Stevanović’s notebook, written in Cyrillic ............... 345
It was early Saturday morning, 11 March 2006. I was just finishing breakfast before leaving to spend yet another weekend in the office, when the telephone rang. On the phone was Geoffrey Nice, the Principal Trial Attorney in charge of the team – of which I was a part – that was prosecuting Slobodan Milošević at the International Criminal Tribunal for the Former Yugoslavia (ICTY). Very calmly, he told me: “You won’t need to go into the office today. He’s dead. He died last night. There’s no need to do any work today, or any other day. That’s it. That’s the end of the trial.”

It took some time to comprehend what this meant; and before I could make any sense of it, a colleague who was already in the office, and who had just heard the news on television, called me inquiring about what we were to do. That weekend, Prosecution researchers had been set to begin preparing for the cross-examination of Momir Bulatović, who was being called by Milošević as a Defence witness.¹ For the Prosecution, preparation for a witness such as Bulatović was exactly what those of us in the Leadership Research Team (LRT) had been hired to do.² I became a member of the LRT in May 2000 and thereafter worked exclusively on the Milošević case until his death. The LRT and the MAT (Military Analyst Team) were part of the ICTY’s Office of the Prosecutor (OTP), consisting mostly of non-legal experts and researchers hired to provide information and expertise on historical, political, and military topics required by Prosecution trial teams that were made up mostly of police investigators and lawyers.

Bulatović was a dream witness for the Prosecution and we could hardly believe that Milošević was being so reckless as to call him; for Bulatović had knowledge of more or less everything the Prosecution needed to prove in order to establish our case. He had been a trusted associate and protégée of Milošević, in something of a father-son relationship, especially since his ‘election’ as the President of Montenegro at the age of 34. He had been present at many of the most important

¹ The testimony of a witness consists of three parts: testimony ‘in chief,’ ‘cross-examination,’ and ‘re-examination’. Testimony ‘in chief’ is the term used in legal jargon for adducing evidence from a witness in court by the party – the Prosecution or Defense – that calls the witness. It is followed by a ‘cross-examination’ by the opposing party. After the cross-examination of a witness, the party that originally called the witness and conducted the examination ‘in chief’ has an opportunity to re-examine the witness on topics addressed by the opposing party during the cross-examination, for clarification or correction.
² Members of the LRT came from different national backgrounds. All spoke the languages of the former Yugoslavia and most had been academics, with expertise in the Balkans. The author maintained her position as a lecturer in European Studies at the University of Amsterdam throughout her employment at the UN.
high-level meetings that had determined Serbia’s role in the three conflicts for which Milošević was indicted and, during cross-examination, could be asked by the Prosecution to confirm the authenticity and accuracy of documentary evidence.

Milošević’s defence was to be concluded by the end of April 2006. He died in his prison cell less than two months before the official end of the trial. His death was by no means entirely unexpected; his ill health was well known and his medical condition was not helped by the fact that he had represented himself. He had not only acted as his own advocate in court, but had also read, watched, and listened to every piece of evidence presented against him. He wrote his own opening addresses, prepared cross-examinations of every Prosecution witness, and organised and conducted the Defence case, preparing Defence witnesses before examining them in court himself. These would have been difficult tasks, physically and mentally, even for a healthy person in his or her prime.

But with the trial so abruptly concluded, indeed – as my colleague had asked – what were we to do? How were we to think about, and what were we to learn from, an unfinished trial? We were confronted with how the sudden end of a trial can obscure the truth. It was with that in mind that the end of the trial became the stimulus for some of us to start a new journey of discovery; this time, reviewing the frozen record of the trial outside of a sealed courtroom, where we had breathed stale but exhilarating air filled with the anticipation of what witnesses would, or would not, say. We knew what had been said. We knew what could not be said. Yet, in hundreds of thousands of pages of our own research, and in the court record, we had the makings of history.

The death of Milošević marked more than the end of a man. It was also the end of our chance to reveal more about Milošević and his plan, and to force him to face truths he never expected to confront. In the immediate aftermath of his passing, it seemed these truths would forever be hidden and that Milošević’s death was another demonstration – among many – that trials of individuals in international courts leave unreliable records of historical events. But, in the unexpected turn of his death lay an unexpected discovery – that records of such trials may actually be invaluable points of departure to a level of discovery far greater than trial lawyers can ever conjure as they balance tests of proof against the rules of a court and the decisions of judges. After the dust of any trial has settled, perhaps it is the quiet precision of academic
research that future generations should turn to when they seek the truth about what a trial actually brought to light.

I wondered what would happen to all the research, testimony, and documentary and other evidence that had been collected by all parties. After all, I had handled material on a daily basis that uncovered the historical and political context in which mass atrocities had occurred during the wars that accompanied the disintegration of Yugoslavia. Might it disappear into oblivion because the trial did not come to a close? A huge amount of the material already assembled and analysed for use in court seemed destined to remain unexploited.

As the product of a legal proceeding dealing with individual criminal responsibility, the Milošević trial record contains a comprehensive – possibly the largest existing – collection of materials pointing to the political and criminal responsibility of individuals for the disintegration of Yugoslavia and for the mass atrocities by which it was marked. Although the traditional objectives of criminal law, such as retribution, justice for victims, and deterrence, were not achieved in the Milošević case, the trial produced an extensive archive of testimonies, expert reports, hearing transcripts, and other documentary evidence to be studied by researchers from various fields. Indeed, there is no doubt that the Milošević trial record is a significant historical resource. And any record of a mass atrocities trial – whether finished or unfinished – establishes a chronicle of past events. These records contribute to interpretations of a historical period and the shaping of collective memory in postconflict societies. In this way, mass atrocities trials do not have merely a legal purpose, they also have a pedagogical function to fulfil.

Examining the Milošević trial record for academic purposes, I experienced advantages and disadvantages as an ‘insider’ to the subject of my research. One clear advantage was my familiarity with the trial record – the principal source for this study – in which I was easily able to identify relevant passages and references in transcripts. But, at the same time, I had to be sure to remain true to the academic requirements of objectivity, academic distance, and impartiality. This dilemma, over the appropriate measure of distance or proximity for those writing about mass atrocities, has been described occasionally by scholars like Mark Osiel, who questioned:
How to strike an authorial posture that is scholarly, yet humane; “disinterested,” yet not disengaged? How to represent the victims’ suffering, for instance, in a way that is neither luridly salacious nor unduly solicitous and sycophantic? For the victims turn out to be perpetrators as well. How to render the perpetrators’ self-understanding at once as supremely malevolent yet humanly intelligible? How to depict the zealotry of international prosecutors in both its sincere humanitarianism and its professional self-aggrandizement?3

From my own experience, neither an insider nor an outsider can be preferred as a matter of principle, nor can either be assumed to maintain appropriate detachment more capably. Any author and researcher must engage academic discipline, consisting of critical thought, rigorous scrutiny of sources, and a mind open to new discoveries.

My journey in trying to make sense of the trial record was a difficult one, not least because of the enormous volume of material the trial produced. The trial lasted 467 days, leaving behind 49,191 pages of transcripts. During the trial, over 400 witnesses were called, the Prosecution tendered 5,759 documentary exhibits into evidence amounting to approximately 150,000 pages, and the Defence tendered 2,107 exhibits of some 25,000 pages. Milošević and his lawyers also received approximately one million pages of potentially exculpatory material supplied to them by the Prosecution under the ICTY’s Rule 68.4

I sought guidance and insight from scholars who have studied Nazi war planning by scrutinising the records of Nuremberg war crimes trials. The Nuremberg Tribunal produced a very specific historical interpretation of the Nazi plan, ascribing responsibility for the war chiefly to one person and the ruling elite; but, historians realised over time how the evidentiary focus of criminal proceedings in Nuremberg had unwittingly influenced their analysis in favour of what came to be known as the ‘intentionalist’ interpretation of the period, which maintains that the Holocaust resulted from an explicit master plan created by Adolf Hitler himself and implemented from the top down.5 Only later was attention directed to the role of minor bureaucrats and

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5 The terms “intentionalists” and “functionalists” was coined by Timothy Mason in his 1981 essay “Intention and explanation: A current controversy about the interpretation of National Socialism,” published in G. Hirschfeld and
functionaries at all levels of German society – an approach known as the ‘functionalist’ interpretation and concerned with the complicity of ordinary Germans in the Holocaust, to such an extent in the case of some scholars that they ascribe the adoption of the Final Solution primarily to social and political pressures from the bottom up.⁶

Given that the Milošević trial revolved around his leadership and his ability to articulate and implement his plan, I narrowed my examination of the trial record to the exploration of three major topics – the Leader, the Ideology, and the Plan. I also considered that any criminal investigation and the criminal trial that may follow deal with three elementary questions: Who? What? and How? These questions are revisited by judges when weighing the evidence and writing a judgement and these are also the questions of interest for historians researching a historical period. In the following chapters, these essential questions will be addressed. The question of Who? addresses the role of Milošević as the Accused. The question of What? addresses the Ideology and the Plan behind the leader. The question of How? elicits a search for answers about what led to the violence and mass atrocities that occurred, and at what point in the planning they were sanctioned.

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Long before his trial started in 2002, there was an ongoing debate among scholars, journalists, politicians, and diplomats about the extent of Milošević’s historical and political responsibility for the violent disintegration of Yugoslavia; and there has been near consensus among these authors that Milošević personally bore the greatest share of blame for it.⁷ Still, one might argue that the dominant Yugoslav political culture – which relied on strong leadership – had allowed him to develop very extensive de jure and de facto powers. And so, notwithstanding his personal


mark on Serbia’s path to war, the trial record also contains a wealth of material about the ideology to which Milošević tied his political destiny, best described for the purposes of this text as a variant of Serbian state ideology. Since the 19th century, one expression of this ideology has manifested in aspirations for what is known in historiography as a Greater Serbia – a state that would include all Serbs scattered across the Western Balkans. Over time, a number of publications have been seen as roadmaps for such a state, including the 1941 pamphlet “Homogeneous Serbia,” which proposed that the western border of a Greater Serbia cut through Croatian territory along the line extending between the three Croatian towns of Virovotica, Karlovac and Karlobag. This became known as the V-K-K line, and evidence of its continued significance emerged in the courtroom. Materials contained in the trial record on Serbian state ideology will be explored in this text with particular focus on Milošević’s contribution to its development in the 1980s and 1990s, by means of a project he described by its aim: “All Serbs in a Single State.”

Milošević’s plan for achieving a state which would encompass all Serbs was a process of attempting to reach five successive goals set between 1987 and 1999, beginning with a successful attempt to centralise Serbia by revoking the autonomy of its two formerly autonomous provinces, Kosovo and Vojvodina. The Serbian Constitution of 1990 reflected those changes, and its revision launched Milošević to new political heights among Serbs. The successful centralisation of Serbia was followed by unsuccessful efforts to centralise the Yugoslav Federation and secure Serb domination through control of the Communist Party and federal institutions of the Socialist Federal Republic of Yugoslavia (SFRY). Attempts to achieve this second goal instead brought the disintegration of the SFRY, after Slovenia and Croatia declared their independence in 1991.

Milošević’s third goal was set in reaction to the failure to preserve a centralised SFRY. The disintegration of the Federation led to efforts to preserve a Rump Yugoslavia that would consist of all former SFRY republics save for Slovenia and parts of Croatia. This Rump Yugoslavia was

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8 Some authors use the term “Serbian State Project” to denote the various forms that aspirations for a Serb state have taken since the 19th century. For example, see: Biserko, Yugoslavia’s Implosion.
9 The term ‘rump’ can be applied as an adjective to describe the remainder of any state after the separation of a region or regions. In the local languages of Croatia and BiH, the term krnja Jugoslavija was used to refer specifically to the former Yugoslavia less Slovenia and parts of Croatia. The word krnja means “truncated” or “made incomplete” but, colloquially, is associated with a “messy break” or a “rough edge.” Here, Rump Yugoslavia
projected to include ‘Serb-designated territories’ in Croatia and, to that end, attempts were made to secure those territories by force as early as mid-1990. These actions led to an escalation of violence and a full-fledged war in Croatia in 1991. In this process, Croatian Serbs proclaimed their own quasi-state entity. The Republika Srpska Krajina (RSK) was envisaged to extend to the Virovitica-Karlovac-Karlobag (V-K-K) line – a boundary that is the very representation of the Greater Serbia ideology articulated in 1941 – and the borders of the RSK were more or less achieved by December 1991.

The failure to achieve a Rump Yugoslavia with the inclusion of BiH led to Milošević’s fourth goal. A referendum on independence held in BiH in February 1992 made it clear that a majority of the population there was in favour of independence. Adjusting to the loss of BiH, the republic of Serbia and Montenegro – which had not given up on Yugoslavia as the name for a common state – constituted the Federal Republic of Yugoslavia (FRY) in April 1992. The FRY Constitution allowed for other territories to join in. At the same time, Bosnian Serbs, following the example of Croatian Serbs, formed their own quasi-state in BiH: the Republika Srpska (RS). Unlike the formation of the RSK, which was achieved after several months of fighting, the formation of the RS took more than three years to realise and led to mass atrocities against non-Serbs. Eventually, the peace agreement for BiH that was signed by all parties in December 1995 allowed the RS to maintain its territorial autonomy despite the fact that its borders were established by the commission of crimes, including genocide.

The fifth goal Milošević sought to achieve was related to Kosovo. The Kosovo conflict escalated into an armed conflict in 1998, exposing Milošević’s failure to keep Kosovo under Serbian rule even after revoking its autonomy in the 1990 Serbian Constitution. The eruption of violence between the Kosovo Liberation Army (KLA) and Serbian forces in 1997 was used by Serbia to justify a violent campaign against the Kosovo Albanian population that sought to alter the ethnic composition of Kosovo in favour of Serbs. By the end of December 1998, Milošević’s determination to keep Kosovo in Serbia – and on his terms – resulted in a war, causing a humanitarian catastrophe that was eventually brought to an end by NATO military intervention.

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10 ‘Serb-designated territories’ was the term used by the ICTY Prosecutor to denote the areas in Croatia and BiH that Serb leaders had claimed on ethnic, historical, or geostrategic bases.
NATO’s defeat of Serbian forces led to Serbia’s loss of Kosovo in June 1999 and, eventually, to the downfall of Milošević in October 2000.
Introduction

The Court

There is no universal prescription for how societies should deal with legacies of mass atrocities and political violence; and transition periods, during which societies extricate themselves from authoritarian or criminal regimes, are characterised by mass violations of human rights. Studies in the field of transitional justice provide some guidance about the ways a state may address a legacy of mass atrocities or long-standing human rights abuses, and a UN report has defined them as “processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation.” These mechanisms vary, from vetting or lustration processes, to truth commissions, to criminal trials.

Legal scholars, such as Gerry Simpson, have noted that while war crimes are committed around the world every day, national and international laws designed to punish these acts are invoked only under favourable political circumstances. In international law this has resulted in some well-known initiatives aimed at addressing the individual criminal responsibility of high-level political and military officials. In 1945, ad hoc military tribunals in Nuremberg and Tokyo were established to try high-level German and Japanese perpetrators, for example. But it was not until nearly the end of the 20th century that international political circumstances again allowed for the establishment of another international tribunal, to address individual criminal responsibility for crimes committed in the former Yugoslav republics.

The UN Security Council (UNSC) laid the groundwork for creation of the ICTY in two Resolutions. In February 1993, UNSC Resolution 808 announced the establishment of an

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international tribunal to prosecute those “responsible for serious violations of international humanitarian law” in the former Yugoslavia. The initial mandate of the ICTY was to put an end to such crimes and take effective measures to bring the persons guilty of them to justice. UNSC Resolution 827 of May 1993 confirmed this mandate and asserted that the Tribunal would “contribute to ensuring that such violations of international humanitarian law are halted and effectively redressed,” and further, that one of the objectives of the ICTY was “to contribute to the restoration and maintenance of peace.” Once brought to life, the ICTY was afforded considerable power; it had been established under Chapter VII of the UN Charter – “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression” – which compelled all UN states to cooperate. Soon, other ad hoc tribunals, for Rwanda, Cambodia, Sierra Leone, and Lebanon followed; and in 2002, the International Criminal Court (ICC) was finally established. It is the first permanent court with jurisdiction to address crimes committed in armed conflicts.

The founding of the ICTY took place as the violent conflict in BiH raged. In February 1993, parties to the conflict were presented with a plan known as the Vance-Owen Peace Plan (VOPP) which, if accepted, would have left BiH as a single state divided into ten ethnically-defined cantons. But negotiations definitively failed on 5 May 1993 when Bosnian Serb leaders rejected the VOPP. Less than three weeks later, the UNSC announced the establishment of the ICTY at a public hearing. The ICTY’s creation was labelled by some as a ‘fig leaf’ – alluding to the inability, up to that point, of the international community to stop the commission of crimes in BiH through peace negotiations or military intervention. Indeed, the creation of the Tribunal

16 United Nations, Charter of the United Nations and Statute of the International Court of Justice (October 1945), Chapter VII.
19 John Hagan, Justice in the Balkans: Prosecuting War Crimes in the Hague Tribunal (University of Chicago Press: 2003), 60, 62. The term ‘international community’ (abbreviated IC) is used somewhat arbitrarily in different contexts, typically to connote international bodies such as the EU and the UN acting in concert with individual states such as the US, UK, and Russia in espousing joint views and undertaking multilateral action.
did not bring peace nor did it deter the warring sides from committing further crimes. In fact, the gravest crimes of the war in BiH were committed by Serb forces in the summer of 1995 in the areas of Srebrenica and Žepa, two years after the Tribunal was established; and the Kosovo conflict came five years after the ICTY was created.

The question arises whether the creation of the ICTY – or any international criminal court for that matter – can compensate for political, diplomatic, and military failures to end an ongoing military conflict, to secure a long-lasting political solution, or to contribute to reconciliation after the end of a conflict. In other words, should legal remedies be expected to resolve political and military problems during ongoing armed conflict or in the postconflict period? No matter the answer, the creation of the ICTY raised high expectations, locally and internationally. These expectations have gone far beyond the original mandate or capacities of the Tribunal and have been difficult if not impossible to meet. And, this has been compounded by an underappreciation among those working in the ICTY that it serves a region with a specific and unique legal culture. Indeed, this seemed barely recognised within the ICTY for years, until the results of several 1999 studies revealed that members of the public as well as legal professionals in the former Yugoslavia did not understand the scope of the Court’s work or its processes and procedures.20

Initially, the ICTY was based on Anglo-Saxon or Common Law, which uses an adversarial system.21 Regional domestic legal systems are based on Continental European or Civil Law, which uses an inquisitorial system. While the adversarial system is primarily concerned with proving and ultimately winning a case, the inquisitorial system is primarily focused on determining the truth and was considered by some scholars and practitioners as more suitable for mass atrocities trials. Proponents of an inquisitorial model for the Tribunal asserted, *inter alia*,
that it would allow judges to be more active in the evidentiary part of trials and this could shorten their duration.\textsuperscript{22}

Support and acceptance of the Tribunal by its ‘real constituency’ – understood here as people from the region where the crimes have been committed – has generally been seen as one of the important criteria by which to measure the success of the ICTY. The international criminal system is a normative system with strict rules and procedures, specific legal theories, lengthy court sessions, and terminology that make many aspects of the courts inaccessible to local communities. The fact that the proceedings are held abroad and often must be interpreted and translated is an additional barrier to constituents’ comprehension of ICTY trials. As Prosecutor Geoffrey Nice asked, “Would you go in for a surgery in which you had a Brazilian doctor, a Ugandan nurse, a Canadian anaesthesiologist, and the operation took place in a Japanese hospital?”\textsuperscript{23} Maybe not; and this is a fitting analogy for the challenging international character of the Tribunal.

The establishment of the ICTY – along with that of other of ad hoc tribunals – has also opened doors to a new field of research in which the interaction between law and politics became a topic of analysis.\textsuperscript{24} Human rights activists and victims cheered the Tribunal’s foundation, but the ICTY has also faced questions regarding alleged political undertones and partiality, and doubts about its legitimacy and legality.\textsuperscript{25} In discussion about its foundation, so-called liberals,


\textsuperscript{25} For discussion on points of criticism, see: Jovan Ćirić, ed., \textit{Haški tribunal između prava i politike}, Institut za uporedno pravo (Beograd: Goragraf, 2013), available in B/C/S at: http://www.comparativelaw.info/haski-s.pdf; Jill
concerned with violations of human rights and the nature of crimes committed in BiH, saw the Tribunal as a victory of liberal ideals; in this case, of what was referred to in the literature as ‘liberal legalism.’

On the other hand, realists attributed the Court’s foundation to Realpolitik, concerned more with concrete political interests such as ensuring international stability than with addressing the humanitarian catastrophe.

More generally concerns exist about the UN running the ICTY given that it was involved in peacekeeping and peace-making processes and was present on the ground when some of the most severe crimes occurred and were witnessed – but not prevented – by the UN’s own personnel. Is it right for the UN to be in charge of an ostensibly independent court where criminal culpability for these very crimes is determined?

Responding to critical external assessments of the Tribunal, Gabrielle Kirk McDonald, the ICTY President at the time, launched the Tribunal’s battle for ‘hearts and minds’ of the people. The ICTY established its Outreach Programme in 1999, aiming to encourage communication between the Court and citizens of the former Yugoslavia. After a slow but promising start, the Outreach Programme remains meagrely staffed so that the mandate it is expected to fulfil is unreachable. And the limited influence of ICTY outreach activities is not just a matter of finances. It also results from the UN’s general, and the ICTY’s particular, propensity to control public debate on ICTY-related issues. Cautious to protect the professional and public image of the institution, UN and court officials often achieve this by minimising contact with the outside world, even with – or perhaps specifically with – victim constituents.

Still, one of the first empirical studies assessing the impact of ICTY outreach in BiH between 2000 and 2005 concluded that the ICTY had a relatively positive impact in Bosnian society during that period.


27 For more on the views of liberals and realists, see: Bass, Stay the Hand of Vengeance, 265, 302-305.
29 See: Refik Hodzic, “Accepting a Difficult Truth: ICTY is Not Our Court,” Balkan Insight, 6 March 2013. One interesting example of this was the ICTY’s lack of outreach after the acquittals of General Momčilo Perišić, Jovica Stanisavljević and Franko Simatović.
The author stressed, however, that attitudes do and will change; and that any study on the subject of public attitudes is valuable only if research continues over time.\footnote{Lara J. Nettelfield, *Courting Democracy in Bosnia and Herzegovina: The Hague Tribunal’s Impact in a Postwar State* (Cambridge, UK: Cambridge University Press, 2010).}

Reasonably, people of the former Yugoslavia, especially bereaved relatives of victims and surviving victims themselves, expected criminal accountability to be achieved more swiftly than it was. Lengthy trials tend to dilute interest, with new indictments and judgements left as the only events that renew the public’s attention. Further, the approach applied at the ICTY, of ‘equivalence of guilt’\footnote{This concept is referred to by a number of similar terms, and no one term has been universalised; it may also be called ‘equity of guilt,’ ‘equality of guilt,’ and ‘proportionality of guilt.’ For more on the OTP’s indictment policy, see (in Dutch): Frederiek de Vlaming, *De Aanklager* (Leiden: Boom, 2013). For similar arguments in English, see: Frederiek de Vlaming, “The Yugoslavia Tribunal and the Selection of Defendants,” *Amsterdam Law Forum* 4, no. 2 (2012).} – according to which all the warring parties committed equally grave crimes and should be equally punished – has been criticised.\footnote{For example, see: Ines Sabalić and Roland Kemp, “Marko Hoare: Bivši istražitelj Haškog suda,” *Globus*, no. 854 (2007). In this interview, Marko Attila Hoare, a former war crimes investigator at the ICTY, claimed the Tribunal had treated war criminals less stringently than their victims.} Indeed, disappointment among victims, who are probably the ICTY’s most interested and constant observers, has often been expressed after acquittals; predictably, reactions depend on which “side” victims see themselves.\footnote{For discussion, see: Marija Ristić, “Mixed International Reactions to Haradinaj’s Acquittal,” *Balkan Insight*, 30 November 2012; Edona Peci, “Hague Tribunal Acquits Kosovo’s Haradinaj,” *Balkan Insight*, 29 November 2012; and Edona Peci, “Kosovo and Albania Demand Inquiry Into Del Ponte,” *Balkan Insight*, 3 December 2012.}

The case of Ramush Haradinaj is a good illustration of this. The OTP was under great pressure to indict the former Kosovo Prime Minister and Kosovo Liberation Army (KLA) commander, despite a lack of evidence.\footnote{Ibid.} He was acquitted twice, in 2010 and again in 2012, and these results were cheered by many as an example of justice having prevailed. But in Serbia, Haradinaj’s acquittal was used to bolster criticism of the work of the Tribunal and label it as an anti-Serb institution.\footnote{On reactions in Serbia to the acquittal of Ramush Hardinaj, see: Meridijana Sadović and Aleksandar Roknić, “Serbian Anger at Haradinaj Acquittal,” Institute for War and Peace Reporting, 4 April 2008.}

The acquittal in 2012 of Croatian General Ante Gotovina – a commander during Operation Storm in the summer of 1995, which liberated a large part of Croatian territory from Serb occupation – brought a similarly split reaction. It was received with anger among Serbs but was...
celebrated in Croatia, where the verdict was seen as exoneration for the Croatian side in the war.\(^{36}\) Yet this did not insulate the ICTY from hostility against the Tribunal in Croatia, which emerged in response to other verdicts. When three officers of the Yugoslav People’s Army (\textit{Jugoslovenska Narodna Armija}, or JNA) were indicted and tried for crimes committed in the Croatian town of Vukovar in 1991, their sentences were deemed inadequate by many in the Croatian public.\(^{37}\) At the same time, the acquittals of indictees from Serbia – especially General Momčilo Perišić in March 2013, and Jovica Stanišić and Franko Simatović in April 2013 – have been cheered by Serbians as absolution for Serbia.\(^{38}\) But these judgements have been severely criticised by Croats and Bosnian Muslims who interpret them as politically-motivated decisions imposed by the international community.\(^{39}\)

The ICTY’s work was never going to be easy, given the unique internal and external circumstances that framed its creation. With no institutional equivalent since Nuremberg, the ICTY pushed its way forward in what was aptly described as “learning by doing.”\(^{40}\) The Tribunal’s indictment policy, long trials, and disappointing judgements have led to scepticism about whether the ICTY and its \textit{retributive justice} mechanism, which concentrates on perpetrators and punishment, delivers the justice sought by victim communities. Now, after years of retributive justice via the ICTY and in local courts, there is a growing appreciation that this form of justice may indeed be insufficient and that more weight should be given to \textit{restorative justice} mechanisms that directly address the immediate needs of victims.\(^{41}\)


\(^{38}\) For example, see: “Stanišić i Simatović oslobđeni optužbe za ratni zločin, bit će odmah pušteni na slobodu,” \textit{Klix}, 30 May 2013.

\(^{39}\) ICTY President Judge Thoedor Meron visited the “Making the ICTY” Conference in Sarajevo, organised to mark the 20th anniversary of the Tribunal. Victims in attendance expressed dissatisfaction and disappointment over the administration of justice by the ICTY and especially about the acquittals of Perišić, Stanišica, and Simatović. See: “Sarajevo Conference: Ode to Tribunal or Requiem for Justice?” \textit{Sense Tribunal}, 27 December 2013. See also: “Bosnia Victims Protest Against Hague Tribunal President,” \textit{Balkan Insight}, 29 November 2013.


Robinson, who served as President of the ICTY from 2008 to 2011, voiced concerns that victims need more support. He pleaded in 2010 before the UNSC for establishment of a trust fund that would “complement the Tribunal’s criminal trials by providing victims with the necessary resources to rebuild their lives.”

Victim communities regularly stress that they need to know why violence against them occurred; they want to know details of crimes, such as where their family members were killed and buried, but they also want to try to understand how the crimes could have happened at all.

The End of the Mandate

International criminal tribunals have introduced a new dimension into international affairs and have put the emphasis on justice and accountability, now a standard part of many peacemaking efforts. Their creation was announced as a new era marked by an end to impunity for political leaders who use violence and commit mass atrocities in pursuit of their policies. But over time, the initial ambitions of the ICTY had to be toned down and adjusted to reflect concrete capacities. From 1994 to 2004, 161 persons were indicted for violations of international humanitarian law committed on the territory of the former Yugoslavia. Proceedings against 126 of them were concluded by November 2011; and by March 2015, with the cases of 15 defendants still ongoing – mostly in appeals proceedings – 79 indictees had been sentenced and 18 acquitted. Of the 161 persons indicted by the ICTY, 36 cases were terminated and indictments withdrawn, and 13 cases were transferred to local courts.

The first indictee at the ICTY was Duško Tadić, a Bosnian Serb charged for the role he played at detention camps for non-Serbs; namely, Keraterm, Omarska, and Trnopolje, in Bosnia’s Prijedor municipality. He was arrested...
in 1994 in Germany and was sentenced by the Tribunal to twenty years in prison in 1997. The longest sentence handed down by the Tribunal, life imprisonment, was imposed in 2007 by the Appeals Chamber on General Stanislav Galić, Commander of the Sarajevo Corps of the Bosnian Serb Army between 1992 and 1993.\(^47\)

The ICTY was founded as an ad hoc institution with no fixed time frame for its mandate. By early 2002, it became apparent that international support for the ICTY had started to fade as a consequence of shifting military and diplomatic priorities in a post-September 11th world.\(^48\) In August 2003, the UNSC passed a resolution that gave the ICTY specific deadlines for completion: 2004 for all investigations, 2008 for all first instance trials, and 2010 for all appeals.\(^49\) This was a signal to ICTY senior management to start preparing their Completion Strategy; and one of their key aims before the closing date of the Tribunal was the arrest of three last fugitives – Radovan Karadžić was apprehended and transferred to the ICTY in 2008, followed by Ratko Mladić and Goran Hadžić in 2011.\(^50\)

The deadlines for the first instance trials of these defendants had to be pushed back, and estimates were that all three would be finished in 2012, with appeals initially expected to finish in 2014. However, Radovan Karadžić’s trial didn’t finish until late 2014, and the extradition of Mladić and Hadžić led to new extensions. Official estimates now are that the ICTY will finish hearing four of five appeals cases and three of four trials in 2015; but a judgement in the Mladić case is not expected until 2017, just before the Tribunal is set to close.\(^51\) From 1 July 2013 on, the ICTY’s work started overlapping with that of the Mechanism for International Criminal Tribunals (MICT), created by UNSC Resolution 1966 on 22 December 2010 in order to maintain the legacy of the ad hoc UN Tribunals – the ICTR and ICTY – and the ICTY branch of the Mechanism will hear any appeals that may follow the trials of Karadžić, Mladić, or Hadžić.\(^52\)

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\(^49\) Ibid., 38–39.

\(^50\) Ibid., 38.


The Legitimacy and Legality of the ICTY

When he was first indicted by the ICTY in 1999, Milošević was still a sitting head of state and few people believed that he would be tried in The Hague. Even in 2000, when he lost power, the ICTY was dependent on the cooperation of the successor regime in Serbia in order to apprehend him. Because the ICTY was not imbued with law enforcement mechanisms with which to arrest indictees on its own, Milošević – and any other indictee – was out of reach of the ICTY after it handed down indictments since the Tribunal was reliant upon NATO, UN forces, or local authorities to apprehend indictees that did not surrender voluntarily. But in March 2001, Serbian authorities arrested Milošević and handed him over to the ICTY after having detained him for three months in a Belgrade jail while they investigated him on charges of abuse of power.

Milošević was transferred to The Hague on 28 June 2001 on the authority of the Serbian (republic-level) government despite the fact that FRY authorities led by President Vojislav Koštunica declared the transfer illegal. Serbia – a unit of the FRY – was not an international subject at the time and could not engage in international politics, which was the exclusive domain of the federal government. But Serbian Prime Minister Zoran Đindić took responsibility for the decision to transfer Milošević, arguing that the Republic of Serbia could legally trump the FRY’s authority per Article 135 of the 1990 Serbian Constitution, which indeed stipulated that Serbia could disregard federal law in certain circumstances. The Article – originally included by Milošević’s constitutional experts so that, when needed, Serbia could exercise greater power in relation to the then SFRY – was used successfully 10 years later by the Serbian government to facilitate Milošević’s transfer without the approval of federal authorities who were not inclined to comply.

Once in The Hague, Milošević raised questions about the legality and legitimacy of the ICTY during his initial pre-trial appearance on 3 July 2001. He argued that the Court had been illegally constituted because it was not established by the UN General Assembly. The arguments raised

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54 Milošević told the court, “I consider this Tribunal a false Tribunal and the indictment a false indictment. It is illegal being not appointed by the UN General Assembly, so I have no need to appoint counsel to illegal organ [sic].” Trial Transcript (3 July 2001), 2. Unless otherwise noted, primary trial documents (including trial transcripts,
by Milošević matched those heard in the Tribunal’s first trial, the Duško Tadić case, in 1995. Subsequently, a motion challenging the legitimacy of the ICTY was filed on behalf of Milošević by a court-appointed *amicus curiae*, or ‘friend of the court.’ The Trial Chamber dismissed the motion in November 2001.\(^55\) The Tribunal ruled that although its creation by the Security Council was without precedent, the ICTY had been founded under the Council’s broad powers to act to maintain international peace and security.\(^56\) And in fact, Milošević had effectively recognised the legitimacy of the ICTY when he signed the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Peace Agreement, in which all parties had agreed to cooperate fully with the Tribunal.\(^57\)

***International Criminal Trials: Political Trials, Show Trials, or Transformative Trials?***

In his Opening Statement, Milošević asserted that the entire world knew that his was a political trial.\(^58\) His brother Borislav, former Ambassador to Russia from the Federal Yugoslav Republic, said at a news conference in Moscow that it was “plainly evident that Slobodan Milošević’s trial in The Hague is a political trial aimed to justify NATO’s campaign in Yugoslavia.”\(^59\) When defending his right to represent himself, Milošević repeated this argument that the trial was political. He claimed that whether he had committed a crime was not at issue, saying that certain intentions ascribed to him were “beyond the expertise of any conceivable lawyer.”\(^60\)

The fact that Milošević’s trial (as well as other trials at the ICTY) has been labelled a “political trial” deserves attention, because this criticism potentially reflects on the integrity and authority of the trial record left behind. But there are many different meanings ascribed to the term ‘political trial’ and trials should not be confused with politicised trials or with show trials simply because they include political elements. Scholars distinguish between political trials, which take

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\(^55\) For discussion, see: Preliminary Protective Motion (9 August 2001); Presentation on the Illegality of ICTY (30 August 2001); Amici Curiae Brief on Jurisdiction (19 October 2001) – all filed by the Accused or his representatives. Also see: the Court’s Decision on Preliminary Motions (8 November 2001).


\(^58\) Trial Transcript, Defence Opening Statement (15 February 2002), 352.

\(^59\) “Slobodan Milošević’s Trial Is a Political Case,” *The Voice of Russia*, 3 January 2002.

\(^60\) Trial Transcript, Appeals Hearing (21 October 2004), 53.
place within the rule of law, and ‘partisan trials’ or ‘show trials’, which substitute political expediency for law.\textsuperscript{61} There is a widespread view of the term ‘political trial’ as pejorative and referring to trials that use legal systems to eliminate or discredit political opponents. But many scholars accept, to a degree, that all trials have a political element; because in every state, the judicial system is a branch of government and thus part of a political and ideological system. If a “purely legal trial” is imagined to embody ideal justice – depending on fair procedure and neutral assessment only – then a “purely political trial” would be pre-determined and procedure would be irrelevant.\textsuperscript{62}

A number of scholars have posed the question of whether political trials are, by definition, in conflict with the law.\textsuperscript{63} Or, can political trials be fair despite a political agenda? Otto Kirchheimer, a legal scholar, understood political trials as those in which “the courts eliminate a political foe of the regime according to some prearranged rules.”\textsuperscript{64} Even if political goals may not be inherently unwelcome in judicial processes, as one legal scholar put it, “fairness is the tipping point...[and] the goal is to achieve a process that is fundamentally fair and thus predominantly legal, even if it simultaneously serves some desirable consequentialist purposes.”\textsuperscript{65} Ron Christenson, another legal scholar, identified four categories of political trials – trials of public responsibility, trials of dissenters, trials of nationalists, and trials of regimes.\textsuperscript{66} Christenson described all political trials as “using legal procedure for political ends.”\textsuperscript{67}

In a broad sense, all trials dealing with political violence and mass atrocities may indeed qualify as political.\textsuperscript{68} When a regime responsible for human rights abuses or for committing mass atrocities is overthrown, a new regime must decide how to handle members of the old regime.

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\textsuperscript{63} Schabas, \textit{Unimaginable Atrocities}, 23. Schabas writes that the political dimension of mass atrocities trials is inescapable.

\textsuperscript{64} Kirchheimer, \textit{Political Justice}, 6.

\textsuperscript{65} Ford, “Fairness and Politics at the ICTY,” 57-58

\textsuperscript{66} Christenson, \textit{Political Trials}, 8-10.

\textsuperscript{67} Ibid, xiii.

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One option is to put them on trial. When doing so, it is commonly understood that only a limited number of former political and military leaders can be tried; and those brought to trial are likely to be tried by their political opponents. Critics of such trials condemn them for being exercises in selective justice, while proponents praise their value in highlighting the criminality of regimes and tempering calls for vengeance. But any system of justice, whether at the international or domestic level, is only effective if it is seen as legitimate by society.\(^6^9\)

However, political trials should not automatically be equated with partisan or show trials, which are characterised as criminal legal proceedings instituted by governments for political ends, meaning that inevitable outcomes of guilt are simply couched in the trappings of legality. Show trials are often associated with totalitarian ideologies and regimes – such as that of Joseph Stalin in the Soviet Union – and with the power of a singular leader to influence a trial’s outcome. In Stalinist-style show trials, all the prosecutors, judges, and defence attorneys are employed by the government and the legal system is used as an instrument of politics to secure total power through total control of the population.\(^7^0\) The same preordained results can also be achieved through what are known as “structural show trials,” in which it is “the structure of the proceedings that assures conviction, rather than direct control over the judges.”\(^7^1\)

Jeremy Peterson, a legal scholar, social scientist, and practitioner working for the US Justice Department analysed Saddam Hussein’s trial in an attempt to determine if it qualified as a show trial. The trial, held in 2005, ended with the application of a death sentence, unleashing public debate about its fairness. In analysing the trial, Peterson defined a show trial as composed of two essential elements: certainty of the defendant's conviction and a focus on the audience outside the courtroom rather than on the defendant.\(^7^2\) He concluded that both criteria applied to the trial of Saddam Hussein. Other scholars have argued that the US military commissions at Guantanamo Bay, though not show trials in the Stalinist sense, employed a system which “retains features that are fundamentally unfair” and are weighted toward conviction.\(^7^3\)

\(^6^9\) Ibid., 16.
\(^7^0\) Christenson, *Political Trials*, xv. Also see: Ford, “Fairness and Politics at the ICTY,” 53-54.
\(^7^1\) Ford, “Fairness and Politics at the ICTY,” 53.
The trials at the ICTY did not lead automatically to a conviction, as there were regular acquittals. Yet some ICTY acquittals raised the question of whether it is not only the certainty of conviction but also the certainty of acquittal that may determine a show trial. This became a topic of debate after the acquittals of three indictees from Serbia in early 2013, which triggered public discussion about whether the ICTY had been under various political influences or was the subject of deals between Serbian leaders and the European Union (EU).\footnote{G} In June 2013, Danish ICTY Judge Frederik Harhoff sent a letter to personal acquaintances in which he strongly criticised the Tribunal’s Appeals Chamber for having “suddenly back-tracked” on what he described as the “set practice” that military commanders were held responsible by the court for war crimes committed by their subordinates. Harhoff speculated that some judges may have been externally influenced and that the Chamber’s Presiding Judge, an American, had exerted internal pressure on other judges to acquit, suggesting that certain countries had an interest in changing the precedents honoured until then by the ICTY. The letter was leaked, sparking questions among scholars and the public about the reasons the Tribunal seemed to have reversed course.\footnote{H}

Drawing on the conceptions of a political trial put forth by Kirchheimer, Christenson, and Simpson, one could argue that all trials held before international criminal tribunals are indeed political trials, because they deal with political violence, specifically with mass atrocities. Accepting, then, that the Milošević trial is by that definition a political trial, this study will explore the value of the trial record based on Leora Bilsky’s definition of a ‘transformative trial.’ Bilsky sees transformative trials as placed somewhere between the political and the legal.\footnote{I} On the one hand, a transformative trial has to remain loyal to the basic liberal value of the rule of law, and on the other hand it performs a unique function as a legal forum in which society’s fundamental values can be examined in the light of competing counter narratives as presented in the courtroom.\footnote{J}

\footnote{G} General Momčilo Perišić was acquitted in the Appeals Chamber. Jovica Stanislić and Franko Simatović were acquitted in their first-instance trial; they are yet to receive a judgement from the Appeals Chamber, which could still reverse their sentences.


\footnote{I} Bilsky, \textit{Transformative Justice}, 7.

\footnote{J} Ibid., 8.
The Trial

The trial of Slobodan Milošević began on 12 February 2002, less than eight months after he was transferred to The Hague – swiftness unprecedented at the ICTY. The start date of the trial was cheered by some, but others questioned if there had been enough time to prepare the case properly given the extent of the charges. Once the trial ended unfinished, more questions arose – about its length, its structure, its procedures, and the evidence – opening a discussion on how to best try a political leader for crimes alleged to have occurred over a protracted period of time.\(^78\) The 66 counts in the indictments were allegedly committed in Croatia, BiH, and Kosovo over a period of nine years. It is useful to keep in mind the distinction between the terms ‘count’ and ‘charge.’ According to the explanation given in the ICTY’s Judgement in the case of Milutinović et al., a charge represents a potential basis for the imposition of liability, while a count alleges the commission of a statutory offence on the basis of one or more charges, related to many different individually named victims, different geographic locations, and different forms of responsibility. A count has been described as “nothing more than a means by which the Prosecution organises the charges in an indictment.” Further, an accused person “may be convicted of a count if only one of the charges under that count is established. It is each charge therefore that holds the potential of exposing the accused to individual criminal liability.”\(^79\) The 66 counts for which Milošević was indicted reflected many hundreds, if not thousands, of charges.

Milošević faced charges in three separate indictments – for crimes in Croatia, in BiH, and in Kosovo – which included charges of grave breaches of the Geneva Convention, crimes against humanity, violations of laws and customs of war, and genocide. The geographical distribution of


crimes in the indictments is shown on Map 1 (below). From the outset, the number of crime sites alone indicated that the trial would be a major test of the administration of justice for any court, but especially in one as new and inexperienced as the ICTY. Once the trial ended, and without a judgement, both professionals and the public wondered how the scale of the indictments and the extent of the charges had impacted the speed and management of the trial.\textsuperscript{80}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{map1.png}
\caption{Crime scenes as charged in the three Milošević indictments}
\end{figure}

The extensive nature of the charges caught the attention of the judges, too, and under instructions of the Trial Chamber, the Prosecution amended all three indictments between November 2001 and October 2002, reducing the number of counts and crime sites from the original indictments.\textsuperscript{81} In an attempt to manage the trial, the Court also imposed a time limit on the parties in presenting their cases, resulting in a further cutback of the evidence presented, which meant that evidence for some crimes was not presented at all. At the end of the Prosecution case in February 2004, the \textit{amici curiae} filed a Defence Motion for Judgement of Acquittal arguing that some charges


\textsuperscript{81} For comparison, see the original Kosovo indictment from 24 May 1999 and the amended indictment from 19 June 2001; the original Croatia indictment from 1 October 2001 and the amended indictment from 23 October 2002; and the original Bosnia indictment from 22 November 2001 and the amended indictment from 22 November 2002.
should be dismissed on the basis that the Prosecution had not presented enough or any evidence to prove that they occurred.\footnote{Amici Curiae Motion for Judgement of Acquittal (3 March 2004).}

In June 2004, the Trial Chamber issued its Decision on the Motion for Judgement of Acquittal (hereinafter, the Half-Time Judgement) and a considerable number of crime site incidents, most of which related to crimes alleged in the BiH indictment, were dismissed.\footnote{Decision on Motion for Judgement of Acquittal (16 June 2004), Schedules A through F. The Decision is hereinafter referred to as the Half-Time Judgement. Also see: Boas, The Milošević Trial, 80. The Decision on Motion for Judgement of Acquittal is the only document akin to a judgement offered by the Chamber regarding those counts that the amici curiae claimed were inadequately established. The test applied by the judges at that stage was not whether they were satisfied beyond a reasonable doubt that the offence(s) had been committed but whether there was sufficient evidence for the case on that count to continue and whether there was enough evidence to convict.} The Prosecution had to hope that they had provided enough evidence to meet the ‘widespread and systematic’ test required to establish crimes against humanity and illustrate an overall plan.\footnote{For discussion, see: Prosecution’s Position in Relation to Management of Trial Proceedings and the Regime for Presentation and Admission of Evidence with Comments on Issues Concerning the Accused’s Health (5 April 2002).} Yet, the Prosecution was unsure of what this test was or how to guarantee that they had offered evidence for enough crimes sites to prove a pattern of crimes.\footnote{“If you only prove one spot in Bosnia or one spot in Croatia, you never prove the widespread and systematic nature of the campaign, which is what this trial is about. We have recently, and quite specifically, effectively invited the judges to look at this and indicate have we got enough. Because there’s no test. Is it ten villages? Is it four municipalities? Or is it one? I don’t know. And if I put on too little, then the case fails.” Statement by Prosecutor Geoffrey Nice, as recorded in Milošević on Trial, directed by Michael Christofferson (Copenhagen: Team Productions, 2007).}

Arguably, the Trial Chamber’s constraint on the time allotted to each party to present evidence should have ensured a brisk pace of the trial. The Prosecution’s part of the trial went smoothly and was within the time limit imposed by the Chamber; which, by its own calculation, determined that the Prosecution spent 360 hours proving its case, not counting those hours used for cross-examination and procedural/legal arguments. Altogether, for the three indictments and including cross-examinations by Milošević and all procedural arguments, the Prosecution part of the case would have occupied 294 full eight-hour working days.\footnote{For discussion, see: Order Rescheduling and Setting Time Available to Present Defence Case (25 February 2004); Order Concerning the Time Available to Present the Defence Case (10 February 2005); Order Recording Use of Time Used in the Defence Case (1 March 2005); and Human Rights Watch, Weighing the Evidence, 72.}

Milošević was given the same amount of time to present his Defence case; again, not including cross-examination and procedural issues. But there was a considerable difference between the
technically efficient way the team of professional Prosecution attorneys presented evidence and Milošević’s slow progress. The Prosecution presented its whole case, including the testimonies of 296 viva voce witnesses and 59 witnesses whose testimonies were presented in written form, in their 360 hours. Milošević used his time less efficiently, partly because he insisted on examining all his witnesses orally, often at length, and chose not to make use of the possibility of written testimonies. Milošević presented the testimonies of only 42 Defence witnesses, covering mostly the Kosovo indictment, and was just starting to call witnesses for the Croatian indictment when he died. Several months beforehand, in November 2005, the Trial Chamber had calculated that Milošević had already used 75% of the 360 hours allotted to him, in which he had dealt almost exclusively with the Kosovo part of the case. Even if the trial had reached its conclusion, the Defence case could not have been completed by April 2006, as mandated by the Trial Chamber, because no evidence for the Bosnia indictment would have been presented by then.

Self-Representation

In August 2001, the Trial Chamber granted Milošević the right to represent himself. This is allowed under the Statute and Rules of the ICTY; however, no mechanism, guidance, or protocol regulates the right of self-representation. Self-representation in such a complex case would have been a challenge for the court in the most ideal of circumstances, but in combination with Milošević’s deteriorating health condition, it became a major obstacle to efficiency. Delays attributed to Milošević’s recurring health problems highlighted the issues of fairness that exist in a trial of this kind. Is fairness delivered only if the right of the Accused to represent him/herself is preserved even if he/she is physically unfit? Is fairness delivered only when victims have the right to see justice done, even if that requires the forced imposition of defence counsel on a sick accused person and continuation of the trial proceedings in his/her absence? Can both be achieved or must one concept of fairness yield, in whole or in part, to the other? The judges

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87 ‘Viva voce’ is live evidence given by a witness in court.
88 Scheduling Order for a Hearing (22 November 2005), 3.
89 Trial Transcript, Pre-Trial Status Conference (30 August 2001), 18. Status conferences are held before a trial starts so that the Prosecution and Defence can discuss practical issues concerning the preparation and conduct of the upcoming trial. Also see: ICTY Statute, Article 21, section 4(d).
resolved this question by affording extensive rights to Milošević to represent himself, whatever additional difficulties this caused due to his ill health.

Adding to the confusion over Milošević’s legal representation, the Trial Chamber invited the Registrar to assign three amici curiae to the case. The order that assigned them to the case explicitly stated that the amici did not represent the Defendant but were there to assist the court to ensure that the case was conducted properly.90 Yet, no concrete instructions were given as to how the amici should play this role and Milošević chose not to give them such instructions himself. Still, the amici managed to file hundreds of motions, and all three amici – including Branislav Tupušković, the only one from Serbia – took part in cross-examining Prosecution witnesses.91 Milošević also had a team of legal advisors of his own choosing, who met with him regularly and assisted him with preparations.92

Self-representation by Milošević impacted the pace of the case largely because of the time he spent cross-examining Prosecution witnesses and, later, examining his own witnesses; often addressing issues that had no probative relevance for the case – something about which he was cautioned by judges on a regular basis.93 His health was also regularly on the agenda of the court. In November 2002, nine months after the start of the trial, the parties were invited by the Trial Chamber to submit their views and proposals on how to deal with the effects of Milošević’s health on trial proceedings. The possibility of appointing counsel to assist Milošević was discussed, something that would have been very different than the appointment of amici curiae. He resisted this proposal and defended his right to self-representation, saying that under no conditions would he abandon his fight in the courtroom.

90 Order Inviting Designation of Amicus Curiae (30 August 2001). The following tasks were assigned to the amicus: “(a) making any submissions properly open to the accused by way of preliminary or other pre-trial motion; (b) making any submissions or objections to evidence properly open to the accused during the trial proceedings and cross-examining witnesses as appropriate; (c) drawing to the attention of the Trial Chamber any exculpatory or mitigating evidence; and (d) acting in any other way which designated counsel considers appropriate in order to secure a fair trial…” Their tasks were expanded by the Order Concerning Amici Curiae (11 January 2002), to: “1) drawing the attention of the Trial Chamber to any defenses, for example, self-defense, which may properly be open to the accused to raise on the evidence; and 2) making submissions as to the relevance, if any, in this trial of the NATO air campaign in Kosovo. The amici curiae may also assist the Trial Chamber, if appropriate, by identifying witnesses whom the Trial Chamber may itself wish to call pursuant to Rule 98 of the Rules and reiterates that the amici curiae should assist the Trial Chamber in any other way they consider appropriate.”

91 Human Rights Watch, Weighing the Evidence, 72.

92 Milošević’s legal advisors were Zdenko Tomanović, Dragoslav Ognjanović, and Branko Rakić.

93 For example, see the reactions of the judges in the courtroom: Trial Transcript (15 March 2002), 2461; Trial Transcript (12 June 2002), 6824-6889 and 6895; and Trial Transcript (10 April 2003), 18933.
…you yourselves have provided for that possibility in your Rules and regulations, although I don’t consider this Tribunal of yours to be legal. But as you yourselves do, then I assume you adhere to the Rules you laid down yourselves. Therefore, this position on the part of the opposite party I consider to be completely illegal, absurd, and ill-intentioned, and I don't think it deserves any further explanations at all, nor can anything along the lines of what they have proposed be acceptable.  

The Trial Chamber decided against imposing Defence counsel in light of the objections of Milošević. However, his health did not improve over time, and delays became more frequent as the case progressed. In September 2003, the Prosecution again pushed for counsel to be appointed to assist Milošević, at least with crime site evidence. If that were that to happen, the Prosecution argued, it would be possible to continue with trial proceedings when Milošević was unable to attend court as a result of ill health.  

After all, the trial proceedings were interrupted thirteen times just during the Prosecution’s part of the case. Nonetheless, Milošević’s resistance persisted and the Trial Chamber repeatedly decided against the appointment of counsel. While the Prosecution correlated his frequent ill health episodes with the appearance of witnesses who were unpleasant or unfavourable to Milošević – such as Ante Marković, whose testimony had to be postponed – a detention unit official monitoring Milošević’s health did not find any evidence of this, nor that he had tried to use his blood pressure problems as a tool to slow the trial more generally. 

The Defence part of the case, originally scheduled to start on 8 June 2004, was postponed on five occasions. It eventually began on 31 August 2004, and in September 2004, the Prosecution once again called upon the Trial Chamber to reconsider the right of the Accused to self-representation. The Chamber responded with an order that adjusted the court schedule to accommodate Milošević’s failing health, reducing the working week from five to three days, and

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94 Procedural Hearing (11 November 2002), 12835.
97 Scheduling Order for Hearing (22 December 2005), 3.
98 Reasons for Decision on Assigned Counsel (22 September 2004).
it finally assigned legal counsel to assist Milošević. The ruling stated, *inter alia*, that there was a “real danger” that the trial would not conclude without the assistance of counsel.\(^9\) The order allowed Milošević to continue to participate in the conduct of his case, “with the leave of the Trial Chamber” and to examine witnesses after the assigned counsel had done so.\(^\text{100}\) However, this decision was effectively overturned by the Appeals Chamber, which agreed in principle on the necessity of assigning legal counsel but which modified their responsibilities so as to minimise their impact. In reality, nothing changed, and the Defence case continued as it had before.\(^\text{101}\)

In April 2005, Milošević again fell ill, during the testimony of Defence witness Kosta Bulatović, and the Trial Chamber decided for the first time to proceed in Milošević’s absence. The attempt failed, as the witness refused to answer questions in cross-examination by the Prosecution, saying that he had come to testify at the request of Milošević, whom he still considered his President. As long as Milošević was absent from the courtroom, Bulatović refused to testify or make any statements, explaining:

I have come at your invitation to testify here for my president, the president of the state, Mr. Slobodan Milošević. He asked me questions in your presence, and his examination has been completed. I was cross-examined for half an hour by Mr. Nice, the Prosecutor, and I think that there are some 40 minutes to go… I am Milošević’s witness and nobody else’s witness. So without his presence, I cannot make any statements nor can I have any conversation. Thank you.\(^\text{102}\)

Bulatović was subsequently charged with contempt of court on 20 April 2005, which led to a four-month prison sentence, suspended for two years due to his own poor health.\(^\text{103}\) Bulatović might actually have gone to jail if he had committed further contempt by refusing to answer questions on a second occasion; but, by the time Bulatović returned to give evidence on 25 April 2005, Milošević had recovered sufficiently and Bulatović’s testimony was concluded in his presence. Temporary continuation of the trial *in absentia* would have represented a major

\(^9\) Ibid., para. 65.  
\(^\text{100}\) Ibid., para. 69.  
\(^\text{101}\) Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defence Counsel (1 November 2004), para. 20.  
\(^\text{102}\) Testimony of Kosta Bulatović (19 April 2005), 38591-38592.  
\(^\text{103}\) Decision on Contempt of the Tribunal (13 May 2005).
breakthrough in resolving the problems caused by Milošević’s ill health. But witnesses like Kosta Bulatović forced the court to submit to Milošević’s notion of how the trial should be managed.

A workable and effective solution, to continue the trial with assigned counsel, did not materialise; and many interruptions due to Milošević’s health problems extended the duration of the trial beyond the total of its actual courtroom hours. The length of the trial – slightly over four years – does not accurately reflect the time spent in the courtroom. If sessions had been held five working days each week, with a daily schedule from 9.00 to 16.00, the whole trial would have been considerably shorter and could have been concluded in two to three years.

*Joinder or Severance?*

The issue of the scope of the indictments remained an important one in debates about best management of the trial. The difficult question was whether all three indictments should have been tried together or in two separate trials: one for the Kosovo indictment and one for the Croatia and Bosnia indictments. But in December 2001, the Prosecution filed a motion seeking joinder, whereby all three indictments would be addressed in a single trial on the basis that they were all part of the same overarching plan.⁷⁴ The Trial Chamber initially ruled against combining all three indictments but was subsequently overruled by the Appeals Chamber in February 2002, which left open the possibility of severing one or more of the three indictments if the trial threatened to become unmanageable at any later stage.⁷⁵ The Trial Chamber did indeed later raise the possibility of severing the indictments, proposing two trials in July 2004.⁷⁶ The Prosecution strongly rejected severance, though, arguing that the problem arose not from Milošević’s ill health but from his insistence on self-representation and contending that the solution was the imposition of professional legal counsel to conduct Milošević’s defence.⁷⁷ A submission filed by the *amici curiae* also opposed severance, and the Trial Chamber made the decision not to sever the cases.

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⁷⁴ Motion on Joinder (27 November 2001).
⁷⁶ Further Order on Future Conduct of the Trial Relating to Severance of One or More Indictments (21 July 2004).
⁷⁷ Prosecution’s Submission in Response to Trial Chamber’s Decision (19 July 2004).
Discussion of this topic was again on the Court’s agenda in November 2005, as the judges grew concerned about the time the trial was taking and the prospect that it might never conclude. The Trial Chamber invited the parties to consider severance of the Kosovo part of the trial in order to secure a judgement for Kosovo, leaving the Croatia and BiH crimes to be tried later.\(^\text{108}\) At a hearing held on 29 November 2005, both the Prosecution and Milošević argued – for different reasons – that all three indictments should continue to be tried together. Milošević argued that there had been one war, in which Yugoslavia had been destroyed in a planned manner, and that his trial was a continuation of that war and the ICTY one of its instruments.\(^\text{109}\) The Prosecution made a case for “judicial economy,” noting that many high-level witnesses would need to be called twice if there were two trials. But the most persuasive argument articulated by the Prosecution was that trying events “back to front” could prejudice both parties to the case in unpredictable ways. The Prosecution argued that the Trial Chamber’s December 2001 Decision to start the trial with the Kosovo part of the indictment effectively made severance impossible. In any Kosovo-only trial, evidence from the Croatian or Bosnian wars that could illuminate Milošević’s developing state of mind applicable to the Kosovo conflict would have been excluded from consideration. And, if evidence was presented in the Kosovo trial that related back to events in the earlier conflicts, findings made might have had to be accepted without challenge in the subsequent trial that would cover earlier events.\(^\text{110}\) With this consideration in mind, the Prosecution’s position was that the trial could be severed only if the Croatia and Bosnia indictments were tried first, following the chronology of events from 1991 to 1999.

Milošević’s assigned counsel filed a submission on his behalf that focused on the unmanageability of the case, caused, in their view, by the Prosecution’s presentation of the case. Still, even they did not support severance. In fact, the only person in the courtroom who supported severance for the Kosovo indictment was an amicus curiae, and the length of the trial was his core argument in favour of severance.\(^\text{111}\) The time allocated for the Defence was used in such a way that, by November 2005, Milošević had just 25% of his time remaining and still

\(^{108}\) The Trial Chamber issued an Order inviting the parties to make a submission. See: Scheduling Order for a Hearing (22 November 2005).
\(^{109}\) Trial Transcript, Procedural Hearing (29 November 2005), 46695.
\(^{110}\) Prosecution Submission in Response to the Trial Chamber’s 22 November 2005 ‘Scheduling Order for a Hearing’ on Severing the Kosovo Indictment (28 November 2005), para. 53.
\(^{111}\) Trial Transcript, Procedural Hearing (29 November 2005), 46714-46715. Also see: Decision In Relation To Severance, Extension of Time and Rest (12 December 2005).
needed to present the rest of his Kosovo defence and start and finish the defence for both the Croatia and Bosnia indictments.

On the basis of the way this trial developed, one could conclude that a defendant who is not physically fit enough to conduct their own defence on a daily basis, as professional attorneys must do, should not be given the option of self-representation. Instead, a defence lawyer should be imposed by the court on any such accused who declines to engage counsel, from the outset of proceedings. For Milošević – whose absences due to ill health were a permanent threat to the trial and to his own ability to defend himself – counsel should have been imposed much earlier, for his own sake and for the sake of justice. The judges, acting out of concern for the Accused personally and in order to uphold (or be seen to be upholding) judicial standards of fairness, may have inadvertently deprived victims of the justice they so needed and deserved.
We waste a lot of time waiting for spectacular new material...
We haven’t sat down and taken a very close look at the material we have.

Bettina Stagneth, author of Eichmann Before Jerusalem, interview, New York Times, October 2014

Chapter I: Theoretical Framework, Scope of the Research, and Sources

Why were expectations so high for the Milošević trial? Why was disappointment about its premature end so widespread? What did victims and the public hope for from the judgement or the verdict? Did they wish to see Milošević found guilty and sentenced to a long prison term? Would the text of a judgement have provided answers as to why mass atrocities had occurred, and at the instigation of whom? And most importantly, can the record of his unfinished trial meet any of those expectations?112

Some of these answers can be found in transitional justice literature on mass atrocities trials; trials which, *inter alia*, are meant to adjudicate individual responsibility and establish the truth about controversial events from the past.113 International criminal trials represent one way of addressing the commission of crimes by past regimes, and they have been reintroduced as a transitional justice mechanism since the 1990s. But debate about the purpose of trials that deal with mass atrocities extends back to the Nuremberg and Tokyo Tribunals and is dominated by two opposing views – one, that mass atrocities trials should fulfil the legal purpose of delivering justice and meting out punishment, and another that stresses the importance of the extralegal objectives of mass atrocities trials in establishing truth and documenting history.114

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Scholar Ruti Teitel connects transitional justice with five conceptions of justice: criminal justice, historical justice, reparatory justice, administrative justice, and constitutional justice.\textsuperscript{115} Teitel characterises transitions as times following a regime change in which ‘successor trials’ are commonly used as a primary means of establishing a measure of historical justice. She argues that the pursuit of historical truth is embedded in a framework of accountability and in the pursuit of justice, to which criminal trials contribute.\textsuperscript{116} In defining historical justice, Teitel applies the Enlightenment view, in which history is considered teacher and judge and historical truth is equated with justice.\textsuperscript{117} Yet the assumption that ‘truth’ and ‘history’ are one and the same is not universally accepted. Teitel cautions that when history takes its “interpretative turn” there is no single, clear, and determinate understanding or lesson to draw from the past. Instead, one must recognise the degree to which historical understanding depends on political and social contingencies.\textsuperscript{118}

Lawrence Douglas qualifies all Holocaust trials as “orchestrations designed to show the world the facts of astonishing crime, but also to demonstrate the power of law to reintroduce order into the space evacuated of legal and moral sense.”\textsuperscript{119} He has introduced the term ‘didactic legality’ and argues that the trials of the Holocaust blurred the very boundary between the legal and extralegal.\textsuperscript{120} Douglas finds that insisting on the legal aspect of trials is a “needlessly restrictive vision of the trial as legal form.”\textsuperscript{121} While recognising that the primary responsibility of a criminal trial is to resolve questions of guilt in a procedurally fair manner, Douglas advocates integration of the legal and extralegal purposes of mass atrocities trials.\textsuperscript{122}

Other proponents of recognising the extralegal value of mass atrocities trials stress that criminal trials must be conducted with a pedagogical purpose in mind. Mark Osiel asserts that, in times of democratic transition, the need for a public reckoning with the question of how horrific events of recent history could have happened is more important for democratisation than criminal law’s

\textsuperscript{115} Teitel, \textit{Transitional Justice}, 70.
\textsuperscript{116} Ibid., 73.
\textsuperscript{117} Ibid.
\textsuperscript{118} Ibid.
\textsuperscript{119} Douglas, \textit{The Memory of Judgment}, 3.
\textsuperscript{120} Ibid.
\textsuperscript{121} Ibid., 2.
\textsuperscript{122} Ibid., 3.
more traditional objectives. In his opinion, effective mass atrocities trials stimulate public discussion in ways that foster toleration, moderation, and civil respect.\textsuperscript{123} Leora Bilsky warns against compartmentalising the discussion into the legal versus the historical, though. In her view, this polarisation distracts from the fact that \textit{transformative} trials – a term she introduced – should “fulfil an essential function in a democratic society by exposing the hegemonic narrative of identity to critical consideration.”\textsuperscript{124} In other words, the legal and the historical do not compete with, but rather complement, each other.

A study by Jelena Subotić, aptly entitled \textit{Hijacked Justice}, examines the fact that elites may not be motivated to agree to transitional justice mechanisms because they wish to deal with the past. Instead, they may use transitional justice for purposes other than achieving justice and establishing truth. Subotić identified three political aims of state-level elites in Serbia that inspired them to meet the state’s obligation to cooperate with the ICTY: to get rid of domestic political opponents, to obtain international financial aid, and to gain admission to the European Union. Ignoring the true purpose of the ICTY as an institutionalised legal response to mass atrocities, political elites in Serbia contributed to its politicisation, undermining the primary objectives of transitional justice processes to render justice and ascertain the truth. Subotić argues that ‘hijacking justice’ in this way can backfire because it can “foster domestic backlash, deepen political instability, or create politicised versions of history.”\textsuperscript{125}

\textbf{The Courtroom Narrative: “Two Truths” about the Conflict}

Any mass atrocities trial record inevitably reflects complex historical interpretations of the period with which it deals. Each side in any conflict will have its own theory of how the conflict turned violent and who started it; and there is no mechanism to indicate which of the two competing narratives produced in a courtroom will prevail outside of it. The nature of the legal system applied at international criminal courts is such that the Prosecution and Defence are likely to present competing narratives, or two truths, about a conflict.\textsuperscript{126} Depending on how many

\begin{itemize}
  \item \textsuperscript{123} Osiel, \textit{Mass Atrocities}, 2.
  \item \textsuperscript{124} Bilsky, \textit{Transformative Justice}, 7.
  \item \textsuperscript{126} As noted in the Introduction, international law has also incorporated elements of the inquisitorial system to become a unique hybrid system.
\end{itemize}
persons are on trial, sometimes there are even more than two versions of events presented, and these narratives produced in the courtroom persist regardless of the trial judgement.\footnote{At Nuremberg, with twenty-two defendants, including Martin Bormann who was tried \textit{in absentia}, the accused often disagreed among themselves in describing what had happened in Nazi Germany and reacted quite differently to accounts of the persecution and murder of European Jews.” From: Marrus, “History and the Holocaust,” 229.}

Kirchheimer described the polarised narratives that can be introduced in the courtroom as a gamble. In some ways, he asserted, the risk of making every moment of traumatic history subject to criminal law is a “double wager” – not only might a defendant prevail, but even if a trial ends in conviction it may fail in its didactic aim. He called this an “irreducible risk” and the inevitable \textit{sine qua non} of a just trial.\footnote{Kirchheimer, \textit{Political Justice}, 324.} In the debate over the prevailing narrative of the Holocaust, for instance, Douglas acknowledges that the law succeeded at times but, at others, lost this wager. Nevertheless, he sees the Nuremberg and Eichmann trials as “powerful, imaginative, and socially necessary responses to extreme crimes.”\footnote{Douglas, \textit{The Memory of Judgment}, 5.}

Gerry Simpson offers an example of this legal double wager in the case of Klaus Barbie, who was put on trial and eventually convicted of crimes against humanity committed by Nazis in occupied France. His trial, held in 1987, turned quite unpredictably into a test for the entire French nation, causing cultural upheaval and unease. At times, France even appeared to be placed alongside Barbie as a co-defendant, accused of having collaborated with the Nazis during the occupation and of having carried out crimes against humanity in Algeria during the colonial struggle there.\footnote{Simpson, “Didactic and Dissident Histories,” 802-3.} With the focus of public attention shifted toward French crimes committed in Algeria, it seemed occasionally as if Barbie was no longer the defendant at all.\footnote{Ibid., 834.}

Milošević seemed to be very much aware of the double wager of such trials. In his Opening Statements,\footnote{In ICTY trials, both parties have the right to make an Opening Statement at the start of each part of the trial; thus, Milošević gave an Opening Statement in both February 2002, at the start of the Prosecution part of the trial, and again in August 2004, at the start of the Defence part of the trial.} he repeatedly addressed the responsibility of Germany, the Vatican, the European Community, and the United States as principal actors in the violent destruction of Yugoslavia:

\begin{quote}
By instrumentalising extremely complex events in the territory of Yugoslavia and by placing the responsibility on Yugoslavia and myself personally as aggressors, a
\end{quote}
very obvious tactic was used to close the circle and prevent logical thinking based on empirical principles. Senseless, vulgar theories about bad guys...cannot serve to explain historical facts and provide the historical responsibility for the destruction of a state. The joint criminal intent existed but it didn't proceed from Belgrade, however, nor did it exist in Belgrade at all. Quite the contrary! It existed through the joint forces of the secessionists, Germany and the Vatican, and also the rest of the countries of the European Community and the United States.\textsuperscript{133}

Milošević’s choice of Defence strategy, as puzzling as it might have seemed to the Prosecution and the outside world from time to time, reflected an effort to establish his own counternarrative of what happened during the war and why. But, besides Prosecution and Defence narratives, legal and historical narratives are also shaped during a trial. And, legal and historical narratives overlap, complement, and influence each other, with one distinguishing difference between the two: a historical narrative comprises material presented in and outside the courtroom, while a legal narrative is shaped in the courtroom alone.

\textit{History in the Courtroom}

Research on mass atrocities trials has attempted to determine, among other things, the extent that Prosecution and Defence courtroom narratives influence collective memory and history.\textsuperscript{134} In a trial, as in the writing of history, the judge, like the historian, aspires to produce a coherent narrative – one that explains and interprets as well as records.\textsuperscript{135} Although historians and legal scholars who have addressed the relationship between the legal and extralegal value of mass atrocities trials see no immediate contradiction between a trial’s legal objectives and its extralegal effects, they do emphasise that legal judgements and proceedings should never be looked to for definitive historical interpretations of the events concerned. Historian Charles Maier asserts that “doing justice” and “doing history” are related activities, as a historian endeavours to “do justice” by articulating the aspirations of protagonists and exploring their

\textsuperscript{133} Trial Transcript, Defence Opening Statement (31 August 2004), 32173-32174.
\textsuperscript{135} Maier, “Doing History, Doing Justice,” 271.
choices. Michael Marrus, who studies the interplay between history and law, sees the records produced at mass atrocities trials as historical sources like any others. He underscores the fact that historians must evaluate every source with an eye to its provenance, since all sources are in some sense “tainted” and war crimes trial records are certainly no exception. The material used in a court is limited by legal standards and procedural rules that exclude some sources commonly depended upon by historians and which would be considered essential for shaping historical opinion. For example, although hearsay is allowed at the ICTY under certain circumstances, other materials used by historians – such as reports about the political atmosphere or general statements made by reliable commentators about the tone set by leaders – may not be allowed as evidence in the courtroom.

Ruti Teitel argues that it is impossible to fix the past, which she says would “be a futile attempt to stop the state’s historical accounting, to exhaust its politics and its potential for progress.” She stresses that any legal response to mass atrocities produces transitional narratives and leaves behind, explicitly or implicitly, a historical account. This means that a judgement, though the final stage in legal proceedings that are fixed in time, does not represent a definitive historical interpretation of the events judged. Yet, there will always be history in a judgement. According to Richard Wilson, a human rights scholar, the judgements in two ICTY cases he has analysed “are characterised by detailed contextualisation of criminal acts and extensive historical interpretation.” He also contends that charges such as genocide, which emphasise the collective nature of the crime, compel the court “to situate individual acts within long-term, systematic policies.”

The Milošević trial illustrates that it is desirable, even essential, for the courtroom to be a place where there is an understanding of history, for at least two reasons. First, historical context is necessary in establishing and proving the guilty mind – mens rea in legal terminology – of an

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136 Ibid., 270.
137 Marrus, “History and the Holocaust,” 228.
138 Teitel, Transitional Justice, 117.
139 Ibid.
142 Ibid.
accused person and of fellow high-level officials involved in articulating and executing a political plan that eventually led to the commission of crimes. Since a criminal plan often derives from ideological concepts conceived in the past, a proper understanding of such an ideology applied contemporaneously is best achieved, or perhaps can only be achieved, when placed in a broader historical context. Second, historical context is necessary in the courtroom because it allows judges to comprehend the political dynamics that led to the occurrence of mass atrocities. In the Milošević case, a knowledge of historical political events was required if the judges were to grasp how political elites in Yugoslavia had articulated Serbian state ideology and when Milošević had embraced it as a platform for political and military action.

Awareness of these complicated and contextual dynamics on the part of judges helps deflect attempts by defendants to reframe history in support of their own narrative. Milošević claimed throughout his trial, for instance, that the international community had conspired against him. “Accusations levelled against me are an unscrupulous lie,” he said in his August 2004 Opening Statement, arguing that Yugoslavia had in fact been destroyed by outside forces “through a war which continues to be waged.” He said the international public had been offered a “distorted picture” and asserted that “everything has been presented in a lopsided manner...in order to protect from responsibility those who are truly responsible and to draw the wrong conclusions about what happened.”

The Trial Record

Materials selected as evidence by the Prosecution and Defence in the Milošević case now constitute an unmatched historical source; and even with some gaps in the trial record, it incorporates documents from state archives that would have otherwise been unavailable to the public and to researchers for many decades. Indeed, some of the trial material would never have surfaced at all were it not for the obligation of states to cooperate with the ICTY, or more precisely, to provide the OTP and the Defence with materials upon request. Still, there remains trial material that is officially available and yet inaccessible to the public; and the (in)accessibility of ICTY records to the public is an important issue. The ICTY Court Record (ICR), an electronically accessible database, is sometimes more of a challenge than an aid to

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143 Trial Transcript, Defence Opening Statement (31 August 2004), 32158.
researchers because it comprises only a selection of materials, not the full record of every trial, and remains incomplete for a number of technical and other reasons.\textsuperscript{144}

Particular attention was paid in this research to pieces of evidence that triggered important debate after being presented in court, compelling former Yugoslav societies to face the past and deal with uncomfortable truths. Among these materials were records from meetings which revealed Milošević’s state of mind before, during, and after the armed conflicts. Investigation into Milošević’s political and criminal behaviour had initially found that Milošević preferred one-on-one meetings and had suggested that these meetings, both domestic and international, were not officially recorded and archived as prescribed by domestic laws and regulations. Milošević was said to have been regularly accompanied by Goran Milinović, his Chef de Cabinet, who supposedly made notes.\textsuperscript{145} But in 2001, the Prosecution discovered that there were indeed records of these meetings; and that the most interesting – and arguably most valuable – material was located in the state archives of the FRY and Serbia.

What makes the Milošević trial record especially interesting as a source of history is the fact that it includes responses by Milošević himself to every piece of evidence brought against him. Milošević not only represented himself in court, and therefore responded in that capacity to the evidence presented, but also made remarks throughout the trial from the standpoint of a man attempting to defend his political and private decisions. The two competing narratives in his trial – those of the Prosecution and of Milošević himself, as the Defence – are traced in this study through the oral and written argumentation in which both parties asserted their positions, by presenting evidence and questioning witnesses in court, and in indictments, briefs, opening statements, and various motions. Some of these sources have evidentiary value and some do not. An example of a document that is informative but is not evidentiary is a pre-trial brief, filed by the Prosecution after an indictment has been confirmed.\textsuperscript{146} While an indictment is a reasonably short document, a pre-trial brief lays out the Prosecution case to the Court and to the Defence. It

\textsuperscript{144} There are more than 190,000 public records on the ICTY website as of mid-2014, and it is updated daily. These records range from arrest warrants, to motions and trial evidence, to final appeal judgements.

\textsuperscript{145} For examples, see: Testimony of General Wesley Clark (15 December 2003), 30386; Testimony of Zoran Lilić (17 June 2003), 22625; Testimony of Hrvoje Šarinić (21 January 2004), 31263 and 31265; and Testimony of Milan Babić (26 November 2002), 13504. The Prosecution never acquired the notes made by Milinović.

\textsuperscript{146} In the Milošević case, The Prosecution filed two Pre-Trial Briefs: one for the Kosovo indictment (26 November 2001) and one for Croatian and BiH indictments (31 May 2002).
makes explicit the legal theories, witnesses, and evidence that the Prosecution plans to use to prove its case. Although a pre-trial brief contains references to concrete documentary evidence and witness testimonies, on the basis of which an indictment is formulated, none of these references can be considered in a final judgement if the documents or witness accounts in question are not discussed in court and tendered into evidence. The Defence might also file its own pre-trial brief, in response to the charges in the indictment and the Prosecution’s pre-trial brief. These documents can be used for historical research on a number of topics, even if they are not considered evidentiary.

A trial usually begins with an Opening Statement, delivered by the Prosecution, which has no forensic value and also cannot be included in a judgement. A Closing Argument is different, though; it may draw heavily on opening statements and pre-trial briefs and may repeat the theory of the case by citing the same documents and referring to the same witnesses, but this time under the condition that they were introduced as evidence in the courtroom. The test for the introduction of evidence in court is bound by a strict forensic process, which consists of presentation of evidence by one trial party, followed by cross-examination by the opposing party, and eventually the right of re-direct by the first party. The product of this process – forensic truth – is different from historical truth in several ways. For one, a historian is not bound by the same forensic process in order to include a source in a historical account and instead seeks corroboration in other available sources, of a greater variety than are admissible in a courtroom, and through this analysis develops a historical interpretation of an event. And, over the course of time, this interpretation might be altered by other historians, which is another way in which historical and legal narratives about the same topic may differ considerably; as the latter is captured in closing arguments and judgements, which are formed in the normative legal framework and in rigid court procedures, and remain fixed in time.

At the ICTY, a discrepancy between the public perception of responsibility for mass atrocities and the legal requirements for proof of the crimes alleged against an individual such as Milošević have often led to the accrual of a great deal of evidence in order to prove ‘the obvious’ in a court bound by strict legal rules and procedures.147 For every general allegation against

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147 Louise Arbour, former ICTY Chief Prosecutor, said that “general knowledge” was the ICTY’s worst enemy: “I am told all the time, ‘Why didn’t you indict this man or that man? Everybody knows he is guilty.’ It is long way
Milošević, probative evidence was needed to establish that the crime actually happened and that Milošević was criminally responsible for it. The large amount of evidence presented by the parties during the trial was also partially due to the changing world in which we live. Modern technology made the wars in the former Yugoslavia into media spectacles, watched daily on the television and captured on the Internet. Minute details of the conflicts became available and accessible to the public in nearly all the world’s languages; and material from these ‘open sources,’ potentially relevant as evidence, was almost unlimited.\footnote{from what everybody ostensibly knows to an indictment for crimes listed in the Statute of the Tribunal that will withstand the test before the court. When the accused are not famous personalities nobody asks us, ‘Why haven’t you indicted them?’” As quoted in: “Why Did Prosecution Fail to Prove What ‘Everybody Knows’,” \textit{Sense Tribunal}, 7 April 2008.}{148}

\textit{History Outside the Courtroom}

Notwithstanding the huge amount of audio, video, and written material that exists about the conflicts and about the role of Slobodan Milošević in them, ICTY Prosecutors – unlike their Nuremberg counterparts – did not have full or easy access to documentary material from the archives of the former leader’s country.\footnote{‘Open Sources’ is the term used at the ICTY to denote media and other publicly accessible information such as scholarly research.}{149} Documents from the official archives of the FRY and the Republic of Serbia, considered more important from a forensic point of view than open source materials, were difficult and sometimes impossible to obtain.\footnote{See the sections titled “State Cooperation” or “Cooperation” in the Annual Reports submitted by the ICTY President to the UN Security Council from 2000 to 2006. Available at: http://www.icty.org/tabs/14/1.}{150} This was in stark contrast to the experience of prosecutors in Nuremberg, for which Allied Powers had simply seized the state and Nazi Party archives of defeated Germany for use as evidence in court. Nonetheless, evidence that did come directly to the ICTY from state archives in Serbia, the FRY, the RS, and the RSK makes the Milošević trial record particularly valuable, as it includes state documents that would otherwise have remained protected for decades or even longer. Once used in court as evidence, most of these documents became public.

The Milošević trial record comprises transcripts, material tendered as evidence, motions on administrative and procedural matters, and decisions and judgements of the Trial Chamber and
Appeals Chamber. The record – the main source for this research – is so large that it is too substantial to be analysed in a single academic study, and it is not examined in full here. Still, missing source materials that were requested but never produced represent a gap; meaning that the trial record, while vast, is not exhaustive. And so, despite its size, the trial record alone was insufficient for the task of this research, and sources from outside the trial proceedings – known as extratrial material – were also analysed.

Extratrial material originating from the ICTY and OTP includes investigative and analytical documentation, such as reports by in-house investigators, researchers, and analysts on the Milošević trial team, which were not used per se in court proceedings. ICTY internal policy documents on topics such as indictment strategies or how to conduct the trial also fall under the designation of extratrial material. In other words, a considerable amount of extratrial material was used for the court’s investigative and research purposes without becoming a part of the official trial record. The ICTY database contains diverse materials collected by the OTP, from demographic data on the former Yugoslavia to media reports that may have been used in preparation for cross-examination of Defence witnesses to seemingly endless supporting evidence and courtroom exhibits.\(^\text{151}\) Access to some of these materials remains limited to OTP employees until, or unless, they are made publicly available, which will depend on the conclusions of the Mechanism for International Criminal Tribunals (MICT).

Scholarly Debate on the Causes and Consequences of the Disintegration of Yugoslavia

This study incorporates extratrial material such as academic analyses and media reports, as well as numerous studies written by scholars, journalists, former diplomats, and Milošević’s own contemporaries – who all ascribed to him the lion’s share of responsibility for the disintegration of the SFRY and the wars that followed.\(^\text{152}\) The scholarly debate on the causes of Yugoslavia’s

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\(^{151}\) The OTP’s database included 8.5 million items (each item representing one page of documentation) by mid-2011.

dissolution offers useful insight into the complex socio-political climate in which it occurred. To that end, Jasna Dragović-Soso has identified five categories of causation, focusing on: first, “ancient hatreds” and a “clash of civilisations;” second, the nineteenth century rise of South Slav nationalist ideologies and the first Yugoslav state-building experiment; third, the Yugoslav socialist system, with its complicated federal structure, ideological delegitimation, and economic failures; fourth, Yugoslavia’s breakdown in the second half of the 1980s and the actions of “political and intellectual agency;” and fifth, external factors.

The narrative that developed over the course of the trial tracked Milošević’s political motivations, objectives, and intentions and the trial record provides a unique chance for historians to revisit existing disputes and controversies about historical details, the legality of particular political decisions and actions, and the real nature of policies implemented by leaders at both the republic and federal levels. Many politicians who were in power at the outbreak of violence in fact testified as Prosecution or Defence witnesses. Their testimonies were further enriched by Milošević’s courtroom performance – his comments, protestation, denials, and even his body language regularly gave away more than he would have revealed had he not represented himself.

The part Milošević played in events of the 1980s and 1990s has also been explored in a number of political biographies and is an important sub-topic of analysis. However, the most well-known of these biographies, written in both English and Serbian, were published before his trial or in the University Press, 1997); Susan L. Woodward, Balkan Tragedy: Chaos and Dissolution after the Cold War (Washington, DC: Brookings Institution, 1995).


155 For example, witnesses for the Prosecution included: Milan Babić, Croatian Serb leader and first Prime Minister of the Republika Srpska Krajina (RSK); Borisav Jović, the Serb representative in the PSFRY and its one-time President; Milan Kučan, the President of Slovenia from 1991 to 2002; Zoran Lilić, the President of Federal Republic of Yugoslavia (FRY) from 1993 to 1997; Ante Marković, the last Prime Minister of the SFRY; Stipe Mesić, Croatian representative in the PSFRY and its last President; and Hrvoje Šarinić, the Chef of Cabinet of President Franjo Tuđman. For the Defence, witness included: Branko Kostić, the Montenegrin representative in the PSFRY and the President of the Rump Presidency from October 1991 to April 1992; and Vladislav Jovanović, the Minister of Foreign Affairs of Serbia and later the FRY, from 1991 to 1995.

156 Calling Vojislav Šešelj as a witness backfired, for instance. See Dobroslav Ognjanović’s statement in Milošević on Trial, Team Productions, 2007.
same year that it started. This means that few authors have presented the trail of evidence that was followed in the courtroom to establish responsibility for the break-up of Yugoslavia and, more importantly, the violence that followed.

A majority of authors agree that Milošević played a central role in events that unfolded in the former SFRY between 1987 and 1999. For the purposes of this study, three categories of interpretations of Milošević’s role in the disintegration of Yugoslavia have been identified: intentionalist, relativist, and apologist. ‘Intentionalists’ see Milošević as having dictated the pace of the Yugoslav crisis through well-articulated and planned objectives that drove the other republics away. According to this view, violence was used cynically and practically with a clear purpose. The intentionalist perspective is that violence against non-Serbs was the result of a pre-mediated strategy – the success of which is irrelevant – to secure Milošević’s promise of “All Serbs in a Single State” at any cost. Alternative to this are authors who tend to see Milošević as an intelligent and ruthless politician but not a good tactician or strategist, whose politics were mostly reactive. These ‘relativists’ see Milošević’s policies as responses to developments that were driven by leaders of Slovenia, Croatia, BiH, and Kosovo, and by the international community. From this standpoint, Milošević genuinely wanted to preserve Yugoslavia but did not succeed. Relativists perceive Milošević as an immensely ambitious politician who endeavoured to achieve more than he was capable of; and his rule has been cast by authors in this camp as a sequence of mistakes and failures – at the

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159 Sell, *Slobodan Milošević and the Destruction of Yugoslavia*, 4-5.


161 For example, see: Cohen, *Broken Bonds*, 130 and 265.

national and international levels.\textsuperscript{163} The violence that accompanied the disintegration of Yugoslavia is thus explained as resulting from a complicated interplay of many factors, leading to an escalation of the crisis that was beyond the control of Milošević alone.

‘Apologists’ share the opinion held by relativists regarding the role of the republics that sought independence and of the international community in the disintegration of Yugoslavia. Yet they not only see his goal to preserve Yugoslavia as well-intentioned but also defend his politics and decision-making in general.\textsuperscript{164} They downplay Milošević’s calculating and ruthless side to recast him as a somewhat clumsy, wayward, and inconsistent authoritarian leader who merely failed to deliver on promises he made.\textsuperscript{165}

In fact, apologists frame Milošević as an atypical authoritarian ruler who could have secured his power by force but was willing, instead, to compromise his initial goals.\textsuperscript{166} Apologists also dismiss arguments about the influence of Greater Serbia ideology on Milošević or on Serbia’s involvement in the ethnic cleansing in Croatia, BiH, or Kosovo. They stress that it was NATO that committed grave crimes in Serbia and Kosovo, for which nobody has been held accountable. And, as to Milošević’s domestic criminality, some apologists say that there has been no definitive proof of his personal involvement in assassinations that took place during his rule; and some go further in their absolution of him, arguing that even if he did play a role in these murders, there were “not many such examples.”\textsuperscript{167} Apologists see Milošević as having been a true statesman who resisted foreign pressure.\textsuperscript{168}

\textsuperscript{163} Jović, Jugoslavija: država koja je odumrla, 491-492; Woodward, Balkan Tragedy, 80 and 94.
\textsuperscript{166} Ibid., 478-479.
\textsuperscript{167} Ibid., 479.
\textsuperscript{168} Ibid.
So, did Milošević genuinely try to save Yugoslavia? Did he, together with others, inadvertently cause its disintegration through a series of well-intended blunders? Or, did he actively work to re-draw its borders? One event that has in particular sparked contesting interpretations about Milošević’s attitude toward the break-up of Yugoslavia is the 1991 meeting in Karadordevo at which Milošević and Croatian President Franjo Tudman allegedly discussed the partition of BiH between Serbia and Croatia. Scholars have described this meeting as significant for many different, and sometimes contradictory, reasons.

Both Milošević and Tuđman had managed for years to avoid responding to rumours about what may have passed at the Karadordevo meeting; but at the trial, it was addressed in detail by several witnesses with firsthand knowledge of the event. For Milošević, the idea that he had even contemplated the partition of BiH undermined his proclaimed position as the champion of Yugoslav unity. And so, Milošević denied that he and Tuđman had ever discussed the partition of BiH, at Karadordevo or elsewhere. This denial was significant; for, why disavow facts testified to by reliable witnesses except to distance himself from what such a plan or agreement would have revealed about his state of mind? As he claimed to be fighting for the preservation of Yugoslavia, had his deeds in Karadordevo – hidden at the time from the public – reflected the covert objectives he truly wished to achieve?

This highlights a larger problem for historians: historical source material on Milošević, including evidence given in court, exposes a discrepancy between his overt and covert agendas, from his first to last days in power. Take, for instance, the debate about the role of the SANU Memorandum, a document co-authored by several prominent members of the Serbian Academy of Sciences and Arts in 1986. Indeed, it is hard to find any literature on the Yugoslav crisis that does not make note of connections between the SANU Memorandum and the political programme introduced by Milošević, but there are various perspectives on the nature of these connections. One view is that the Memorandum served as the “blueprint” for Milošević’s war

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169 See: Jović, Knjiga o Miloševiću, 52-56 and 59-61. Jović described Milošević as an able politician who was a true democrat at the beginning of his political career, but who nevertheless made several significant tactical mistakes – notably his contribution to the dissolution of the League of Communists of Yugoslavia in January 1990, which sped up the disintegration. Milošević postponed multi-party elections in Serbia long as he possibly could, miscalculating the disadvantage this would create for Serbia in relation to the other republics.

170 For example, see: James Gow, The Serbian Project and its Adversaries: A Strategy of War Crimes (London: Hurst, 2003).
policies.\footnote{\textit{For example, see: Sell, \textit{Slobodan Milošević and the Destruction of Yugoslavia}, 46; Dragović-Soso, “Why did Yugoslavia Disintegrate?”} 14.} Another is that it more generally advocated “a reformed federation.”\footnote{Dragović-Soso, “Why did Yugoslavia Disintegrate?” 14.} And alternative to both of these is the view that the Memorandum can be seen as an “explicit post-Yugoslav Serbian national program.”\footnote{Ibid., 19.} 

Dragović-Soso argues that the Memorandum did not advocate the dissolution of Yugoslavia, the creation of a Greater Serbia, or ethnic cleansing, and that no connection has been established between the authors of the Memorandum and Milošević. According to Dragović-Soso, at the time of the Memorandum’s publication, Milošević’s views were no different from other Serbian communist leaders.\footnote{Ibid.} Nonetheless, some witnesses talked about the importance of the SANU Memorandum in court, and the polarised narratives that unfolded followed the fault lines of pre-existing scholarly debate. And once again, this narrative was significantly shaped by Milošević’s active participation in court, discussing his position on the SANU Memorandum with several of its authors who appeared as Defence witnesses.\footnote{This will be explored in Chapters III and IV.}

Questions about Milošević’s role in the collapse of the SFRY are most relevant where they concern how it became violent. When, why, and by whom was violence unleashed? And for what purpose? In scholarly literature, the outbreak of violence has often been ascribed to Greater Serbia ideology and efforts to create a Serb state. Some authors hold that Milošević’s plans corresponded with the historical goals of Greater Serbia ideologues but that his political choices actually had no basis “in any particular scheme.”\footnote{Cohen, \textit{Serpent in the Bosom}, 142.} And despite the wealth of evidence on the role he played in the dissolution of Yugoslavia – including from the ICTY – no official document, intercept, or meeting transcript can “incontrovertibly implicate Milošević in a coherent, premeditated strategy of breaking up Yugoslavia in order to create a Greater Serbia.”\footnote{Dragović-Soso, “Why did Yugoslavia Disintegrate?...” 16. For discussion, also see: Eric Gordy, “Destruction of the Yugoslav Federation: Policy of Confluence of Tactics,” in Cohen and Dragovic-Soso, \textit{State Collapse in South-Eastern Europe}, 281-301, 292.} But then, in the history of mass atrocities trials, rarely has there been a single “smoking gun” document clearly ordering a war crime and signed by an indicted former leader. Historians who
study the regimes of Stalin or Hitler know this all too well.\textsuperscript{178} These historians have thus, by necessity, based their interpretations mostly on circumstantial evidence; but that has not diminished the responsibility of both leaders for the mass atrocities carried out under their rule.

Greater Serbia ideology needs to be seen first as a piece of a complex jigsaw puzzle of nineteenth century South Slav nationalist movements. Although it originated in the mid-1800s, Greater Serbia ideology has been closely connected with the formation of a Serb state ever since, and it has been a potent political force for generations of Serb politicians. Yet some historians claim that Serbs abandoned the idea of a Greater Serbia when they accepted the creation of the first Yugoslav state in 1918. They argue that Serbia’s genuine dedication to the idea of a common state was proven by rejection of the London Treaty in 1915, a treaty which – if it had been accepted – would have created an internationally-brokered Greater Serbia.\textsuperscript{179} Other historians disagree. They do not see any contradiction between Greater Serbia designs and the creation of a common state. According to Ivo Banac, when Serb elites accepted a common Yugoslav state in 1918, they envisaged it as a centralised and Serb-dominated state and they were not prepared to treat other nations that entered the union with them – Croats or Slovenes – as equals.\textsuperscript{180}

From this viewpoint, Serbian leaders made little sacrifice at all by rejecting the London Treaty, since they achieved the same practical result. Serbian historian Latinka Perović offers useful context for the apparent contradiction between Greater Serbia designs and Serbia’s role in the creation of a common Yugoslav state, explaining that two paths to a Greater Serbia have been recognised since the 19th century. The first, a state of South Slav peoples less the Bulgarians, was only acceptable to Serbia if it was centralised and dominated by Serbs. If such a centralised Yugoslavia was not possible, the second option was a Serb state including Serbia proper and

\textsuperscript{178} For example, on Hitler, see: Ian Kershaw, \textit{Hitler: Profiles in Power} (New York: Routledge, 2013). Kershaw argues that a vague doctrine, open-ended decrees, and a complex system of bureaucracy within the Third Reich helped obscure Hitler’s direct responsibility for the Holocaust. And, on Stalin, see: Johnathan Brent, \textit{Inside the Stalin Archives: Discovering the New Russia} (New York: Atlas & Co., 2008). Brent writes that even when evidentiary documents emerge about historical events, it is often “only researchers with encyclopedic knowledge of their subject” who can glean meaning from them because there are “no smoking guns as such, documents that could stand alone and tell the ‘whole’ story.” However, he says, there may be “many guns with the smell of smoke in their barrels” (page 92).

\textsuperscript{179} Dragović-Soso, “Why did Yugoslavia Disintegrate?...,” 7.

\textsuperscript{180} Ibid., 6.
Serb-claimed territories in Croatia and in Bosnia-Herzegovina. Still, alongside the fact that Serbian leaders turned down the London Treaty and accepted the first Yugoslavia, some Serbian historians argue that the creation of the Second Yugoslavia in 1945 further demonstrated the genuinely integrative nature of Serbian policy. Others point out that Serbs were yet again only prepared to accept a centralised state, and cite as proof their rejection in 1974 of a confederated model for Yugoslavia. Not altogether surprisingly, all these topics were revisited during the trial.

Another recurring topic was the role of Milošević’s personality. Biographies that offer an overview of Milošević’s early years often note that his life was marked by the three tragic deaths – all suicides – of his father Svetozar in 1962, his maternal uncle Milisav Koljenšić in 1963, and his mother in 1974. However, no author has managed to establish any clear link between these losses and Milošević’s development into the particular person and politician he became. And such loss cannot solely account for the lack of empathy that ultimately characterised Milošević. Nor can another prominent influence that was critical throughout Milošević’s life and is discussed in almost every biography written about him – the close, almost pathological, relationship he had with his wife Mira. He began courting her when both were still in high school and the relationship remained strong until his death.

Milošević’s relationship with his one-time political mentor and friend Ivan Stambolić also turned out to be significant, and the path it took was a reflection of the seeming incongruity of his personality. After being ushered into politics by Stambolić in 1984, Milošević turned against him in 1987 in a calculated series of political manoeuvres, and in 2000, ordered his assassination. Seeking to identify the personal pathology that might adequately describe, and perhaps even explain, Milošević’s alleged ruthlessness and lack of empathy, biographers have assigned him titles such as “Tyrant” and “Cold Narcissus,” the “Despot from Požarevac,” “Sociopath,”

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181 Latinka Perović, interview (11 August 2004). Perović was approached by the OTP as a potential rebuttal witness regarding topics brought up by Defence expert witnesses Ćedomir Popov, Kosta Mihailović, and Slavenko Terzić.
183 Ibid.
185 Ibid., 11.
and the “Butcher from the Balkans.” These unflattering names suggest that he was “different” from the rest of us and they lead readers to leap to conclusions about Milošević being the singular driving force behind all that went wrong in the former Yugoslavia. But how different was he? He has been described as intelligent, charming, engaging, and attentive on one hand, and deceitful, manipulative, and forbidding on the other. But duplicity and indifference do not alone make a tyrant. How did the trial contribute – if at all - to a better understanding of a man and a politician?

The Transformative Value of the Evidence

The opinion of some historians is that existing interpretations of the disintegration of Yugoslavia are based chiefly on “contradictory and hardly impartial evidence” such as witness accounts, personal memoirs, and Milošević’s own public statements. This view is sometimes supported by the assertion that Milošević was “extremely secretive, leaving very little documentary trace,” and that his strategic decisions were made in the seclusion of his home, where only his wife and a small group of advisors were party to his thoughts. Even among historians who take this position, there is some recognition of the need to explore new material that has emerged from the ICTY and government archives. And, for good reason, because research of the trial record reveals a different picture – that Milošević did at times leave traces, and that audio and video records in some cases irrefutably establish the veracity of certain events or claims.

Documents tendered by the Prosecution and pertaining to Milošević’s state of mind before, during, and after the wars in Croatia, BiH, and Kosovo – which were analysed for this research – are thus important to the developing historiography of the conflict. During the early years of war, in the period relevant to the Croatia indictment, telephone intercepts, records of meetings of the Presidency of the SFRY (PSFRY), and a video known as the Kula Camp Video illustrate the evolution of Milošević’s state of mind. For the period covered by the Bosnia indictment, this evidence again includes telephone intercepts, but also records from two FRY state organs, the Council for Harmonization of Positions on State Policy and the Supreme Defence Council.

189 Stambolić, Put u bespuća.
191 Ibid., 27
(SDC). For years covered by the Kosovo indictment, documents from an ad hoc body known as the Joint Command were of great value, but the key piece of evidence shown at the trial was undoubtedly a video that featured a Serbian-based paramilitary group, the Scorpions, executing civilians taken from Srebrenica in the summer of 1995. The Scorpions were re-deployed by the Serbian Ministry of Internal Affairs (Ministarstvo Unutrašnjih Poslova, or MUP) in 1999, when they again committed crimes against civilians. Although footage from the Scorpions Video was shown during the cross-examination of a Defence witness, the video was never tendered into evidence. Yet, what transpired in the courtroom was the cause of an unprecedented uproar in the world and in the region.

It will be argued in this text that evidence with transformative value has an impact on public opinion and on political processes, and contributes to shaping narratives about a conflict. In some cases, the transformative value of trial evidence may also be reflected in the efforts of postconflict elites to control or contain the damage that exposure of incriminatory evidence in the courtroom might cause for alleged perpetrators. In the Milošević trial, early obstruction by Belgrade authorities regarding requests for certain materials added weight to the power of that evidence once it was later acquired and presented in court. And, several pieces of evidence had significant and undeniable impact on Serbian and post-Yugoslav society by laying bare the reality of wartime crimes and the degree to which state actors and institutions were linked to criminal activities. The evidence selected for examination in this study has been analysed – at least in part – according to its effect on public debate outside the courtroom and its role in:

- contributing to the existing scholarly discussion on the causes and consequences of the disintegration of Yugoslavia;
- exposing the *de facto* and *de jure* power of Milošević and the elites around him;
- exposing how Milošević and his associates plotted together to establish and re-draw Serbia’s borders by force;
- exposing efforts by members of the Milošević regime to cover up their real intentions;
- exposing the extent of Milošević’s criminality – after the wars in Croatia, BiH, and Kosovo – in the assassinations of his political opponents in Serbia;
- exposing the reluctance of post-Milošević political elites in Serbia to accept or assign responsibility for mass atrocities committed by the Milošević regime;
• triggering public revelations of crimes committed by Serb armed forces in the 1990s;
• generating public discussion about the obligation of states to cooperate or not with international courts, and the need for transparency in court proceedings, in cases where trial evidence and other documents from state archives have been protected from public view on national security grounds.

What the Trial Record Tells Us about the Leader, the Ideology, and the Plan

Who? The Leader

The personal and political development of Milošević as a leader whose politics led to mass atrocities can be fully appreciated only when analysed together with concurrent political, ideological, and historical processes. An analysis of several African leaders and the commission of mass atrocities in Africa suggests, though, that the ‘evilness’ of a leader is a concept more easily understood than the historical and political processes that actually make the emergence of such a leader possible.\textsuperscript{192} And mass atrocities are indeed most likely to be unleashed by authoritarian political regimes, which by their nature rely on leadership that may be “instrumentally effective, even if morally repugnant.”\textsuperscript{193} Thus, legal and historical discourse that emerges from trials that deal with individual criminal responsibility must be careful to not neglect collective or state responsibility by overemphasising the criminality of an “evil leader.”\textsuperscript{194}

At the turn of the 20th century, German sociologist Max Weber identified three types of authority: traditional, legal, and charismatic. Traditional authority rests on the understanding that traditional rules are to be respected and that subordinates accept the traditional right to power of a dominant and powerful individual or group. Weber classified ‘patrimonialism’ as a form of traditional authority that reflects the authority of fathers within families. Patrimonialism, applied more recently in the analysis of present-day regimes, is defined by Nathan Quimpo as “a type of

\begin{footnotes}
\item[192] Angelo Izama: “Kony is not the problem,” \textit{International Herald Tribune}, 21 March 2012. The author argues that: “While the evil methods of men like Kony are easily understood by millions, the politics so crucial to sustaining their brutal campaigns are harder to grasp.”
\item[193] Joseph Masciulli, Mikhail A. Molchanov and W. Andy Knight, eds., \textit{The Ashgate Research Companion to Political Leadership} (Surrey, UK: Ashgate, 2009), 10.
\item[194] Izama, “Kony is not the problem…”
\end{footnotes}
rule in which the ruler does not distinguish between personal and public patrimony and treats matters and resources of state as his personal affair.”

Legal authority, also known as rational authority, relies instead on enacted rules and laws. In modern societies, it is bureaucracies that largely exercise such authority. While traditional authority is seen to be pre-ordained by status and legal authority is pre-ordained by policy, charismatic authority rests on a “devotion to the exceptional sanctity, heroism, or exemplary character of an individual and of the normative patterns or order revealed or ordained by him.” Expanding on this concept of charismatic authority as set out by Weber, modern day authors describe how a charismatic leader projects onto his followers characteristics such as “self-security, a need to influence others, and a strong conviction in the moral integrity of his/her belief.”

Most theories of charismatic leadership emphasise the attribution of extraordinary supernatural or superhuman qualities to a leader by his or her followers. And so, layered atop these different types of authority, the concept of transformational leadership considers how a leader affects his or her followers. It focuses on how, when, and why followers develop trust, admiration, loyalty, and respect for a leader and it explores leadership in terms of the degree to which a leader holds influence over followers and the type of leader-follower relationship that emerges as a consequence of this interaction. Milošević understood the impact of his interaction with his followers very well, casting his political aspirations and choices as an expression of the will of Serb people everywhere and asserting that he was seen by officials at the ICTY as an agent of Serbs and Serbia. Referring to Prosecutor Geoffrey Nice, Milošević said:

198 Winkler, Contemporary Leadership Theories, 32-33.
200 Ibid., 286-287.
He has accused Serbia and all Serbs who supported me in Serbia and those Serbs who supported me outside Serbia, and all the people who support me in Serbia to this day. And then he is accusing the people, the nation.... And then he says that he is just accusing an individual, and that individual is myself. And he probably thinks that I am superhuman, having these superhuman powers of influencing people and responsibility and accountability outside the territory of my own country.\(^{201}\)

While this depiction by Milošević of his leadership may have been a gesture to long-term Serb nationalist loyalists, it also reflected his appreciation of the important legal question of to what extent political and criminal responsibility can be ascribed to one individual. International criminal trials do allow individuals to be held accountable for what may have been state violence committed through institutional state structures and state bureaucracies; but a focus on individual criminal responsibility in the investigation into and prosecution of alleged mass atrocities has a number of potential pitfalls. The first is that charging a single person with extensive crimes spread over years carries the risk of ‘over-prosecution’ or even of distorting the complex historical and political realities that led to the mass atrocities in question. In his Opening Statement before presentation of the Prosecution’s evidence for the Croatia and Bosnia indictments, Prosecutor Geoffrey Nice warned the Court to resist characterising Milošević as the sole architect of the plan and policies that led to mass atrocities:

> Before we move on through the events of these two indictments...a word of resistance to temptation: There may be a temptation to characterise this Accused simply as the sole architect, and that temptation may have to be resisted until the precise outlines of his role are etched by evidence, because plans can emerge without a single originator. Such plans can be joined, and there can be those who choose to lead such plans, once they join them, being criminally opportunistic and coming to be seen as, and indeed to be, central to the plan itself. And this may be a reality of this Accused’s personal history, he being a man to whom others committed to the plan looked for leadership that he was able to provide.\(^{202}\)

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201. Trial Transcript, Defence Opening Statement (14 February 2002), 248.
The second pitfall is that isolating a political leader’s criminal responsibility for mass atrocities risks scapegoating an individual for what was in fact the criminality of a state and of state institutions. Because international criminal law as practised at the ICTY deals exclusively with individual criminal responsibility, an individual is placed at the centre of a criminal investigation and as the focus of accountability.\textsuperscript{203} The state thus disappears into the background as a vague collection of institutions, disregarding the fact that every state institution is populated by individuals who run and represent it according to a prescribed hierarchy.\textsuperscript{204} It is therefore necessary to address the relationship between individual, collective, and state criminal responsibility when necessary.

Recognising the overlap between individual and collective criminal responsibility, the ICTY invoked the legal doctrine of Joint Criminal Enterprise (JCE) in the Milošević case, or, very roughly, what is termed a ‘conspiracy’ in some national legal systems.\textsuperscript{205} This doctrine serves to link crimes to several, at times many, individuals who participated as perpetrators of crimes, or who acted as instigators, accomplices, or planners. While connecting some individuals to the commission of actual crimes, for example the killing of civilian victims, the doctrine allows forensic consideration of the interactions between – and cooperation among – all the individuals who may be members of a group or organisation, or who may simply have acted in concert, for the purposes of the JCE.\textsuperscript{206} The scope of the JCE doctrine includes ‘common purpose,’ wherein the members of a JCE are not only involved in the perpetration of crimes but share a common understanding of its goals. Types of JCE as charged at the ICTY also recognised different levels of participation; but each level requires JCE members to have shared a common criminal purpose.

\textsuperscript{203} The ICTY Statute allows for two types of criminal liability, as defined by Articles 7(1) and 7(3). Article 7(1) reads: “A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.” And Article 7(3) reads: “The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”

\textsuperscript{204} For discussion on the criminal responsibility of states, see: Osiel, \textit{Making Sense of Mass Atrocities}, 189-194; and Schabas, \textit{Unimaginable Atrocities}, 125-153.


or to have, at minimum, knowledge that crimes were being committed by others. Critics of the doctrine point to its inability to account for “(co)responsibility in case of functional fragmentation where the lines of communication between the accomplices are diffuse or are even completely obliterated.”  

What? The Ideology and the Plan

For the purpose of this study, a distinction is made – for practical and conceptual reasons – between the Ideology and the Plan which, together, contribute to answering that essential question of criminal investigation: What? The Milošević trial record contains a great deal of evidence that exposes the development and evolution of Serbian state ideology since the 19th century. Some of this evidence does not necessarily relate directly to Milošević, who occupied a position of power only between 1989 and 2000. But continuity of this ideological concept demonstrates how Milošević incorporated key elements of an already existing ideological template into his political platform, then developed it a step further by re-addressing Serbian statehood and the Serbian national question in the 1980s and 1990s. Despite differences in rhetoric, Milošević’s objectives regarding borders and the geostrategic viability of a single state for Serbs overlapped significantly with long-spoused ideologies.

The Plan is conceptualised here as a separate topic, in order to mark the stages where and when the Ideology became a platform for action at the level of state policy; and this notion of the Plan is very similar to the legal concept of a common purpose used to illustrate ties between the members of a JCE. While the Ideology is a broader concept, reflecting the historical evolution through two centuries of efforts to form a state that would include all Serbs scattered across, most recently, the former SFRY republics; the Plan manifests the concrete objectives that Milošević and the political elites around him strove to achieve.

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207 Van der Wilt, “Joint Criminal Enterprise,” 92.
208 For example, see: Judgement, Prosecutor v. Milutinović et al., No. IT-05-87-T (26 February 2009), para. 97 and 103.
209 Serbs in the SFRY lived not only in the Republic of Serbia but in large numbers in the republics of Croatia, BiH, Montenegro, and Macedonia. But, Greater Serbia ideology and Serbian state ideology pre-date the Yugoslav Federation, extending back to the Ottoman era.
In order to make this distinction between the Ideology and the Plan even clearer, it is necessary to review several theoretical concepts that underpin ideology generally. John B. Thompson, an authority on the theory of ideology, makes a link between language and ideology, stating that language is not simply a structure employed for communication or entertainment, but a social-historical phenomenon.\textsuperscript{210} His work represents a series of attempts to explore the relationship between the theory of an ideology and the language by which it is promulgated.\textsuperscript{211} Thompson recognises three major conceptions of ideology. The first, the neutral conception, denotes ideology as a “purely descriptive term,” when speaking for instance “of ‘systems of thought,’ of ‘systems of belief,’ [or] of ‘symbolic practices’...”\textsuperscript{212} The second, critical conception, invests the term ‘ideology’ with a negative connotation. And Thompson’s third, rational conception of ideology suggests that “to study ideology is to study the ways in which meaning (or signification) serves to sustain relations of domination” through analysis of power dynamics “between actions, institutions, and social structures.”\textsuperscript{213}

Thompson writes further that if ideology is understood as a belief system, politics and ideology are inseparable because “all political action is ultimately oriented toward the preservation, reform, destruction, or reconstruction of social order, and hence all political action is necessarily guided by an ideological system of beliefs.”\textsuperscript{214} And so, adopting a combination of these conceptions, ideology is a system of beliefs with the propensity to impose or sustain domination; and it will be argued in this study that the moment at which an ideological concept becomes a dominant political force and political leaders choose to act upon it, an ideology transcends into a plan.

Terry Eagleton, another scholar studying ideology, advances this discussion by exploring the role of ideology in legitimising the power of a dominant social group or class. His analysis of the ways in which a dominant power legitimises itself “by promoting beliefs and values congenial to it” is useful for understanding how witnesses appearing for Milošević defended elements of Serbian state ideology in court. Eagleton writes that the proponents of an ideology will attempt to naturalise and universalise their ideological beliefs and values, trying to make them appear “self-
evident and apparently inevitable.’”

These ideologues will also malign competing ideas, exclude rival ideologies, and cover over social reality to serve their paradigm. Referred to as ‘mystification,’ this is meant to mask or suppress social conflicts, “from which arises the conception of ideology as an imaginary resolution of real contradictions.”

The Prosecution’s approach to the Plan was based on the assumption that there was not a single, comprehensive political programme espoused by Serbian political elites since Milošević’s rise to power that could be seen as a blueprint for the events that led to war and violence between 1991 and 1999. In other words, the Plan changed over the course of the conflict and was influenced by political actions and reactions from other Yugoslav republics and the international community. Thus, this study identifies five goals that reflect key elements of the Plan at different intervals, extending from 1987 to 1999. Analysis of these goals explores how and when the Plan and its implementation became criminal:

**Goal 1, 1987 to 1990:** to centralise the Republic of Serbia by revoking the autonomy of Kosovo and Vojvodina.

**Goal 2, 1990 to 1991:** to centralise the Yugoslav Federation with the Republic of Serbia as its dominant force.

**Goal 3, 1991 to 1995:** to create a reduced Yugoslavia, including ‘Serb-designated territories’ in Croatia. For that purpose, the Republika Srpska Krajina (RSK) was established. This is the point at which the criminality of the Plan and its implementation emerged in full, as the creation of the RSK was achieved through the commission of crimes.

**Goal 4, 1992 to 1995:** the formation of the Federal Republic of Yugoslavia (FRY), a federation including Serbia and Montenegro, with contingencies in its Constitution for later absorption of other Serb territories. Following the model of the RSK, the Republika Srpska (RS) was created in BiH.

**Goal 5, 1998 to 1999:** continuation of efforts to dominate Kosovo (Goal 1), in the face of rising opposition from the majority ethnic Albanian population. This led to conflict between Serbia and Kosovo on the status of Kosovo, resulting in full-scale war in 1999, during

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216 Ibid., 6.
which Serbian forces committed grave crimes in an attempt to alter the ethnic composition of Kosovo by displacing and expelling Kosovo Albanians.

*How? The Plan Becomes Criminal*

At the core of every international criminal trial is evidence about the criminal nature of acts committed in the process of implementing political and military objectives – evidence from crime sites, the accounts of direct perpetrators and victims, forensic scientific evidence, eyewitness reports, etc. Reflecting on the five goals articulated above, Goal 1 was achieved through political pressure from the streets, and through manipulation and deception that led to changes to the Serbian Constitution in 1990. Political manipulations, bullying, and eventual military intervention – in Slovenia, upon its declaration of independence – were again employed in the effort to achieve Goal 2. Yet, the violence in Slovenia was short lived. The military intervention there ended after ten days, and with Slovenia’s secession, efforts to centralise the SFRY failed and the Federation disintegrated.

The question of *How?* becomes very important when considering Goals 3, 4 and 5. Those goals mark stages of planning during which mass atrocities occurred. Goal 3 led to a full scale war in Croatia and an attempt to split Croatia into two, through a strategy of ‘ethnic separation’ in Serb-designated territories that was aimed at keeping all Serbs in a Rump Yugoslavia. The goal of ethnic separation meant that crimes had to be committed against non-Serbs living in those territories. And, despite the failure to establish a Rump Yugoslavia, the Republika Srpska Krajina was established by the end of 1991 and continued to exist until the summer of 1995.

Goal 4 developed in response to the February 1992 vote for independence in Bosnia, which effectively ended any prospect of the Rump Yugoslavia for which Milošević had hoped. Serbia reacted by creating the Federal Republic of Yugoslavia in April 1992, as a federation between Serbia and Montenegro that was envisaged to eventually include Serb-claimed territories in Croatia and in BiH. Bosnian Serbs had refused to participate in the referendum on independence in BiH, or to accept the outcome. Applying the same methods as Croatian Serbs had, Bosnian

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217 The term ‘ethnic separation’ refers to a condition in which ethnicities are physically segregated; but if this segregation is not self-imposed, reaching a state of ethnic separation requires the forced movement of people – in other words, ethnic cleansing. Ethnic cleansing can refer to a range of ways through which population transfer or demographics shifts are manufactured, from deportation to mass murder.
Serbs began a military campaign of ethnic separation, seizing territories by violence and through the commission of mass atrocities from April 1992 to September 1995. The violence was most severe in areas where Bosnian Serbs did not have a majority but sought territory for its geostrategic importance. One such area was Eastern Bosnia – a region which became world renowned for the genocidal massacre that took place in the town of Srebrenica in July 1995.

Goal 5 was focused on keeping Kosovo a part of Serbia by changing its ethnic composition, and reflected efforts that began in 1990 with the introduction of various laws and decrees that encouraged the settlement of Serbs in the province. In 1998, the ineffectiveness of these policies to change the ethnic balance in Kosovo resulted in an attempt to force these demographic changes through the commission of mass atrocities against the Kosovo Albanian population. These crimes were committed under the pretext of fighting Kosovo Albanian terrorism, which led to a massive police and army deployment in the province. In fact, violence was used indiscriminately against the entire population in targeted areas; and the Kosovo conflict proved to be a flagrant example by Serbia of the hostility of a state against its own citizens. Then, as the Prosecution asserted in the courtroom, Serbia used the 1999 NATO military intervention that was intended to end this violence as an excuse for the organised expulsion of Kosovo Albanians to the neighbouring states of Albania and Macedonia. But Goal 5 also ended in failure for Milošević. In June 1999, Serbian and FRY forces were made to leave Kosovo, and in 2008, Kosovo proclaimed its independence.

Development of the Plan, expressed in these five goals, reflects Milošević’s development from an ordinary politician to a criminal leader. In order to prove its case, the Prosecution highlighted events that demonstrated when and how the line was crossed between the lawful and the unlawful, and how unlawful (criminal) acts by Milošević led to the particular crimes alleged in the indictments to have been committed by Serb forces. Of all the goals outlined above, Milošević achieved only the first. And in failing to reach the others, Milošević forever became associated in the history books with savagery and mass atrocities not seen in Europe since 1945.
He was a communist opportunist and became an opportunistic nationalist. His actions led to... four wars, the instability in Europe, creation of criminal gangs...

Richard Holbrooke, Interview, CNN, 11 March 2006

Chapter II: The Leader

The legal theory applied by the Prosecution distinguished the de facto and de jure powers of Milošević and, alongside the Joint Criminal Enterprise doctrine, assessed the dynamics of his influence in order to prove his individual and command responsibility for crimes alleged in Croatia, BiH, and Kosovo. The Prosecution’s case against Milošević was that, as President of Serbia and later of the FRY, he accumulated extensive de jure and de facto powers that made it possible for him to control political and military institutions in Serbia, Montenegro, the SFRY and the FRY, as well as those established by Serb leadership in Croatia and BiH. In all three indictments against him, the Prosecution addressed Milošević’s unique position as an omnipotent leader of all Serbs. This stemmed from his de jure power, as President, and was reinforced and extended by his de facto power, which resulted from the acceptance by Serbs living outside the Republic of Serbia of Milošević as their leader, too. His de facto power was further strengthened by the willingness of politicians from other Yugoslav republics – even those who actively opposed Serbian politics under his rule – to deal with him as if he was indeed the leader of all Serbs, inducing representatives of the international community to treat him in the same way.  

The Defence also underlined Milošević’s leadership and his extensive powers, but stressed that they were legitimate and based on his qualities as a leader who was willing to listen to his people and who, unlike his fellow communist politicians at the time, was prepared to take risks and deliver what was expected from him. The Defence argued that he was the protector of Serbs

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218 There are two telling examples of how Milošević’s de facto power was accepted by Serbs from Croatia and BiH, along with his domestic political opponents and international representatives. The first is the Igalo Cease Fire Agreement – signed on 17 September 1991 by President of Croatia Franjo Tuđman, Chief of Staff of the JNA and Federal Minister of Defence General Veljko Kadijević, and Milošević, then President of Serbia, with the mediation of EC representative Lord Peter Carrington – which was an important agreement that secured a total cease fire in Croatia, in negotiations for which Milošević represented Croatian Serbs. See: “Statement by Lord Carrington, the Presidents of the Republics of Croatia and Serbia, and the Minister of National Defense at Igalo, Yugoslavia on 17 September 1991,” Exhibit D275.2. The other example is the role Milošević played in the Dayton peace negotiations, where he represented Bosnian Serbs. See: “Notes from a meeting held in Dobanovci (Serbia) between Slobodan Milošević and the Bosnian Serb leadership,” 29 August 1995,” Exhibit P469.20a.
everywhere and in particular those living in Kosovo, Croatia, and BiH. In those places, the Defence claimed, Serbs’ national existence had been threatened by Kosovo Albanians, Croats, and Bosnian Muslims.

In this chapter, Milošević’s leadership will be explored, first by examining the degree to which his personal leadership style and charisma constituted a ‘game changer’ in Yugoslav politics beginning in 1987. Drawing on the definition of transformational leadership and the effect a leader has on his or her followers, the questions to be answered are: How, when, and why did followers develop trust, loyalty, and respect for Milošević and make him the leader of all Serbs? Was he a charismatic leader who triggered a revival of the post-communist nationalist movement and its populist appeal, or had the Serbian nationalist agenda been kept alive during the communist period as its ideologues waited for the right moment to act and the right man to lead them? Also, to what extent was Milošević a product of the dominant political culture in which a single leader was the state’s most powerful political institution? Was he a dreary and predictable bureaucrat who found himself suddenly in the eye of a spiral of violence that he had triggered but was unable to stop, or was he prepared to use every means at his disposal to attain and maintain his grip on power, without any regard for human suffering? And finally, was Milošević driven primarily by ideological convictions, by political and personal ambition, or by the taste for power itself?219

The Making of a Leader

Until 1987, Slobodan Milošević’s biography was typical of a professional communist functionary, with nothing to distinguish him from many others who had also loyalty served the party, the political system, and the state. Born in the small Serbian town of Požarevac in 1941, Milošević left home at the age of eighteen to study law at the University of Belgrade. Although the Prosecution did not dwell on his youth and the trial record does not contain material about his earliest years, a number of authors have found his childhood relevant to understanding

Milošević’s political conduct. They have explored it in a search for clues that could explain Milošević’s later behaviour. His parents’ ideological differences – his mother an orthodox communist and his father an Orthodox priest – could certainly have created confusion for a young boy. But it was not until he was much older that he faced the oft-cited tragedy of both of his parents committing suicide. His father killed himself when Milošević was 21 years old and a student in Belgrade, and ten years later, when Milošević was 33, his mother also took her own life. It was an extraordinary start to his adulthood, and in part why his relationship with his wife Mira Marković would turn out to be the most important relationship of his life; and she has been regarded by many of their contemporaries as the driving force behind Milošević’s political ambitions. They met in high school before going together to Belgrade to study. Both were devoted communists. Mira’s parents had fought as communist Partisan guerrillas in WWII, and her mother had not survived. Her father had remarried and moved to Belgrade, leaving Mira’s upbringing to relatives in Požarevac. Upon completing their university educations, Milošević and Marković married and had two children.

A firsthand account of Milošević’s early years in politics can be found in a book written by his former political mentor, Ivan Stambolić, who detailed his dealings with Milošević during the 1980s power struggle in Serbia in *Put u bespuće* (“Road to Nowhere”). Stambolić was President of the Presidency of the League of Communists of Serbia in the mid-1980s and President of the Presidency of the Republic of Serbia from 1986 to 1987. In his book,
Stambolić described the political culture in which the post-WWII generation of communists in Serbia was raised and cultivated. They studied, worked, and socialised together, and considered each other friends. And so, when Stambolić entered politics, his friends and contacts naturally followed.\textsuperscript{225}

Stambolić felt the newer generation of communist politicians were more innovative and less bureaucratic, and Milošević held a special place in this group as a political protégé and favourite of Stambolić.\textsuperscript{226} Their friendship had started when they were both law students at the University of Belgrade and Stambolić, several years his senior, became Milošević’s mentor.\textsuperscript{227} The relationship defined Milošević’s career path and tragically, in the end, the future of Stambolić as well. In 1987, they parted ways bitterly, never to mend their friendship; and in 2000, Stambolić was assassinated while Milošević was still in power, leaving his 1995 book as a testimonial against his former protégé.

Although Milošević earned a law degree, he initially chose a career in management and banking. His entrance into professional politics came relatively late in life, at the age of 43. It was then, in 1984, four years after the death of Tito, that Milošević became Chairman of the City Committee of the League of Communists of Belgrade – one of the top four political positions in Serbia.\textsuperscript{228} In 1986, as Stambolić rose through the ranks, becoming the President of the Presidency of the Republic of Serbia, Milošević succeeded him, becoming the President of the Presidency of the Central Committee of the League of Communists (LC) of Serbia.\textsuperscript{229} In those early years, Milošević was remembered as a supporter, to some degree, of market-oriented reform; and in

\begin{itemize}
  \item \textit{Ibid.}, 2.
  \item The three more powerful positions were: President of the Presidency of the Central Committee of the LC of Serbia, President of the Presidency of the Republic of Serbia, and Representative of the Republic of Serbia in the Presidency of the SFRY. For details of Milošević’s career, see: Second Amended Indictment, 27 July 2004. Hereinafter, the Croatia Indictment.
  \item Budding, \textit{Serbian Nationalism in the Twentieth Century}, 59.
\end{itemize}
1984, he had called on Serbian Communists to support a stronger Yugoslavia, which was very much in the line with “the usual communist rhetoric.”

Milošević’s political career took a decisive turn when Stambolić appointed him as his successor in 1986. In retrospect, Stambolić saw that the unwritten rule that allowed departing party leaders to determine their successors was in error. He grew to believe that if Milošević had been elected on a broader, more democratic platform, “he would have been under greater control and subject to a more direct review” by his peers. Indeed, Stambolić would later reflect on his appointment of Milošević as one of the biggest mistakes of his life. Still, he contextualised his decision, saying:

Even if I conditionally agree that personnel choice could determine historical turning points, even then it can really happen only under certain circumstances. In that respect, Milošević was that decisive “fatal” personnel choice after which our society started sliding downhill.

While he had initially viewed Milošević as representing an ideal politician – young, ambitious, and unburdened by the past – Stambolić recognised Milošević’s shortcomings over time. He noticed that Milošević was unable to cope with criticism, that he could be rash, and that he was prone to draw superficial conclusions and judge too harshly. Yet, Stambolić nonetheless viewed Milošević as a man who was decisive and dynamic; qualities he thought were required in a leader faced with implementing economic and political reforms.

Others questioned Stambolić about his faith in Milošević, warning him in person and in writing about Milošević’s weaknesses. Vladimir Jovičić, a writer and active party functionary, left a

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230 Ibid.
232 Ibid., 3.
233 Ibid., 1.
234 Ibid., 4.
235 Ibid., 5.
236 Ibid. This highlights the importance of political succession in communist structures, in which the installation of a leader was of paramount importance to the regime. Although it played out on a higher political level, one example of this can be seen in Lenin’s Testament from 1922. He offered a very critical appraisal of six potential candidates to succeed him, including Joseph Stalin, and expressed negative views about all of them; yet, despite Lenin’s evaluation (“I am not sure whether he will always be capable of using [unlimited] authority with sufficient caution”), Stalin nonetheless took over the leadership of the Communist Party of the Soviet Union as well as of the state. Lenin’s Testament is available online in Fordham University’s “Internet Modern History Sourcebook,” at: http://www.fordham.edu/halsall/mod/lenin-testament.asp
letter on Stambolić’s desk one year before Milošević’s appointment, expressing his reservations that Milošević was “arrogant, haughty, [and] craving power.”

Cvijetin Mijatović, a high-level federal functionary and member of the Presidency of the SFRY in the early 1980s, told Stambolić that certain forces in Yugoslavia and in Serbia were uniting against him. Even Draža Marković – Mira Marković’s uncle and a member of the communist elite – warned Stambolić that history and the Serbian people would never forgive him for having pushed Milošević through; he said that Milošević “would destroy everything.”

Aware as he was about Milošević’s personal deficiencies, Stambolić never expected them to become political drawbacks. For instance, when he read in the newspapers that Milošević was appointing as candidates to the Central Committee of the LC of Serbia and the City Committee of Belgrade those whom he had not managed to push through as members of the Presidency of the LC of Serbia, Stambolić initially ascribed it to Milošević’s need to demonstrate independence from his political mentor. Eventually, though, Stambolić was forced to admit that he had underestimated Milošević’s cunning character and political misconduct; and as much as he was inclined early on to ascribe Milošević’s manipulation and deception to his personality and not to political premeditation, Stambolić drew different conclusions in time. He finally understood the extent of the long-term plan Milošević had designed, in order to take power in Serbia, when Milošević populated the most powerful political body in the Republic – the League of Communists – with party functionaries loyal to him, who voted Stambolić out of office in favour of Milošević. But Stambolić’s realisation that Milošević had for some time been successfully playing a game of deception came too late. The committees in which Milošević installed his loyalists became important centres of his personal power, where he successfully advanced policies on which he and Stambolić disagreed.

Many years after their falling out, Stambolić still could recall Milošević as an amiable companion who radiated optimism and energy. Indeed, Milošević’s deceitful side seems to have been well hidden by his charming façade. According to Stambolić, Milošević could quite

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238 Ibid., 8.
239 Ibid., 19.
240 Ibid., 10-12.
241 Ibid.
skilfully win the loyalty of people when it suited him. For example, he made a point of ingratiating himself to the older generation of communists by remembering their birthdays and visiting them in hospital, securing their support and sympathy. He also hid behind his charm when faced with his own blunders; most of the time responding to any confrontation with a larger dose of self-criticism, becoming suddenly warm and indulgent. Although he sometimes overused this tactic, he often succeeded in bringing himself back into favour.

*The Leader Made in Kosovo*

Milošević’s entry into politics in the 1980s was tightly connected to the revival of Serb nationalism, fomented by ethnic clashes in Kosovo. Ethnic Albanians took their grievances to the streets in April 1981, only one year after the death of Tito, and federal authorities saw them as a very serious threat to the stability of the SFRY. The 1974 Federal Constitution had created ambiguity about the status of Kosovo and Vojvodina, Serbia’s two autonomous provinces, by making them territorial parts of the Republic of Serbia and at the same time federal units with representation equal to that of the six constituent republics. Both provinces had their own representatives in the Presidency of the SFRY, with voting powers. While many praised the 1974 Constitution as a model for a functioning decentralised federation, nationalists in the Serbian intellectual elite saw it as a threat to Serbian territorial and constitutional integrity. Critics claimed, *inter alia*, that it divided Serbia into three territories, thereby weakening the republic economically and politically, relative to the other five; for none of the other republics had autonomous provinces within their territories.

Riots on the streets of Kosovo towns in the spring of 1981 had been followed by political manoeuvring. Kosovo Serbs – encouraged by intellectual elites from Belgrade, the Serbian Academy of Sciences and Arts (*Srpska akademija nauka i umetnosti*, or SANU), and the Serbian Writers Association – formed the Serbian Resistance Movement of Kosovo (*Srpski Pokret Otpora Kosovo*, or SPOK) in 1982. According to Miroslav Šolević, one of the founders, the driving forces behind the SPOK were writer and eventual President of the FRY Dobrica Ćosić.

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243 Ibid., 17.
244 Ibid., 10.
and Dušan Ristić. Ristić, a former professional politician from Kosovo, had held various party and state positions, including President of the Kosovo Provincial Assembly, before he was expelled from the Party in 1981.\textsuperscript{247} He had good knowledge of the communist political culture and suggested that the demands of the SPOK should be addressed to existing political and state institutions. He felt that if the communist establishment were approached first, the movement would be less likely to be labelled as nationalist, anti-Yugoslav, or anti-communist.\textsuperscript{248} For the SPOK to be efficient in pursuing its still developing political agenda through the League of Communists, it needed a leader who was already a respected communist functionary in Serbian party and republican structures.\textsuperscript{249} Members initially thought of Stambolić, but as it turned out, he was not prepared to advocate their positions at the republic level.\textsuperscript{250}

Kosta Bulatović, another of the founding members of the SPOK, testified as a Defence witness that in 1986, after consulting Dobrica Ćosić, he and other Kosovo Serbs drafted a petition to the authorities calling for changes they claimed were necessary in order to stop alleged terror by Kosovo Albanians against Kosovo Serbs. He considered this a major success and asserted that 86,000 Kosovo Serbs, along with 2,016 other Serbs, had signed the petition.\textsuperscript{251} According to Bulatović, he was arrested by Kosovo authorities on 2 April 1986 simply because he had a text of this petition on his person. When asked by Judge Robinson about the arrest, which seemed puzzling given that the text of the petition had been published in the press, Bulatović answered that the authorities had arrested him so that “nobody else would dare speak the truth.”\textsuperscript{252}

Subsequent to Bulatović’s arrest, the SPOK leadership invited Stambolić to visit Kosovo. Stambolić accepted the invitation apparently unaware that Bulatović was in custody.\textsuperscript{253} The SPOK organised public protests, demanding Bulatović’s immediate release. Once he realised how precarious the situation was, Stambolić gave a reconciliatory speech, sending a signal to

\begin{itemize}
\item \textsuperscript{247} Miroslav Šolević, interview (16 April 2005). Šolević did not testify, though he was approached by the Prosecution in 2005 as a possible rebuttal witness to be called at the end of the trial.
\item \textsuperscript{248} Ibid.
\item \textsuperscript{249} Ibid.
\item \textsuperscript{250} Ibid.
\item \textsuperscript{251} Testimony of Kosta Bulatović (14 April 2005), 38525-38526. The petition was thought of as a particular success at the time, given that only 78 people signed a petition of similar substance in 1984.
\item \textsuperscript{252} Ibid.
\item \textsuperscript{253} Stambolić, “It Started in Kosovo,” in \textit{Put u bespuće}, Exhibit P811a, 35-53.
\end{itemize}
Kosovo Serb activists that he would not advance their agenda. With Bulatović still in prison, where he spent three days, his fellow activists threatened to bring the protest against his detention to the streets of Belgrade. Communist leaders in Kosovo started their own inquiry, finding that there had been no order issued by the Kosovo police to arrest Bulatović; the police, it seemed, did not know, or could not say, on whose authority he had been detained. It eventually emerged that he had been arrested on the orders of someone from Belgrade, and Kosovo communists realised that the arrest and the protests may have been staged. Bulatović was released and communists in Kosovo, including top leaders like Azem Vllasi, began to understand that they were pawns in a game much bigger than they could appreciate from Priština or Prizren.

On his return from Kosovo, Stambolić told members of the Serbian Central Committee that the situation in Kosovo was so unstable that one bloodthirsty slogan yelled by a prominent Serbian nationalist at a rally would bring the Serbs to rebellion. One year later, in the spring of 1987, another high-level visit from Belgrade to Kosovo was scheduled. Originally, Stambolić was expected to go; but he felt it was time for somebody else from Serbia’s republican leadership to become acquainted with the political problems of the province. Some senior functionaries disagreed with the choice of Stambolić to delegate such an important function, but he held firm and chose his protégé Milošević, the second highest-ranking official in Serbia.

Before his departure, Milošević sought advice from Stambolić about how to approach the visit. Stambolić recalled advising Milošević not to succumb to emotions, telling him that the tense and passionate atmosphere could easily explode and unleash violence. He told Milošević to “be careful and keep a cool head.”

Milošević’s visit to Kosovo took place on 17 April 1987 and followed usual party protocol. At the end of the visit, Kosovo Serb activist Šolević confronted Milošević, saying they did not want

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254 Miroslav Šolević, interview.
255 Azem Vllasi, interview (17 April 2005). Vllasi had not been called as a witness by the Prosecution or Defence at the time of Milošević’s death. He had been interviewed by the OTP as a potential rebuttal witness, or as a witness the judges themselves might call to address changes in the Kosovo policy after Milošević took over power in Serbia.
256 Ibid.
258 Ibid.
259 Ibid., 37.
him to present a monologue, they wanted dialogue. “When are you coming back?” they asked. Milošević replied that he would return the following Friday. The week between these two visits would prove to be crucial to Milošević’s political rise. The trial record does not reveal what happened in that week, or with whom Milošević consulted, but his return visit to Kosovo appeared meticulously orchestrated. He organised this second visit through his own channels, bypassing the LC of Kosovo.\footnote{Miroslav Šolević, interview. Also see: \textit{Death of Yugoslavia}, “Enter Nationalism,” Part I, produced by Brian Lapping, BBC, 1995. The \textit{Death of Yugoslavia} documentary series detailed the violent dissolution of Yugoslavia and relevant portions of the film were used by the Prosecution in court on numerous occasions.}

The political leadership in Kosovo decided to confront Milošević over his disregard of official protocol upon his arrival; but they waited for him in the capital, Priština, in vain.\footnote{Azem Vllasi, interview. Also see the statement made by Dušan Mitević in \textit{Death of Yugoslavia}, Part I. Mitević, one of Milošević’s closest aides and an expert in public relations, was the Deputy Head of Serbian TV. He recalled that Milošević had summoned his most trusted associates to his home, asking how to handle the situation.} They contacted his office and learned that Milošević was scheduled to arrive by helicopter, but the time of his arrival was unknown. Eventually, just one hour before the meeting was to start, he landed, leading Kosovo communists to think that he was deliberately avoiding an encounter with them. Vllasi insisted on a meeting, arguing that Milošević was to blame for any delay, but Milošević, visibly upset, said the public meeting should not be delayed and was adamant that they meet afterward.\footnote{Ibid.}

The entire group went to Kosovo Polje, only to discover that there had been substantial changes in the organisation of the event. Azem Vllasi and the LC of Kosovo had planned for the meeting to take place in a Railway Company Hall that could accommodate only a limited number of people and where attendance would have had to be controlled by invitation. When they arrived, they saw that the Railway Company Hall was empty and they were told that a parallel meeting had been arranged in the nearby Cultural Hall.\footnote{Ibid.} According to Vllasi, the leadership of the LC of Kosovo learned through an informer that Milošević had already sent his own Chef de Cabinet to Kosovo to coordinate directly with members of the SPOK. They also discovered that local Serbs were being encouraged to prepare speeches in advance, to share their difficult plight and request

\footnote{Miroslav Šolević, interview.}
constitutional changes for Kosovo, and that every word would be broadcast on television. Miroslav Šolević later explained that the SPOK had been given only three days to re-organise the event. He admitted that the venue had been changed without informing Kosovo’s communist leaders and that part of the plan included parking roadwork trucks in front of the Cultural Hall, loaded with stones to be thrown at the local police in order to start a riot if Kosovo Serbs were not allowed inside.

As originally envisioned, 300 people were to attend the event, but many more turned up. Even with the venue change, not everyone could fit. And indeed, as expected, many of those without invitations were kept outside, giving the SPOK activists an excuse to spark unrest. Mitar Balević was with the local League of Communists at the time, in charge of organising the meeting, and appeared as a Defence witness. Answering Milošević in the courtroom, he explained:

> When the meeting began, I was informed that the police had used truncheons against some citizens who had gathered outside and there was a crowd of about 15,000. That was the estimate made then. I asked you to go outside the building and to address the citizens, and I asked Azem Vllasi to do the same… So you went outside and I followed you but there was a huge racket, cries and shouts of “Yugoslavia”…and the first people who came up to you said “We are being beaten, President.” And you answered that little group around you, “They must not. They must not beat you.” But there was a huge racket in which you couldn’t hear anything, so I returned inside, and I told the technician, an Albanian, to put the loudspeakers on the window so you could address the citizenry from the window.

Šolević recalled that he had approached Vllasi first, telling him that a problem was developing outside, and when Vllasi refused to do anything about it, he had approached Milošević.

This second visit to Kosovo by Milošević in April 1987 led to his meteoric rise to power and has been regarded as a turning point in Yugoslavia’s history and the beginning of the process of

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265 Azem Vllasi, interview.
266 See statement by Miroslav Šolević in Death of Yugoslavia, Part I.
267 Testimony of Mitar Balević (25 January 2005), 35660.
268 Ibid., 35653-35654.
269 See statement by Miroslav Šolević in Death of Yugoslavia, Part I.
disintegration and war. The debate among scholars over the historical meaning of the words
ascribed to Milošević on that day – “No one is allowed to beat you”\textsuperscript{270} – is still ongoing, with
some claiming he made the statement on the spur of the moment and others that it was part of a
premeditated plan. Nonetheless, these words were attributed to Milošević in heroic terms even
though they did not reflect any real brutality in the moment or any real heroic poise on his part.
The event took place as planned and when local Serbs were allowed inside, they spoke in front of
the cameras from prepared speeches about the personal suffering they claimed to endure in
Kosovo just because of their ethnicity.\textsuperscript{271} The meeting dragged on for hours, with a total of 76
people allowed to speak.\textsuperscript{272}

The events of 24 April 1987 were aired live on Serbian television and Milošević’s utterance of
“No one is allowed to beat you” was taken out of context, aired repeatedly, and instrumentalised
by Kosovo Serb activists and the intellectual establishment in Serbia to forge a new leader. The
footage was rerun endlessly and the visit became a major topic in the written press as well,
presenting Milošević to Serbs outside of Kosovo as a saviour and unifier of the Serb people and
placing the Kosovo issue solidly on the federal (and later, state) political agenda. Years
afterward, Šolević summarised this interlude aptly, remarking that it would be wrong to say the
SPOK had put Milošević in power, for as a communist politician Milošević already had power;
what they did was make a leader out of him.\textsuperscript{273}

\textit{The Eighth Session: Milošević Seizes Power in Serbia}

The Kosovo Serbs may, indeed, have played a vital role in making Milošević a leader, but he had
yet to win power in Serbia at the republic level. As Milošević’s public profile began to rise and
he started to enjoy support from influential Serbian intellectual elites, he became a threat to the
communist establishment that gravitated around Stambolić. Still, Stambolić persisted in
underestimating Milošević’s craving for power until he was confronted with it in a very public
and humiliating way. Only three months after Milošević’s visit to Kosovo Polje, a showdown

\textsuperscript{270} The sentence “\textit{Niko ne sme da vas bije}” has been seen colloquially as a symbol of his rise to power. In reality, the
words were uttered in a different order: “\textit{Ne sme niko da vas bije}.” This has been translated in a number of ways, for
example, as “\textit{Nobody will be allowed to beat you}” and “\textit{No one shall beat you}.”

\textsuperscript{271} Testimony of Mitar Balević (25 January 2005), 35661-35680.

\textsuperscript{272} Ibid., 35689.

\textsuperscript{273} Statement by Miroslav Šolević in \textit{Death of Yugoslavia}, Part I.
occurred between the two at the Eighth Session of the Central Committee of the LC of Serbia, held in September 1987, with Milošević presiding. Milošević attacked Stambolić indirectly, by targeting Dragiša Pavlović, another of Stambolić’s protégés, who held an influential position as Chairman of the LC of Belgrade and who had criticised Milošević’s nationalistic rhetoric.\footnote{Budding, \textit{Serbian Nationalism in the Twentieth Century}, 58.} Everyone in attendance understood that Milošević was also assailing Stambolić and the policies he represented.

Borisav Jović, a close ally and advisor to Milošević, recalled the atmosphere that surrounded the meeting, explaining that the media broadcast every word that was spoken and that citizens, while watching, began sending telegrams of support to Milošević. These telegrams were read aloud at the session, to the dissatisfaction of Stambolić supporters, encouraging further telegrams. As the pressure increased, a vote for Milošević’s policy won with only seven opposing voices, leading to the dismissal of Pavlović.\footnote{Jović, \textit{Knjiga o Miloševiću}, 44.}

To viewers, Milošević appeared resolute and self-assured – a person determined to win even if that meant publicly humiliating his political mentor and former friend. Stambolić, on other hand, looked totally unprepared to respond to an attack against his politics and leadership. It seemed he did not comprehend the consequences of shifts in Serbian politics, for himself or for the future of Serbia and the SFRY.\footnote{Stambolić, “A Prelude to the Eighth Session,” in \textit{Put u bespuće}, Exhibit P811a.}

Prosecution Expert Witness on history, Audrey Budding, summarised the importance of these events of September 1987, noting that Milošević had targeted those who opposed his Kosovo policies or criticised his inflammatory portrayal of the Albanian population there.\footnote{Budding, \textit{Serbian Nationalism in the Twentieth Century}, 61.} Budding, like many other historians, political commentators, and political opponents of Milošević, qualified the changes to the political leadership in Serbia that followed, and the unorthodox manner in which it happened, as a putsch.\footnote{Ibid., 58.} In the aftermath of the Eighth Session, the LC of Serbia was purged; those not aligned with Milošević were marginalised or dismissed before the
end of their mandate. Objections to or questions about what happened to exiting members were met with the simple explanation that they exhibited “professional incompetence.”

In May 1989, Milošević became President of the Presidency of the Republic of Serbia, the position previously occupied by Stambolić. Commenting on his own responsibility for Milošević’s rise to power in Serbia, Stambolić explained that it was not only his election as President of the Presidency of the Central Committee that had pushed Milošević to new heights of power. It had also taken well-planned efforts to make a cult figure out of Milošević; for which songs were written about him, paintings painted, and his photographs printed in great numbers for public display. And, adding further to this persona, academicians competed in their praise of him, comparing Milošević to French President Charles de Gaulle and American President Theodore Roosevelt.

Empowered by a Legacy of Authoritarian Culture

It may indeed have been Kosovo and the cult that emerged after his appearances there that made Milošević the leader of all Serbs, but as Šolević noted, it was the system that had given him authority. The political system of the former Yugoslavia developed from a monarchy before the Second World War into a communist federation after it, always with power concentrated in the hands of a single leader. In post-Cold War transformations, post-communist elites did not seek to develop democracy but concerned themselves first and foremost with ‘self-determination’ – which meant establishing nation states based on an ethnic principle. Yet, all attention had been given to the state and to the collective rights of nations, with hardly any regard for the development of civil society and the rights of individuals.

279 Jović, Knjiga o Miloševiću, 20.
281 For example, see: Dov Ronen, “End the Campaign to Spread Democracy,” New York Times, 30 April 2013, 8. Ronen develops an interesting theory on the tension between self-determination and democracy in the aftermath of the collapse of communist regimes in the 1980s and 1990s, and after the recent Arab Spring uprisings. In his view, what people aspired to was self-determination, not democracy. Also see: Dov Ronen, The Quest for Self-Determination (New Haven, CT: Yale University Press, 1979).
The first Yugoslav state existed from 1918 to 1941 as a parliamentary monarchy that was strongly influenced by the king. The Communist Revolution started in 1941, but drastic modifications to the political system that were introduced after the Partisans won in 1945 brought little change to a political culture that had long accepted strong leadership. As in other communist regimes, the Yugoslav government revolved around the personality cult of its leader, Josip Broz Tito (1892-1980), who would rule the country for 35 years. And despite Tito’s determination that a single person would not succeed him as head of state and Chairman of the Party (he had laid out plans for his successors to rule through a collective presidency) his political will alone could not change the dominant political culture overnight. So, although it was not officially possible for another politician to succeed Tito, carrying out all his functions after his death in 1980, there was a general expectation among the public that another strong leader would emerge.\(^\text{283}\)

It was in this historical and political context, and in a culture of political patrimonialism, that Milošević was able to assume a position that gave him power beyond his formal political entitlement.\(^\text{284}\) It had been his ambition to impose himself as the leader of Yugoslavia through the League of Communists; but, with the end of the communism in 1990, Yugoslav state structures changed and so did Milošević’s ambitions. He would have to secure his place as the elected leader of Serbia.

Milošević’s first term as the President of Serbia, still in a one-party system, lasted only one year.\(^\text{285}\) Then, in 1990, Serbia was the last of all six SFRY republics to organise multi-party elections. In July of that year, Milošević and his allies formed a new political party with a socialist orientation. The Socialist Party of Serbia (\textit{Socijalistička partija Srbije}, or SPS) was constituted by merging two existing organisations, The Socialist Union of the Working People of

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\(^{284}\) See: Quimpo, “Trapo Parties and Corruption.”

\(^{285}\) Until January 1991, his official title was President of the Presidency of the Republic of Serbia; then, after multi-party elections, his title was simply President of Serbia.
Serbia and the League of Communists of Serbia.\footnote{286} It had inherited the property of both constituent institutions, and with it a legacy of one-party politics that its leaders looked to replicate despite the ostensibly multi-party environment in which they now operated. The SPS embraced and united various ideologies, from left to right, and Milošević’s role in forming the SPS – a party based on socialist principles at least in name – conflicted with the principles of his nationalist supporters. But in reality, he wasn’t driven by either ideology, beyond their instrumental benefit, and was thus well placed to embrace both at the same time.

Winning political power in Serbia, with a mandate handed to him by the Serbian people themselves, Milošević entered a new stage in his political career. Latinka Perović, a historian and former communist politician from Serbia, described Milošević as a “consensual autocrat” because he came to power with considerable public support but then used the electoral mandate of Serbian voters as a platform to rule autocratically. According to Perović, Milošević was not an authentic nationalist but someone who simply rode the train of nationalism that was put in motion by Serbian elites close to Dobrica Ćosić and in the Serbian Writers Association and the Serbian Academy of Sciences and Arts (SANU).\footnote{287}

As Chairman of the SPS, Milošević was able to control the federal government as well as republic-level governments and assemblies through party loyalists, much as he had been able to do under communism. This secured the next phase of his political agenda; namely, imposing the SPS Party Programme – which had been legitimised by Serbian voters – as the dominant state policy in Serbia. Zoran Lilić, a former prominent SPS official and President of the FRY from 1993 to 1997, testified as a Prosecution witness about how the SPS became Milošević’s major power base, through which he influenced legislation that was eventually passed at all levels of government.\footnote{288} Lilić said that important decisions were first reviewed within Milošević’s family (alluding to his wife Mira Marković), then within Milošević’s inner circle of close associates from the SPS. The Executive Committee of the SPS’s Main Board, which served to legitimise Milošević’s initiatives, subsequently confirmed decisions made by the inner circle. From there,

\footnote{286} “Programme of the Socialist Party of Serbia from the first Congress,” 16-18 July 1990, Exhibit P469.3a.
\footnote{287} Latinka Perović, interview (11 August 2005).
\footnote{288} Testimony of Zoran Lilić (17 June 2003), 22551-22552.
trusted leaders of municipal and regional boards implemented those decisions without question.\textsuperscript{289}

The SPS participated in every federal government in the decade between 1990 and 2000, extending the reach of Milošević to all federal institutions.\textsuperscript{290} The party also won majorities in republic-level parliamentary elections in 1990, 1992, and 1996, giving opposition parties no chance to shape legislation.\textsuperscript{291} It was clear that Milošević knew very well how much political strength and control resulted from his position in the SPS. Upon his election as President of Serbia in 1990, he ceded the position of SPS chairman to Borisav Jović for a short time because the Serbian Constitution prohibited the President from engaging in other public duties; but, several months later, disregarding the Constitution, Milošević reclaimed his chairmanship.\textsuperscript{292}

Milošević was re-elected President of Serbia in 1992 and was appointed President of the FRY in 1997, moving his power to the federal level. With his departure, the office of the President of Serbia suddenly lost all influence and his successor Milan Milutinović settled comfortably into the role of Milošević’s lapdog. Milošević had planned to serve two more mandates as President of the FRY.

**Power for the Sake of Power**

Milošević’s personal taste for power developed very quickly. His leadership had been attained with support of Serbian intellectuals and Serbs from Kosovo, who were determined to re-define Serbian statehood via nationalism. However, evidence presented at the ICTY revealed that Milošević’s central motivation over ten years as the political leader of Serbs was nothing more or less than his desire to have and hold onto power for the sake of it. Indeed, when faced with choices between the welfare of Serbia and his own political power, Milošević chose the latter.

*Surviving Mass Protests*

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\textsuperscript{289} Ibid., 22557-22558.
\textsuperscript{290} Ibid., 25551.
\textsuperscript{291} Ibid., 25552.
\textsuperscript{292} Ibid., 25555.
Demonstrations in central Belgrade, organised by his political opposition on 9 March 1991, were the first serious threat to Milošević’s personal authority or regime after his rise to power in 1989. The demonstrations were massive but peaceful; but Milošević was aware that they could bring his leadership to an end. Alarmed by the prospect, he called PSFRY President Borisav Jović to request military intervention. Jović, who was not in Belgrade at the time and was reliant on Milošević’s assessment of the security risk, began contacting the other seven PSFRY representatives to garner support for deployment of the Army on Belgrade streets.

Vasil Tupurkovski, the Macedonian representative, recalled later that Jović had first called him around midday. Tupurkovski told Jović that there was no need for JNA intervention since the demonstrations were peaceful. That evening, violence did break out among the protestors, but whether or not it was provoked by Serbian police in order to create the necessary conditions to declare a state of emergency – required to activate the military – is now hard to establish. However, by the time Jović called Tupurkovski later that day, Tupurkovski had seen the eruption of violence on the TV news and gave his consent. According to Jović, JNA Chief of Staff General Veljko Kadijević was reluctant to allow the Army to get involved, apparently only changing his mind when demonstrators neared JNA Headquarters in the centre of Belgrade. Eventually, Milošević managed, through Jović, to secure a favourable majority and the JNA did intervene, dispersing the demonstrators using tanks, water cannons, and tear gas.

It wasn’t just Tupurkovski who wondered if some manoeuvring had taken place to justify use of the JNA and help Milošević retain power; and Milošević and his associates heard enough rumblings of distrust from other PSFRY members in the immediate aftermath of these events to understand that they could no longer rely on the PSFRY for a majority vote the next time they felt the need to deploy the armed forces. And the test came just days later, during the 12 to 15 March 1991 PSFRY session, when the JNA proposed introducing extraordinary measures that would have allowed the Army to take action against the Croatian government for its noncompliance with orders given by the PSFRY earlier that year. Five votes were needed to

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293 According to Tupurkovski: “Finally at about six o’clock in the evening, when Jović called me for seventh or eighth time, I told him, ‘OK I will vote Yes,’ because I saw that there were casualties, [and thought] others will come for sure. Everything was getting out control, it was obvious.” See: Death of Yugoslavia, Part II.
295 See: Testimony of Branko Kostić (7 February 2006), 48174; Testimony of Major General Aleksandar Vasiljević (13 February 2003), 16045-16046.
enact the measures, only seven members were present, and BiH representative Bogić Bogićević, an ethnic Serb, surprisingly voted against. Sensing that there was indeed a growing schism, the Serbian Bloc realised that the PSFRY could be an obstacle as far as use of the JNA was concerned, and so the day after the session, Milošević gave a rare public address in which he announced the formation of special police forces in the Republic of Serbia.296

Defying Political Opponents

The next challenge to Milošević’s power followed the formation of the Federal Republic of Yugoslavia in 1992, and came from Milan Panić, a successful US businessman with dual citizenship who Dobrica Ćosić had put forth as Prime Minister. According to Borisav Jović, Panić had approached him in May 1992 with intelligence that the US was willing to help lift UN sanctions against the FRY if Milošević would step down. When Jović brought this to the attention of Milošević, he was dismissive and avoidant; Jović believed Milošević feared that the intelligence could lead to his forced resignation.297

Although Milošević had initially been in favour of Panić’s appointment, their relationship very quickly cooled, and then Milošević did all he could to sideline Panić. He banned Panić from attending sessions of the Supreme Defence Council, the collective commander-in-chief of the FRY.298 But Panić was allowed to participate in meetings of the State Council for Harmonisation of Positions on State Policy (Savet za usaglašavanje stavova o državnoj politici) because this ad hoc body had been brought to life by his close political ally, FRY President Dobrica Ćosić. According to Zoran Lilić, who succeeded Ćosić as President, the Council for Harmonisation was created in order to provide a forum for the political leaders of the FRY, Serbia, Montenegro, and

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296 See: Slobodan Milošević, public address, 16 March 1991, Exhibit P328.29.
297 Jović, Knjiga o Miloševiću, 34.
298 Ibid, 33-34. He prevented Panić from attending SDC meetings by using Panić’s dual citizenship – Serbian and American – as justification, and asserted that Panić’s presence was not necessary. See: “Minutes from the 3rd session of the Supreme Defence Council,” 23 July 1992, Exhibit P667.3.2a, 2-4.
occasionally the RSK and the RS to discuss issues of vital importance to their common political future.\footnote{Testimony of Zoran Lilić (18 June 2003), 22745-22746.}

Records of the eight sessions of the Council for Harmonisation, held between July 1992 and April 1993, were discovered by the Prosecution by chance in 2001. They reveal a great deal about Milošević’s politics and about his resentment – and on occasion, open hostility – toward Panić, who had shown himself willing to contradict Milošević. Although Ćosić and Panić were both federal leaders and therefore his superiors, Milošević was not prepared to tolerate their criticism or entertain any alternative political course and did everything he could to contradict, obstruct, and marginalise them.

The showdown between Milošević and Panić started before the London peace conference held on 26 and 27 August 1992. The conference was called by the international community after the disclosure of information about Serb-run detention camps in Northern Bosnia and ethnic cleansing of the non-Serb population. At the Council of Harmonisation meeting on 18 August, a stern and blunt Milan Panić had not found support among Milošević and his followers, and the delegation went to London several days later without a unified position.\footnote{“Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 18 August 1992, Exhibit P469.42.} According to Jović, Panić had requested that Milošević withdraw from politics and that he announce it while in London. Apparently Ćosić supported Panić in asking Milošević to step down; only he thought that the announcement should not take place in London, but in Belgrade before the Serbian parliament.\footnote{Jović, 	extit{Knjiga o Miloševiću}, 102-103.} Milošević was incensed. Upon returning to Belgrade, he pressured his party to initiate a motion of distrust in the FRY Parliament against Panić as Prime Minister.\footnote{Ibid.}

In the unfolding power struggle, Panić – who had no party base in Serbia – took a risk and challenged Milošević in the December 1992 elections, and lost. He left Serbia, and returned to his career, abandoning politics after only several months. Milošević won the elections and remained in power for the next eight years.
After London, Milošević also turned against Ćosić. The depth of the rift between them became apparent at the Council of Harmonisation session held on 2 November 1992. The immediate cause of a heated debate that polarised Serbian and FRY representatives at the meeting was a raid that had been executed by the Serbian Ministry of Internal Affairs (MUP) on the Federal Ministry of Internal Affairs, purportedly due to a dispute over the ownership of the property. Pavle Bulatović, Minister of the Federal MUP at the time and one of Milošević’s closest associates, was taken by surprise. He complained that when Serbian MUP officers took the building, they also took over its communication system, cryptographic equipment, technical devices of the State Security Service, documentation, registries, and cars from the car pool.

The Prosecution considered this event a turning point for the Serbian MUP, which usurped the Federal MUP to become the most powerful security service in the country. By taking over sophisticated intercepting and cryptographic equipment along with intelligence files on many prominent political, military, and other figures, Milošević was able to control his political opponents. He also succeeded in diminishing federal authority and humiliating President Ćosić and Prime Minister Panić, who were both out of the country at the time. Ćosić, livid about the takeover, noted in his diary that he was “astounded by Milošević’s act.” He went on:

His police forcibly entered the building of the Federal Ministry of Internal Affairs and offices of the SDB disarmed the policemen, took over the intelligence equipment, documentation, the archive and threw the federal civil servants out. The federal state was left without a State Security Service by which it was deprived of one of its constitutional functions. The Požarevac despot carried out this coup when Panić and I were not in the country.

The takeover of the Federal MUP by the Serbian MUP was an important part of the Prosecution’s theory on how Milošević’s de facto power had relied on the Serbian MUP’s implementation of his politics inside and outside Serbia, beginning in April 1991. And an internal document from 13 November 1992 – “Rules Governing the Amendments to the Rules on

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303 For this session, only minutes were provided. “Minutes from the Council for the Co-ordination of positions of State Policy,” 2 November 1992, Exhibit 469.45.
304 Ibid., 2.
305 Ćosić, Piševi zapisi, 183.
the Internal Organisation of the State Security Department in the Ministry of the Interior” – had actually stated that the Serbian MUP was to takeover security tasks on behalf of the FRY.\textsuperscript{306}

In mid-1993, only a few months after Panić’s withdrawal from politics, Milošević finally managed to force Dobrica Ćosić out of his position as President. With the elimination of Ćosić, Milošević was successfully able to initiate changes to the federal leadership that tightened his grip on power, appointing only those most loyal to him. And despite losing some support from Serbian nationalist circles loyal to Ćosić, Milošević was firmly in control.

\textit{Keeping It in the Family}

When Milošević’s charismatic authority began to fade in the mid-1990s, it was largely as a result of the economic disaster that had been set off by the high price of Serbia’s involvement in war. Borisav Jović reflected back on how Milošević’s war politics were criticised by the international community, and how international sanctions in combination with those imposed by the UN in 1992, along with widespread corruption among elites close to Milošević and his wife, left Serbia impoverished.\textsuperscript{307} Milošević’s political tenure was marked by a huge gap between a small group of excessively rich elites – including his family – and a large group of excessively poor citizens. While Milošević had declared himself a socialist at the formation of the SPS in 1990, according to Jović, Milošević was not actually committed to principles of social justice and began to lose the support of many people who had originally believed he held socialist convictions.\textsuperscript{308}

Milošević’s early supporters also could not possibly have envisaged the degree to which his leadership would be influenced by his wife. Milošević’s political alliance with Mira Marković strained the relationships he had with many close associates; and indeed, Milošević was defined by Marković and uxoriously deaf to the opinions of others. In 1991, for example, Jović advised Milošević to remove a photograph of his wife from the wall of his presidential office, reasoning that a huge portrait of his wife next to a portrait of Tito of the same size was not something that

\textsuperscript{306} “Rules Governing the Amendments to the Rules on the Internal Organisation of the State Security Department in the Ministry of the Interior, 13 November 1992, 1. This document reached the OTP after the trial.\textsuperscript{306}

\textsuperscript{307} Jović, \textit{Knjiga o Miloševiću}, 21.

\textsuperscript{308} Ibid.
would pass unnoticed by visitors. Milošević replied that he would rather remove Tito’s photograph than his wife’s. Jović did not ascribe too much importance to the exchange until he saw later that Milošević had indeed removed Tito’s photograph but his wife’s remained, and would until the end of his time in office.\textsuperscript{309}

Jović and Lilić both witnessed firsthand the influence Mira Marković had on her husband and, through him, on Serbian politics generally; and they both testified about how Milošević and his wife engaged in a destructive political game that led to many irrational and otherwise inexplicable decisions. Jović recalled how Marković began writing published articles in the form of diary that recorded her thoughts and ideas, which were printed in the biweekly magazine \textit{Duga}. The articles fascinated the public. Once, she attacked the SPS, asserting that it was not a socialist but a nationalist party and claiming that some party members did not want a peaceful solution to the Yugoslav crisis. The fact that Marković attacked her husband’s party led initially to rumours that they were about to divorce, which turned out to be far from the truth.

Mihailo Marković (no relation to Mira) was known worldwide for his role in introducing the Praxis School into Marxist philosophy, and in 1990 had become one of the founders of the SPS and its principle ideologue. He responded in the media to Mira’s accusations only to see Milošević come to her rescue. Through an intermediary, Milošević requested that Jović, who was Vice-President of the SPS at the time, call Mihailo Marković and demand that he stop arguing with Mira in public. Jović did contact Marković, but only to tell him that he agreed with him and could not understand what Milošević and his wife were up to.\textsuperscript{310}

Shortly after her public clash with Mihailo Marković, Mira Marković founded her own political party, the United Yugoslav Left (\textit{Jugoslavenska ujedinjena levica}, or JUL). Notwithstanding that this new party would directly compete for votes with the SPS – another leftist party at least in name – Milošević more or less ordered SPS leadership to attend the JUL party gathering. Those who refused, as Jović did, became outcasts from the SPS leadership, essentially writing off their political futures.\textsuperscript{311}

\textsuperscript{309} Ibid.
\textsuperscript{310} Ibid., 23-24.
\textsuperscript{311} Ibid., 25.
Jović apparently discovered by accident that Milošević had personally taken part in the foundation of the JUL, which was purportedly aimed at helping him remove warmongers, criminals, and thieves from his own SPS ranks. Jović was sceptical of this reasoning; Milošević could have dealt with this problem without founding a new party.  

Lilić also testified about Milošević’s involvement in the foundation of the JUL and said he could not distinguish the influence of the SPS from that exercised by the JUL. Lilić explained how the JUL took over some of the most important functions in the Republic of Serbia and in the FRY, including controlling financial affairs as well as media, and concluded that both the JUL and SPS were under Milošević’s authority.

The Prosecution characterised Milošević as a man without personal conviction or honour, though not a racist or xenophobe, who was motivated only by power. But does that sufficiently explain his political conduct and the violence that resulted? Must the ideological platform from which he acted be taken into account? And does it matter if he adopted an ideology out of conviction or out of political opportunism? In the following chapter the relationship between Milošević’s leadership and Serbian state ideology will be explored.

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312 Ibid.
313 Testimony of Zoran Lilić (17 June 2003), 22555-22557.
314 Trial Transcript, Prosecution Opening Statement (11 February 2002), 9.
...the law usually is an accomplice to ideology, sometimes an enemy of justice and always the narrator of a series of complex and deeply ambiguous stories.

Gerry Simpson, The Law of War Crimes

Chapter III: The Ideology

Criminal investigations into the language of leaders attempt to uncover derogatory and racist words that might represent prejudice or hatred toward members of a targeted enemy group. This evidence is essential to revealing the state of mind of an accused, needed to establish criminality. To prove a criminal case, both the words and deeds of an accused are equally important. Although actus reus – the criminal act itself, such as killing or rape – is an essential starting point for every criminal investigation, proving the criminality of a political leader focuses more on mens rea, the criminal mind, which must be shown to have led to or accompanied the actus reus. Throughout the Milošević trial, witnesses who were once close to or engaged in political negotiations with him testified that there was often a discrepancy between Milošević’s words and deeds. So, what were Milošević’s true intentions and why did he try to obscure his political goals? Was it because he knew that the creation of a single state for all Serbs could be achieved only through violence against non-Serbs?

Since 19th century, Greater Serbia ideology is associated with territorial expansionism, advocating that the Serbian state be enlarged to the south (into Macedonia and Kosovo) and to the west (into BiH and Croatia). Early proponents of a Greater Serbia aspired to expand Serbian borders into Ottoman and then Habsburg territories – which had ethnically mixed populations with large numbers of non-Serbs – and the Prosecution argued that this history of efforts to enlarge Serbian territory was one of mass atrocities against those non-Serb populations. In establishing Milošević’s criminal state of mind, it was essential for the Prosecution to present evidence on his adoption of this ideology that has long inspired attempts by Serbian political elites to create an ethnically-defined Serbian state; efforts known to frequently have been accompanied by violence.315

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315 A number of witnesses testified at the ICTY as to this history and ideology. The Prosecution called Audrey Budding as an expert witness on history, Renaud de la Brosse on political propaganda, and Ton Zwaan as an expert
Greater Serbia Ideology and a History of Violence: From Terrorism to Mass Atrocities

Expert witnesses for both the Prosecution and Defence addressed the history of the Greater Serbia concept. Prosecution Expert Witness on history Audrey Budding credited the term to Serbian politician Ilija Garašanin (1812-1874), who wrote a short nationalistic manifesto in 1844 known as Načertanije (The Outline), which identified the borders of a future Serbian state.\(^{316}\) The document was kept secret until it was finally published in 1906.\(^{317}\) Since Garašanin’s time, there has been much debate over his ideology and what the notion of Greater Serbia implies. Is it a unified South Slavic state incorporating a large number of non-Serbs, or a Serbian national state meant to unite Serbs and connect all predominantly Serb territories? In other words, does it reflect Yugoslavism or Serb nationalism?

In his Opening Statement, Milošević asserted that the concept of Greater Serbia had been invented for a propaganda campaign launched by the Austro-Hungarian Empire. When Ottoman territory conquered by Christian powers was redistributed in 1878 by the Congress of Berlin, BiH became an Austro-Hungarian protectorate, to the great consternation of the adjacent emerging Kingdom of Serbia.\(^{318}\) Between 1878 and 1914, the relationship between the Kingdom of Serbia and the Austro-Hungarian Empire was dominated by a rivalry over BiH territory, which worsened when Austro-Hungary annexed BiH in 1908. Milošević cited that rivalry as the reason the Austro-Hungarian Empire had devised the “Greater Serbia” concept, in order to accuse the Kingdom of Serbia of expansionism.\(^{319}\)

Čedomir Popov, a Defence witness on the topic, similarly claimed that the concept of Greater Serbia was a consequence of the power struggle for territory between the Austro-Hungarian

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\(^{316}\) Budding, *Serbian Nationalism in the Twentieth Century*, 3.

\(^{317}\) For example, see: Dušan T. Bataković “Ilija Garasanin’s Načertanije: A Reassessment,” *Balkanica* XXV, no. 1 (1994): 157-183. The article was tendered into evidence as Exhibit P805.

*The Principality of Serbia existed from 1812 to 1878, under nominal Ottoman rule. It gained full independence after formal recognition by the Berlin Congress in 1878, and was thereafter known as the Kingdom of Serbia until it joined a pan-Slavic state in 1918 at the end of World War I.*

\(^{319}\) Trial Transcript, Defence Opening Statement (31 August 2004), 32193.
monarchy and the Serbian kingdom. He testified that the “myth” of Greater Serbia ideology had been fostered as a scare tactic, saying it:

...was nurtured and further developed after the 1878 Berlin Congress, acquiring the character of a never-ending political and religious campaign. The aim of this campaign and the creation of the myth was threefold; to prevent the creation of a Serbian state within its national borders, to conceal the fact that Austria possessed some of the Serbian and Balkan territories and aspired to others, and to open the routes to a Catholic missionary campaign among the Orthodox population of Southeastern Europe. No effort was spared to spread the myth about a Greater Serbian threat...  

A number of Defence witnesses repeated the explanation Milošević and Popov offered for the negative connotation attached to the term Greater Serbia, asserting it was a foreign invention meant to discredit Serbia – an emerging political power in the late 19th century – and prevent its westward expansion. Defence Expert Witness Kosta Mihailović also brought up the role of two well-known Serbian socialists, Dimitrije Tucović (1881-1914) and Svetozar Marković (1846-1876), who he claimed contributed to a negative appraisal of the term by applying it to Serbian expansionist policies in the second half of the 19th and beginning of the 20th centuries, and whose views he said were due to “unyielding” ideological positions that were “one-sided.”

Čedomir Popov also claimed that Načertanije had not advocated aggression and therefore should not be seen as having instigated violence. Instead, Popov argued, Garašanin’s plan focused on integrating lands claimed by Serbia on linguistic and religious grounds – BiH, Northern Albania (specifically Kosovo and Metohija), and Montenegro – allowing Serbia to unite all Serbs while leaving the door open to other South Slavic nations, including Bulgarians as well as Croats from

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321 For example, see: Testimony of Mihailo Marković (17 November 2004), 33541.

322 Kosta Mihailović, Economic Aspects of the ‘Greater Serbian Policy’, Expert Report, Exhibit D265a, 12-13. Although Professor Mihailović was officially listed as an expert witness, the Prosecution considered him to be more of a fact witness, for Mihailović had participated in events of significant relevance to the planning and strategy of the conflicts. For discussion, also see: Testimony of Mihailo Marković (17 November 2004), 33541.

323 Testimony of Čedomir Popov (16 December 2004), 34590-34591. Also see: Bataković, “Ilija Garasanin’s Načertanije: A Reassessment.”
Slavonia, Croatia, and Dalmatia. According to Popov, Garašanin’s primary aim was to liberate Serbs in the Balkans from Ottoman rule, invoking their “sacred historical right” based on the pre-Ottoman legacy of the 14th century Serbian state under Tsar Dušan the Mighty.\(^\text{324}\)

Asked by the Prosecution to comment on the proposition that a future Serbian state as envisaged by Garašanin would have been based on historic, ethnic, religious, linguistic, and geostrategic criteria and be led by a Serb dynasty, Popov replied that, indeed, \textit{Načertaniye} advocated the national interest of Serbs, but he said that similar nationalist and irredentist\(^\text{325}\) conceptions “prevailed throughout Europe in the 19th century” and that “Serbs also had the right to espouse such an idea.”\(^\text{326}\) In his Expert Report, Popov characterised Greater Serbia ideology as a myth that had been “nourished, fostered, and spread” to destabilise Serbia, which he claimed in court was meant to enforce a stereotype against Serbs as hegemonic. When Milošević asked if he in fact saw Serbia as a “victim nation and a victim state,” Popov said that he did.\(^\text{327}\) His answer reflected the ideological framework of Serb victimhood by which Serb nationalist elites had mobilised social action in Kosovo in the 1980s.

**A History of Expansion of the Serbian State by Force, 1912-1941**

*The Balkan Wars, 1912-1913*

Serbian state borders were redrawn twice during the Balkan Wars, waged in 1912 and 1913, in which emerging Balkan states fought the Ottoman Empire. Serbia extended its borders south, to Vardar Macedonia (a region now in northern Macedonia) – also known as Old Serbia because it was part of the medieval Kingdom of Dušan the Mighty – and into Kosovo and parts of Sandžak. These conquests meant that the Kingdom of Serbia incorporated large numbers of non-Serbs.\(^\text{328}\)

In his Expert Report, Defence witness Kosta Mihailović wrote that Serbian socialist Dimitrije Tucović had asserted at the time of the Balkan Wars that Serbia’s 1912 military incursion into the northern parts of Albania proved it was trying to conquer that territory as well, with

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\(^{325}\) In Yugoslav political rhetoric, the term \textit{irredentism} was distinguished from \textit{separatism}. Irredentism has been associated with Kosovo Albanian nationalism and their alleged attempts to join Albania. Separatism has been associated with Slovenia, Croatia, and BiH and their attempts to break away from Yugoslavia.

\(^{326}\) Testimony of Cedimir Popov (15 December 2004), 34586.

\(^{327}\) Testimony of Cedimir Popov (16 December 2004), 34565-34566.

\(^{328}\) Budding, \textit{Serbian Nationalism in the Twentieth Century}, 3-5.
aspirations to gain an outlet to the Adriatic Sea. Mihailović contested this, saying that it was in fact the threat of the creation of a Greater Albania that had spurred the start of the Balkan Wars in the first place. But it wasn’t just the Albanians who had expansionist ideas, and the danger of competing irredentist or separatist claims had been recognised in the late 19th century by another Serbian socialist, Svetozar Marković, who drew attention to the hypocrisy of Serbia for asserting the right to an exclusive state in the Balkans but denying that right to others. Marković was also quoted by Mihailović in his Report, though Mihailović dismissed Marković’s concerns by asserting that “it can be reasonably assumed that he did not know the real intentions of [Serbian] policy.”

The Serbian conquest of territory in Kosovo during the Balkan Wars involved atrocities committed by Serbian and Montenegrin soldiers, which some observers saw as a systematic attempt by the Serbian military to alter the demographic balance of the region in order to justify the incorporation of Kosovo into the Serbian state. On this issue, Prosecution Expert Witness Budding referred to the Carnegie Endowment’s 1914 Report of the International Commission to Inquire into the Causes and Conduct of the Balkan Wars, which chronicled these atrocities:

Houses and whole villages reduced to ashes, unarmed and innocent populations massacred en masse, incredible acts of violence, pillage and brutality of every kind – such were the means which were employed and are still being employed by the Serbo-Montenegrin soldiery, with a view to the entire transformation of the ethnic character of regions inhabited exclusively by Albanians.

Defence witness Čedomir Popov recognised that atrocities had been committed by Serbian forces; but he contended that they were only in response to attacks by Albanian units, which he claimed were motivated by the Albanian majority’s refusal to accept Serbian authority.

Slavenko Terzić, who was called by the Defence as an Expert Witness on the history of Kosovo, notably omitted any reference to the Balkan Wars in his Expert Report. Yet, this particular

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330 Ibid., 13.
331 Budding, *Serbian Nationalism in the Twentieth Century*, 5.
333 Testimony of Čedomir Popov (16 December 2004), 34601-34602.
episode in the history of Kosovo and Serbia is undeniably significant because, in 1913 – after almost 500 years – Serbia repossessed Kosovo from the retreating Ottoman Army and incorporated its territory into the expanding Kingdom of Serbia. In the Prosecution’s cross-examination, Terzić was asked why he hadn’t mentioned these historical events, including mass atrocities committed against Kosovo Albanians by Serb soldiers, in his Report. Terzić accepted that the Carnegie Endowment’s accounting of the extent of the atrocities was probably accurate, but said that they were the expected consequences of war. He rejected the Prosecution’s suggestion that these atrocities resulted from a Serbian government plan to ethnically cleanse that territory, concluding that such a plan would have been implemented if it existed. Terzić also failed to mention the Serbian government’s Kosovo colonisation programme in his Report, though it was significant for having offered certain economic privileges to Serbs who were willing to settle in Kosovo after 1913. As Audrey Budding explained, the purpose of the programme was to change the ethnic composition of Kosovo in favour of Serbs; but the scheme never really worked and Kosovo Albanians maintained a majority.

The First World War, the London Treaty of 1915, and a Greater Serbia

In questioning Čedomir Popov, the Prosecution pressed the matter that some of the first Greater Serbia ideologues had advocated violence for the purpose of unifying Serb-claimed territories, asking about the early 20th-century organisation known as both “Unification or Death” (Ujedinjenje ili smrt) and the “Black Hand” (Crna ruka). Popov corroborated that, indeed, a member of the organisation had assassinated Aleksandar Obrenović – the last king of the Obrenović Dynasty – in 1903. Obrenović was known for having cultivated a good relationship with Austro-Hungary, then seen by Serb nationalists as the major obstacle to territorial expansion and a specific challenge to territorial aspirations in BiH. The same group was also involved in the assassination of Franz Ferdinand in Sarajevo in 1914.

Popov, who had initially rejected the Prosecution’s proposition that Greater Serbia ideology was linked to violence, was challenged to admit that terrorism had indeed marked early attempts at

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334 Testimony of Slavenko Terzić (9 December 2004), 34374-34376. Also see: Slavenko Terzić, Kosovo and Metohija in the 20th Century, Expert Report, Exhibit D259a.
335 Budding, Serbian Nationalism in the Twentieth Century, 5.
336 Testimony of Čedomir Popov (16 December 2004), 34592-34593.
Serbian irridentism. He agreed that the assassinations of King Aleksandar and Archduke Franz Ferdinand represented a shift toward support for a more violent approach by the Black Hand, which he described as a paramilitary organisation comprised of active army officers of the Serbian Royal Army. The objective of the group, he said, was Serbia’s unification with Serbs from Bosnia, an aim which he claimed was fully supported by Bosnian Serbs.\footnote{Ibid., 34593-34594.} Popov denied that the assassination of Archduke Ferdinand in 1914 was an expression of Greater Serbia ambitions, though, asserting that Bosnian Croats and Bosnian Muslims were members alongside Bosnian Serbs of Young Bosnia (Mlada Bosna), the organisation that actually carried out the assassination. According to Popov, Young Bosnia representatives sought support from the Black Hand when they were refused assistance from the Serbian government.\footnote{Ibid.} The assassination was of course seen as triggering the outbreak of the First World War, during which the Austro-Hungarian Empire disintegrated and after which BiH became part of a newly formed Kingdom of Yugoslavia.

The Defence position was that Serbs had never aspired to form a Greater Serbia, and had even rejected an enlarged state when it was offered to them in the 1915 London Treaty, preferring instead to form a joint state with the Slovenes and Croats. Milošević introduced this notion in his Opening Statement in August 2004, stressing that the Serbs had rejected the London Treaty despite promises by the Allies to expand Serbia to include territories in BiH and Croatia:

> To make the irony and absurdity even greater and to make the lies and injustice against the Serbian people even worse...it is well known that in 1915, the allies of Serbia, in the so-called London Treaty, offered Serbia, after winning the war, an extension of its territory to Bosnia and Herzegovina, parts of Dalmatia, parts of Slavonia, and so on and so forth. There are documents to show all this. But Serbia did not do this. Serbia instead embraced and espoused Serbs, Croats, and Slovenes alike from the former territories of the Austro-Hungarian Empire, and this is how the Kingdom of Croats, Serbs and Slovenes was created, later on to be called Yugoslavia. This option taken by the Serbian state to create a common state of Yugoslavia rather than their own state provided protection to our Croatian and...
Slovenian brothers. We protected them from territorial fragmentation. And also, after they had been part of a defeated state, they became part of the winning camp.\textsuperscript{339}

Popov contextualised the London Treaty historically and politically, saying that Austro-Hungary was the enemy state and its territory had been offered to Italy by the British in order to get Italy involved in the war on the side of the Allies. According to Popov, Serbia was not involved at all in these secret negotiations; but the British had agreed with Italy to the division of a considerable part of the Austro-Hungarian Empire, with the rest going to either Serbia or a common Serb, Croat, and Slovene state.\textsuperscript{340} Further, Popov testified, there were two London Treaty Maps, the second of which dealt specifically with Serbia. This second map captured changes made to the first, he said, and marked the territories offered up to Serbia, including Macedonian territory, as compensation for the fact that Serbia had lost Dalmatia to Italy.\textsuperscript{341} Popov explained that Serbia was also offered Bosnia, Eastern Slavonia, Bačka, Srem (Syrmia), and the part of Dalmatia from north of Split up to the Planck peninsula. He commented that this was more territory than Serbia ever considered rightfully due.\textsuperscript{342}

Map 2: London Treaty Map showing land offered to Serbia in 1905 by the Allied Forces

\textsuperscript{339} Trial Transcript, Defence Opening Statement (31 August 2004), 32193.
\textsuperscript{340} Testimony of Čedomir Popov (15 December 2004), 34507-34508.
\textsuperscript{341} Ibid., 34511-34512.
\textsuperscript{342} Ibid., 34513.
The First Yugoslavia or Greater Serbia?

The contention of the Defence was that the London Treaty could have secured what was, in effect, a Greater Serbia, but that the Kingdom of Serbia had rejected this prospect because it chose instead to liberate Slovenes, Croats, and Serbs who lived under Austro-Hungarian rule. Popov testified that Serbia’s war aims had been laid out in the 1914 Niš Declaration and favoured the creation of a common Yugoslav state.\(^{343}\) However, Prosecution Expert Witness Budding offered a different interpretation of these events, saying that Serbian political elites in fact saw a common state as an expanded Serbian state, not as a Yugoslav state, which was then a fundamentally new concept. Budding testified that, at the time, the notions of Greater Serbia and Yugoslavia were synonymous, at least in the minds of political decision makers. According to her, the Niš Declaration was a continuation of Serbia’s pursuit of the unification of all Serbs.\(^{344}\)

Croat representatives in the negotiations that preceded the creation of the first Yugoslav state advocated for a confederation; though they eventually compromised with the Serbs and established the Kingdom of Serbs, Croats, and Slovenes under the Serb royal dynasty of Karadžordević.\(^{345}\) As Audrey Budding noted, there were Serbian intellectuals who also saw the importance of making a distinction between a common state and the expansion of Serbian domination, and pushed for a federal state that would decentralise power.\(^{346}\) In 1929, the Kingdom of Serbs, Croats, and Slovenes changed its name, becoming the Kingdom of Yugoslavia, or the First Yugoslavia. The state was troubled by inter-ethnic relations and growing Serbo-Croatian conflict. Still, Serbia did engage in political dialogue with Croats and Slovenes and treated them as equal nations; but its relationship with other ethnic groups – the Bosnian Muslims, the Macedonians, and the Kosovo Albanians – remained problematic.

An extreme example of how some Serbs felt the non-Serb population should be dealt with was found in yet another document that remained hidden away from the public for years, at the Institute for Military History in Belgrade, titled “The Resettlement of the Arnauts” (Iseljavanje

\(^{343}\) Ibid., 34514.
\(^{344}\) Testimony of Audrey Budding (24 July 2003), 24930.
The term ‘Arnauts’ was used to denote ethnic Albanians, and the document recommended moving the Albanian population to Turkey and paying the Turkish government as compensation for resettlement costs. The proposal was written by Vasa Ćubrilović, then a junior historian who was known for his Young Bosnia membership at the time of the assassination of Franz Ferdinand. Ćubrilović wrote the document when he was an Assistant Professor at the University of Belgrade and presented it at a session of the Serbian Cultural Club in 1937. The Club was an establishment for the elite, including prominent Serb politicians, high-ranking military personnel, and intellectuals with considerable influence over politics and public opinion.

The Second World War and the Historical Legacy of Moljević’s “Homogeneous Serbia”

The disintegration of the First Yugoslavia in 1941 and its partition among the Third Reich, Italy, and neighbouring Nazi satellite states – such as Hungary and Bulgaria – redrew the map of Yugoslavia considerably. Croatia was rewarded with more territory for its alliance with the Third Reich, extending its borders to the east by annexing BiH and Syrmia and reaching as far as the suburban town of Zemun in the vicinity of Belgrade. The Serbs, on the other hand, were left by Nazi Germany with a Serbian state that was much smaller than the new Independent State of Croatia (Nezavasina država Hrvatska, or NDH). The NDH was led by the extreme right Ustasha movement, which started exterminating Serbs, Roma, Jews, and Communists in the Jasenovac concentration camp in order to change the ethnic composition of the NDH in favour of Croats.

In both Nazi Serbia and the NDH, several Serb Chetnik guerrilla units were active. The Chetnik guerrillas under the command of Colonel Draža Mihailović were considered by Allied Forces to be a royal army and were seen as an official resistance movement until 1943, when Tito’s victorious communist guerrillas, known as the Partisans, became the only recognised resistance movement on the territory of the former Kingdom of Yugoslavia. One of the ideologues of the Chetnik guerrilla movement was Stevan Moljević (1888-1959), a lawyer from Banja Luka who was a member of the Serbian Cultural Club. In 1941, he authored a pamphlet titled “Homogeneous Serbia” (Homogena Serbia), which revitalised Greater Serbia ideology in the political and military context of the Second World War and the changing European State System.

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Asked by Milošević to comment on Moljević’s contribution to the Chetnik movement and Greater Serbia ideology, Čedomir Popov testified that it was Ustasha terror against Serbs in the NDH that led to the Chetnik movement. He described the Chetniks as an incoherent group, but said that, for some time, Draža Mihailović’s movement indeed seemed to have adopted Moljević’s ideas. According to Popov, Moljević envisaged a Greater Serbia that would encompass even more territory than offered by the London Treaty in 1915:

...Moljević envisaged that this should be a homogenous Serbia from a national point of view along the following lines: The non-Serb population will be allowed to leave on their own or will be exchanged for those Serbs which remain outside this Greater Serbia. This programme was rejected by the Chetniks themselves. It was revised at the so-called Sveti Sava Congress in the village of Bar in January 1944 when, under pressure exerted by the Allies and because of the general feeling that prevailed among the Allies, a decision was made to create a federative Yugoslavia with Serbia at its centre.\(^{348}\)

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\(^{348}\) Testimony of Čedomir Popov (15 December 2004), 34524-34525.
The historical importance of the Moljević map for the development of Greater Serbia ideology is in its demarcation of a Western border running from the Northern Croatian town of Virovitica, through Karlovac, to Karlobag in the South of Croatia. The Prosecution asked Popov to comment on Moljević’s map, and in particular on the proposed boundary, which would have left Croatia as a very narrow strip of territory beyond the projected Virovitica-Karlovac-Karlobag (V-K-K) line. Popov asserted that this border was not accepted by all Serbs, and indeed, that’s possible; but the V-K-K line grew to be seen by many as a potent and enduring representation of Greater Serbia ideology and proved relevant to the war in Croatia in 1991.

The SANU Memorandum and Serbian State Ideology

In 1985, Serbian political leaders approved a proposal by members of the Serbian Academy of Sciences and Arts (SANU) that they contribute to solving the profound social, economic, and political crises facing Yugoslavia and the Republic of Serbia at the time. Stambolić consented to the endeavour because he firmly believed that science should be part of those efforts. The SANU leadership organised several expert teams, each of which analysed different aspects of the crisis and made proposals for how to resolve them. The product of this work – the SANU Memorandum – took Stambolić by surprise, and he qualified it as an “obituary for Yugoslavia.” He felt that the recommendations advanced in the document were contrary to the interests of Serbs in Yugoslavia, whom he felt were best served by a common state. Stambolić was one of the first communist officials to criticise the Memorandum in public, warning against the dangers of attempts to “unite” Serbs on the ruins of Yugoslavia, and saying presciently that this would lead to conflict with other Yugoslav nations and with the rest of the world.

In the months following a ‘leaked’ disclosure of the Memorandum in 1986, it was the topic of discussion at all Party forums. Unlike fellow politicians Stambolić and Dragiša Pavlović, Milošević remained silent; he was diligent about not speaking against the Memorandum in public, though he did allow for some criticism of it by others in less public settings. And while

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349 Testimony of Čedomir Popov (16 December 2004), 34609-34610.
350 Stambolić, “The Memorandum, In Memoriam to Yugoslavia,” in Put u bespuće, Exhibit P800a, 2. Also see: Budding, Serbian Nationalism in the Twentieth Century, 53.
351 Stambolić, Put u bespuće, 1.
352 Budding, Serbian Nationalism in the Twentieth Century, 58.
he never commented on the contents of the Memorandum itself, Milošević defended the Academy on a number of different occasions, saying that it was only natural that an institution of the highest intellectual and moral standards would deal with solving complex issues like the Yugoslav crisis.353

The Prosecution mentioned the SANU Memorandum only briefly in its Opening Statement, referring to the threat it had alleged faced Serbs in Kosovo and Croatia and how that rhetoric contributed to creating fear among Serbs.354 But the Memorandum kept cropping up in evidence as the trial went on, progressively revealing its importance as an apparent blueprint for the political programme that had been implemented by Milošević. The central arguments in the Memorandum were based on the notion that economic and political systems had suffered negative consequences as a result of the 1974 Yugoslav Constitution, by which the Federation had become a confederation. According to the Memorandum’s authors, the 1974 Constitution made the Yugoslav political system “a textbook case of inefficiency” and they argued that the only way out of the crisis was to abandon the political and economic systems that were based on that Constitution.355 They also identified three additional issues confronting Serbia in the Federation: its economic underdevelopment, its unresolved relationship with the state and the provinces, and “the genocide in Kosovo.”356 These and other very serious charges painted a dim picture of life for Serbs and included accusations that the Serb population in Kosovo and Croatia had been threatened by “physical, political, legal, and cultural genocide” that had directly affected the ethnic balance in the Yugoslav Federation.357 The conclusion of the Memorandum’s authors was that the root of both the Yugoslav crisis and the Serbian crisis lay in Yugoslavia’s decentralisation. They called for transforming Yugoslavia and referred, though only in passing, to the possibility of its collapse.358

The Memorandum’s one-sided emphasis on Serbian victimisation was reflected in all forms of public debate in the years that followed. But Prosecution Expert Budding suggested that the content of the Memorandum was not its most relevant feature; she considered it most significant:

353 Ibid., 37. See footnote 75.
354 Trial Transcript, Prosecution Opening Statement (12 February 2002), 17.
355 Budding, Serbian Nationalism in the Twentieth Century, 54.
356 Mihailović and Krestić, Memorandum of the Serbian Academy of Sciences and Arts, 119.
357 Ibid, 128.
358 Budding, Serbian Nationalism in the Twentieth Century, 55-56.
for the way in which it had been introduced to the public and how it had polarised Serbian political leadership.359 Budding also drew attention to the fact that, unlike previous critics of the 1974 Constitution, the authors of the SANU Memorandum catalogued pre-existing grievances together with one important and groundbreaking new inference – that Serbs might be able to do without Yugoslavia.360

Authors of the Memorandum Appear as Defence Witnesses

In his Opening Statement in February 2002, Milošević said that the indictments against him accused not just him but the whole Serb nation, beginning with the Serbian intelligentsia and members of the SANU. He defended the SANU and the Memorandum, saying that Serbian academics had responsibly and authoritatively described the situation in Kosovo.361 Though he had hardly ever spoken publicly of the Memorandum and it was difficult to prove that he had even read it, its role in shaping his ideology became clear when Milošević called some of its most prominent authors to the stand for his Defence. The fact that they were asked to appear spoke volumes despite his reticence.362 Professor Kosta Mihailović, an economist who was among the Memorandum’s authors, was an advisor to Milošević at all major negotiations in the early 1990s; he testified as an expert witness on the topic of Serbia’s economic sluggishness in the First Yugoslavia (1918-1941), and also about the Memorandum and Milošević’s attitude toward it. In 1993, Mihailović had co-authored a book titled Memorandum of the Serbian Academy of Sciences and Arts: Answers to Criticisms in which he and Vasilije Krestić – a Professor of History and fellow SANU member who was responsible for the part of the Memorandum that addressed the history of genocide against Serbs – explained why and how the Memorandum was written. While Mihailović confirmed in his testimony that there was indeed a link between the ideas in the Memorandum and the views of Milošević on legal, political, and economic aspects of the crisis, in the book, he and Krestić denied that this was anything but coincidental:

359 Ibid., 57.
360 Ibid., 58.
362 SANU Members and Memorandum authors Mihailo Marković and Kosta Mihailović both appeared, as well as Slavenko Terzić, Smilja Avramov, and Čedomir Popov; Vasilije Krstić was scheduled to testify, and his Expert Report was already was filed, before Milošević died.
The insinuation that Slobodan Milošević was carrying out a national agenda contained in the Memorandum is a pure fabrication. This claim was inspired by the course of events and the anti-Serbian propaganda’s need to keep the official and unofficial organs of Serbia under a constant barrage of accusations. Another charge against the Memorandum is that it served as a springboard for Slobodan Milošević’s policies. There is nothing strange in the fact that he may have seen some of the problems and solutions in the same or similar light as the document in question. It is more likely that he did not learn about the existence of these problems for the first time from the Memorandum, but that he found in it confirmation for some of his own personal observations.³⁶³

The booklet also shed light on the few criticisms Milošević had actually expressed about the Memorandum:

...some facts suggest that he was critical of the authors of the Memorandum more out of compliance with the party discipline than out of personal conviction. During the political witch hunt in Serbia, it was noted that his criticisms were rare and relatively mild. After assuming the key political position in Serbia, finding himself able to influence the direction of political action, he stopped the campaign against the Memorandum. The importance of this is not diminished by the fact that he had stopped the attacks against the Serbian Academy as part of the democratisation of society, an official change of heart toward the intelligentsia, freedom of speech and the introduction of a multiparty system.³⁶⁴

The publication – or rather, public disclosure – of the Memorandum had been the subject of controversy itself. The authors maintained that it was leaked without their knowledge. Others claimed that it was deliberately leaked in order to generate interest among Serbs for the topics it discussed. A second controversy centred on the version of the text that was published. Was the 1986 publication an unfinished version as the authors claimed? Or was this label used as a way to brush off and deter criticism by claiming that this first published version was not the final, authorised text?

³⁶³ Mihailović and Krestić, Memorandum of the Serbian Academy of Sciences and Arts, 80-81.
³⁶⁴ Ibid., 81.
Kosta Mihailović addressed this point in his testimony, saying that uproar over the Memorandum was unjustified, and all the more so because the version that was leaked was unedited. He explained that there were initially twenty copies printed, of which sixteen were meant for the contributors and members of the commission, along with copies for each of three consultants – Dobrica Ćosić, Ljuba Tadić, and Jovan Đorđević – leaving one copy undistributed. Mihailović stressed that this unauthorised draft of the text was not approved as the final version.

In response, the Prosecution produced an analysis that compared the leaked “unauthorised” version from 1986 with the official version published in Memorandum of the Serbian Academy of Sciences and Arts: Answers to Criticisms seven years later. Only six small differences existed between the two, and mostly in language, not in substance. Mihailović readily accepted the Prosecution’s findings and stated that he was personally aware of only one change in the section on economics that he authored, which appeared to be the result of a typing error. He admitted that if there were any differences between the two versions, they could be only minor. On the question of the leak, he insisted that the document had been leaked without the authors’ involvement, and that their intention was never to make it public. Mihailović attributed the leak to Professor Jovan Đorđević’s son-in-law, a journalist at the daily Večernje Novosti who allegedly spotted the draft text at Đorđević’s house and published it in the newspaper. This explanation is unlikely, though, as it was quite inconceivable in the communist system that any journalist would dare, or be able, to publish such an explosive text without consent of their editor-in-chief and the backing of at least a handful of politicians. Both the political system and the media were tightly controlled by the League of Communists.

The publication of the Memorandum led to a buying frenzy, with photocopies sold at every street corner in Belgrade. The Prosecution suggested that this leak had been manipulated and compared the clandestine nature of it to the treatment of Načertanije, which was written in 1844 but kept secret until it was published for general consumption for the first time in 1906. But Mihailović rejected the Prosecution’s suggestion that secrecy had helped generate popular interest in either

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365 Testimony of Kosta Mihailović (17 December 2004), 34749-34751.
366 Ibid., 34748-34749 and 34751.
367 Ibid., 34751-34753.
368 Ibid., 34751-34752.
of those documents.\textsuperscript{369} He insisted that the Memorandum was meant to be a non-public document, written to animate the political establishment.\textsuperscript{370}

In his Expert Report, Prosecution Expert Witness on propaganda Renaud de la Brosse qualified the publishing of the Memorandum as a “deliberate leak” and suggested that its appearance in a daily newspaper in several instalments could not have occurred without the approval of at least some members of the LC.\textsuperscript{371} Just how broad support for the Memorandum was in Serbia became apparent at the Eighth Session of the Central Committee, held in September 1987, when it divided the Serbian leadership into Stambolić and Milošević blocs. A majority of delegates supported Milošević against Stambolić and Dragiša Pavlović, the two most vocal critics of the Memorandum, and the standoff that ensued exposed proponents and opponents of a new policy course.\textsuperscript{372} The wave of political purges that followed allowed Milošević to quickly rid the government of anyone who did not readily accept this new political direction.\textsuperscript{373}

\textit{The Influence of the SANU Memorandum on Post-Communist Serbian State Ideology}

The SANU Memorandum reflected criticism that had been expressed by Serbian elites since the adoption of the 1974 SFRY Constitution, which was seen by some as disadvantageous to Serbia because it partitioned the republic into three political-administrative parts by making the provinces of Kosovo and Vojvodina federal units. To contextualise the aims of the 1974 Constitution, Audrey Budding explained that in the 1950s and 1960s, Serbia had dominated the Kosovo political scene. At the time, Aleksandar Ranković, a Serbian communist functionary who held significant influence, made centralisation of the Federation and of Serbia a dominant political goal. Ranković had risen to the highest political ranks by serving as the first Head of the Communist State Security Service (UDBA). Even when he moved on to more visible political functions – making an impressive political career in post-WWII Yugoslavia by becoming Vice-President of the Federation – he continued to control the Secret Service. Ranković was eventually dismissed from the Party in 1966 for, among other things, disloyalty to Tito and

\begin{itemize}
  \item \textsuperscript{369} Ibid., 34758-34759.
  \item \textsuperscript{370} Ibid., 34753.
  \item \textsuperscript{371} Renaud de la Brosse, \textit{Political Propaganda and the Plan to Create a “State for all Serbs”: Consequences of Using the Media for Ultra-Nationalist Ends}, Expert Report, January 2003, Exhibit P446.2, 34 and 38.
  \item \textsuperscript{372} Jović, \textit{Knjiga o Miloševiću}, 9-10.
  \item \textsuperscript{373} Ibid., 20.
\end{itemize}
espousing Serbian unitarism. He was accused of abusing the power he had over the security services, including by allegedly putting Tito himself under surveillance, as well as for unlawful use of the police in Kosovo. Some of his contemporaries later claimed that Ranković had been loyal to Tito but had gotten himself into trouble trying to secure his position as Tito’s heir. Nonetheless, Ranković was labelled a Stalinist, a centralist, and a Serb nationalist, and the post-Ranković period brought democratisation and decentralisation of the Party and the state, with changes in the balance of power in Kosovo in favour of its Kosovo Albanian majority.  

Addressing the criticism by Serbian intellectual elites of the Constitution of 1974, Budding explained that the first changes to the status of Kosovo and Vojvodina came with three sets of constitutional amendments passed between 1968 and 1971, in which Serbia’s autonomous provinces were given greater independence from Serbia and greater decision-making power at the federal level. The most radical of these changes were passed in 1971, when a twenty-three member collective federal presidency was introduced, with three representatives from each republic and two from each province, and Tito as the 23rd member. The 1974 Constitution reduced that number to nine: one representative from each republic and province, and Tito as the ninth member. The composition of the Presidency changed once again in 1980, after Tito’s death, to an eight-member body, since no one replaced Tito as the singular head of state.

Serbian communist liberals led by Marko Nikezić and Latinka Perović, who were in power until 1972, welcomed decentralisation. Still, many Serbian intellectuals and sitting communist politicians resisted the changes. According to Budding, there were two groups of opponents to decentralisation: Yugoslav unitarists were ardent Yugoslavists who saw decentralisation as weakening the original Yugoslav concept; and the ‘particularists’ had been early proponents of Yugoslavism but sought unity in Serbdom when they felt a common state was being undermined. This latter group remained preoccupied with the unity of the Serbs, rejecting the idea that they should be divided among different federal units, and began raising concerns about the rights of Serbs outside Serbia. One of the most articulate critics of decentralisation was Dobrica Ćosić, who was still a member of the Party and of the communist establishment at the time. When Ćosić

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374 Ibid.
375 Ibid., 21-22.
376 Ibid., 32-33.
became marginalised for his criticism of decentralisation, he moved his activities to the Serbian Literary Cooperative, the so-called Zadruga, of which he was elected president.\textsuperscript{377}

The most serious and explicitly political condemnation of the decentralisation amendments came from the Law Faculty of the University of Belgrade. At a Faculty session in March 1971, Serbia’s most authoritative legal experts articulated their criticism in a public discussion, concluding that after the adoption of the amendments, Yugoslavia would no longer exist as a state. Some participants called on Serbs, in Serbia and beyond, to look to their own interests, alluding to a post-Yugoslav era.\textsuperscript{378} More severe criticism included the claim by philosopher Mihailo Đurić that “in the name of national equality several independent and even opposing national states had already been established on Yugoslavia’s territory.”\textsuperscript{379} Yugoslav authorities responded with repression and did not resolve the issue, which Budding called a missed opportunity.\textsuperscript{380}

In 1977, the Serbian Presidency commissioned an analysis of the Constitution and its impact on Serbia, presented in March of that year and dubbed the Blue Book (\textit{Plava knjiga}) because of its blue cover page.\textsuperscript{381} The Blue Book was never officially discussed by the Party or made public due to its explicit criticism of the implementation of the 1974 Federal Constitution.\textsuperscript{382} It stated that Serbia had been divided into three separate political, legal, and economic entities since each province, like all the republics, had its own constitution, presidency, government, and supreme court. The analysis emphasised the procedural difficulties of passing or implementing laws that applied to the whole republic, and drew attention to the political asymmetry that resulted from the fact that republic-level organs were theoretically empowered to enact measures for the entire republic but were in practice limited to sovereignty over Serbia proper, i.e. excluding Kosovo and Vojvodina. Further, representatives of the two provinces took part in decision-making processes and bodies of the republic, while there were no representatives of the republic in the decision-making organs of the provinces.\textsuperscript{383}

\textsuperscript{377} Ibid., 35-36.
\textsuperscript{378} Ibid.
\textsuperscript{379} Ibid.
\textsuperscript{380} Ibid., 39.
\textsuperscript{381} Ibid., 44.
\textsuperscript{382} Ibid.
\textsuperscript{383} Ibid., 44-45.
The authors of the Blue Book avoided nationalist language and, according to Budding, offered their most extreme statements in its conclusion, where a lack of cooperation between Serbia’s republican and provincial bodies was said to be adversely affecting the unity of Serbian national culture and identity, and the question was raised as to whether Serbs were being allowed to exercise their historical right to a national state in the Yugoslav framework, as stipulated by the 1974 Constitution.\textsuperscript{384} Although the Blue Book was never explicitly adopted by activists in the 1980s, Budding noted that similar rhetoric cropped up again in that decade, creating common ground for cooperation between Serbia’s politicians and opposition intellectuals.\textsuperscript{385} And indeed, contrary to the culture of a one-party system, various petitions in the 1980s demanded protection of the rights of Serbs in Kosovo.\textsuperscript{386}

One such petition, made public in January 1986 and signed by 212 Belgrade intellectuals, promoted the idea that Serbs were being victimised.\textsuperscript{387} Among other things, the petition said that Kosovo Albanians had been driving Serbs out of Kosovo for three centuries. Although the ethnic composition in Kosovo did change over those centuries, the number of migrations tied to the 20th century was exaggerated in the petition text, as were their causes; but the claims presented in the petition portended the economic and political arguments that would be expressed in the SANU Memorandum, published later that year.

The petition’s core assertion about the risk to Serbs in Kosovo was rooted in the fact that the percentage of Serbs and Montenegrins in Kosovo had fallen from 27\% in the four censuses after the Second World War to just under 15\% in 1981.\textsuperscript{388} Serb nationalist activists saw this emigration pattern to be the result of a federal policy that favoured Kosovo Albanians and discriminated against Serbs in the province; and also frequently pointed to high birth rates among Kosovo Albanians as evidence of a ‘special war’ waged against the Serbs and meant to change the demography of Kosovo. But this argument failed to account for some significant demographic, social, and cultural differences between Kosovo Albanians and Kosovo Serbs. For

\textsuperscript{384} Ibid., 45-46.
\textsuperscript{385} Ibid.
\textsuperscript{386} There were three important petitions that mobilized public opinion in Serbia in favour of Serbs in Kosovo. Petitions in 1983 and 1986 were authored by Kosovo Serbs and, in January 1986, a petition was signed by 212 Serbian intellectuals before it was sent to the Yugoslav and Serbian parliaments. See: Ibid., 50-51.
\textsuperscript{387} Budding, \textit{Serbian Nationalism in the Twentieth Century}, 51.
\textsuperscript{388} Ibid.
example, in rural areas where Kosovo Albanians were already a natural majority, women generally did not work, leading somewhat automatically to higher birth rates among Kosovo Albanians than among Serbs, who lived predominantly in towns. The petition asserted that emigrations of Serbs and Montenegrins had been the result of intimidation and violence that was meant to create an “ethnically pure” Kosovo. The word “genocide” was also deployed, coupled with the claim that it could not be stopped without making profound social and political changes throughout the country.

The views expressed in court by Defence Expert Witness Slavenko Terzić echoed the arguments articulated in the 1970s and 1980s by his fellow Serbian intellectuals and academics. The SANU Memorandum had effectively synthesised and aggregated several strains of complaints, grievances, criticisms, and arguments, and had given them a new legitimacy in the post-Tito era. Its authors, ostensibly offering solutions, were responding to deep political, economic, inter-ethnic, and social crises that had been unfolding in the Yugoslav Federation since the late 1970s; yet, they seemed interested primarily in the status of Serbia and of Serbs in other republics, and they concluded that the most expedient solution was a revocation of the autonomy of the two Serbian provinces. Even Vasa Ćubrilović, who authored “The Resettlement of the Arnauts” in 1937 and who was himself a member of the SANU, had criticised the recommendations of the Memorandum, saying that the authors had spent years analysing the maps of Bosnia, trying to discover how to connect Serb lands from Belgrade via BiH to the Croatian town of Karlovac.

The Principle of Self-determination as an Element of Milošević’s Greater Serbia Designs

As a vocal advocate of the principle of self-determination, Milošević exposed himself to a contradiction that has never really been resolved. In court, the debate over the concept of self-determination developed on two tracks, based on different applications of the term in the post-Yugoslav space. Serbs and Serbia had applied a right of self-determination to peoples, or the right of a nation of people to territorial autonomy. Slovenia and Croatia, along with the international community, had instead applied the self-determination principle to the republics.

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389 Ibid. 51-52.
390 Ibid., 50
391 See: Testimony of Slavenko Terzić (6,7, and 9 December 2004).
392 Budding, Serbian Nationalism in the Twentieth Century, 55.
meaning in practical terms that the republics would become independent within their existing borders after the disintegration of the SFRY. The Prosecution argued that the Serbian insistence on self-determination of peoples over republics inherently envisioned a Serbia made much larger, and it framed attempts to unify all Serbs by forcibly redrawing republican borders on the premise of Serb self-determination as the *de facto* creation of a Greater Serbia.

There was no evidence that Milošević had ever actually used the term ‘Greater Serbia’ to express his political objectives or war goals; and, recognizing that the term lacks a universally agreed definition, the Prosecution exercised considerable caution in applying it, instead using “*de facto* Greater Serbia” to describe Milošević’s objectives.³⁹⁴ Indeed, intercepted telephone conversations involving Milošević and Karadžić in 1991 showed they were both aware of the negative connotations surrounding the term and preferred instead to use more descriptive language to identify the form of a future Serb state. Karadžić, for instance, complained to fellow Bosnian Serb Andelko Grahovac that Serbs in Croatia needed to be more careful about making explicit statements that they wanted to join Serbia because it might sound too much like they were talking about a Greater Serbia.³⁹⁵ Milošević also warned Karadžić about avoiding public reminders of historical efforts to achieve a Serbian state, telling him in September 1991 to remove a reference to Serbia’s 1914 borders from a speech.³⁹⁶

But Greater Serbia ideology was clearly at the heart of Serb territorial designs in the 1990s. Discussing a common political future and the “*regionalisation*” or “*cantonisation*” of BiH, Karadžić told Milošević about a conversation he had with a French official who had remarked that compromise wasn’t being reached on the issue of Bosnia; Karadžić had replied that anything but a Greater Serbia would be a compromise for Serbs.³⁹⁷ And in a 1992 discussion with a Serbian politician, Karadžić said that the goal was not Greater Serbia *per se*, but that existing borders were unacceptable because they divided the Serbs in Croatia and BiH. Further, echoing the victim-hero complex modelled by Serbian intellectuals, he insisted that Serbs “were not the

³⁹⁴ For example, see: Testimony of Major General Aleksandar Vasiljević (17 February 2003), 16224.
³⁹⁶ Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 20 September 1991, Exhibit P613.70a, 1.
³⁹⁷ Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 19 September 1991, Exhibit P613.67a, 5.
cause of the war conflicts” and had “never done anything but fight for a democratic and peaceful resolution.”

When the Prosecution questioned Defence witness Čedomir Popov on whether violent connotations associated with Greater Serbia ideology had prevented people from espousing it publicly, he continued to deny that it had ever been anything more than a fabrication. He also claimed that what several Prosecution witnesses had described were not Serb aspirations for a Greater Serbia and said that Yugoslavia was a country of all South Slavs, not just Serbs. As the Prosecution pressed, Popov asked agitatedly just how small Serbia would have to be to avoid being called Greater Serbia.

Still, while Greater Serbia ideology has been cast in different forms by political and intellectual elites in Serbia throughout the 20th century, repeated failures to realise an expanded Serbian state have never led to an abandonment of the underlying ideology. On the contrary, after each failure, new opportunities to reinvent the ideology have always been based on the same or similar principles but adapted to new political circumstances. Milošević’s interpretation of Greater Serbia ideology was analysed in court, and yet the term ‘Greater Serbia’ was used by the Prosecution only in the Croatia indictment, because during the investigation into events in Croatia a number of witnesses spoke specifically of the Greater Serbia territorial designs Serbs wanted to achieve there. For the most part, though, the Prosecution argued that Milošević had espoused Greater Serbia ideology without using the term, because he was aware of its negative connotation and association with violence. His rhetoric in the late 1980s and the platform of the SPS, founded in 1990, reflected an ideological paradigm that identified the protection of Serbs living outside of Serbia as a priority and claimed they faced threats from the majority ethnic groups in Croatia, BiH, and Kosovo.

An important question for the Prosecution was: To what extent did the more euphemistic terms used by Milošević and his associates – such as “All Serbs in a Single State” or “the right of the Serb people to self-determination” – reference something akin to the historical concept of Greater Serbia? Arguing that if a self-determination principal were applied to Serbs, Serbian territory would indeed expand, bringing the same desired result, the Prosecution introduced the

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398 Intercept of Conversation between Radovan Karadžić and Budimir Košutić, 7 February 1992, Exhibit P613.171a.
399 Testimony of Čedomir Popov (16 December 2004), 34595.
term ‘de facto Greater Serbia’ to describe the ideology espoused by Milošević. The Prosecution coined the term a ‘de facto Greater Serbia’ in order to stress that there was not a single fully-articulated overall plan from the very start but that the plan changed with changing circumstances, affected by the actions of the other SFRY republics or the actions of the International Community to which Serbia had to respond by changing its original territorial designs.  

An important question for the Prosecution was: To what extent did the more euphemistic terms used by Milošević and his associates – such as “All Serbs in a Single State” or “the right of the Serb people to self-determination” – reference something akin to the historical concept of Greater Serbia? And this rhetorical question is a useful point of departure for understanding events that took place in Serbia between 1987 and 1999, because it was the size and shape of a future Serb state that was at the core of Serbian politics.

A Centralised Yugoslavia or a Serb State?

While preparing for its cross-examination of Ratko Marković, the Prosecution stumbled upon a 1992 article he had authored in the law journal Pravni život (“Legal Life”) on the unresolved issue of Serbian statehood. If not for Marković’s political engagement on the side of Milošević, his article would probably have been lost in oblivion given the limited number of readers such specialist journals typically have. But, because Marković appeared as a Defence witness, the Prosecution saw the article as evidence of advanced planning by Serbian political and intellectual elites under Milošević’s leadership.  

The article, “The Constitutional Status of Serbia and her Choice for a Joint State with Montenegro,” was published in the first quarter of 1992, coinciding with the foundation of the

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\footnote{Prosecution Response to Amici Curiae Motion for Judgment of Acquittal Pursuant to Rule 98 bis, 04 May 2002, §262.}

\footnote{Marković was a Professor of Constitutional Law who had offered his legal knowledge and skills to Milošević for use in drafting amendments to the Serbian Constitution in 1990, the RSK Statute in 1991, and the FRY Constitution in 1992. He was an active SPS politician and became Deputy Prime Minister of Serbia in 1998 – a critical time for resolution of the Kosovo crisis – and was one of the principle negotiators present at the failed Rambouillet talks in February 1999. Marković’s academic work and his involvement in the drafting of important constitutional texts, together with journal articles he wrote in the 1990s, proved to be of significant probative value for establishing the real goals of the Serbian political and military leadership at that time, notwithstanding his attempts in court to minimise the importance of the role he played.}
FRY – the federation of Serbia and Montenegro – and gave a comprehensive account of the history of the Serb national question, unveiling the two principal alternatives for statehood pursued between 1987 and 2000 by Serbian leadership under Milošević: a centralised Yugoslav federation or an ethnically-defined state that would unite all Serbs. Marković preferred a federal state because of the ethnically-mixed population of the former Yugoslavia. He explained that although there were territories in which one nation was a majority, there were also enclaves populated by one nation and surrounded on all sides by other nations. He recognised, too, that in some territories, no nation had a majority, and he proposed a joint state of all Yugoslav nations organised as a federal state. It was significant that Marković advocated a federation with non-Serb nations and rejected a confederation as historically outdated. The alternative he outlined was an enlarged Serbia; an independent and sovereign state that would consist of all the territories with a Serb majority, which would need to be connected territorially. He acknowledged that connecting Serb majority territories with Serbia would necessitate the inclusion of territories with a non-Serb majority, bringing a risk and high probability of war, which he appreciated would expose Serbia to condemnation and sanctions by the international community.

The Prosecution saw Marković’s article as significant because he was not just an academic and constitutional expert, but was also an active politician. As a member of the SPS, he served from 1994 to 2000 as Deputy Prime Minister of Serbia. In the introductory footnote that had accompanied his article, Marković was introduced as someone who had worked directly on drafting the Constitution of the joint state of Serbia and Montenegro, and who could inspire consideration of the constitutional status of Serbia and of Serbia’s attempts to achieve a gradual unification of all Serb territories and people. The Prosecution suggested to Marković that this footnote implied the creation of an enlarged Serbia with which other Serb areas could join. Marković protested, saying that it was the journal’s editorial board, not he, who wrote the note. He went on to say that there were no efforts to create a Greater Serbia and that everything had been done by Serbia to remain within Yugoslavia. Explaining his position further, he stated that

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403 Ratko Marković, “Constitutional Status of Serbia...” Exhibit P824a, 3-4.
404 Ibid., 4.
405 Ibid., 1.
Serbs did not wish to be absorbed into a Croatian or Bosnian state, but wanted to “remain in the state they had lived in.” But Serbian elites were in fact indifferent toward Yugoslavia, as Dobrica Ćosić expressed when he explained to Karadžić in 1991 that the attempt to unify the South Slavs had already failed and the unification of Serbs was the next stage, yet to be achieved.

In the chapters that follow, the stages of planning identified in Chapter 1 as comprising five key goals will be explored. The first goal – the centralisation of Serbia – reflected the ideology of the SANU Memorandum and was a precursor to other developments that ensued once Milošević took power in Serbia. The events described in the next chapter correlate to the rise of Serb nationalism and of Milošević as the leader of Serbs, as well as to the articulation of a political programme focused on “Serbs outside of Serbia,” and provide historical and political context for understanding the phases of Milošević’s planning that followed.

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Chapter IV: Centralisation of Serbia, 1987-1990

This chapter will explore the goal to centralise Serbia by describing the methods Milošević used to revoke the autonomy of the two autonomous provinces in Serbia, as well as analysing the extent to which the grievances of Kosovo Serbs were instrumentalised in order to politically mobilise Serbs and justify and legitimise changes to the status of Kosovo and Vojvodina. Then, the chapter examines the adoption of a new Serbian Constitution in September 1990. Finally, the overlap of views on the position of Serbs in the SFRY as expressed in the SANU Memorandum, the Gazimestan Speech given by Milošević in 1989, and the SPS Party Programme of 1990 is examined; and connections between language used by Serbian nationalist intellectuals and Milošević are explored.

The Implementation of SANU Memorandum Goals by Mob Rule, 1988-1989

Although the SANU Memorandum was never explicitly invoked by Kosovo Serbs, its narrative supported theirs by characterising their position in Kosovo as one of “physical, political, legal and cultural genocide” and as among the worst defeats in the history of Serbs. Rhetoric used at public rallies by Kosovo Serbs echoed the Memorandum in advocating that the provinces “become genuinely integral parts of the Republic of Serbia,” and made it appear that constitutional changes were an expression of the will of ordinary people.

The first step in modifying the 1974 Constitution of Serbia was to change the sitting leadership in Kosovo and in Vojvodina. Milošević needed the guaranteed support of provincial leaders if he were to succeed in getting amendments to the Constitution passed in the provincial Assemblies. In 1988, to this end, the street was mobilised in mass protests led by the same activists who had been instrumental in making a leader out of Milošević in 1987. This unorthodox method of

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408 Mihailović and Krestić, Memorandum of the Serbian Academy of Sciences and Arts, Exhibit D250, 128.
409 Ibid., 139
bottom-up political activism, achieved through public pressure, was dubbed a ‘happening of the people.’

At demonstrations, Kosovo Serbs claimed that Serb women had been raped, that the graves of their ancestors had been desecrated, and that Serbs and Montenegrins from Kosovo had been bullied and expelled by ethnic Albanians. And the strategy was effective; after protests that took place in Vojvodina’s capital of Novi Sad in October 1988 – known as the ‘yoghurt revolution’ because demonstrators came straight from the factories, with prepared lunches that included yoghurt – provincial and Party leadership withdrew and handed over control to Milošević’s supporters.

Mob rule used to bring about leadership change in Kosovo, Vojvodina, and Montenegro was given ‘scientific’ justification in an early Pravni život article authored by Ratko Marković, published in the same month as the yoghurt revolution. As the rest of the SFRY republics looked on with disbelief and amazement as the streets crowded with angry masses, Marković argued that the political establishment had to respect the will of its people:

Today, in Serbia, the people themselves are beginning to execute the constitutional authority. Its formal executors are risking losing legitimacy if they do not translate in writing this living constitution of the people. Today, the entire Serbia is a legislature, a spontaneously convened, constituent assembly in a continuous session. In it, the people, in an immediate fashion without intermediaries and interpreters of their desires, write their own constitution as a work of their self-determination.

Defence witness Kosta Bulatović, a Kosovo Serb activist, testified that the goal of these rallies was not only to inform the public of certain issues but to communicate to them how much Serbs were suffering in Kosovo. Still, while many Kosovo Serbs insisted that they deserved redress and the Constitution had to change, there was no obvious reason to ensnare Vojvodina in an identical process; nobody there had expressed similar torment or desires. Indeed, Vojvodina was among the most multiethnic places in Yugoslavia and took pride in its tolerance and in the

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410 Testimony of Branko Kostić (25 January 2006), 47607-47608.
411 Boško Krunić, interview (17 April 2005).
412 Ratko Marković, “Ustav naroda,” Pravni život 38 (1988). The article, titled “People’s Constitution” in English, was tendered as Exhibit P816, in B/C/S only.
413 Ibid., 1179-1180.
414 Testimony of Kosta Bulatović (14 April 2005), 38561.
peaceful coexistence of its inhabitants. Bulatović explained that Kosovo Serb activists took
demonstrations to Vojvodina and elsewhere on their own initiative because they estimated that
the leadership there presented “quite a hindrance to constitutional amendments in Serbia,” which
would bring the provinces back under Serbia’s jurisdiction.\footnote{Ibid. 38560-38561.} For the amendments to be passed,
Serbia needed votes in favour from both the Kosovo and Vojvodina Assemblies, as the 1974
SFRY Constitution stated explicitly that the border of a republic or autonomous province could
not be altered without the consent of that republic or autonomous province.\footnote{Testimony of Ratko Marković (19 January 2005), 35339-35341.}

The street protests did not come to an end upon the installation of new leadership in the two
Serbian provinces. Soon, the same method was applied in Montenegro. The smallest of the
republics, Montenegro was a historic ally of Serbia and shared with it a strong cultural kinship;
indeed, the ethnic distinction between a Serb and Montenegrin is sometimes quite arbitrary.\footnote{Testimony of Nikola Samardžić (8 October 2002), 11160-11162.} Another ‘happening of the people,’ similar to the yoghurt revolution only a few months earlier, was repeated in January 1989 in Montenegro, where sitting leaders were again replaced. The protests were labelled an “anti-bureaucratic” revolution, suggesting that the old leadership was too stuffy and inert and a younger and more dynamic generation of politicians and functionaries was needed. The leaders of the protests in Montenegro came from academic circles attached to the University of Titograd, today’s Podgorica, and like their predecessors in the protests in Vojvodina, the Montenegrin activists, notably Pavle Bulatović and his young relation Momir Bulatović, looked to Milošević for leadership. Milošević subsequently rewarded them for their loyalty with impressive political careers. Pavle Bulatović was first the Federal Minister of Internal Affairs of the FRY and later became the Defence Minister until his assassination in 2000, which remains unsolved. The 34-year old Momir Bulatović and 27-year old Milo Đukanović – another anti-bureaucratic revolution leader – both started impressive political careers as well, becoming the President and Prime Minister of Montenegro respectively.\footnote{For example, Milošević had roots in Montenegro but identified himself as a Serb, while his brother made a career in Yugoslav diplomacy as a Montenegrin.}

Not surprisingly, Montenegro became an important ally of Serbia. Milošević had effectively
gained control over four votes in the eight-member Presidency of the SFRY (PSFRY) – those of
Serbia, Kosovo, Vojvodina, and Montenegro. Revoking the autonomous status of the provinces
actually brought their separate representation in the PSFRY into question from a legal standpoint; but with control of four votes, Milošević no longer seemed concerned that the two provinces he had fought to disempower enjoyed representation equal to the six republics.

Adoption of Amendments to the Serbian Constitution, 1989

There was a determination in Serbia to press for constitutional changes with or without federal support. In a speech given at the Serbian Assembly in January 1989, Milošević openly criticised federal institutions as ineffective and accused the federal leadership of “a lack of readiness and capability.” He went so far as to characterise the new political landscape as a “conflict between the people and its many representatives” and said of recent protests that “things that cannot be changed institutionally...will be changed un-institutionally.” He added that if Serbia could not count on the support of others in the Federation, it was prepared to do without Yugoslavia, marking the first time a politician in the SFRY had said something like this publicly.\(^{419}\)

Kosovo Albanians were not prepared to accept the constitutional reforms advocated by Belgrade. The wave of social and political protests that unfolded in the province in 1988 had culminated with strikes at the Stari Trg mine in February 1989.\(^{420}\) Striking Kosovo Albanian miners, numbering well over a thousand, were reacting to the imposition by Milošević of new leadership in the Kosovo Assembly.\(^{421}\) Kosovo Serbs were concerned that the social unrest and strikes could obstruct the Assembly’s vote on amendments planned for 23 March, and on 27 February, they headed to Belgrade and gathered in huge numbers in front of the Federal Assembly to demand that federal authorities proclaim a state of emergency in Kosovo. A nervous Rafi Dizdarević, the President of the PSFRY and its representative from BiH, addressed them, calling for “brotherhood and unity.” But the crowd hadn’t come to see Dizdarević and they demanded Milošević, who kept them waiting all day.

\(^{419}\) Slobodan Milošević, speech as recorded in “Unauthorised Transcript of the 2nd Session of the Central Committee of the League of Communists of Yugoslavia,” 30 January 1989, Exhibit P447.2a.
\(^{420}\) Testimony of Dr. Vukašin Andrić (23 February 2005), 36556; Testimony of Vukašin Jokanović (2 December 2004), 34130.
\(^{421}\) The new leadership consisted of Rahman Morina, Ali Shukri, and Sinan Hasani. See: Testimony of Vukašin Jokanović (2 December 2004), 34130-34131.
Though Milošević seemed genuinely reluctant to address the crowd, his closest associates urged him to, saying that if he did not show up, the rally would never end. Eventually, he appeared that evening and gave one of his most memorable public performances. The crowd greeted him by demanding the arrest of ousted Kosovo leader Azem Vllasi, and Milošević responded theatrically:

I cannot hear you well. But I’ll answer your demand! Those who deceive the people…those who are plotting against Yugoslavia…will be arrested and punished!423

The choice to rally in front of the Federal Assembly had been strategic. Milošević wanted a state of emergency declared in Kosovo – which only the PSFRY could do – and Dizdarević felt he had little choice but to comply with the demands of protestors.424 To the astonishment of the rest of Yugoslavia, Vllasi was subsequently detained on charges of organising the general strike and engineering social unrest in Kosovo. He was ultimately acquitted, but not before losing all power in the LC of Kosovo.425

On 3 March 1989, the constitutional amendments Milošević sought were passed by the Serbian Assembly, and on 24 March, by the Kosovo Assembly – which was effectively eliminated by its own vote. Milošević’s supporters saw enactment of the amendments as a triumph. And for Milošević, the episode was an important demonstration of his power and a chance to show the public that he was capable of manipulating the federal authorities to work in his interest.

Due to the PSFRY’s declaration of a partial state of emergency in Kosovo, the vote there occurred amid a climate of tension. The Prosecution introduced evidence in court that depicted the atmosphere of fear and intimidation created by the presence of tanks on Kosovo streets, columns of which had started moving toward the province in the days preceding the vote. Further, military and secret service officials were present in the Kosovo Assembly Hall during the voting; and delegates who voted seemed to have been given advance directives by their local

422 Jović, Knjiga o Miloševiću, 17-18.
423 Death of Yugoslavia, Part I.
424 Ibid. Also see: Testimony of Vukašin Jokanović (2 December 2004), 34139-34140.
425 Testimony of Vukašin Jokanović (2 December 2004), 34141.
committees to agree to the proposed constitutional changes. The fact that a hand vote was used – a surprising choice for a matter as important as a province surrendering its autonomy – also meant that it was open to infiltration and unauthorised voting by people who were not Assembly members. In the end, the official result was that only 10 out of 187 delegates voted against surrendering autonomy, and two abstained.

In his cross-examination of Prosecution witness Adnan Merovci, a Kosovo Albanian politician, Milošević asked him to confirm that a majority of the Kosovo Assembly had voted in favour of the amendments. Merovci replied that, during the public debate that preceded the vote, many members had in fact opposed the amendments. He explained that the Assembly Hall was full of State Security officers and the building was surrounded by police forces during the vote; and that people who were not members of the Assembly and should not have been there at all were allowed to vote.

Milošević repeatedly asked his Defence witnesses to attest to the fact that the overwhelmingly one-sided results in favour of the amendments were legitimate, and all of them testified that the Kosovo Assembly meeting had been truly democratic. But it was not only the Prosecution that wondered why a political body would give up its autonomy so easily; the judges also questioned the results. When pressed during his testimony on why the Kosovo Assembly would abolish itself, Mihailo Marković was evasive, insisting that the vote had not actually been on the revocation of autonomy and admitting only that “elements of the sovereignty of the provinces were removed.” Indeed, that was technically true, but it was implicitly understood that the measures introduced by the amendments would lead to a new constitution in which the autonomy of the provinces would be revoked; and that eventually happened when the Serbian Assembly adopted the new Serbian Constitution in September 1990. Veton Surroi, a Kosovo Albanian politician and publisher who testified as a Prosecution witness, described the constitutional changes as an *Anschluss*, or an annexation of Kosovo, by Serbia.

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426 Testimony of Ibrahim Rugova (3 May 2002), 4190-4191; and (6 May 2002), 4330-4331.
427 Testimony of Veton Surroi (18 April 2002), 3468.
428 Testimony of Vukašin Jokanović (1 December 2004), 34063-34064.
429 Testimony of Adnan Merovci (24 May 2002), 5479-5480.
430 Testimony of Mihailo Marković (17 November 2004), 33503.
431 Testimony of Veton Surroi (18 April 2002), 3467-3468.
Milošević’s Major Success: The Centralisation of Serbia

The reactions of the Serbian elite as well as ordinary Serbs were unreservedly supportive, and the political opposition was left without any real chance to challenge Milošević’s popularity, making it easy for him to win Serbia’s first multi-party elections held in December 1990. Still, between the vote on the amendments on 23 March 1989 and the adoption of the new Serbian Constitution in September 1990, unrest and violence in Kosovo had continued unabated. On 27 March 1989, for instance, a disturbance broke out in Kosovska Mitrovica when a demonstration – led initially by students and teachers and then involving more of the Kosovo Albanian population – was confronted by police who intervened, eventually killing five people and wounding twenty-four. But Defence witnesses insisted that constitutional changes had not spurred unrest in Kosovo. Kosta Bulatović testified, for example, that adverse reactions on the part of Kosovo Albanians did not follow the passage of the amendments but were only later encouraged by foreign influences.

The Gazimestan Speech: Celebration of a Political Triumph in Kosovo

Milošević had scored a victory with the adoption of the amendments and public celebrations of the constitutional changes that resulted were held on 28 June 1989, with an event at the Gazimestan memorial in Kosovo, erected to commemorate the 600th anniversary of the battle of Kosovo Polje. The keynote speaker was a confident and exultant Milošević. Addressing domestic and foreign dignitaries and an audience of almost one million Serb supporters who had come from across Yugoslavia to hear him speak, he delivered a speech that made this one of the most significant public appearances of his career.

Expert Witness on propaganda Renaud de la Brosse testified about different interpretations of the speech among the Serb and non-Serb populations. Milošević’s political opponents and many non-Serbs saw the speech as an exercise in sabre-rattling, and a majority of non-Serbian media that covered the speech framed it as an expression of Milošević’s determination to achieve his goals by violence. On the other hand, Serbian media – and in particular Serbian television – gave special prominence to the speech and cast Milošević as a saviour who had restored the collective

432 Testimony of Halit Barani (27 February 2002), 1173-1174; and (28 February 2002), 1277-1279 and 1306-1307.
433 Testimony of Kosta Bulatović (14 April 2005), 38554-38556
dignity of Serbs. Calling Kosovo “the heart of Serbia” and invoking the legend of the Battle of Kosovo, Milošević told the crowd:

Kosovo heroism has been inspiring our creative endeavours for six centuries. It has been feeding our pride and does not allow us to forget that once upon a time we were a large army, a brave army, and a proud army. One of the few who remained undefeated in defeat. Six centuries later, in the present day today we are again engaged in battles and are having to face battles, but they are not armed battles, although such things cannot be excluded either. However, regardless of what kind of battles we’re talking about, they cannot be won without the resolve, bravery, and sacrifice of the people, without the noble qualities that were once present here on the field of Kosovo Polje.

Former Croatian President Stjepan Mesić testified that “the possibility of an armed struggle was intimated,” and that this “was the first time that anybody in Yugoslavia had ever mentioned...the possibility of actually going to war.” For Mesić and many others, the speech was a signal “that a restructuring of Yugoslavia was being prepared which would no longer be a federal one and which would no longer be the one prescribed by the 1974 constitution.”

When asked by The Prosecution to comment specifically on Milošević’s assertion that the possibility of armed struggle could “not be excluded,” Mesić explained:

That sentence actually mobilised the masses, the masses who supported...the disappearance of Yugoslavia, because Yugoslavia, as a federation, can be envisaged and thought of as a chain, a chain in which the republics and provinces were the links linking up the chain. Now, if you do away with one of the links, the chain is no longer able to function. In other words, the Federation ceases to function. And this meant that they were moving towards the end of the kind of Yugoslavia that we had had up until then.

Careful analysis of the Gazimestan speech in the courtroom led to some interesting findings. During cross-examination of Mihailo Marković, the Prosecution explored connections between

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434 de la Brosse, Political Propaganda, 45.
436 Testimony of Stjepan Mesić (1 October 2002), 10517-10518.
437 Ibid., 10518.
the topics addressed in the speech and those in the SANU Memorandum, finding that the speech reflected concerns raised in the Memorandum about Serbia’s administrative borders and its integrity as a state. Milošević had responded triumphantly at Gazimestan that Serbia had “regained its state and its dignity.” The Memorandum and the speech also both referred to the betrayal of the Serbian people by their leaders, including the communist leadership of Serbia. The Memorandum criticised Serbian communists for allowing Serbia to stagnate economically in the post-WWII period and for their inadequate response to the 1974 Constitution and the Kosovo issue. At Gazimestan, Milošević alleged that Serbian leadership had betrayed Serbs, saying:

The concessions that many Serbian leaders made at the expense of their people could not be accepted historically and ethically by any nation in the world, especially because the Serbs have never in the whole of their history conquered and exploited others.

In court, Milošević dismissed the Prosecution’s narrative about his speech, rejecting any suggestion of nationalistic content and denying that it had fanned the flames of Serb nationalism among the audience. He said he was proud of the speech, maintained that the Prosecution’s interpretation of it was politically motivated, and contended that the case against him was part of a larger political scheme linked to the NATO bombardments of Serbia and Kosovo in 1999.

To make his point that the attitudes of Western media and politicians shifted depending on the political context, he noted that a 29 June 1989 article in The Independent had praised his Gazimestan speech for its language of tolerance and absence of aggressive references to Albanian counter-revolutionaries, even cheering Milošević for “assuming the mantle of a statesman and Yugoslavia’s natural leader.” Yet, Milošević claimed that ten years later, British Foreign Secretary Robin Cook said that the speech had not delivered a message of hope

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438 Mihailović and Krestić, Memorandum of the Serbian Academy of Sciences and Arts, 125-127 and 139.
439 “Speech, Gazimestan,” 28 June 1989, Exhibit D251.1e, 1. Also see: Testimony of Mihailo Marković (17 November 2004), 33503-33505.
440 Mihailović and Krestić, Memorandum of the Serbian Academy of Sciences and Arts, 124-127.
441 Ibid.
442 Trial Transcript, Defence Opening Statement (1 September 2004), 32291.
443 Ibid., 32291-32294. Also see: “Milošević carries off the battle honours,” The Independent, 29 June 1989.
and reform, but had threatened the use of force to deal with Yugoslavia’s internal political difficulties.\textsuperscript{444} In June 1990, the Constitutional Court of Kosovo proclaimed that the amendments which had been passed in March 1989 were unconstitutional. One of the arguments put forth in the Court’s Decision was that “unprecedented pressure” had been put on Kosovo Assembly members to vote in favour.\textsuperscript{445} A subsequent ruling by the Court actually annulled the Assembly’s vote, along with the amendments.\textsuperscript{446} Still, none of this had any effect on political realities on the ground; Serbia simply pushed through changes and adopted a new Constitution in September 1990.

**The 1990 Serbian Constitution**

The 1990 Serbian Constitution was perceived at the time as an accomplishment of Milošević and an endorsement of his three years of domination over Serbian politics. Discussion during the trial about the March 1989 constitutional amendments and the 1990 Serbian Constitution was partly focused on technical legal issues, which were addressed in great detail by Prosecution Expert Witness on the SFRY and Serbian Constitutions Ivan Kristan. Kristan analysed the amendments, singling out several of them that most impacted a changed Serbian policy toward Kosovo. He concluded that revocation of the status of the autonomous provinces by the Republic of Serbia was a contravention of the SFRY Constitution because it required that Serbia assume powers it was not constitutionally granted.\textsuperscript{447} Kristan’s position was that the way in which Serbia revoked Kosovo’s autonomy was inconsistent with the rule of law and that the 1990 Serbian Constitution had “abolished crucial elements of the autonomous provinces.”\textsuperscript{448} Although they still retained a form of territorial autonomy, the provinces ceased to be federal entities and thus lost their statehood attributes, placing them “in an inferior position to the one they had under the SFRY Constitution and the one they had previously had under SR Serbia’s Constitution.”\textsuperscript{449}

\textsuperscript{444} Ibid.  
\textsuperscript{445} “Decision of the Constitutional Court of Kosovo,” 27 June 1990, Exhibit P822.1a, 1.  
\textsuperscript{446} “Ruling by the Constitutional Court of Kosovo, No. 64/90,” Exhibit P822.2a.  
\textsuperscript{448} Ibid., 85.  
\textsuperscript{449} Ibid.
Defence witness Ratko Marković, who was involved in drafting the 1990 Constitution, testified that the two provinces had remained as units with territorial autonomy, such as those in Italy or Spain.\footnote{Testimony of Ratko Marković (24 January 2005), 35527-35530.} In its cross-examination, the Prosecution questioned Marković about Article 135 of the 1990 Constitution, which stipulated that the Serbian Constitution would be enforced in accordance with the SFRY Constitution but also specified, somewhat incompatibly, that “if acts of the agencies of the Federation or acts of the agencies of another republic...violate the equality of the Republic of Serbia or in any other way threaten its interests without providing for compensation, the republican agencies shall issue acts to protect the interests of the Republic of Serbia.” When asked to comment on the content of Article 135, Marković denied that it gave Serbia primacy over federal agencies or laws and called it a “defensive clause” meant to protect Serbia from the acts of other republics. He pointed out that similar amendments had been made to the Slovenian Constitution in 1989, which according to him, announced Slovenia’s secession.\footnote{Ibid., 35529-35530. Also see: “Federal Republic of Yugoslavia, Republic of Serbia,” in Constitutions of Dependencies and Special Sovereignties, eds., Albert P. Blaustein and Eric B. Blaustein (Dobbs Ferry, NY: Oceana, 1994). The book was tendered into evidence as Exhibit P319.1a.}

Another important change brought about by the 1990 Serbian Constitution was an expansion of the *de jure* executive powers of the President of Serbia, who was designated to head the armed forces in both times of peace and war, and to order general or partial mobilisations in preparation for defence.\footnote{Kristan, Constitutional and Legal Issues in the Case Against Slobodan Milošević, 57.} This would prove vital to Milošević, who had been careful – at least ostensibly – to observe constitutional and legal requirements, even in organising the public intimidation and pressure that had been on display in Kosovo during the March 1989 vote of the Kosovo Assembly. The question of Kosovo and the activism of Kosovo Serbs had been a key to Milošević’s ability to exercise his political will at the provincial, republic, and federal levels, but after the constitutional changes he sought were achieved, he distanced himself from Kosovo Serb leaders and moved on to the next stage of the Plan – the centralisation of the Federation.\footnote{Miroslav Šošović, interview.}
From the SANU Memorandum to the SPS Party Programme

Pressured by the introduction of multi-party systems in the other republics, Milošević eventually had to follow suit; but Serbia was the last to do so, with elections held in December 1990. It had been less than six months before this, in July, that Milošević and his political allies founded the Socialist Party of Serbia, or the SPS. Borisav Jović recalled that Milošević had originally rejected the introduction of political pluralism in Serbia because he was anxious that it would allow Kosovo Albanians to take control of Kosovo:

Milošević...cautioned me that, should we accept a multiparty political system, an Albanian party would be formed in Serbia. There are nearly two million of them. No matter what they call this party of theirs, they would take over power in their local settings and we would lose Kosovo. ...As far as Serbia proper and Vojvodina were concerned, no one there could do anything to us, regardless of multiple parties, because of the ethnic composition.⁴⁵⁴

Four of the sixteen contributors to the SANU Memorandum – Miloš Macura, Antonije Isaković, Dušan Kanazir, and Mihailo Marković – became members of the Main Board of the SPS.⁴⁵⁵ This made the SPS a curious ideological mix of communists and Serb nationalists, and broadened their electoral base to facilitate a win of the popular vote. And not surprisingly, the 1990 SPS party platform shared similarities with the SANU Memorandum.

The SPS gave special attention to the position of Serbs outside of Serbia, promising to “regularly monitor the living conditions and development of Serbs living in the other republics and abroad, and maintain intensive relations with their political, cultural, and other organization, believing it to be only natural for other nations to maintain such relations with their fellow countrymen living in Serbia.”⁴⁵⁶ Additionally, it stated that Serbia would “extend material and moral assistance to them, help improve their living conditions, preserve their national identity and cultural traditions

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⁴⁵⁴ Borisav Jović, Rule 89 (F) Witness Statement, 18 November 2003, Exhibit P596.1a, para. 13. His book, Poslednji dani SFRJ (“Last Days of the SFRY”), was tendered into evidence in English as Exhibit P596.2a.
⁴⁵⁵ Testimony of Mihailo Marković (17 November 2004), 33489. According to Marković, “In 1990, that is to say four years later, they became members of the Main Board, that’s correct. Kanazir, who was President of the Serbian Academy of Sciences and Arts, and Antonije Isaković, who was also vice-president of the academy.”
⁴⁵⁶ Ibid., 33560. Also see: “Programme of the Socialist Party of Serbia from the first Congress.”
and ensure more intensive cultural development.” So, after the SPS won the December 1990 election and formed the first post-communist Serbian government in February 1991, the party established the Ministry for Serbs Outside of Serbia. The SANU Memorandum had also presented the status of Serbs outside of Serbia as a significant concern, and the establishment of a Ministry to address the issue made it a pragmatic political issue in the months before the outbreak of war.

The SPS platform called further for a new federal constitution that would allow for the formation of autonomous provinces “on the basis of the expressed will of the population and national, historical, cultural and other specificities.” This seemed inconsistent with the political efforts of Milošević before 1990. Indeed, his top agenda item for years had been to revoke the autonomous status of Kosovo and Vojvodina. So, the Prosecution asked Defence witness Mihailo Marković, one of the leading SPS ideologues, whether the ability to create new autonomous provinces had been intended to justify the establishment of Serb territories in Croatia and Bosnia. He answered affirmatively:

Yes. It was about this, the fact that the Serbs in Croatia, in the area stretching [into] today’s Lika, Banija and Kordun, that area, that region, they had lived there for many years. They were historically there. They were a separate Krajina enjoying separate rights under Austria, for example, and the Croatian rulers never had control over that area. Those rights were abolished, and now we wished to revive them, to give them back their rights….

The SPS proposed dealing with the Kosovo issue, which it viewed as a strictly ethnic problem, through policies that would reverse demographic shifts in the province by repopulating it with Serbs and Montenegrins. Party ideologues suggested that this would require a multifaceted approach, including “determined efforts to stop Serbs and Montenegrins from moving out of the province and secure their return,” matched by a campaign that would “tell the world the full truth

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457 Ibid.
458 The Ministry for Relations with Serbs Outside of Serbia was established on 5 February 1991. The Ministry existed until 1998 and was led by three Ministers who were SPS members: Stanko Cvijan (1991-1993); Bogoljub Bjelica (1993-1994); and Radovan Pankov (1994-1998).
459 Mihailović and Krestić, Memorandum of the Serbian Academy of Sciences and Arts, 125-127 and 139.
460 Testimony of Mihailo Marković (17 November 2004), 33560.
461 Ibid., 33561.
about Kosovo and Metohija, and to tell them about the causes and grave consequences of the actions of Albanians, chauvinists, and separatists.”

When asked by the Prosecution to comment on this part of the SPS platform, Mihailo Marković responded that:

The Albanians in Kosovo had an exceptional rate of demographic growth, a large growth rate, and...you couldn’t, of course, stop them having this population increase, but one wanted to enable that those people who had been expelled from Kosovo to have the right to go back to their own homes and houses.

Following their December 1990 electoral victory, the SPS remained in power at the republic and federal levels until October 2000.

Having successfully centralised Serbia, Milošević and the SPS next attempted to centralise the SFRY. In the first phase of this effort, a political polarisation between Slovenia and Serbia allowed Milošević to call for an early Congress of the League of Communists of Yugoslavia. Then, after the fall of communism, a debate among all the SFRY republics on reform of the Federation ensued; and the introduction of multi-party systems brought the future of the SFRY to the centre of inter-republic political dialogue. The question was: Should the Federation become centralised as Serbia and Montenegro preferred, or become a confederation as Slovenia and Croatia proposed? And, for our purposes: Was Milošević really trying to preserve the SFRY or was he in fact obstructing every federal reform that would have allowed the Federation to continue functioning as a state? This question will be addressed in the next chapter, which analyses Milošević’s efforts to centralise the Yugoslav Federation with the Republic of Serbia as its dominant force.

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463 Testimony of Mihailo Marković (17 November 2004), 33563.
Chapter V: A Failure to Centralise the SFRY, 1990-1991

As the SFRY dissolved, former republics emerged as nascent states, and the causes and consequences of Slovenia’s and Croatia’s proclamations of independence are examined in this chapter. Was the violent disintegration of the Federation, as the Prosecution asserted, the result of Serbia’s rejection of a confederation and the preconceived plans of Serbian leaders for a Rump Yugoslavia that would include parts of Croatia? Or, as the Defence argued, was it triggered by “unilateral” declarations of independence by Slovenia and Croatia? And, how did the outbreak of the war in June 1991 and the Hague Peace Conference impact geopolitical realities on the ground? Many saw this conference as the last attempt by the European Community (EC) to preserve Yugoslavia as a common state.

A Failed Attempt by Serbia to Control the SFRY through the League of Communists

Slovenia was the first SFRY republic to publicly raise concerns about Serbia’s policy regarding the revocation of Kosovo’s autonomy, and Slovenian-Serbian relations on the eve of the breakup of the SFRY were explored in court during the testimony of Milan Kučan, Slovenia’s former President. According to Kučan, Slovenian leadership organised a public event in late 1989 in Ljubljana on the topic of Kosovo and in support of the Kosovo Albanian strikes, generating a wave of negative reactions from Kosovo Serb and Serbian leaders.464 Immediately afterward, Kosovo Serbs announced their intention to organise their own public rally in Ljubljana, following the example of similar events in Vojvodina and Montenegro. But the gathering, known as the ‘Rally of Truth,’ never took place. Kučan explained that the rally had not been seen as the most objective or efficient way for information about Kosovo Serbs to be shared with the Slovenian public. He testified that, after assessing the situation, Slovenian authorities decided

464 Testimony of Milan Kučan (21 May 2003), 20970. As discussed earlier, the miners protested, inter alia, because of the sudden change to Kosovo Albanian leadership in favour of those chosen by Milošević. In his cross-examination of Kučan, Milošević alleged that Slovenian leadership had supported Kosovo Albanian separatism. Kučan replied that the meeting at Cankar Hall was simply in support of striking miners.
that having such a large numbers of Serb demonstrators on the streets of Ljubljana would be a threat to public security. Milošević accused Slovenian leaders of bias, alleging that by banning the Rally, they had disregarded Kosovo Serb victims of Albanian terrorism and had kept them from informing the Slovenian public about their suffering. Kučan said that Slovenians knew enough to appreciate the difficulties of finding a solution in Kosovo; yet, Slovenia had differed from Serbia in its approach to solving these problems, insisting that Serbia should not impose solutions at the expense of other nations and states.\footnote{Ibid., 20973.}

The cancellation of the Rally of Truth in Ljubljana forced Milošević to find other ways to deal with Slovenia. Emphasising that an atmosphere of emergency and crisis faced the Federation, he called for an early Congress of the LC of Yugoslavia, which became known as the 14th Extraordinary Congress because it was held prematurely. The Congress took place in January 1990 amid a climate of division and animosity between Serbian and Slovenian leaders. The Slovenian delegates looked at the Congress as a real chance for progress and, believing that solutions to the crisis lay in reforms, they prepared a series of proposed federal amendments, ranging from an endorsement of political pluralism, to abolition of the crime of “verbal offence,” to a proposal to release all political prisoners.\footnote{Ibid., 20874-20875. The crime of ‘verbal offence’ refers to public expressions in opposition to the political system or state, which were treated as criminal offences under communism.} Kučan testified that when votes were called on the Slovenian proposals, Milošević led as one of the very first to indicate a negative vote; and others followed. In the end, every Slovenian amendment was rejected without any discussion on its substance. The delegates from Slovenia concluded that Milošević was not actually interested in reform, but was trying to use the Congress to impose Serbian control over the LC of Yugoslavia.\footnote{Ibid., 20875.}

The power monopoly inherent in a one-party political system made the League of Communists of Yugoslavia a chief instrument of political control. It was internally governed by a doctrine of “democratic centralism,” according to which delegates were free to have and express their own opinions, but once a decision was made, it was to be upheld by all Party members.\footnote{Testimony of General Imra Agotić (30 June 2003), 23417-23418.} By controlling decision-making processes within the LC of Yugoslavia, Milošević could position himself to influence the transformation of the Federation as it suited his political agenda; and in
the end, other delegates had to accept all majority decisions. However, the 14th Extraordinary Congress backfired, resulting in the opposite of what Milošević intended. Instead of putting the LC of Yugoslavia under his control, he triggered its disintegration along republican lines when the Slovenian and Croatian delegates walked out while the Congress was still in session. It was after this walkout that Slovenia and Croatia held multi-party elections, in April and May 1990 respectively, breaking the monopoly of the LC and changing the political landscape forever. By the end of 1990, all six republics had held multi-party elections and the LC of Yugoslavia ceased to exist.

The Defence asserted that Milošević had acted to preserve Yugoslavia at the 14th Extraordinary Congress, among other reasons because it meant that Serbs would continue to live in a single state. In this narrative, Slovenia played the leading role in, and bore responsibility for, the dissolution of the Yugoslav League of Communists and subsequently of the SFRY. The Defence argued that the Slovenian leadership used the failure of their delegates to pass amendments at the Congress as an excuse to leave the Federation, claiming they had already decided to secede from the SFRY before the Congress was held but needed to justify their exit. According to the Defence, Serbian delegates had voted against Slovenian proposals at the Congress because they did not believe that Slovenia genuinely wanted to reform the Federation.

The Prosecution argued that Milošević’s public statements in support of the SFRY were not matched by his deeds. By obstructing the Slovenian amendments at the Congress, Milošević had rejected a reformed Federation and had provided legitimacy for Slovenian and Croatian leaders to introduce multi-party systems in their republics. Even his trusted ally at the time of the Congress, Borisav Jović, testified that Milošević’s conduct at the Congress contributed to the disintegration of the Yugoslav Federation:

One could say that although he firmly advocated Yugoslavia and its unity, at the Extraordinary 14th Congress of the League of Communists of Yugoslavia – and he

\[469\] Testimony of Mihailo Marković (17 November 2004), 33493-33495. Also see: Testimony of Marko Atlagić (22 February 2006), 48665-48666.
\[470\] Testimony of Mihailo Marković (17 November 2004), 33494-33495.
\[471\] Testimony of Marko Atlagić (22 February 2006), 48667.
had initiated its convening – at this Congress he did not work for the unity of Yugoslavia but, rather, toward its break-up.\footnote{Testimony of Borisav Jović (19 November 2003), 29199. Also see: Borisav Jović, Witness Statement, para. 159.}

Despite this candid assessment, Jović nevertheless persisted in asserting that secessionist policies in Slovenia and Croatia had been the major cause of the dissolution of the SFRY.\footnote{Ibid., 29199-29200.}

**Serbia’s Obstruction of Federal Reforms, 1989-1990**

The Prosecution’s line of argumentation was based on evidence that showed that under Milošević’s leadership, Serbia had opposed essential economic, financial, and political reforms proposed by the federal government under SFRY Prime Minister Ante Marković at the end of 1989. The Prosecution asserted that Serbia’s uncooperative and at times obstructive behaviour had undermined federal authority and led to the dissolution of the SFRY; a view the Defence predictably disputed.\footnote{Ibid., 28003-28010. Also see: Testimony of Ante Marković (15 January 2004), 30920-30921.}

In his testimony, Marković echoed the contention of the Prosecution that Milošević had acted in opposition to his expressed goal to preserve Yugoslavia, commenting that Milošević “always came out in favour of Yugoslavia. However, at the same time what he was doing was undermining Yugoslavia, in fact.”\footnote{Testimony of Ante Marković (23 October 2003), 28023.} According to Marković, when he had presented his reform programme for a vote in the Federal Assembly, deputies loyal to Milošević from Serbia, Kosovo, Vojvodina, and Montenegro – for whom toppling Marković was a priority – were instructed to vote against it. After Marković succeeded in achieving adoption of the reforms by the Assembly anyway, he was faced immediately thereafter with an orchestrated obstruction by Serbia, which objected that the reforms would enrich the wealthier parts of the SFRY but further impoverish the poorer parts.\footnote{Ibid., 28003-28008.} Borisav Jović, who had firsthand knowledge of the events, insisted in the courtroom that Serbia had rejected the reforms for economic, not political, reasons.\footnote{Testimony of Borisav Jović (20 November 2003), 29359-29365.} Still, Ante Marković saw Serbia’s response to his programme as strongly motivated by politics; for while it
did address economic concerns, it also included political, legal, and social reforms that would have made it impossible for one man to usurp power, as Milošević aimed to do.\(^{478}\)

In December 1990, Serbia critically obstructed the Marković reforms when it managed to illegally transfer 18.2 billion dinars (at the time worth over $1.3 billion US) from the National Bank of Yugoslavia to the National Bank of Serbia. In his testimony, Marković called the transfer “daylight robbery, pure and simple” and said it “shook the very foundations of Yugoslavia.”\(^{479}\) After Marković intervened, Milošević repaid about 10 billion dinars; however, the balance of the money was never returned and the federal government was left weakened and publicly humiliated by Serbia’s brazen appropriation of federal financial authority and control.\(^{480}\)

As 1990 passed into 1991, the federal government became almost completely dysfunctional and the republics became increasingly noncompliant with federal law. Slovenia and Croatia had already opted for independence and, as a consequence, allocated to their states the funds that would normally have been directed to the federal budget – such as customs revenues and taxes. Serbia had stopped paying its dues altogether. By 1991, only Macedonia and BiH, the poorest republics, continued contributing; and what they paid was insufficient to meet the needs of the Federation. More money needed to be printed, and while the amount was initially limited by regulations, when governors from Slovenia and Croatia left the Council of the National Bank of Yugoslavia in the second half of 1991, it was no longer possible to regulate the emission of currency.\(^{481}\) Over the course of 1991, the federal government slowly surrendered all its authority to republic-level leaders, who dictated the pace and shape of developments from then on.

**Serbia’s Rejection of a Confederation**

The debate among the republics in the period from January to June 1991 was focused on the question of a new model for a common state. While the majority – Slovenia, Croatia, BiH, and Macedonia – were in favour of a confederation, Serbia and Montenegro insisted on a more centralised model. Leaders from Croatia and Slovenia argued that the republics should either

\(^{478}\) Testimony of Ante Marković (23 October 2003), 28007-28008.

\(^{479}\) Ibid., 28011-28012.

\(^{480}\) Ibid., 28013-28014.

\(^{481}\) Ibid., 28015.
form a confederation or become independent states, while Serbian leaders pushed for a strong federation and asserted that Serbs should be able to remain in a single state if the SFRY disintegrated. Croatian Serb politician Milan Babić recalled Milošević saying that Serbs could not live across four different states nor could a confederation be considered a single state.  

Milan Kučan testified that, by the summer of 1990, the PSFRY had invited Slovenian and Croatian leadership to elaborate in writing on their concept of a modern confederation. They did so, but in its January 1991 session, the PSFRY rejected the model they had proposed. On 5 January 1991, before the PSFRY session, Borisav Jović wrote in his diary that he and Milošević had already agreed that if Croatia were to leave Yugoslavia, Serbs in Croatia would have the right to self-determination. Pressed by the Prosecution about the practical issue of how Serbs living in other republics would be incorporated into a Serb state, Jović insisted that it was not a matter of “taking over anybody’s territory.” In other words, the Serbs envisioned that new borders be drawn based on ethnic distribution, not on already exiting republican borders that encompassed multiple ethnic groups.

Between March and June 1991, negotiations over the future of the SFRY took place at five inter-republic meetings attended by the Presidents of all six republics, who discussed solutions for restructuring the Federation. No representative of any federal institution was included, reflecting that the Federation was losing power as the republics were gaining it. The most significant development of these meetings was a proposal launched in May 1991 by the leaders of BiH and Macedonia, the Izetbegović-Gligorov Proposal. These two republics had every reason to remain in a common state – whether a federation or a confederation – but only as long as all of the other republics also stayed, and Bosnian President Izetbegović said many times that BiH would not remain in a Yugoslav federation without Croatia and Slovenia. In the Izetbegović-Gligorov Proposal, the working names put forth for the loose federation it proposed

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482 Testimony of Milan Babić (19 November 2002), 13011-13012.
483 Testimony of Milan Kučan (21 May 2003), 20890-20891.
484 Testimony of Borisav Jović (20 November 2003), 29443.
485 The first meeting was held in Split (Croatia) on 28 March 1991, then others followed in Brdo kod Kranja (Slovenia) on 11 April 1991, Ohrid (Macedonia) on 18 April 1991, Cetinje (Montenegro) on 29 April 1991, and Stojčevac (BiH) on 6 June 1991.
486 When asked by Milošević in court about discussions of the confederation that took place at this time, Marković remarked: “You excluded the rest of us from these discussions because you were the actual people in power. That is, the republics rather than the federal institutions.” Testimony of Ante Marković (15 January 2004), 30885-30886.
were: the Community of Yugoslav Republics, the Union of Yugoslav Republics, or the Union of Yugoslav States.

Milošević repeatedly made the point in court that he had accepted the Izetbegović-Gligorov Proposal at the inter-republic meeting held in June 1991 in Stojčevac, near Sarajevo. But it is impossible to know whether Milošević had undergone a genuine change of heart from his insistence on strong centralisation or was simply a shrewd enough tactician to know that Croatia would never accept the Proposal and could therefore be scapegoated. Armed conflict was already unfolding in Croatia and the Yugoslav People’s Army (JNA) had sided with the rebelling Croatian Serbs. Had Milošević taken advantage of this conflict to make Serbia appear cooperative, with little risk of any real commitment to what Izetbegović and Gligorov advocated? Prosecution witness Stjepan Kljuić, a Bosnian Croat politician, confirmed that Milošević had accepted the Proposal and that Slovenia and Croatia had refused it; but he also testified that, indeed, Milošević had only agreed to the Proposal because he knew that the Croats would never accept it. And Milošević’s intentions at the Stojčevac meeting were also brought into question by an intercepted telephone conversation he had with Bosnian Serb leader Radovan Karadžić. In the June 1991 call, which took place only two days before the meeting, Milošević and Karadžić discussed and rejected the Izetbegović-Gligorov Proposal.

Milan Babić testified that he had discussed the Proposal with Milošević as well, and had asked him if perhaps just Serbia and Croatia could form a confederation. According to Babić, a Croatian Serb, Milošević said of Croatia, “Let them go. I don’t want them.” And then, “I’ll join with Greece.” Babić concluded that despite Milošević’s public advocacy for a federation, he wanted to create something based more on the self-determination principle than on republican sovereignty, seeking a state that “could be composed not only of republics but also of parts...from other republics.”

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487 For discussion on the Izetbegović-Gligorov Proposal, see: Testimony of Audrey Budding (24 July 2003), 24947-24948; Testimony of Milan Milanović (15 October 2003), 27625-27626; Testimony of General Milosav Đorđević (11 March 2003), 17618-17619; Testimony of Nikola Samardžić (10 October 2002), 11429-11430; Testimony of Ibro Osmančević (24 November 2003), 29528.
488 Testimony of Stjepan Kljuić (15 July 2003), 24480-24481.
489 Intercept of Conversation between Radovan Karadžić, Slobodan Milošević, and Nikola Koljević, 4 June 1991, Exhibit P613.5a.
490 Testimony of Milan Babić (3 December 2002), 13805.
491 Ibid.
Indeed, earlier that year, Milošević had suggested in a PSFRY session that was reported on by the BBC that “Yugoslavia was created only by Yugoslavs and not republics,” arguing that the borders of republics could not constitute state borders because “they do not represent boundaries within which Yugoslav nations [of people] live.”492 And he went on to reject the notion of a confederation:

...each nation has the equal right to decide freely about its destiny. Such a right can be constrained solely by the same, equal right of other nations. As far as the Serbian people are concerned, they want to live in one state. Hence, divisions into several states, which would separate Serbian people and force them to live in different sovereign states is, from our point of view, unacceptable, that is – let me specify – out of the question. The Serbian nation will live in one state and every nation wanting to live with the Serbian people in the same state on an equal basis is welcome. For us, confederation is not a state.493

Milošević’s dismissal of a confederation left other republics seeking solutions that would not depend on Serbia’s political participation, one of which was to gain recognition as independent and sovereign states.

The Debate over Responsibility for the Disintegration of the SFRY

Milošević had actually alluded to the possibility of a political future for Serbia outside of Yugoslavia as early as 25 June 1990, in a speech before the Serbian Assembly in which he had also taken a clear stand against a confederation. Recognising that other republics were leaning toward a confederation, he had announced that Serbia could become an independent state, perhaps with new borders:

This is why this draft Constitution of Serbia has been prepared taking into account another possible option, the one of Serbia as an independent state; [and] passing the new constitution, among other things, should prevent all attempts of a silent transformation of Federal Yugoslavia into a confederation, i.e., passing the new

492 BBC Summary of World Broadcasts (17 January 1991) “Other Reports on SFRY Presidency Session,” Exhibit P469.5
493 Ibid.
constitution represents a moment when Serbia should…make clear that Serbia’s current administrative borders are linked exclusively to the federative state system in Yugoslavia. Should the state system in Yugoslavia be changed, i.e., should Yugoslavia become a confederation, all constitutional issues would be opened. A confederation is not a state but a union of independent states, therefore a confederation would not be a reality even in the case that all political subjects in Yugoslavia would accept it in the existing, administratively set, borders among the republics. In that case…the issue of [the] borders of Serbia becomes an open political issue.\footnote{494}

The Prosecution presented this speech as evidence that the 1990 Serbian Constitution had been designed to allow for the possibility of an independent Serbia. Furthermore, the Prosecution saw the speech as setting the tone for discussions of reforms of the Federation, creating uncertainty and concern among other republics about the possibility of borders becoming an “open political issue,” especially in the areas in Croatia and BiH where Serbs had a majority. When asked by the Prosecution to address some of those concerns, Slovenian Milan Kučan recalled the anxiety that had been stimulated by Milošević’s speech, which Kučan had interpreted as an inference that borders might be re-drawn by force.\footnote{495}

Kučan also testified about the meeting of republic presidents held in Brdo kod Kranja in Slovenia, in April 1991, where Milošević had once again made it clear that Serbia would never agree to a confederation.\footnote{496} Kučan had insisted that the time was right to discuss the issue more concretely, given the results of the referendum on independence held in Slovenia in December 1990; and Croatian President Tuđman said that if Slovenia declared independence, Croatia would have no choice but to do the same.\footnote{497} According to Kučan, Milošević had told him during a private walk that he would not oppose Slovenia’s departure from the SFRY; however, Croatia

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\footnote{494}{“Transcript of Speech by Slobodan Milošević in the Serbian Parliament regarding the new Constitution of Serbia,” 25 June 1990, Exhibit P447.6a.}
\footnote{495}{Testimony of Milan Kučan (21 May 2003), 20887-20889.}
\footnote{496}{Ibid., 20893.}
\footnote{497}{Ibid., 20894.}
was another story. He could not let it go without redrawing its borders, because too many Serbs lived there.\(^{498}\)

**What Intercepted Telephone Conversations Revealed About Overt and Covert Serb Objectives**

In order to help demonstrate the contrast between Milošević’s overt and covert political and military aims from May 1991 to February 1992, the Prosecution relied on recordings of intercepted telephone conversations he held with other politicians and leaders during this time. These intercepted conversations revealed a gap between the real and publicly proclaimed objectives of the power brokers that gathered around Milošević. Relatively free of caution, though not always, they discussed their plans for dealing with the former Yugoslav republics after the disintegration of the SFY.

The existence of these audio intercepts was known for a long time; they were first revealed at a meeting of the Federal Executive Council (Savezno izvršno veće, or SIV) of the FRY on 19 September 1991, and selected parts of some of the intercepts became available to the public thereafter, through the media and in several books.\(^ {499}\) As with much of the record from the Milošević trial, these materials are very important historical documents and, although the intercepts were mostly used in court without any redactions and are available on the ICTY’s website, scholars have not yet explored their full potential.\(^ {500}\)

During the trial, the Prosecution tendered 245 telephone intercepts into evidence, all of which were authenticated by an expert who worked for the BiH State Security Service at the time, and who had been directly involved in their wire-tapping project. The first audiotape of these intercepts to reach the OTP included conversations between Milošević and Radovan Karadžić and came to the OTP via Vasvija Vidović, the Bosnian Liaison Officer for Cooperation with The Hague. Eight more tapes were handed over to the OTP in 1995. These nine audiotapes contained 54 conversations that Milošević had with Karadžić and with other Serbian, Croatian Serb, and

\(^{498}\) Ibid., 20894.


Bosnian Serb officials. Most of them were provided with original language transcriptions, which were then translated into English.

The Prosecution was able to reconstruct the circumstances in which intercepted telephone conversations took place, situating them in political, diplomatic, and military contexts that added to their evidentiary value. This was done firstly by discussing them in court with witnesses such as Milan Babić, the former President of the RSK, and General Aleksandar Vasiljević, the former head of the Military Counterintelligence Service (Kontraobveštajna služba, or KOS), who were either participants in the conversations or were mentioned in them. Both of these witnesses were well placed to explain and deconstruct the political and military contexts of particular exchanges.

Conversations recorded between June and October 1991 revealed that Milošević had insisted on portraying a united SFRY to the outside world while he counted on the independence of Slovenia and Croatia to bring about an inevitable disintegration of the Federation. A conversation with Karadžić in late June reflected the development of Milošević’s rhetoric on the independence of Croatia specifically. Both he and Karadžić were adamant that the ‘Serb-designated territories’ – the SAOs of Krajina, of Western Slavonia, and of Slavonia, Baranja, and Western Syrmia, all of which were eventually incorporated into the RSK – must remain in Yugoslavia should Croatia secede. Their formulation was that it was not the SAOs separating from Croatia, but Croatia separating from a reduced Yugoslavia in which the SAOs remained. That summer, the two leaders also discussed various initiatives to preserve Yugoslavia – such as the Izetbegović-Gligorov proposal put forth by the Bosnian and Macedonian Presidents or the Tuđman proposal, both of which advocated some sort of Yugoslav confederation of republics. In one call, Karadžić showed his hand by saying that if Tuđman agreed to keep Croatia in Yugoslavia it would spoil the plans of Serbs. Milošević exclaimed with confidence, “How could Franjo stay in Yugoslavia?!”

In court, however, Milošević accused Croatian leaders Stjepan Mesić and Franjo Tuđman of being the true engineers of Yugoslavia’s collapse, claiming further that they had worked to make it appear as if the Federation’s downfall was the fault of Serbian leadership. Milošević suggested

501 For example, see: Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 17 June 1991, Exhibit P613.9a.
to Mesić – who testified as a Prosecution witness – that he had started his tenure as President of the PSFRY, in May 1991, by declaring that he would be the last President of Yugoslavia, implying that Mesić had planned all along for the dissolution of the Federation and accusing him of betraying Yugoslavia and contributing to its break up. When asked by the Trial Chamber to respond to these allegations, Mesić explained:

> When I was elected to the Presidency of Yugoslavia, I believed that I would help to resolve the Yugoslav crisis by political means... My proposal to the Presidency was that we should adopt a fully confederal system and that the confederation should be given a time limit, three to five years, that the republics should be declared independent, that the republics should be internationally recognised, that they should recognise each other, and thereby be recognised by the international community, and that on the day when the Federation ceased to exist, a confederation be established. Why? Because everyone was dissatisfied with Yugoslavia! Serbia claimed that it was being exploited. Serbia claimed that they were the ones who funded others. Croatia was saying that its hard currency was being siphoned off to Belgrade. If everybody was dissatisfied, why not adopt a new model? ...Serbia never expressed its view on this proposal. Instead of this, Milošević proposed a strong federation. That is, what happened to Kosovo and Vojvodina, that this should happen everywhere. We could not agree to this. But I was in favour of negotiations. I thought that it was better to negotiate for ten years rather than to wage war for ten days. Some people were in favour of the war option, and Slobodan Milošević was certainly one of those.\(^{504}\)

In the Defence narrative, Croatia’s proclamation of independence on 25 June 1991 was identified as the start of armed conflict with the former republic. Milošević quoted US Secretary of State James Baker, who had said at the time that independence had been declared by Slovenia and Croatia despite a warning from the US that their actions could trigger war.\(^{505}\) Milošević also highlighted the role of Germany, asserting that its “premature” recognition of Slovenian and Croatian independence had led to violence.\(^{506}\) What Milošević failed to acknowledge, though,

\(^{504}\) Testimony of Stjepan Mesić (2 October 2002), 10669-10671.
\(^{505}\) Trial Transcript, Defence Opening Statement (18 February 2002), 456-458.
\(^{506}\) Ibid., 482.
was that violence in Croatia had actually begun in August 1990 with a rebellion of Croatian Serbs in the Knin Krajina, and had then intensified by April 1991 in the Plitvice region before spreading to both Western and Eastern Slavonia in May and becoming a full scale war in June.

Violence and the Disintegration of the SFRY

Milošević had easily agreed to Slovenia’s departure from the SFRY because he had no territorial aspirations there; the ethnic composition was overwhelmingly Slovene with very few Serbs. Yet, in the night following the Slovenian declaration of independence, federal armed forces – consisting of JNA units and the Federal MUP – tried to prevent Slovenia’s secession, claiming they were acting in accordance with their constitutional obligation to protect the Federation’s external borders. The Presidency of the SFRY would not have issued such an order given that it would have required the consent of both the Slovenian and Croatian representatives, and so the question was on whose orders, and for what purpose, these forces intervened. It was a question asked in court by both the Prosecution and the Defence.

Milošević claimed that the federal government of Ante Marković was responsible for the decision to intervene militarily in Slovenia. He cited recordings of an extended session of the PSFRY, held on 21 August 1991, as evidence. In it, both Milošević and Milan Kučan had blamed Marković for starting the war in Slovenia. During his cross-examination of Marković, Milošević again accused him of having directly ordered the JNA to act without informing the PSFRY. Marković rejected the proposition as preposterous, saying that only the PSFRY had the authority to deploy JNA units. He did confirm that federal police units had been sent to Slovenia on his authority in order to supervise federal facilities there, and that they were to be assisted by JNA units already deployed along the border. But he testified that cooperation between the federal police and the JNA border units never happened because, according to Marković, the JNA had been given orders to invade Slovenia by Milošević, who he said had de facto control of the Army.

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508 Ibid., 30832.
509 Ibid., 30832.
Yet, why would Milošević encourage – or even order – the JNA to intervene in Slovenia as suggested by Marković, considering the evidence that he had already let Slovenia go? What would Milošević gain through military intervention that would lead to the loss of lives of JNA soldiers, meeting no strategic objective while risking negative reactions from the West? Was he manoeuvring to appease JNA leadership, who represented the only surviving federal institution and one that could not be preserved without the continued existence of the SFRY?

If Milošević’s claims that he was trying to preserve the SFRY were true, this objective would have overlapped with that of federal institutions, making both Ante Marković and the JNA his natural allies. JNA leadership had seen Ante Marković and his government as potentially capable of ensuring the continued existence of some form of Yugoslavia and, thereby, of the JNA; and this was well understood by Milošević. In an intercepted telephone conversation from 17 June 1991, he and Karadžić both expressed alarm at the possibility that Marković might try to prevent the secession of SFRY republics through use of the JNA.\(^5\)\(^1\)\(^0\)

In reality, the JNA had its own war to wage, for its own existence – which was intrinsically tied to the survival of the SFRY. Constitutionally, the JNA was obliged to preserve the external borders of the SFRY as well as the socio-political order of the Federation per the 1974 Constitution.\(^5\)\(^1\)\(^1\) Additionally, by mid-1991, the composition of the formerly multiethnic army had drastically changed. The JNA had become an increasingly Serb force, and non-Serb officers were encouraged to leave in light of the new political realities that followed the Slovenian and Croatian declarations of independence. When Ante Marković could not secure the continuation of the SFRY and lost his political authority by the autumn of 1991, the JNA was left in hands of Milošević.

Despite the accusations he levelled against both Mesić and Marković in court, Milošević also suggested in his cross-examination of Milan Kučan that it was the Slovenians who had started the war by declaring independence without any preceding negotiations.\(^5\)\(^1\)\(^2\) Kučan firmly rejected the assertion that Slovenia had not engaged in negotiations, explaining that the Slovenian Assembly had adopted a Declaration on Disassociation in February 1991 after failed attempts to

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\(^5\)\(^1\)\(^0\) Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 17 June 1991, Exhibit P613.9a.


\(^5\)\(^1\)\(^2\) Testimony of Milan Kučan (21 May 2003), 20910-20911.
achieve an agreement on the restructuring of the Federation, and that it had sought consensus from other republics but only received a response from Croatia. Kučan also denied Milošević’s proposition that the war in Slovenia was waged over customs revenues. According to Milošević, by taking control of the border crossings between the West and the SFRY, Slovenia had appropriated the revenues from custom taxes, which he claimed made up 75% of the federal budget. Kučan said that the Slovenian government had actually deposited income from customs taxes into a special fund, pending a definitive outcome of talks being held at the time on the future of Yugoslavia or a decision on the matter from the Slovenian Assembly.

The End of Yugoslavia

The Brioni Declaration

The Slovenian declaration of independence triggered a short-lived war there that lasted ten days before it was brought to an end on 7 July 1991 by a European Community (EC) brokered truce, signed at an international peace conference held on the Croatian island of Brioni. The signatories agreed to a ceasefire to be monitored by an EC Monitor Mission, a three-month moratorium on the independence of Slovenia and Croatia, and talks on a political solution for Yugoslavia. Ante Marković, who represented the Federation at the negotiations, had originally proposed a six-month moratorium because he felt three months was too short a period in which to achieve a compromise that could accommodate two extremes – Slovenia’s call for a loose confederation on one hand and Serbia’s call for a centralised federation on the other. But three months was decided upon, during which the principles for the preservation of a common state were to be negotiated.

Branko Kostić, a close Montenegrin ally of Milošević, was involved in the negotiations in Brioni as well as in talks that were held later in The Hague, when he was Vice President of the PSFRY. He asserted in his testimony that the Prosecution either failed to understand, or had deliberately

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513 Ibid., 20912-20913.
514 Trial Transcript (21 May 2003), 20910-20911.
515 Testimony of Milan Kučan (21 May 2003), 20913-20925. Also see: Testimony of Ante Marković (15 January 2004), 30899-30900.
516 “Brioni Joint Declaration,” 7 July 1991, Exhibit P330.35a. The text of the Declaration is also available in Exhibit D333.63e, excerpted from Branko Kostić, Lest We Forget (Beograd: Obodsko Skivo, 1996).
517 Testimony of Ante Marković (23 October 2003), 28049-28050; and (15 January 2004), 30848.
neglected to portray, the essence of the Brioni Declaration. According to him, its key points were
the establishment of peace and the search for a political solution within a three-month period; but
he claimed that the moratorium, which only temporarily suspended the independence of Slovenia
and Croatia, was not agreed upon.\footnote{Testimony of Branko Kostić (1 February 2006), 32168-32170. Kostić said: “...my opinion would be that this is a purely factual issue. What fact is important to determine the dissolution of SFRY as a federal state? In count 85, this is linked to the 8th of October, when independent Croatia was declared. In count 110, it is linked to the fact of the adoption of the Federal Republic of Yugoslavia, which was the 27th of April 1992. So the same phenomenon is being linked to two different facts. I'm not passing any legal judgement here. All I'm doing [is] I am concluding that the dissolution of Yugoslavia is being linked to two different dates.” Also see: Testimony of Ratko Mladić (18 January 2005), 35171-35172.} The Prosecution showed Kostić the text of a Memorandum of Understanding attached to the Brioni Declaration that referred to the moratorium on independence, and indeed permitted Slovenia and Croatia to declare independence as of 8 October 1991 if a political solution to preserve the Federation had not been reached. When
pressed, Kostić insisted that the agreement made by all parties had been to find a solution within
three months only “to the situation along the borders.”\footnote{Testimony of Branko Kostić (13 February 2006), 48312-48317.} In fact, the Declaration was explicit
that the “implementation of the declarations of independence” would be suspended “for the
period of three months.”\footnote{“Documents of the European Communities, including the ‘Memorandum of Understanding on the Monitor Mission to Yugoslavia’,” (13 July 1991), Exhibit P946a, 3.} Further, Kostić claimed that the intention of negotiators was not that
this part of the Declaration apply to Croatia, the leadership of which he said had “interpreted in
their own way everything that was mutually agreed upon” in order to achieve an independent
state. This characterisation of the Brioni Declaration by Kostić was reflected by Milošević, who
spent much time and effort challenging the factual basis of the Declaration, in part to contest the
date that Croatian independence was recognised; for, this was significant in determining when
the war in Croatia became an international armed conflict.\footnote{The distinction between internal and international armed conflict is important in an international criminal trial. In this case, once Croatia or Bosnia became recognised as independent, military action by Serbian-controlled forces – military or paramilitary – exposed Serbian leaders to investigation as possible war criminals.}

\textit{The Hague Conference and Milošević’s Rejection of The Carrington Plan}

Negotiations on the future of Yugoslavia that followed July’s Brioni Declaration were held in
The Hague under the leadership of the EC, chaired by British politician and diplomat Lord Peter
Carrington within the framework of a newly formed International Conference on the Former
Yugoslavia (ICFY). The ICFY would become the forum for peace negotiations until the end of the conflict in BiH in 1995. The Hague Peace Conference, from September to December 1991, effectively failed by 18 October and marked the first of many ICFY negotiations, which moved to Geneva throughout the war.

At the opening of the Conference on 7 September 1991, each republic president gave a speech; and as was expected, Milošević blamed the “unilateral secessionist policy, first of Slovenia and then of Croatia,” as the cause of the crisis, asserting that these republics had “jeopardised the Yugoslav constitutional order.” Milošević also insisted that existing republican borders could not be seen as inter-state boundaries. He qualified them as merely administrative and argued that the independence of former SFRY republics was thus illegal.

On 4 October, negotiators led by Lord Carrington met alone with Milošević and his Croatian counterpart Tuđman, both of whom consented to three fundamental components for a general agreement to be presented to all parties at a plenary session two weeks later: 1) a loose association or alliance of sovereign or independent republics; 2) adequate arrangements for the protection of minorities, including human rights guarantees and possible special status for certain territories; and 3) no unilateral changes to borders. A loose federation consisting of sovereign states was to be formed by allowing all the republics to first declare themselves independent, as Slovenia and Croatia did on 8 October, and then build political, economic, and other ties from there. But the plenary session ended without consensus on an agreement, and the Prosecution and Defence narratives differed considerably in how they allocated responsibility for the failed Hague Peace Conference.

The Prosecution attempted to depict events between the 4th and 18th of October that led to Milošević’s rejection of the Carrington Plan, and the trial record includes a revealing reconstruction of a falling out between Montenegrin and Serbian leaders on the night before the

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522 Testimony of Vladislav Jovanović (14 February 2005), 36048-36051.
523 Testimony of Herbert Okun (28 February 2003), 17084-17085.
525 See: “Joint session of all Chambers of the Parliament of the Republic of Croatia,” 8 October 1991, Exhibit P641.22a. It includes an announcement that, following the end of the three-month moratorium agreed to in the Brioni Declaration, “the Republic of Croatia severs all state/legal ties... [with] the previous SFRY and disavows the legitimacy and legality of all borders of the former federation.”
critical plenary session. Along with the testimony of many witnesses, a book by Momir Bulatović helped the Prosecution piece together the details. In his memoir, *Pravila čutanja* (“Rules of Silence”), Bulatović – who was President of the Republic of Montenegro at the time of the Hague Conference – offered valuable insight into the matter. Indeed, the Prosecution had analysed the book and was planning to introduce it in its cross-examination of Bulatović, who was set to appear as a Defence witness. But an earlier opportunity to present excerpts of it in court arose when Bulatović’s former colleague Branko Kostić, who was also very close to Milošević, testified in February 2006. And so, the Prosecution referred to parts of Bulatović’s book in its cross-examination of Kostić as a jumping-off point for discussion of the failure of the Hague Conference, calculating that even if Bulatović did not end up testifying, the most valuable parts of his book would still be tendered into evidence through Kostić’s testimony.

According to the Prosecution narrative, events directly leading to Milošević’s reversal regarding the Carrington Plan began in Belgrade on 14 October. Milošević had expressed satisfaction with the Plan and had called a meeting with his allies, where Serbian and Montenegrin leaders had all agreed to accept it. Milošević and Jović said they would convey the outcome of the meeting to JNA leadership. Two days later, Carrington sent a draft proposal for final consideration to all parties, based on the three components that had been agreed upon by Milošević and Tuđman. The next day, 17 October, Milošević met with the JNA while Bulatović led the Montenegrin Assembly in a vote on whether to accept the Plan. But Milošević’s meeting, which he expected to be routine, took an unexpected turn; and Bulatović, who had fought hard to persuade Montenegro Assembly members to vote in favour of the Carrington Plan, received a call from Milošević during the Assembly session with surprising instructions that the Plan should not be accepted. Milošević said Serbia would reject the proposal after all and advised that Montenegrin leaders do the same, with no explanation as to why.

Bulatović agreed to convey Milošević’s message to members of the Montenegrin ruling party, the DPS, but made no promises. Milošević reckoned that once the DPS majority was aware of

527 Testimony of Nikola Samardžić (10 October 2002), 11434.
528 Ibid., 70-71.
his position they would vote against the Plan, but the Montenegrin Assembly voted in favour of it. On his flight to The Hague, Bulatović had still not decided whether he would definitely accept the Carrington Plan; but in the end, he did vote in favour. This prompted an angry reaction from Milošević, who rejected the proposal on the ostensible basis that Serbs in Croatia had a right to establish their own state.

Years later, Bulatović explained why Milošević had backpedalled from his original consent to the Plan. Apparently, Milošević had been told by JNA leadership, headed by Veljko Kadijević, that they rejected the Plan because it would lead to the abolition of the SFRY and thereby of the JNA. They had argued to Milošević that the Federal Constitution explicitly forbade such action, and had said that in the event of a breach of the Constitution, the JNA would challenge the civil leadership – a statement that was interpreted by some as a threat of a coup d’état. This pressure by JNA leadership swayed Milošević’s vote, for he could not afford the gamble of disobeying the Army hierarchy. His power was at stake, and he needed the Army to implement the next stage of his plan.

Smilja Avramov had given a similar account of these events in her book, published in 1997. She described the arrival of the draft Carrington Plan in Belgrade on 16 October as having been received there as “lightening from the blue sky.” Avramov meeting, agreed that it was the meeting on 17 October between Serbian and JNA leadership that had prompted Milošević to change his mind, and she asserted that the speech Milošević gave at the plenary session on 18 October in The Hague was a synthesis of the opinions expressed the night before in Belgrade.

Branko Kostić also participated in the meeting with the JNA, but unlike Bulatović and Avramov, attached no importance to it. In his testimony, he repeated well-known criticisms of the wording of the Carrington Plan and reiterated the argument made by Milošević and other Defence witnesses that if Serbia had accepted the Plan, Yugoslavia would have been wiped off the map. According to Kostić, the Carrington Plan was not concerned with a common state but with the creation of independent states out of the republics; he asserted that if certain republics had

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529 Ibid.
530 Testimony of Nikola Samardžić (8 October 2002), 11225.
531 Bulatović, Pravila čutanja, 85.
532 Smilja Avramov, Postherojski rat Zapada protiv Jugoslavije (Belgrade: Akademija za diplomatiju i bezbednost, 1997), 274.
wished to secede, the same rights should have been given to people within those republics who wished to remain in a common state.\textsuperscript{533}

Milošević’s rejection of the Carrington Plan at the plenary session was the effective end of talks; and while negotiators still aimed to reach an agreement by November, Milošević worked actively against this in the two weeks from 18 October to 1 November. Serb leaders such as Milan Babić, President of the self-proclaimed Republika Srpska Krajina (in Croatia) at the time, testified that Milošević had lobbied for him to accept the Plan before the plenary session, and in particular the component that granted a “special status” to Serbs in Croatia – something Babić was less than enthusiastic about because he worried that Serbia would get its state and leave “the Croats to take revenge” on Croatian Serbs who had established separate territorial entities within Croatia.\textsuperscript{534}

But after Milošević’s sudden change of heart, he rallied Serb leaders across the SFRY to reject the Plan he had been promoting. According to Babić, Milošević summoned him and Karadžić to a meeting in Bosnia, where they were both instructed to reject the Carrington Plan. Babić deduced that this directive was linked to the fact that the Plan awarded special status to \textit{all} minorities, which would have given Kosovo Albanians the same rights they had enjoyed under the 1974 Serbian Constitution and would have reversed years of work by Milošević as the champion of Serbs in Kosovo.\textsuperscript{535}

In a dramatic epilogue to events in The Hague, Momir Bulatović ended up changing his position on the Carrington Plan as soon as he returned to Montenegro, reportedly under the threat of removal from office.\textsuperscript{536} In his book, Bulatović described the harassment he endured, from intimidation, to accusations that he was a traitor, to rumours that he had sold his vote to the Italians – who were said to have committed themselves to financial aid for Montenegro in exchange for acceptance of the Plan.\textsuperscript{537} Under pressure from Milošević, Bulatović co-signed an amendment to the Plan, jointly filed by Serbia and Montenegro, which proposed that the rights of those who wished to continue living in a joint state also be recognised.\textsuperscript{538}

\begin{itemize}
  \item \textsuperscript{533} Testimony of Branko Kostić (2 February 2006), 15861-15863.
  \item \textsuperscript{534} Testimony of Milan Babić (21 November 2002), 13197.
  \item \textsuperscript{535} Ibid., 13199-13201.
  \item \textsuperscript{536} Testimony of Nikola Samardžić (8 October 2002), 11227-11229.
  \item \textsuperscript{537} Testimony of Smilja Avramov (8 September 2004), 32543.
  \item \textsuperscript{538} Testimony of Branko Kostić (2 February 2006), 15863-15864.
\end{itemize}
In court, Milošević presented a different understanding of history. He suggested, during his examination of Defence witness Vojislav Šešelj, that Bulatović’s initial decision to sign the Carrington Plan was evidence that Milošević did not control the Montenegrin leadership. Šešelj agreed, saying that Milošević had been unable to influence Bulatović, who, Šešelj claimed, had eventually been forced to change his mind because of pressure from Montenegrin citizens. But Šešelj’s claim that Milošević had little control over other political leaders was incompatible with his reference to Milošević as “political figure number one in Serbia.”

Establishing the Nature of Yugoslavia’s Disintegration

One important corollary of the Hague Peace Conference was a list of Opinions formulated by the Badinter Arbitration Commission. The Commission had been formed to assist Lord Carrington in addressing the issues raised by the parties to the talks. Named for Chairman Robert Badinter, a Constitutional Judge from France, the Commission issued eleven Opinions over the course of the Conference, to answer questions posed by the negotiating parties.

The Commission’s first Opinion addressed the opposing interpretations of the declarations of independence that had been made by former SFRY republics. Serbia assumed that the SFRY would continue to exist despite the secession of some republics; but the other republics didn’t view their proclamations of independence as secession because they felt that the SFRY had functionally disintegrated upon the consensus of several republics to leave the Federation. The Badinter Commission responded, inter alia, that with four of its republics having already expressed a desire to become independent, the SFRY was in a process of dissolution. Both Slovenia and Croatia had declared independence on 25 June 1991, after referendums held in December 1990 and May 1991 respectively. Macedonia had voted in favour of independence in a referendum held in September 1991, and the BiH Assembly adopted a resolution on

539 Testimony of Vojislav Šešelj (1 September 2005), 43617-43618. Šešelj claimed: “It was impossible for you to gain control over Montenegro. The then Montenegrin leadership comprised of Momir Bulatović, Milo Đukanović, and others came to power in Montenegro by declaring themselves publicly to hold political standpoints close to yours, but that was only when they came to power. Afterwards they waged their own independent policy and I know of a whole series of political conflicts between you and them. First of all, in 1991, you parted ways publicly as regards your political orientation. ...I think it must have been [at] the Hague Conference…. After this, on his return to the country, Momir Bulatović faced enormous resistance from his own citizens, and he began changing his position. You were unable to persuade him...but his own citizens convinced him on his return.”
540 Ibid., 43619.
sovereignty on 14 October 1991 – though its validity was contested by the Bosnian Serb
community.\textsuperscript{541} The Commission stated that the question of state succession was for the republics
to settle according to the principles and rules of international law, and that it was up to any
republics that wished to do so to work together to form new institutions.\textsuperscript{542}

Opinion No. 3 answered the question of whether internal boundaries between Croatia and Serbia
and between Serbia and BiH could be regarded as external borders under international law. In an
elaborate response, one of the points made by the Commission was that these boundaries “may
not be altered except by agreement freely arrived at.” The Opinion also stated that, where
existing boundaries became frontiers in the international legal sense through political processes,
those borders must be respected per the principles of the United Nations Charter; and further that
“the alteration of existing frontiers or boundaries by force is not capable of producing any legal
effect.”\textsuperscript{543}

Opinion No. 11, issued on 16 July 1993, was the last in the series and responded to a question
about the precise dates the SFRY successor states achieved independence. The findings of the
Arbitration Commission were that: Croatia and Slovenia had become independent on 8 October
1991, in accordance with the Brioni Declaration; Macedonia had officially become a sovereign
state on 17 November 1991; and BiH attained independence on 6 April 1992. Regarding BiH,
the Commission cited its own Opinion No. 4, issued on 11 January 1992, in which it had stated
that if BiH was to become independent, it ought to hold a referendum. A referendum had indeed
been held on 29 February and 1 March 1992.\textsuperscript{544}

Milošević did not accept the authority accorded to the Badinter Arbitration Commission by the
Prosecution and the Trial Chamber, referring to the arguments of its Opinions as “legal
metaphysics.”\textsuperscript{545} In his August 2004 Opening Statement, Milošević harshly criticised the
international community for recognising the independence of states that had seceded from the
SFRY, saying:

\begin{itemize}
  \item \textsuperscript{541} \textit{Conference on Yugoslavia Arbitration Commission (Badinter Commission): Opinions on Questions Arising from the Dissolution of Yugoslavia (Nos. 1,3,5,8,11)}, Exhibit P641.32.2-5a. Opinion No.1 was published 27 November 1991.
  \item \textsuperscript{542} Ibid.
  \item \textsuperscript{543} Ibid. Opinion No. 3 was published 11 January 1992.
  \item \textsuperscript{544} Ibid. Opinion No. 11 was published 16 July 1993.
  \item \textsuperscript{545} Trial Transcript, Defence Opening Statement (31 August 2004), 32159.
\end{itemize}
The international community will have to face up to all of this. It is not only that a state was destroyed. The United Nations system was destroyed. Also the corpus of principles upon which the world civilisation was based has been destroyed. In addition to that, never in history has a state disappeared by sheer coincidence. There was a great deal of rhetoric involved in the destruction of Yugoslavia. When the crisis first broke out, all the way up to the present day, everything that has been said, including what this so-called Prosecution said, is wrong.\footnote{Ibid.}

Milošević felt the Serbian delegation had been betrayed by the international community at the Hague Peace Conference. Defence witness Vladislav Jovanović recalled a meeting that had been held on the initiative of French President François Mitterand on 29 August 1991, designed to get Serbia to agree to the principles of the Conference. Jovanović had accompanied Milošević to the meeting in his capacity as Minister of Foreign Affairs and testified that Mitterand informed the Serbian delegation then of the appointment of Robert Badinter as head of the Arbitration Commission. Mitterand reportedly told them that he considered Badinter his personal friend and therefore Serbia’s friend, too; and he assured Milošević that the members of the Commission would be presidents of the constitutional courts of Greece, France, Britain, and Germany, suggesting that there would be at least three members sympathetic to the cause of the Serbs.\footnote{Testimony of Vladislav Jovanović (14 February 2005), 36048.} According to Jovanović, Mitterrand recognised that Serbia had “strong political and historical arguments” and said there was absolutely no reason to worry that their interests would be overlooked at the Conference.\footnote{Ibid., 36050-36051.}

Expecting support from the international negotiating team in The Hague – as they believed had been assured in Paris – the Serbian delegation was unpleasantly surprised by what they encountered at the Conference, where they felt the republics that had chosen secession and independence were favoured from the very first days. In his testimony, Jovanović claimed the Conference ended with a take-it-or-leave-it diktat and that republics which did not accept the Carrington Plan due to their desire to stay in the SFRY were punished through sanctions.\footnote{Ibid., 36051.} But as a backdrop to talks, armed conflict in Croatia continued, practically unabated. A cease-fire
had been reached on 17 September in Igalo, Montenegro, when Milošević, Tuđman, and JNA General Kadijević met with Lord Carrington and agreed to immediately end hostilities. However, the JNA began a large-scale operation in Croatia just two days later, and the fighting there went on as negotiations in The Hague – which had come in response to JNA operations in Croatia, including attacks on Dubrovnik and Vukovar – failed. Milošević’s rejection of the Carrington Plan effectively meant the definitive end to any possibility that Slovenia and Croatia would remain in a Yugoslav state. Milošević had to move on, and the third of his goals – the creation of a reduced Yugoslavia that would incorporate ‘Serb-designated territories’ in Croatia – is examined in the next chapter.

550 The Security Council passed Resolution 713 on 25 September 1991, noting its alarm about “violations of the cease-fire and the continuation of fighting.”
This is not a conflict between the Republic of Serbia and the Republic of Croatia.
This is a conflict between the Croatian authorities and the Serbian people.
This is a kind of state terrorism against the Serbian population in Croatia.

Slobodan Milošević, Interview, Sky TV, 7 August 1991

Chapter VI: The Formation of the Republika Srpska Krajina (RSK) and the Policy of Ethnic Separation in Croatia

The Croatia indictment alleged that Milošević participated in a Joint Criminal Enterprise (JCE) that came into being sometime before 1 August 1991 and existed until at least June 1992, which was organised for the purpose of forcibly removing the non-Serb population from one-third of Croatian territory. As part of a common plan to create a Serb state, self-declared “Serbian Autonomous Regions” (SAOs) were then established; and they were known collectively as the Republika Srpska Krajina (RSK) after 19 December 1991. According to the indictment, Milošević – President of the Republic of Serbia at the time – exercised considerable control over other JCE participants and, through the PSFRY, over Yugoslav and Serb forces in Croatia. JNA battalions, local and Serbian Territorial Defence units, local and Serbian police units, and paramilitary detachments attacked and took control of Serb-claimed territories before creating a climate of persecution that drove non-Serbs out. The indictment also alleged the murder of hundreds of non-Serb civilians and the forcible transfer of at least 170,000, as well as the imprisonment of thousands more in deplorable conditions. Further, Serbs were accused of wantonly destroying public and private property, including religious and cultural symbols.551

The Prosecution argued that ethnic violence in Croatia had resulted from the Serb policy of ethnic separation and the process of establishing the RSK, during which Serb forces engaged in the commission of crimes against the non-Serb population living there. The Defence asserted that the creation of the RSK was a legitimate right of Serb people who wanted to remain living in Yugoslavia and did not want to live in a newly-independent Croatia, which they saw as seceding from the Federation.

551 Second Amended Indictment, 27 July 2004 (the Croatia Indictment).
Milošević’s *de jure* position was different in each of the three indictment periods for which he was charged; but in the period relevant to the Croatian indictment, Milošević was President of the Republic of Serbia and had no direct political authority at the federal level. Yet, in order to control the armed forces of the SFRY, he gained indirect power over the PSFRY, which was still in charge of these forces in 1990 and 1991. Charges against Milošević for crimes allegedly committed in Croatia were thus based on his *de facto* political power, exercised through a number of proxies at various levels of government – members of the PSFRY, commanders of the JNA who remained loyal to him, individuals in the Serbian Ministry of Internal Affairs, para-state special operations units, and Croatian Serb leaders.

Evidence on Milošević’s responsibility for the violence in Croatia, both *de facto* and *de jure*, included transcripts from PSFRY sessions that were crucially important to understanding the degree to which Milošević, as President of the Republic of Serbia, cooperated with PSFRY and JNA leadership to establish the western borders of a Rump Yugoslavia through a policy of ethnic separation.\textsuperscript{552} The role of Milošević as the *de facto* leader of all Serbs was revealed in telephone intercepts between him, Radovan Karadžić, and other Serb politicians. These intercepts also showed the extent of their joint planning and scheming, which undermined the SFRY at the same time that Serbian authorities were claiming in public to be preserving it. This tendency by Milošević and his associates to obscure their real goals as well as Serbia’s direct involvement in planning and waging war was exposed in the courtroom, sometimes with significant impact outside of it. For example, the Kula Camp Video – a recording of a 1997 award ceremony for members of a Special Operations Unit that Milošević had gone through great trouble to conceal the existence of – proved that Milošević had in fact created this para-state military outfit in 1991, to operate in the other republics.

\textbf{The Armed Rebellion of Serbs in Croatia in 1990}

Serbian intellectual elites had expressed their concerns about the position of Serbs in Croatia in the 1986 SANU Memorandum. In quite dramatic language, they wrote that, since the WWII-era

\textsuperscript{552} It is important to stress that not all the PSFRY transcripts analysed in this chapter were tendered into evidence due to the delayed procurement of some of them.
Independent Croatian State (NDH), when the extremist Ustasha movement was in power, Serbs in Croatia had never been as threatened as they were in the 1980s. They called for an immediate solution and warned that if one was not found the consequences would be disastrous, not only for Croatia but for Yugoslavia as well.\textsuperscript{553} It was four years later that the SPS announced its intention to provide assistance to “Serbs outside of Serbia,” advocating the establishment of autonomous provinces based on the expressed will of the population just two months before Kosovo and Vojvodina were stripped of their autonomous status in the 1990 Serbian Constitution.\textsuperscript{554}

Belgrade’s position regarding the status of Croatian Serbs was solidified when, after the multi-party elections held in Croatia in April and May 1990, the Croatian Democratic Union (\textit{Hrvatska demokratska zajednica}, or HDZ) – a nationalist party led by Franjo Tuđman – won and formed a government. Inter-ethnic relations were strained by the ideological confusion of Tuđman’s post-communist government, which alienated not only former Croatian communists but also Croatian Serbs, who made up 12\% of the Croatian population.\textsuperscript{555} During the election campaign in February 1990, the HDZ distanced itself from the region’s communist past and, by uniting the Croatian anti-communist opposition, opened its doors to Croatian political emigrants with sympathies toward the Ustasha movement and the Ustasha-led Independent Croatian State of WWII.\textsuperscript{556}

It was understandable that the political revival of NDH symbolism alarmed the Croatian Serb population; NDH leadership had conducted a policy of genocide against the Serb population during the Second World War. Although Croatian Serb parties were represented in the Croatian Parliament, the \textit{Sabor}, the most successful of them – the Serb Democratic Party (\textit{Srpska Demokratska Stranka}, or SDS)\textsuperscript{557} – left the \textit{Sabor} by July of 1990. Defence witness Marko Atlagić, a former Croatian Serb politician, alleged that an anti-Serb atmosphere had been created by the Croatian government.\textsuperscript{558} Atlagić testified that the government aimed to establish an

\begin{footnotesize}
\begin{enumerate}
\item Mihailović and Krestić, \textit{Memorandum of the Serbian Academy of Sciences and Arts}, 130-133.
\item “Programme of the Socialist Party of Serbia from the first Congress.”
\item The official 1991 census data for Croatia showed that 12.2\% of its population was of Serb ethnic origin. However, some Defence witnesses tended to inflate the figures, claiming that Serbs constituted 18 to 20\% of the Croatian population before the war. For example, see the testimony of Zoran Lilić (18 June 2003), 22691.
\item Testimony of Marko Atlagić (15 February 2006), 48558.
\item The Croatian SDS existed only from 1990 to 1995. However, the Bosnian SDS – also founded in 1990, by Radovan Karadžić – remains a leading Serb political party in BiH.
\item Testimony of Marko Atlagić (15 February 2006), 48558-48559.
\end{enumerate}
\end{footnotesize}
independent Croatia devoid of Serbs, and to illustrate his point, he referred to “purges” of Serbs from sectors such as the police and Territorial Defence Units.\footnote{Ibid., 48554-48556 and 48569.}

Following the 1990 elections in Croatia, the top priority of Croatian Serbs from the Knin region became their regional autonomy in the areas that they constituted a majority. The starting point for the creation of the Serb Autonomous Region (\textit{Srpska autonomna oblast}, or SAO) of Krajina, with Knin as its administrative centre, was the Declaration of the Sovereignty and Autonomy of Serbian people in Croatia, adopted by the Serbian Assembly on 25 July 1990.\footnote{Testimony of Milan Babić (25 November 2002), 13481.} The Declaration stipulated that Serbs from the Republic of Croatia were fully entitled to opt for a federal or confederal system, either jointly with the Croatian nation or independently. It also declared that the Serb National Council, a self-proclaimed assembly of Croatian Serbs, had the right to hold a referendum on all issues relevant to the status of Serbs in Croatia and Yugoslavia, including regarding the establishment of sovereignty and autonomy.\footnote{“The Declaration of the Sovereignty and Autonomy of Serbian People in Croatia,” 25 July 1990, Exhibit P351.10a, para. 1.}

The formation of this first SAO in Croatia came at the hands of Milan Babić, a dentist by profession and a communist who, after the fall of communism, became active in the SDS. A one-time political ally of Milošević, Babić appeared as a Prosecution witness in 2002, offering a long testimony that covered many important topics. What emerged was that, whatever the political tensions between Croatian and Croatian Serb leaders, the latter preferred to resolve the Serb question in Croatia via Belgrade. Babić himself had turned to Milošević for support and advice in early August 1990, with complaints about the treatment of Serbs in the area around Knin. When he tried to make an appointment, Babić was told that Milošević was enjoying his summer holiday in the JNA compound at the Kupari sea resort near Dubrovnik, together with PSFRY President Borisav Jović and General Veljko Kadijević, the Federal Minister of Defence and Chief of Staff of the JNA. Milošević replied through an intermediary that Babić should request an official meeting with Jović.\footnote{Testimony of Milan Babić (18 November 2002), 12912-12915; (25 November 2002), 13479-13480; (26 November 2002), 13503, 13608-13609, and 13664; and (6 December 2002), 13999-14000.}
As suggested, Babić and a group of leaders from Knin met Jović on 13 August 1990 to discuss the problems that faced the Serb community in Croatia since the new Croatian leadership had come to power in May of that year. Jović promised to give them political support in his capacity as the representative of Serbia to the PSFRY. He also conveyed to them that a law was being prepared on the right of peoples to self-determination and advised Croatian Serb leaders to hold a referendum. A referendum took place in the SAO of Krajina on 18 August 1990. The SAO was comprised of eleven municipalities with predominantly Serb populations, and the referendum invited Croatian Serbs to vote in favour of, or against, the declaration on autonomy of the Serb people in that region.

Preparation for the August referendum included the arming of Croatian Serbs as leaders in Knin worried that Croatian authorities may try to prevent the referendum by force. According to Babić, the first supply of weapons came from the Bosnian Serbs. Demonstrations held in the Knin area on 17 August 1990, one day before the referendum was scheduled, became known as the “Log Revolution” – after the logs that were used to blockade roads – and were the start of a longer-term rebellion by the Croatian Serbs. The Knin region was in the centre of Croatian territory and barricades that made the whole area inaccessible effectively cut Croatia in two, with the capital Zagreb in the north and the Adriatic coast in the south.

In court, Milošević denied having anything to do with the Log Revolution, noting that he was on vacation in Dubrovnik when it took place and asserting that none of the Serbian leadership had known about it. But Babić’s testimony painted a different picture. He explained that at the time of the Log Revolution, negotiations with the Croatian government were led by Croatian Serb leader Dr. Jovan Rašković, a psychiatrist turned politician who was the founding father of the Croatian SDS. In the summer of 1990, Rašković conducted secret negotiations with

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563 Ibid., (18 November 2002), 12921; (26 November 2002), 13608-13609; (2 December 2002), 13669; and (4 December 2002), 13932.

564 Ibid., (18 November 2002), 12910.

565 Trial Transcript (22 January 2004), 32324-32325. Milošević’s account was contrary to the accounts given by Milan Babić and Borisav Jović in their courtroom testimonies.

566 Jovan Rašković (1945-1992) was a psychiatrist and a member of the Serbian Academy of the Sciences and Arts (SANU) who came into politics on the initiative of Dobrica Cosić. He was an interesting public figure, from an old Croatian Serb family that was well regarded in Croatia. He was also a former professor and political mentor of Radovan Karadžić, and he inspired and encouraged Karadžić’s political career, which started with the founding of the SDS in BiH. He left politics in April 1991 following armed clashes between Croatian and Croatian Serb police units. See: Testimony of Milan Babić (25 November 2002), 13478-13479; (26 November 2002), 13540 and 13557.
Croatian President Franjo Tuđman, and when the talks and their contents became public, Rašković was severely criticised by fellow SDS party colleagues who sought an altogether new approach.\(^567\) Thus, the Log Revolution marked a strategic shift, and was the moment when Croatian authorities and the rest of the SFRY realised that Serbs were prepared to achieve their strategic objectives in Croatia by military means, and with support of the JNA.

Stjepan Mesić, who was the Croatian representative in the PSFRY at the time, testified as a Prosecution witness that the Croatian government became aware of the position of the JNA when it prevented Croatian police forces from dismantling the log barriers that were blocking vital north-south transport routes.\(^568\) And the JNA was not the only federal institution that supported the rebellion; the Federal and Serbian Ministries of Internal Affairs (MUP) also assisted the Croatian Serbs, with support directed through individuals loyal to Milošević.\(^569\) Federal Minister of Internal Affairs General Petar Gračanin, for instance, was appointed in 1989 after three months of negotiations that delayed the formation of the federal government of Ante Marković because Milošević would have no one but Gračanin in that position. His alliance with Milošević was beyond dispute, even if, formally, Marković was his boss. It was Gračanin who boasted before TV cameras that the Federal MUP had helped the Croatian Serbs erect barricades.\(^570\) The violence in Croatia and the erection of the barricades were greeted with enthusiasm and encouragement in the Serbian media, which depicted Milan Babić and Milan Martić as heroes and launched them as leaders of the Croatian Serbs.\(^571\)

On 17 August 1990, a state of war was proclaimed by the Croatian Serb authorities in Knin, lasting until April 1992 and the arrival of UN peacekeepers. The referendum held a day later was a curious exercise and hardly democratic. It allowed only Croatian citizens of Serb ethnicity to vote, regardless of the fact that about 40% of the population on the territories in question was of non-Serb origin and was mostly Croat.\(^572\) Not surprisingly, the results indicated an overwhelming

\(^{567}\) Testimony of Milan Babić (18 November 2002), 12894-12896; (26 November 2002), 13561-13565.
\(^{568}\) Testimony of Stjepan Mesić (1 October 2002), 10524-10525 and 10532-10536; (2 October 2002), 10706.
\(^{569}\) Testimony of Milan Babić (18 November 2002), 12923-12931.
\(^{571}\) Testimony of Milan Babić (18 November 2002), 12931 and 12924.
\(^{572}\) Ibid., 12908-12910; and (26 November 2002), 13543-13545.
majority in favour of the autonomy of Serbs in Croatia.\footnote{“A report on the referendum conducted among the Serbian people in the Republic of Croatia on the Serbian autonomy submitted by the Central Commission for Referendum,” 30 September 1990, Exhibit P351.11a. The report gave the following vote results for the 17 August 1990 referendum: 567,127 in favour, 144 against, and 46 invalid.} After the referendum, the larger Knin area was made inaccessible to non-Serb Croatians, becoming the first occupation by Serbs of large parts of Croatian territory that would be conquered by force in the months that followed.

The actions of Croatian Serbs in the summer of 1990 represented the turning point at which a political conflict became a military conflict – a fact that emerged from the personnel files of JNA officers serving in Croatia at the time. One of these officers was ICTY indictee General Zdravko Tolimir, who was first stationed in Croatia before he was deployed to BiH, where he was one of the leading officers of the Army of Republika Srpska (\textit{Vojске Republike Srpsке}, or VRS). Tolimir would become one of the closest associates of VRS commander General Ratko Mladić, who was the commander of the JNA Corps of Knin at the time of the rebellion in Croatia. Tolimir’s personnel file revealed that he received a double pension for war years, designated as 17 August 1990 to 14 December 1995, as stipulated in the Law on the Yugoslav Army, which allowed double counting of pensionable service for members of the armed forces who took part in armed activity during that period.\footnote{Testimony of Milan Babić (25 November 2002), 13472-13472.}

Babić’s testimony offered a firsthand account of Milošević’s \textit{de facto} control over both JNA and Serb leaders outside of Serbia. Even more importantly, Babić testified that the Croatian Serbs, genuinely alarmed by the extreme language of Croatia’s new power holders, had turned to Belgrade for political patronage and protection. Eventually, Babić saw how Serbian leaders in Belgrade had instrumentalised Serbs in the other republics for their own political goals; but at the time, Serbs in Croatia and BiH considered the JNA to be their army.\footnote{Intercept of Conversation between Radovan Karadžić, Radoslav Brdanin, and Miloslav Mičević, 2 July 1991, Exhibit P613.16a. Radoslav Brdanin was indicted, tried, and eventually convicted at the ICTY of: persecutions; torture; deportation; inhumane acts (forcible transfer); wanton destruction of cities, towns or villages or devastation not justified by military necessity; destruction or willful damage done to institutions dedicated to religion; and} In a telephone conversation in July 1991, Karadžić instructed a fellow Bosnian Serb that they must not form a “Serb army” openly, but that the JNA would become the \textit{de facto} Serb army in due course, since no non-Serb conscripts would respond to the call to mobilise.\footnote{“JNA/VJ Personnel File of General Zdravko Tolimir,” Exhibit P923.4a, 11-14.}
But it was not just JNA forces in Croatia that were receiving orders from Belgrade. The presence of the Serbian MUP in Krajina was initiated by the establishment of the first training camp for local police, founded in April 1991 in the village of Golubić, near Knin. The camp was run by Serbian State Security (Državne bezbednosti, or DB) and was set up by DB official Franko Simatović, an ethnic Croat who was sent by Milošević to Knin in response to Babić’s request for a local police force. Babić recalled that the unit was known by several different names – the Milicija, or the Special Police Unit, or the Territorial Defence Unit. 577

On 29 May 1991, having failed to find a way forward with the Croatian government and in light of unsuccessful inter-republic negotiations to reform Yugoslavia as a confederation, Croatian Serbs – anticipating Croatia’s proclamation of independence – declared the establishment of the SAO of Krajina, which they defined as an “autonomous political-territorial region” within the SFRY. 578 On that same day, a Decision was adopted to apply the legal regulations of the Republic of Serbia in the SAO. 579 This was the first step toward formation of the Republika Srpska Krajina, which was an important pre-condition for plans conceived in Belgrade that saw the solution to the Serb national question in a reduced Yugoslavia that would result from the secession of Slovenia and the non-Serb parts of Croatia. Military conquests eventually led to the official formation of the RSK on 19 December 1991, and two other SAOs were also formed that year, in Western and Eastern Slavonia.

The Belgrade Initiative and the Partition of Croatia in 1991

Leadership from Serbia and Montenegro, and that of the Serbs in BiH, launched the Belgrade Initiative in August 1991, immediately after Croatia’s proclamation of independence on 25 June 1991. 580 Developed under Milošević’s political patronage, the Initiative was instead purported to
be a proposal of the Speakers of the Assemblies from the Republics of Serbia, Montenegro, and BiH – the latter of which was Bosnian Serb Momčilo Krajišnik at the time.\footnote{Momčilo Krajišnik was tried at the ICTY for crimes committed in BiH in 1992. He was sentenced first to 27 years, but that was reduced to 20 years by an ICTY Appeals Chamber Judgement in March 2009.} The earliest evidence of the Belgrade Initiative came from an intercepted telephone conversation between Milošević and Karadžić in August 1991, in which they referred to a meeting of the Speakers of these Assemblies that was to take place in Belgrade, with the goal of declaring that people in these republics wished to continue living in the existing Yugoslav state. In order to keep BiH on their side, Milošević counted on the participation and support of Bosnian Serb representatives and thus proposed that Krajišnik should attend the meeting.\footnote{The Belgrade Initiative was a major topic of conversation in the summer of 1991 and reflected on the common plan. See: Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 7 August 1991, Exhibit P613.27a; 4 September 1991, Exhibit P613.34; 13 September 1991, Exhibit P613.63a; 19 September 1991, Exhibit P613.67a; and 20 December 1991, Exhibit P613.37a and Exhibit P613.60a.}

With Croatia’s independence and the Hague Peace Conference approaching, the common political future of all Serbs from the former Yugoslav republics became a top priority for leaders in Belgrade. In his opening speech at the Conference, in September 1991, Milošević said the Belgrade Initiative had been offered as a political alternative for those republics choosing not to secede, which could continue living together in a reduced Yugoslavia.\footnote{"Draft of Treaty Provisions for the Convention," 4 November 1991, Exhibit P780; and “Official report on Conference on Yugoslavia.”} Milošević and Karadžić had discussed the Conference a couple of days before it opened, with Milošević expressing dissatisfaction that Bosnian Alija Izetbegović favoured a loose federation along the lines advocated by Prime Minister Ante Marković.\footnote{Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 4 September 1991, Exhibit P613.34.}

On 22 October 1991, only four days after the Hague Conference failed, an article entitled “How We Shall Redraw the Borders” appeared in \textit{Epoha} magazine, published by Milošević’s SPS. The article included several maps illustrating potential solutions for a Yugoslavia without Slovenia and parts of Croatia.\footnote{Jovan Ilić, “Kako ćemo se razgraničavati,” \textit{Epoha}, 22 October 1991. For an English translation of the article, see: “How We Will Draw New Borders,” in “Article from Epoha issue 1,” 22 October 1991, Exhibit P786a, 12-20.} The most significant of these showed an ‘Optimal Western Border.’ The map showed detailed territorial demarcations between Yugoslavia and Croatia and was important
corroborating evidence that the war and violence in Croatia did not happen randomly but was carefully planned in advance by Serb political leaders. The border areas identified on the map were the very areas where mass atrocities against Croats were committed in 1991 and 1992. Further, the western borders of the proposed reduced Yugoslavia roughly matched the Virovitica-Karlovac-Karlobag line, inextricably tied to Greater Serbia ideology since the publication of Moljević’s “Homogeneous Serbia” pamphlet in 1941. Even the author of the *Epoha* article, a demographer, recognised that this line was not a viable boundary because it would require the inclusion of 1.5 million Croats in a “Third Yugoslavia” and he did not envisage that Serb majority areas in Croatia could be ethnically cleansed of non-Serb populations. However, in the unfolding crisis, this was exactly what Serb ideologues and politicians eventually sought to achieve. However, in the unfolding crisis, this was exactly what Serb ideologues and politicians eventually sought to achieve.

![Map 4: The ‘Optimal Western Border,’ from *Epoha*, 22 October 1991. See: Exhibit P786.](image)

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586 Ibid., 13. The following areas were listed: 1. The Serbian Autonomous Region of Krajina; 2. Western Slavonia; 3. The Serbian Autonomous Region of Slavonia, Baranja, and Western Syrmia; 4. Western Herzegovina; 5. Šamac Posavina; 6. Dubrovnik Republic; and 7. Western border of Serbian countries. Two of those areas, Western Herzegovina and Šamac Posavina, were in BiH. Also see: Testimony of Mihailo Marković (17 November 2004), 35553.

587 Ilić, “Kako ćemo se razgraničavati,” 12-20. Defence Witness Ćedomir Popov testified that Dr. Ilić was a demographer. Testimony of Ćedomir Popov (15 December 2004), 34538. Slobodan Antonić deal with the evidence about the Epoha map and related article. Antonić claims that the 'evidence' is erroneous as the author of the article propagated the education of young people in the spirit of equality and tolerance. See Antonić, Slobodan Milošević, 450.
Similarities between the 22 October *Epoha* map and Greater Serbia designs from the past now seem obvious. Yet, the Prosecution discovered the link by chance, during the cross-examination of Professor Smilja Avramov. Avramov, who appeared as the very first Defence witness, was already 86 years old when she testified. An international law scholar, she had served as Milošević’s advisor on issues related to international public law and was a member of an expert working group during the Hague Peace Conference in 1991. She was shown the *Epoha* map in court, and to the surprise of the Prosecution, mistook it for the London Treaty Map of 1915.\(^{588}\) When Avramov discovered that the map was in fact drawn in 1991, she refused to comment on its validity as evidence of contemporary intentions, steadfastly asserting that it was a “projection of the offer to Serbia in 1915 to give up Yugoslavia and to stay as the Kingdom of Serbia. This was in…the London Treaty, which the allies offered to Serbia. So this was the basis for this particular map.”\(^{589}\)

The Prosecution reminded the judges of the 29 October 1991 telephone intercept, tendered into evidence during the Prosecution part of the trial, in which Milošević and Karadžić had discussed the possibility of reviving the Yugoslav state according to the London Treaty.\(^{590}\) In the phone call, Karadžić had suggested reactivating discussions about the London Treaty and Milošević had said he would make further inquiries, adding that he thought the London Treaty plans for new Serbian borders had included Macedonia as well. In another telephone conversation a few days later, they discussed the Treaty again. Karadžić asked if Milošević and Avramov had considered the possibility of its revival, stressing that France and England had already signed it in 1915.\(^{591}\)

Although the intercepts did not indicate what final decision Serb leaders had made regarding whether to revive the London Treaty in negotiations in The Hague, Milošević’s own evaluation that the London Treaty and Greater Serbia ideology were linked helped reveal how the planning process had been shaped by this association. Milošević had dealt himself with the topics of Greater Serbia and the London Treaty in his Opening Statement, before the start of his Defence

\(^{588}\) Testimony of Smilja Avramov (8 September 2004), 32556.

\(^{589}\) Ibid.

\(^{590}\) Ibid. Also see: Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 26 October 1991, Exhibit P613.101a.

\(^{591}\) Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 29 October 1991, Exhibit P613.103a.
case in August 2004, and had framed these issues quite differently. He highlighted the London Treaty as an example of how Serbia had in fact refused a Greater Serbia in favour of a common South Slav state.\textsuperscript{592}

When asked by the Prosecution about the London Treaty’s inclusion of BiH, Montenegro, and Macedonia in a new Serbia, Defence Expert Witness Čedomir Popov asserted that this had been a proposal of the Allied Powers. The Prosecution also inquired whether Popov thought that contemporary discussions of Serb borders which roughly aligned with those in the London Treaty revealed the influence or adoption of Greater Serbia ideology. Declining initially to answer, Popov eventually confirmed that, yes, this would indeed have reflected that ideology. But, apparently unaware of the intercepted telephone conversation in which Milošević and Karadžić had discussed the London Treaty borders, Popov rejected the idea that any such plan had existed among Serbian leaders, or among Serb people for that matter.\textsuperscript{593}

\textit{The Reorganisation of the JNA, De facto Greater Serbia Borders, and the RAM Plan}

The London Treaty Map of 1915, Moljević’s “Homogeneous Serbia” pamphlet of 1941, and the 22 October \textit{Epoha} map all projected the demarcation between Serb territory and the rest of Croatia as running roughly along the Virovitica-Karlovac-Karlobag line. Milošević never spoke in public of a Greater Serbia or of the V-K-K line, but his strategy in response to Croatian independence and attempts to redraw Croatia’s borders were consistent with these pre-existing historical and political notions. And the creation of the RSK especially reflected the Greater Serbia objective of establishing a Serb state within conceived ethnic borders. According to former JNA General Imra Agotić, the JNA had actually sought to bring the whole of Croatia under the control of a centralised SFRY in 1991; but when that proved impossible, the plan was made to cut Croatian territory into two at the V-K-K line and retain most of the ‘Serb-designated territories’ in a reduced Yugoslavia. Eventually, that plan also had to be modified to reflect more realistic territorial objectives, according to which the JNA, along with Serb insurgents, would take only those territories where Serbs were the predominant majority.\textsuperscript{594}

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\textsuperscript{592} Trial Transcript, Defence Opening Statement (31 August 2004), 32193.
\textsuperscript{593} Testimony of Čedomir Popov (16 December 2004), 34604-34605.
\textsuperscript{594} Testimony of General Imra Agotić (27 June 2003), 23287-23289.
The goal of the JNA to sever Croatia along the V-K-K line was supported by changes that had been made to the organisation of the Army several years earlier, as explained in the testimony of protected Prosecution witness B-1493. Witness B-1493, a former JNA officer with firsthand knowledge about JNA war planning, testified that the political and military leadership of the SFRY had reorganised the structure of military districts in 1988. As a result, the Seventh Army, which had covered the territory of BiH, and the Ninth Army, which had covered the territory of Slovenia, were both disbanded. Instead, the First and Fifth Military Districts were formed, with headquarters in Zagreb and Belgrade respectively. The new distribution of territories was such that the First Military District – or more precisely its Novi Sad Corps – covered a huge territory between the Drava and Sava rivers, right up to Virovitica.595

Witness B-1493 also confirmed the existence of the plan known as “RAM,” discussed by Milošević and Karadžić in an intercepted telephone conversation in July 1991 in relation to the mobilisation of troops from various TO units and JNA Army battalions.596 Although the Prosecution investigated the origin of the plan, there was no concrete evidence of any official text. The name RAM had first appeared in the media as early as 1991, but even the acronym has never been definitively decoded, and while different authors have ascribed different meanings to the name, none has been confirmed through documentary evidence.597 The existence of the plan was systematically denied by Belgrade authorities and by the Defence. Still, Witness B-1493 testified that although he had never seen it in written form, he believed that the RAM plan existed and that it was a part of the 1988 restructuring of the JNA.598

The existence of the RAM plan was first publicly revealed when intercepted telephone conversations between Milošević and Karadžić were played at a meeting of federal government representatives on 19 September 1991.599 Later, Prime Minister Ante Marković referred to those intercepts, explaining that Milošević had given instructions regarding the JNA’s arming of

595 Testimony of Witness B-1493 (10 April 2003), 18964-18965.
596 Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 8 July 1991, Exhibit P613.17a.
597 The Prosecution never acquired any documents on the origin of the RAM plan; it remains a mystery that may yet be solved. Authors such as Sonja Biserko, a human rights activist, have written with authority that the RAM plan existed, as she did in her 2012 book, Yugoslavia’s Implosion: The Fatal Attraction of Serbian Nationalism. Her sources included books by General Ilija Radaković (Besmislena Yu-ratovanja, 1997) and Stjepan Mesić (Kako je srušena Jugoslavija, 1994), but these sources have not produced actual documentation about the origins of the RAM, nor have they detailed its purpose.
598 Testimony of Witness B-1493 (10 April 2003), 18964.
599 See supra note 495.
Territorial Defence units in the Bosnian Krajina, the northwest part of which later became known as the ARK, or the Autonomous Republic of Krajina.\textsuperscript{600}

Ante Marković, appearing as Prosecution witness, recalled how he had been made aware of the recordings:

Izetbegović informed me that they had intercepts of conversations between Milošević and Karadžić from which it was evident that Serbian paramilitary units in Bosnia and Herzegovina were being armed. I asked him to give me these intercepts, and he sent them to me by his minister of the interior, who came to see me in Belgrade and who played the tapes for me. There were several tapes. And from these, I recognized Milošević's voice and Karadžić's voice. They were discussing the organisation of armies, the arrival of helicopters, the arrival of a colonel, a RAM programme which I was not aware of, I don't know what it was, and of ammunitions which were to be taken from certain places and sent to certain places…. I told the [Council] about it -- Admiral Brovet was there at the session, and he denied this. He said it was impossible, he said this was a forgery, that the army had nothing to do with this. But this was absolutely untrue, because I clearly recognised the voices, and it was quite clear that they were discussing the handover of weapons and the places where weapons could be acquired.\textsuperscript{601}

Witness B-1493 testified about the concrete military implications of the 1988 reorganisation of the JNA, known as the S2 Plan, and its connection with the RAM plan:

[I] recall a plan that was not called RAM but had roughly the same borders and the same roles. Namely, in 1988, the political and military leadership of the Federal Republic of Yugoslavia decided to disband the 9th army in Slovenia and disband the 7th army in Bosnia-Herzegovina, and to form the 5th Military District based in Zagreb and the 1st Military District based in Belgrade. The 1st military

\textsuperscript{600} Mesić, \textit{Kako smo srušili Jugoslaviju}, 236.
\textsuperscript{601} Testimony of Ante Marković (23 October 2003), 28030.
district has borders exactly along the line that Greater Serbia was interested in…that is, along the lines Virovitica-Karlobag.  

Explaining to judges the similarities between the S2 and RAM plans, Witness B-1493 cited the area of responsibility assigned to the 1st Military District – the Belgrade district – in the S2 plan, which coincided fully with the RAM plan, and said that deployment strategies for units of the District were also exactly the same in both plans.  

Milošević attempted to minimise the testimony of Witness B-1493 by calling the information he presented “common knowledge,” and denied the existence of the RAM plan as well as any connection between the 1988 JNA reorganisation and Greater Serbia designs. But Witness B-1493 insisted that there were clear links. The 7th Army, with its headquarters in Sarajevo, had been disbanded and integrated into the 1st Military District in Belgrade, which operated within the boundaries of an imagined Greater Serbia.  

The Prosecution later cross-examined General Geza Farkaš, an ethnic Hungarian who remained loyal to Milošević throughout his active military career and beyond, on the reorganisation of JNA territorial distribution prior to the war. He corroborated that the newly formed First Military District had covered the central part of the country, including parts of Serbia, Kosovo, BiH, and Croatia, with its western borders stretching from the Virovitica area all the way to the sea via Karlobag.  

In Milošević’s cross-examinations of witnesses on the topic of the RAM plan, he insisted that the plan had not existed and he asserted more than once that the word “RAM” had been used as a code to indicate the need to use encrypted language. In an exchange between he and Bosnian Croat politician Stjepan Kljuć, Kljuć responded to Milošević’s denial of the plan by saying he had actually heard Milošević and Karadžić discussing it. Milošević tried to move quickly past the topic, saying “whether you heard me talking about that or something else, let’s leave that alone.” But Kljuć spoke up, addressing the judges: “Your Honours, may I clarify and make

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602 Testimony of Witness B-1493 (10 April 2003), 18964.  
603 Ibid., 18966.  
604 Ibid., 18968-18969  
605 Testimony of General Geza Farkaš (10 November 2005), 46466.  
606 The RAM plan was discussed in cross-examinations of Prosecution witnesses on 6 December 2002, 10 April 2003, and 15 July 2003.
matters simpler? The army was supposed to take the lines, take up positions along the lines to which Belgrade had territorial pretensions..."\textsuperscript{607}

The Defence narrative – that Milošević had never worked to achieve a Greater Serbia – dictated that he not only deny the RAM plan, but it’s purported aims; and he told the court that Kljući knew “full well” that Belgrade never had “any territorial pretensions whatsoever.” But if “RAM” was really the code word he claimed it was, the Prosecution was puzzled about why Milošević and Karadžić had not switched into encrypted language after the word was mentioned in the midst of their discussion of the arming of Bosnian Serbs by the JNA.

JNA plans and strategies, no matter what they were called, were also described in detail in \textit{My View of the Break-up: An Army Without a State}, written by General Veljko Kadijević – the SFYR Minister of Defence in its last years – in which he revealed that the strategic objectives of the JNA had indeed overlapped with those of Serb nationalist leaders in 1991 and early 1992.\textsuperscript{608}

According to Kadijević, the basic aims of JNA deployment were first to defeat the Croatian Army to a degree that that would enable “full coordination with Serb insurgents in the Serbian Krajina [and] completion of the pull-out from Slovenia of remaining JNA forces,” and second, to achieve:

\begin{quote}
...a total air and sea blockade of Croatia...[and] the liberation of Serb regions in Croatia and JNA garrisons deep inside Croatian territory. To this end, cut Croatia along the following lines: Gradiška-Virovitica; Bihać-Karlovac-Zagreb; Knin-Zadar; Mostar-Split. The strongest group of armoured-motorised forces would liberate Eastern Slavonia and move quickly westward, linking up with forces in Western Slavonia and proceeding on to Zagreb and Varaždin, i.e. toward the Slovene frontier. At the same time, strong forces from the Herceg Novi-Trebinje
\end{quote}

\textsuperscript{607} Testimony of Stjepan Kljujić (15 July 2003), 24449.
\textsuperscript{608} For example, see: Testimony of Milan Kućan (21 May 2003), 20900. Kućan testified that Kadijević confirmed the existence of a plan and that he described it as a JNA strategy to establish the Virovitica-Karlovac-Karlobag line as the border of a reduced Yugoslavia without Slovenia and parts of Croatia – inhabited predominantly by ethnic Serbs – which would include territories south of Herzegovina and Montenegro. Also see Kadijević’s book, published in B/C/S: Veljko Kadijević, \textit{Moje Vidjenje Raspada: Vojska Bez Države} (Belgrade: Politika, 1993); and excerpts of the book submitted in English as Exhibit P449a.
region would be used to block Dubrovnik from land and break into the Neretva Valley, thus linking up operations with forces working the Mostar-Split line.\textsuperscript{609}

This strategy was confirmed by other witnesses, for both the Prosecution and the Defence. General Nojko Marinović, a Prosecution witness and former JNA Deputy Commander of the Trebinje Brigade, walked over to the Croatian side in 1991 and became Commander of the Croatian armed forces defending Dubrovnik. He testified that when he was still stationed in Trebinje – a town in Eastern Herzegovina not far from the Croatian border and the Dubrovnik area – the JNA formed an Operational Group for Southeast Herzegovina consisting of land, air, and marine brigades and regiments from Herzegovina and Montenegro. These forces had the joint task of launching an attack along several axes, using all available resources to reach the Neretva River as soon as possible and connect up with the 10th Brigade from Mostar. From Herzegovina, they would continue to advance across Croatian territory in the direction of the Croatian town of Sinj, where they would link up with the Knin Corps. The plan was to reach the Neretva valley in seven days and advance from there in two weeks to Sinj, from where they would, depending on other developments, proceed to the V-K-K line.\textsuperscript{610}

Dubrovnik, like Vukovar, was attacked for geostrategic reasons and not because of ethnic territorial entitlement. In fact, only approximately 7\% of the population in the entire Dubrovnik area were Serbs and they did not need protection.\textsuperscript{611} But Dubrovnik was desired in a reduced Yugoslavia and the prospects of establishing a provisional government there were discussed between Serb leaders as early as October 1991.\textsuperscript{612} Then, in November, Karadžić referred to “the further cleansing” of Dubrovnik in a conversation with Božidar Vučurević, a local Serb leader from Eastern Herzegovina.\textsuperscript{613} Karadžić, already thinking ahead about territories that would be Bosnian Serb, was interested in acquiring the Croatian harbour of Ploče, south of Dubrovnik,
which he realised could only be achieved by force since the populations in Ploče and Dubrovnik were both overwhelmingly Croat.\textsuperscript{614}

In court, the siege of Dubrovnik was tied to Greater Serbia designs by a number of Prosecution witnesses. The first Croatian Minister of Defence, Petar Kriste, testified that Serbs had wanted to centralise Yugoslavia but, in case they did not succeed, sought to push the borders of Serbia westward so that all Serbs would be living in a single state. Kriste understood that the border was to correspond, by and large, to the Virovitica-Karlovac-Karlobag line in the west and to the Dubrovnik area in the east.\textsuperscript{615} Pero Poljanić, the wartime mayor of Dubrovnik, described the siege of Dubrovnik as part of the plan to draw a new border to Karlobag in the west, and said that the southern border of a Greater Serbia was to include the Croatian coastal towns of Dubrovnik, Split, Šibenik, and Zadar.\textsuperscript{616}

From the perspective of the attacking Serb forces, the robust defence of Dubrovnik was unexpected. General Marinović explained that the JNA had expected to be able to walk right into the city, facing no resistance, because it was a demilitarised area. But under Marinović’s leadership, the citizens of Dubrovnik joined together to resist JNA forces, and the international community reacted strongly to images of JNA shelling of the Old Town, thwarting the JNA’s plans and causing a change in their military strategy.\textsuperscript{617}

Defence witness General Božidar Delić, a former JNA and VJ officer with a war career that spanned the battlefields of Dubrovnik, BiH, and Kosovo, denied the existence of any strategic plans for Dubrovnik and asserted that the JNA could have taken the city in one day if it had really wanted to.\textsuperscript{618} When asked by the Prosecution to react to General Marinović’s claim that the JNA’s ultimate plan was to take territory up to the V-K-K line, General Delić maintained that the Army’s only interest was to preserve the integrity of Yugoslavia, and that this coincided with the interests of Serbs who were scattered over several SFRY republics and preferred to remain together in a single state.\textsuperscript{619} Some time after General Delić, former RSK Minister of Foreign

\textsuperscript{614} Intercept of Conversation between Radovan Karadžić and Branko Kostić, 26 November 1991, Exhibit P613.128a.
\textsuperscript{615} Testimony of Petar Kriste (27 January 2003), 14853.
\textsuperscript{616} Testimony of Pero Poljanić (11 December 2002), 14422-14423.
\textsuperscript{617} For discussion, see: Testimony of General Nojko Marinović (3 April 2003), 18522.
\textsuperscript{618} Testimony of General Božidar Delić (20 July 2005), 42578.
\textsuperscript{619} Ibid., 42579.
Affairs Slobodan Jarčević also testified for the Defence, repeating the same argument as if rehearsed. Jarčević did concede that many politicians had been in favour of taking Dubrovnik at the time of the siege; however he claimed that this was because “from the earliest times,” it had been a “Serbian town.”

*The Distinction between Greater Serbia and “All Serbs in a Single State”*

The Prosecution argued that in order to understand Milošević’s motivation in pursuit of his political goals, the court would need to be able to distinguish between the historical concept of a Greater Serbia – from Garašanin to Moljević – and the version of it that was advocated by Milošević in the 1990s. In the Prosecution’s view, the concept of a Greater Serbia was expressed under Milošević’s leadership through the rhetoric of “All Serbs in a Single State,” and there was in fact little variation between the two concepts or between their practical goals; they were simply two different expressions of Serbian state ideology as it had developed over time to accommodate changing political and military circumstances. Milošević’s attempts to ensure that all Serbs who lived in the former Yugoslavia could continue living on ‘Serb-designated territories’ in a single state led the Prosecution to qualify his political plan as a design for a “de facto Greater Serbia.”

When Milošević called extreme-right Serbian politician Vojislav Šešelj – who surrendered to the ICTY in 2003 and is still awaiting a judgement for charges of crimes against humanity – as a Defence witness, the Prosecution had the unique opportunity to revisit the topic of Greater Serbia ideology with a man who has openly and proudly espoused it. Indeed, Šešelj had claimed

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620 Testimony of Slobodan Jarčević (28 February 2006), 48991-48992. Jarčević even asserted that the Croatian language was not spoken in Dubrovnik at the time of the trial. Yet, records from every era contradict his claims. In 1689, Count Tolstoy wrote that “Ragusans...call themselves croats” and noted that they spoke the Dalmatian language. And, since 1948, censuses show that no more than 12% of the population has identified as Serb; indeed, in 2011, over 90% of the population identified as Croats and over 95% listed their mother tongue as Croatian. Results of the 2011 census are available from the Croatian Bureau of Statistics, at: http://www.dzs.hr/default_e.htm (accessed 3 October 2014).

621 Testimony of Vojislav Šešelj (25 August 2005), 43225.

622 Ibid., 43218-43219.

623 In November 2014, Šešelj was granted a temporary release from custody to return to Serbia for cancer treatment. See: Order on the Provisional Release of the Accused Proprio Motu, Prosecutor v. Šešelj, No. IT-03-67-T, 6 November 2014. His trial – which has been called “a series of unfolding disasters” – is not expected to come to a close until mid-2015, and Šešelj has declared that he will not honor a summons to return to The Hague for the verdict. Questions have been raised about his release because Šešelj himself refused a provisional release in June 2014 due to the fact that it stipulated that he avoid politics, but the Court then took the “unprecedented step” of
exclusive use of the term Greater Serbia for his Serbian Radical Party (SRS) and he testified that the western borders of such a state were designated to run along the Virovitica-Karlovac-Ogulin-Karlobag line. Šešelj added Ogulin, a small Croatian town between Karlovac and Karlobag, making the curve of the border run even more westerly than the V-K-K line. When asked if the border of the Republika Srpska Krajina corresponded to the Greater Serbia border, Šešelj replied that it was not quite identical but that the two were quite similar. He identified a key difference as the lack of inclusion of the territory of Central Slavonia in the RSK, which he viewed as part of a Greater Serbia.624

In an interview given to the German weekly Der Spiegel in 1991, Šešelj revealed his ambitions to expand Serbia to the V-K-K line, saying:

I would mobilise all Serbs, amputate Croatia in a quick war, and then inform the international community about the new Serbian borders… Aside from the provinces of Vojvodina and Kosovo, the republics of Bosnia and Herzegovina, Macedonia and Montenegro should be attached to Serbia, as well as the territories in Croatia which are inhabited by Serbs, with the border along the Karlobag-Karlovac-Virovitica line.625

Šešelj’s testimony in 2005 indicated that his wartime views on Greater Serbia had not changed, nor his ideas of how to achieve it. Testifying that his political party had advocated the elimination of Croatia in 1991, he blamed the Serbian government and the international community for their inability to establish the western borders of Greater Serbia, stating that the then Serbian government had failed to do so because it had allowed Western powers to intervene.626

At that time, I said that if we lose Serb territories, the Serb Krajina, it will never be Serb again. I said that by way of a warning. Although we have lost that temporarily and the Serb Krajina is under Croatian occupation nowadays, I'm convinced that

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624 Testimony of Vojislav Šešelj (15 September 2005), 44104.
625 Testimony of Vojislav Šešelj (6 September 2005), 43813.
626 Ibid., 43814.
someday it will be Serb again and that we are going to liberate all of Serb Krajina from Croatian occupation. We will try to do it by peaceful means, but…

Despite the lost wars in the 1990s, in the courtroom, Šešelj still adhered to notion that the Virovitica-Karlovac-Ogulin-Karlobag line was a territorial aim, insisting that it should become the Serbian state border yet. He also claimed that an overwhelming majority of today’s Croats are Serb Catholics and that Muslims from BiH are Serb Muslims. He used a combination of ethnic and linguistic criteria to define the Serb identity, claiming that all South Slavs who speak a Shtokavian dialect are ethnically Serb, regardless of their religion.

Šešelj rejected any suggestion that his notion of Greater Serbia had any influence over – or link to – an alleged Serbian Joint Criminal Enterprise, and he insisted that Milošević was his ideological opponent. To illustrate this point, Šešelj said that he was the only Serbian politician who had not favoured preservation of the Federation when faced with Slovenian independence, and that he was happy to let them go because he did not think of the Slovenes as Serbs “in disguise” as he thought of the Croat Catholics and Bosnian Muslims:

> All these people that are mentioned here as members, participants in the joint criminal enterprise, were against the secession of Slovenia. I was the only one who was in favour of the secession of Slovenia, if the Slovenes wanted. I had made several public appearances on Slovene TV supporting them. But I was against the secession of Croatia because I knew that…[we] were one and the same people. Even those who are not real authentic Serbs in those three districts have been through intermarriage integrated. If you look at Serbs, Muslims, Catholics, and Croats, you cannot find any difference between us except for religion.

While Šešelj was ideologically driven to nationalism, the Prosecution asserted that the evidence revealed that Milošević had come to nationalism by more pragmatic means. Milošević replied that the Prosecutor’s presentation was inconsistent. He told the court, “I did not organise these

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627 Testimony of Vojislav Šešelj (14 September 2005), 43987-43989.
628 Testimony of Vojislav Šešelj (6 September 2005), 43814.
629 Ibid., 43814-43815.
630 Ibid., 43223.
631 Ibid., 43225.
three separatist movements in Croatia, Bosnia, and Kosovo in order to create a Yugoslavia in which all Serbs could live in one state when Yugoslavia [had already existed] for 70 years.”

Yet, the Prosecution had already presented telephone intercepts which revealed that Milošević’s position on the independence of Slovenia had overlapped with Šešelj’s. On 17 June 1991, just a week before the declarations of independence of Slovenia and Croatia, Karadžić and Milošević had discussed Ante Marković’s proposal to use the JNA to prevent both republics from seceding. Milošević was not prepared to let Croatia go before the issue of its borders was settled. Still, referring to the potential secessions, and thus the disintegration of the SFRY, Milošević told Karadžić that things were going “exactly the way we planned it.” The intercepted conversation indicated that Milošević and Karadžić favoured disintegration but did not want to be seen as the parties responsible for it, determined instead to ascribe the blame for Yugoslavia’s dissolution to the leaders of Slovenia and Croatia.

In another intercepted conversation one week later, Milošević and Karadžić expressed caution about discussing their political tactics. They agreed to avoid advocating openly for the unification of all Serb territories, aware that it could trigger negative reactions from the outside world; and instead decided that their purported goal must be the preservation of a common Yugoslav state. That was a particular point of contention for Karadžić, who criticised the approach of the Croatian Serb leadership in the referendum they held on the political future of Serb-claimed territories. Voters had been asked whether or not they wanted “to join with Serbia” and Karadžić was displeased with the formulation, saying the question should have been cast as whether or not “to stay in Yugoslavia.” He was concerned that the referendum would appear to be an attempt to create a Greater Serbia – a goal which he said they should work secretly to achieve, but which should not be said aloud.

Defence Expert Witness Popov dismissed Šešelj as an agitator who attempted to win over as many voters as possible with his extravagant, extremist rhetoric. But the Prosecution saw the rocky political relationship between Milošević and Šešelj as one that had strategically served

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632 Ibid., 43230.
633 Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 17 June 1991, Exhibit P613.9a
634 Ibid.
636 Testimony of Čedomir Popov (16 December 2004), 34604.
Milošević. Whenever it had been politically expedient, Milošević had given Šešelj access to the media; and in times of political cooperation, Šešelj’s extreme views helped Milošević attract far right voters who preferred Šešelj’s blunt nationalistic rhetoric to Milošević’s studied and controlled public discourse. Many extreme nationalist voters were also anti-communist and therefore sceptical of Milošević’s sincerity in pursuing nationalist goals, which support from Šešelj helped mitigate. Though Šešelj did shift his support to Milošević at times, he reacted fiercely when Milošević appeared to give up on the creation of a Serb state, as happened in August 1994 after Milošević threatened to abandon the RS leadership. Still, they continued cooperating at the state level and in 1999, during the Kosovo indictment period, Šešelj was a Deputy Prime Minister of Serbia.

Milan Babić, who had firsthand knowledge of both men, testified that Milošević and Šešelj had in fact promoted very similar concepts of a Serb state. According to Babić, Milošević advocated a state encompassing Montenegro as well as Serb territories in Croatia and BiH, in addition to Serbia. Babić understood the notion of “All Serbs in a Single State” to mean that Serbs from Croatia and BiH had a right to live in the same state as Serbia. He said in his testimony that he had once supported that idea, but changed his mind because its “ethnoegoistic” character had led to “interethnic confrontation, conflict, and war.” Babić accused Milošević of twisting the notion of self-determination for Serbs in Croatia in order to achieve his own objectives.

The Creation of the Republika Srpska Krajina

The Defence narrative presented armed engagement by Croatian Serbs as a reaction to the aggressive policy of a nationalist Croatian government and led by self-organised Serbs who were guarding their own villages without outside support. But in mid-August 1991, one month after the Brioni Peace Agreement, a joint attack by the JNA and police forces from the SAO of Krajina was launched on the small village of Kijevo. The village, which had a Croatian majority,

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637 Testimony of Vojislav Šešelj (16 September 2005), 44295-44298; Testimony of Dejan Anastazijević (10 October 2002), 11477-11478.
638 Testimony of Dejan Anastazijević (10 October 2002), 11478-11479.
639 Testimony of Milan Babić (19 November 2002), 13012-13013. Also see: “Map showing the line intended to be under Serb control,” Exhibit P326.3.
640 Ibid., 13016-13019.
was a military target not because Serbs living there were threatened, but because it was situated on an important route to Knin and had to be taken for geostrategic reasons. The takeover of Kijevo became a telling example of the ruthlessness by which Serb armed forces partitioned Croatian territory. Yet, the operation in Kijevo, in Krajina, was not included in the Croatia indictment, which concentrated instead on the region of Northern Dalmatia, where the western borders of the RSK had been established through fighting near the small villages of Benkovac, Škabrnja, Nadin, and Bruška, leading to mass atrocities against non-Serb civilians.

In his testimony, Babić emphasised that these villages had posed no threat to the JNA or to Serbs. Still, one JNA officer had told Babić that the JNA needed to “even out” or “ethnically homogenise” certain regions with mixed Serb and Croat populations so that the partition line was straightened by the beginning of winter. The villages of Škabrnja and Nadin stood in the way of establishing that line and were therefore attacked by joint forces of the JNA, the Territorial Defence (TO), and RSK police units. Babić learned later that civilians had been killed in Škabrnja and Nadin, and that Goran Opačić, alias Klempo, had taken part in the killings. Opačić, who was the head of the RSK police in Benkovac, was on the payroll of the Serbian DB along with many other RSK policemen. Evidence that the DB had later recognised him for his wartime bravery revealed an important link between Belgrade and the establishment of the RSK, which was achieved through violence and the commission of crimes.

The involvement of the JNA in atrocities committed in the Benkovac area was linked particularly to JNA officer Tripko Ćečović. Records showed that he had been promoted in 1995 because of his war history in Croatia, where he contributed to the establishment of the western border of the RSK as Commander of the Benkovac Brigade. At the trial, eye witnesses to the crimes

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644 Ibid., 13406-13407.
645 A video known as the Kula Camp Video shows Goran Opačić, alias Klempo, receiving an award for bravery from Jovica Stanišić. See: “Video showing an Award Ceremony with members of the Red Berets, political leaders and military leaders...” Exhibit P390.1. Also see the transcript of the video: “Corrected Transcript of Video (V000-3533),” Exhibit 390.3a.
646 Tripko Ćečović was promoted to VJ Commander of the Podgorica Corps in 1995.
committed in Škabrnja described Ćečović as a direct perpetrator.\textsuperscript{647} One witness overheard a radio communication on 18 November 1991 between Ćečović and Ratko Mladić, who was the commander of the Knin Corps at the time. Ćečović had informed Mladić about the loss of ammunition supplies and told him that he had to withdraw, prompting Mladić to respond that if Ćečović withdrew, he would shoot him. Mladić promised to provide everything needed to succeed in the attack on Škabrnja, including more ammunition, which he did; and the attack continued.\textsuperscript{648}

The village of Voćin, near Virovitica – the town in central Slavonia that features in the V-K-K line – was also one of the crime sites featured in the indictment for Croatia. Serb armed forces, including volunteers from Serbia, committed atrocities in the predominantly Croat village, killing 32 people before withdrawing from the area on 13 December 1991.\textsuperscript{649} But Voćin was never taken by the Serbs because of difficulties they had in conquering the surrounding villages and towns as they tried to move toward Virovitica. The failure by Serbs to secure that part of Croatia left the SAO of Western Slavonia smaller than originally planned, encompassing only the Okučani area along the border with BiH. Between May and November 1991, the SAO of Eastern Slavonia was also established, after months of intense fighting that ended with the fall of Vukovar – another central crime site in the Croatia indictment.

\textit{Formation of the RSK, International Negotiations, and the Serb Strategy of Ethnic Separation}

After the failure of the Hague Peace Conference and the Carrington Plan in October 1991, international mediators grasped once again for how to achieve peace in Croatia. Cyrus Vance, a veteran US diplomat, was appointed UN Secretary-General Special Envoy to Yugoslavia in early November and the so-called Vance Peace Plan was presented within months, in January 1992. The Plan led to the cessation of hostilities and the deployment of UN peacekeeping forces in Croatia, but also enforced ethnic separation through the establishment of United Nations Protection Areas (UNPAs) that secured the territory held by Serbs, the SAOs.\textsuperscript{650} The UNPA

\begin{itemize}
\item \textsuperscript{647} Testimony of Marko Miljanić (14 July 2003), 24317-24318; 24320-24322; 24363. Also see: Marko Miljanić, Rule 92 \textit{bis} Witness Statement, Exhibit P501a, para. 24-27.
\item \textsuperscript{648} Testimony of Marko Miljanić (14 July 2003), 24321-24322.
\item \textsuperscript{649} See: Croatia Indictment.
\end{itemize}
zones were to be demilitarised and their inhabitants, by then predominantly Serbs, secured by UN infantry units and UN civilian police monitors.\footnote{Ibid., 451. Also see: “Concept for a UN peace-keeping operation in Yugoslavia,” Annex III in Report of the Secretary-General Pursuant to Security Council Resolution 721, No. S/23280, 11 December 1991.}

Map 5: The Vance Peace Plan: The blue line represents the boundary of the UNPAs in Croatia. According to the Defence narrative, Serbia’s support for the Vance Peace Plan was evidence of its genuine dedication to the politics of peace, and concerns expressed by Croatian leaders that the Plan could make ethnic separation permanent was evidence of their unwillingness to accept a truce. The Defence also stressed that the original request for the deployment of UN troops came from the Rump PSFRY at its 9 November 1991 session, which Branko Kostić, PSFRY President at the time, testified was motivated by a desire to protect Serbs living in Krajina.\footnote{Testimony of Branko Kostić (6 February 2006), 47996-47997.} But the Prosecution argued that, against the backdrop of unsuccessful negotiations in The Hague and the expectation that the European Communities would be moving forward in recognising the independent Yugoslav republics, Serb leaders saw the UN peacekeeping mission as an opportunity to consolidate territorial gains and formalise ethnic separation with international backing. Further, reservations that were voiced by Croatian leaders about the Vance Plan were
seen by the Prosecution to have reflected valid uncertainties about the long-term territorial integrity of the Croatian state.\textsuperscript{653}

Milošević’s role in brokering peace in Croatia became more significant after Croatian Serb leaders refused to accept implementation of the Vance Plan. Before an agreement was eventually reached, Milošević engaged in a public debate with Croatian Serb leader Milan Babić – who opposed the arrival of UN peacekeeping forces – accusing Babić of rejecting peace. Milošević also published a letter to Babić in which he argued that the Vance Peace Plan would not prejudice a political solution, but would enable the citizens of Krajina to lead normal lives again.\textsuperscript{654} In reply to Milošević’s letter, Babić clarified his position regarding the deployment of UN troops, saying he was against their deployment in the RSK but favoured it along the division line between Croatian and RSK forces. Babić said that this would both contribute to the establishment of the RSK and bring about a resolution of the conflict.\textsuperscript{655}

After months of negotiations conducted between New York, Zagreb, and Belgrade, an agreement was reached that the Vance Peace Plan would be implemented in its original form without revision. On 21 February 1992, UN Security Council Resolution 743 established a United Nations Protection Force (UNPROFOR) for an initial period of twelve months and authorised the deployment of 13,000 troops.\textsuperscript{656} Ultimately, troops would stay on until the end of 1995. In Resolution 743, the UN had announced very clearly that it respected Croatian borders, but representatives from the Rump PSFRY felt that borders should be decided at a later date. Defence witness Mihailo Marković explained that Serb acceptance of UN peacekeeping forces in Croatia was in fact based on the expectation that, after the war, people living in the RSK under UN protection would get a chance to decide the state in which they would continue to live. He suggested that Serbs would have chosen to join other Serbs in a single state.\textsuperscript{657}

\begin{footnotes}
\footnotetext[653]{Ibid., 47999-48000.}
\footnotetext[654]{“Open Letter from Slobodan Milošević to Milan Babić and Milan Babić’s response,” 9 and 12 January 1992, Exhibit P352.79a. Milošević attacked Babić saying: “…citizens of Krajina should know that because of what you have done, you have lost all the trust we had in you, and for future relations with the authorities of the Republic of Serbia they have to delegate persons who will hold the interests of their people above personal political prestige.”}
\footnotetext[655]{Ibid.}
\footnotetext[657]{Testimony of Mihailo Marković (17 November 2004), 33554.}
\end{footnotes}
Evidence on Milošević’s *de jure* and *de facto* Power during the Conflict in Croatia

The ICTY Statute allows only for allegations of individual criminal liability; thus, to prove its case against Milošević, the Prosecution’s requests for evidence generally focused on proving his personal responsibility. The core of this evidence, related to Milošević’s use of armed forces across the three different indictment periods and arguably to his criminal state of mind, was found in the records of the three political bodies that had power to command armies and other forces – such as militarised police units – during his tenure. Documentation from the Presidency of the SFRY was mostly, though not exclusively, relevant to the Croatia indictment; that from the Supreme Defence Council (SDC) was mostly, though not exclusively, relevant to the Bosnia indictment; and that from the Joint Command was relevant to the Kosovo indictment. Meeting records, decisions, and communiqués of these bodies revealed the extent of Milošević’s *de jure* and *de facto* powers as well as his specific knowledge of political and military events in territories over which he had no *de jure* sovereignty.

The Presidency of the SFRY

The Presidency of the SFRY, with authority under the 1974 Constitution to command SFRY armed forces as the Commander-in-Chief, took over the leadership of the SFRY in 1980 on the death of Josip Broz Tito. The PSFRY was therefore in *de jure* command of the SFRY armed forces. It was a collective body meant to provide for power sharing and balance among the national and ethnic diversity of the former Yugoslavia, and consisted of eight members – one for each of the six Yugoslav Republics and for each of the two autonomous provinces. In this way, Kosovo and Vojvodina, the autonomous provinces within the Socialist Republic of Serbia, were granted federal status equal to that of the republics, something that was never accepted by the Serbian political and intellectual elite. The most powerful person in the eight-member Presidency was the President of the PSFRY. The tenure of the President was rotational, so that the office passed from the designated representative of one republic or autonomous province to the next, each year. The rotating Presidency was in charge of the armed forces in accordance with decisions of the PSFRY and had to ensure implementation of the collective body’s acts and

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declarations. In the absence of a President, or in the event of their prolonged inability to be effective, the Vice President of the Presidency would take over.\textsuperscript{659}

Although the leaders of both Serbia and the JNA frequently and publicly denied that the JNA had chosen the Serb side, records of PSFRY meetings from October 1991 to April 1992 provided valuable evidence of Serbia’s involvement in the war in Croatia through Miloševid’s \textit{de facto} takeover of the PSFRY and thereby of the Army. He was able to achieve this through the four compliant members of the “Serbian Bloc” within the PSFRY, namely Borisav Jović from Serbia, Branko Kostić from Montenegro, Jugoslav Kostić from Vojvodina, and Sejdo Bajramović from Kosovo and Metohija.\textsuperscript{660} Miloševid, as President of Serbia, was technically junior to members of the PSFRY, but he nevertheless managed to impose his political authority on these four. Still, his \textit{de facto} power was not easy for the Prosecution to deconstruct or prove because it was always someone else who had \textit{de jure} power over the armed forces in the years covered by the Croatia indictment.

To establish the real extent of Miloševid’s power over the Croatian conflict, the Prosecution depended on witnesses who had observed his close cooperation with the PSFRY at that time. For example, Borisav Jović testified as a Prosecution witness about the mechanisms of decision making within the PSFRY. By his account, Miloševid had considerable \textit{de facto} power for more than a decade as the key political figure in Serbia, holding absolute authority with the people and within his party and taking a decisive role in all decision making. According to Jović, Miloševid was a main actor in everything that came to pass during that period.\textsuperscript{661}

Jović, the Serbian member of the PSFRY as well as its President for one of the years relevant to the Croatia indictment, referred in his testimony to the “Group of Six” – which comprised Slobodan Milošević, then the President of Serbia; Jović and Branko Kostić, members of the PSFRY; General Veljko Kadijević, then the Federal Minister of Defence as well as Chief of Staff of the JNA; General Blagoje Adžić, who was Kadijević’s Deputy; and Momir Bulatović, then the President of Montenegro.\textsuperscript{662} Jović described the Group as an informal cadre of high placed officials who were instrumental in the planning and implementation of Serbian policies from

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\textsuperscript{659} “The SFRY Constitution (1974),” Article 328.
\textsuperscript{660} Croatia Indictment, para. 30.
\textsuperscript{661} Testimony of Borisav Jović (18 November 2003), 29131. Also see: Jović, Rule 89(F) Witness Statement, para. 7.
\textsuperscript{662} Ibid., 29128-29129.
\end{flushleft}
By Jović’s estimate, he met or consulted with Milošević literally hundreds of times between 15 May 1989 and July 1992, often with representatives from the JNA, the PSFRY, and Montenegro also present. The Prosecution claimed that the existence of the ad hoc Group of Six was built on the overlapping political and military goals of its members and their acceptance of Milošević as the de facto leader of all Serbs.

The PSFRY did not cease to function in the absence of the four members from republics that seceded (Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia). On the contrary, Serbian leaders understood the importance of the PSFRY as a powerful political instrument that provided access to the JNA. To ensure that the PSFRY would function without Croatian Stjepan Mesić, its President in 1991, the Serbian Bloc amended the rules of procedure to legalise their takeover of the Presidency without agreement from the other republics. Branko Kostić, who was Mesić’s deputy at the time, initiated those changes.

The PSFRY Sessions

The early investigation into Milošević had uncovered informants and witnesses who talked of his preference for one-on-one meetings and suggested that these meetings were not officially recorded and archived, as was legally mandated. Subsequent OTP inquiries into the official state archives of Serbia and the FRY showed this to be true only to an extent; and eventually, a more complex picture emerged. OTP staff did succeed in identifying a number of records of official meetings in which Milošević participated, but it turned out to be difficult to locate them and even more difficult to gain access to them. The PSFRY collection was an exception, though, for the existence of the body, as well as the frequency of its meetings, was a matter of public record.

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663 Jović, Rule 89(F) Witness Statement, para. 5.
664 Croatia Indictment.
665 For example, see: the notice of the 1 October 1991 PSFRY Session Agenda in Exhibit P328.20a; the notice of Decisions from the 3 October 1991 PSFRY Session in Exhibit P328.23a; a letter from Stipe Mesić “...regarding the illegal convocation of the SFRJ Presidency informing those invited to the meeting of his objection,” Exhibit P328.19a; “...proposal for the Change and Amendment of the Rules of Procedure of the Work of the SFRJ Presidency,” Exhibit P328.12a. Also see: Testimony of Stjepan Mesić (1 October 2002), 10569-10570.
666 Witnesses who met with Milošević testified that he preferred personal meetings and was sometimes accompanied by Goran Milinović, his Chef de Cabinet, who reportedly made notes. See supra note 143.
Initially, some records of PSFRY sessions reached the OTP through individual witnesses, mostly through its former President Stjepan Mesić. Records of other sessions, from during the Rump Presidency, were requested by the OTP in both 2005 and 2006. Despite several follow up requests, the OTP never received complete records for all the sessions held between 1 October 1991 and 2 June 1992. For some sessions, no records of any kind were provided; for others, either minutes or stenographic notes of sessions were provided, but not both. Because most of the records from the periods relevant for the Croatia and Bosnia indictments were only received in 2005 – when the trial was already in the Defence stage – the Prosecution was unable to tender all relevant PSFRY records into evidence. And while the February 2006 testimony of Branko Kostić offered the Prosecution an opportunity to present some additional records as evidence, many pertinent PSFRY documents simply are not part of the trial record. This analysis includes PSFRY records that were not tendered into evidence, and the point must be stressed that a trial record used as a historical source can include material beyond what was presented in the courtroom.

PSFRY documents show that the Serbian Bloc took power over the PSFRY as of 1 October 1991, when representatives from Croatia, Slovenia, Macedonia, and BiH stopped attending meetings as the result of growing political and military tensions and the full-scale war being waged in Croatia. Despite the disintegration of the SFRY, members of the Serbian Bloc continued to meet, forming the Rump Presidency and assuming all powers, including that of collective Commander-in-Chief. Stjepan Mesić testified about the pressure the Serbian Bloc had exercised to prevent his appointment as President of the PSFRY in the months before their takeover of the body. Although the rotation of the presiding member should have been routine, the appointment of Mesić was obstructed for months. He became President on 15 May 1991, but only presided over meetings until October, when he no longer attended because he did not feel safe in Belgrade. The first “official” session of the Rump Presidency followed, on 1 October, with Bosnian Bogić Bogićević and Macedonian Vasil Turpukovski still participating – although it was to be their last meeting. They soon followed the lead of Mesić and Slovenian

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667 Any sessions that were tendered into evidence will be cited with an Exhibit number; when no such number is cited, the session was not in evidence.
668 Croatia Indictment, para. 30.
669 Testimony of Stjepan Mesić (1 October 2002), 10563-10564.
670 Testimony of Stjepan Mesić (2 October 2002), 10582.
representative Janez Drnovšek and stayed away from PSFRY meetings, bringing the legality and legitimacy of the PSFRY into question.\textsuperscript{671}

\textit{The Rump PSFRY and Evidence on Planning}

Detailed evidence on the involvement of the JNA, the Serbian and Federal MUPs, and local RSK forces, as well as the corresponding decision-making process of the Rump Presidency and the JNA leadership, appeared in PSFRY transcripts from the autumn of 1991. The 143rd PSFRY session that took place on 1 October 1991 was a turning point in the instrumentalisation of the PSFRY by Milošević. In the Croatia indictment, this session was identified as providing a blueprint for the disintegration of the SFYR and for use of the JNA by the Serbian Bloc to achieve Milošević’s political and military goals. The session, presided over by PSFRY Vice President Kostić, was attended by several high-level federal functionaries – including the Ministers of Defence and Internal Affairs – and the central topics of discussion were the political situation in general and the danger of a full-scale civil war in particular.\textsuperscript{672}

With its membership drastically altered, the legal and constitutional basis of the Rump Presidency was uncertain. Branko Kostić had done quite a bit of manoeuvring in an attempt to legalise the Serbian Bloc’s takeover of federal institutions, pushing legitimate President Mesić aside to allow the Rump Presidency to amend the rules of procedure.\textsuperscript{673} Predictably, Kostić’s account and interpretation of the formation of the Rump Presidency was that all legal conditions had been met after the exit of the four non-Serb members. But a central issue that emerged in court through consideration of the live evidence and the stenographic record of that session was whether or not the PSFRY had proclaimed an imminent threat of war and whether, if so, it had done so legally. For, only if such a proclamation was legal would subsequent deployment of the JNA also have been legal.

The Prosecution argued that the proclamation, all ensuing PSFRY decisions on use of federal armed forces, and the decision that led to the JNA attacks on the Croatian towns of Dubrovnik and Vukovar were in fact illegal. Not surprisingly, Milošević and Kostić both claimed

\textsuperscript{671} Ibid.
\textsuperscript{672} “Draft Minutes from the 143th sitting of the PSFRY,” 1 October 1991, Exhibit P328.28a.
\textsuperscript{673} Testimony of Stjepan Mesić (1 October 2000), 10570.
Kostić insisted that an imminent threat of war had been agreed upon by the required majority, with six members voting for it; but the Prosecution produced a copy of the official statement released after the 1 October session, and it did not entirely fit with Kostić’s account. The text referred to a state of emergency as being only “evaluated” and not proclaimed. The interview, played in court by the Prosecution for Kostić to comment on, showed Kostić explaining the circumstances in which the 1 October session had taken place and admitting that the question of an imminent threat of war had been “sneaked in” to a larger document without specific consideration:

We prepared lengthy conclusions, an eight-page document, which included some provocative stands which we knew would provoke many objections, both by Tupurkovski and Bogićević, and so on. And towards the end of that document, we sneaked in...that the country was facing an imminent threat of war. ...we spent a lot of time discussing the first part of these – of the document, these controversial assessments, and then we accepted their objections and removed one sentence from that document and then another, but the assessment that the country was facing an imminent threat of war, the very sentence that exists in the Yugoslav constitution, went unnoticed.... And so those conclusions which were carried by two-third majority, by six votes, was published.

He went further, explaining how the situation evolved after the 1 October 1991 session:

On the next day, Bogićević and Tupurkovski were reprimanded in writing by Mesić and Drnovšek for attending that session in the first place. ...[in the]

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674 Testimony of Branko Kostić (13 February 2006), 48335.
675 Ibid., 48318-48321 and 48336-48337. Also see: “Public Notice regarding the PSFRY meeting 1 October 1991...,” Exhibit P328.6a; and “Draft Minutes from the 143rd sitting of the PSFRY.”
676 The documentary featured interviews of a number of the main protagonists of the Yugoslav crisis. Eventually, the OTP requested the complete interview tapes for many of the military and political leaders interviewed by the producers. Branko Kostić was one of them. His interview was recorded on seven videotapes, all in B/C/S, with no voice over. It served as a very valuable contemporaneous document, as most of the material had been recorded in 1994 and 1995, when the war still ongoing.
677 Testimony of Branko Kostić (13 February 2006), 48318-48319.
Presidency session held on the 3rd of October, when we started operating in conditions of an imminent threat of war, they did not appear at all, but that document empowered us to work and make decisions with as many members that were present at the session under the constitution; one, three, or all five members of the Presidency, where the peacetime conditions were no longer valid. So we really did use a sort of, if I can say so, political trick, small political trick, but that wasn’t the first or the last time such methods were resorted to. But we did this because we wanted to remain within the limits of the constitution defining that question, and we did…

In his testimony, Stjepan Mesić had explained that use of Yugoslav armed forces after 1 October 1991 was illegal, and he placed responsibility for the crimes committed by the JNA on JNA leadership, the Rump Presidency, and Milošević – who, according to Mesić, held sway over the four remaining members of the Rump Presidency. Indeed, in the absence of representatives from the other republics, the Serbian Bloc had gained full control over armed forces in the SFRY and, aware of the consequences of this development, Mesić sent letters to the international community complaining about Serbia’s hold over the PSFRY and citing the “Serbianisation” of the JNA. In the courtroom, Mesić asserted that every decision made by the Rump Presidency in early October 1991 was made to advance Milošević’s policy goals.

Based on this testimony and the interview Kostić had recorded for The Death of Yugoslavia, and despite Kostić’s insistence that this “small political trick” was still within the confines of the law, the Prosecution argued strongly that the Rump Presidency was in fact unlawful and had acted illegally in all its decisions taken after 1 October 1991, including those relating to the JNA. Indeed, the Prosecution suggested to Kostić that, had there been a vote specifically related to the proclamation of an imminent threat of war, the Bosnian and Macedonian representatives surely would have voted against it:

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678 Ibid., 48319-48320.
679 Testimony of Stjepan Mesić (1 October 2002), 10582-10584. Also see a letter from President Mesić to the UN Secretary General: “Letter originating from the SFRY Presidency...addressed to Javier Pérez de Cuéllar,” Exhibit P329.12a.
680 Testimony of Stjepan Mesić (2 October 2002), 10582-10584.
681 Testimony of Stjepan Mesić (1 October 2002), 10593-10594; and (3 October 2002), 10753.
Mr. Kostić, you knew that Mr. Bogićević and Mr. Tupurkovski would not be in favour of declaring or concluding an imminent threat of war, and that’s why you tricked them, right?\(^{682}\)

Kostić gave an astonishingly candid answer, but still insisted that the actions of other representatives had forced the Bloc to act deviously:

Well, there were moments of honesty. I think that that was the case, that it was so, but bear in mind the fact that we were not able to meet one month previously. The country was at war and they boycotted the work of the Presidency. And after their arrival on the 1st of September, Izetbegović writes a letter to Mesić and Gligorov, criticising why they had attended the Presidency session on the 1st.... So what can I say?\(^{683}\)

When challenged in cross-examination, Kostić persisted in his position that a legal vote had taken place and that the state of emergency had been legitimately adopted by the Presidency of the SFRY in its six-member composition, with a two-thirds majority. His explanation for the fact that stenographic notes from the session did not reflect a vote on the imminent threat of war was that they were incomplete.\(^{684}\)

The following session, on 3 October, had only four members in attendance, who assumed the role of the PSFRY.\(^ {685}\) Kostić rejected the Prosecution’s proposition that, given the situation, it was difficult for other members of the Presidency to travel to Belgrade to attend PSFRY sessions. He insisted that they had spurned regular invitations to take part and that they “consciously wanted to block the work of the Presidency.”\(^ {686}\) And so, the Rump Presidency cleared the way to take decisions with its reduced composition, eliminating the constitutional requirement for a quorum of six members. According to Kostić:

As of the 3rd of October, we could reach decisions with that number of members of the Presidency who were present, based on a simple majority. So if five were

\(^{682}\) Ibid., 48320.
\(^{683}\) Ibid.
\(^{684}\) Ibid., 48335-48336.
\(^{685}\) Ibid., 48337.
\(^{686}\) Ibid., 48339-48340.
present, three votes would be sufficient; if four were present, or three, we could still issue decisions.687

The strategy of the Rump Presidency, i.e. of the Serbian Bloc, unfolded at subsequent meetings. At a session held on 4 October, the Presidency adopted an Order on Partial Mobilisation to strengthen commands, staffs, units, and institutions of the armed forces in order to ensure their combat readiness. PSFRY Vice President Kostić also officially assumed powers of the President in the absence of Stjepan Mesić.688 On 6 October, with Hague Conference negotiations on the future of Yugoslavia still ongoing, Minister of Defence General Veljko Kadijević was not present at the session but his Deputy Minister, Admiral Stanislav Brovet, identified four Croatian cities that would be the focus of military action: Vukovar, Zadar, Dubrovnik, and Karlovac.689

The immediate issue of unblocking JNA military barracks across Croatia that had been cut off by Croatian forces was addressed, too, and Borisav Jović – the Serb representative in the Presidency and one of Milošević’s closest associates at the time – took the strong position that it was completely unacceptable for the JNA to withdraw from Serb territories in Croatia.690 One month later, at the 6 November session, Speaker of the SFRY Assembly Slobodan Gligorijević asked for clarification of the war goals in Croatia, inquiring as to how many barracks were actually under blockade and what the aim would be once they were unblocked. Admiral Brovet responded that the JNA’s goals were to protect the population from genocide and to secure the safety of all citizens who wanted to stay in a new Yugoslav state, and he specifically identified securing the safety of Serbs in Croatia as a JNA objective, pending an adequate political resolution.691 Branko Kostić echoed Admiral Brovet’s position, proclaiming that the ultimate goal was effective military protection of Serbs on the territories where they lived until a solution could be reached through peace negotiations.692

Occasionally, sessions included representatives from Serbia, Montenegro, the Republika Srpska, and the Republika Srpska Krajina, along with Slobodan Milošević himself. Records of those

687 Ibid., 48338.
689 Notes of the 147th PSFRY Session, 6 October 1991, 5.
690 Ibid., 16.
691 Notes from the 159th PSFRY Session, 6 November 1991, 14-15.
692 Ibid., 21.
meetings made it clear that Serb leadership in Croatia and BiH shared the political and military goals of the Rump Presidency. At a joint meeting with Serb representatives from Croatia and BiH held on 9 and 12 December 1991, territories claimed by the Serbs were discussed in detail. Serb representatives from Western Slavonia insisted on the inclusion of several villages in plans to carve out Serb municipalities there, naming Grubišno Polje, Novska, Podravska Slatina, Slavonska Požega, and Orahovica.693 These towns are very near Virovitica – the starting point of the V-K-K line – and it was in this area that among the gravest crimes were committed against civilians, including a massacre in Voćin, halfway between Orahovica and Podravska Slatina.694

Milošević was present on the second day of this joint meeting, on 12 December, and participated actively in discussion about common objectives.695 He expanded Serbian political goals to include the preservation of a Serb ethnic space within Croatia, and he saw the protection of certain areas by the UN as an important precondition for the development of their economic and cultural ties with Serbia – which he predicted would also lead to a loss of ties between those areas and Croatia. Milošević described targeted Serb military conquests using the term “armed resistance,” and emphasised that political recognition of the Serb-claimed territories could be achieved only through political means.696

At the 3 April 1992 session, General Blagoje Adžić, the acting Chief of Staff of the JNA, stated that civil war in BiH would need to develop similarly to the conflict in Croatia, namely by protecting Serb areas and Serb people. He advocated the military capture of territory, but only where there was a Serb majority.697 PSFRY sessions continued for another month after the formation of the FRY on 27 April 1992, before the FRY Supreme Defence Council took control of all issues relating to war and peace, in June. In the weeks between 27 April and 2 June 1992, the agenda of the Rump Presidency was dominated by the war in BiH and the transformation of the JNA into three Serb armies – the Army of Yugoslavia (Vojska Jugoslavije, or VJ), the Army

693 Notes from PSFRY Session, 12 December 1991, 136.
694 The crimes committed in Voćin were referred to in the Croatia indictment, para. 36(a), 36(l), and 39.
695 Notes from PSFRY Session, 12 December 1991, 172.
696 Notes from PSFRY Session, 12 December 1991, 178.
697 Notes from the 191st PSFRY Session, 3 April 1992, 14.
of Republika Srpska (VRS), and the Serbian Army of Krajina (Srpska Vojska Krajine, or SVK). Footnote text.

Records of the Rump PSFRY, in which Serb leaders from across the former Yugoslavia discussed and aligned their goals, indicate that war objectives in Croatia and BiH were seen as part of a single overarching strategy. In combination with intercepted telephone conversations, these records laid bare the *de facto* power Milošević held over federal institutions that were technically superior to him in the political hierarchy, such as the PSFRY and the JNA. It was clear that in the early days of the conflict, Milošević had acted as an intermediary between Croatian and Bosnian Serb leadership and the JNA. Intercepts also exposed the role of the Serbian MUP as a channel for communication between Milošević and Serb leadership in the republics, and as an important facilitator of provisions of aid from Serbia to the Bosnian and Croatian Serbs from the start of the war.

**The Kula Camp Video and the Formation of the JSO**

After the 9 March 1991 demonstrations against his regime in Belgrade, Milošević had announced the formation of special police forces; and he would later admit that the failed attempt to enact extraordinary measures at the PSFRY session held from 12 to 15 March marked an intensification of the arming of Serbs in Croatia. The full extent of the function of these special police forces in this process became evident upon the discovery of a 1997 video recording of an award ceremony for the Serbian MUP’s Unit for Special Operations (*Jedinica za specijalne operacije*, or JSO). The recording, which became known as the Kula Camp Video, provided proof that Milošević had established a para-state military unit in 1991 that was designed to operate in the other republics. Milošević and his associates had tried to obscure the existence of the JSO, and what the unit’s formal status had been within the Serbian MUP was a

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Footnote:


699 For example, see: Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 8 July 1991, Exhibit P613.17a; 9 August 1991, Exhibit P613.30a; and 9 September 1991, Exhibit P613.48a.

700 For example, see: Intercept of Conversation between Radovan Karadžić and Mihalj Kertes, 24 June 1991, Exhibit P613.10a and Exhibit P613.11a; Intercept of Conversation between Radovan Karadžić and Jovica Stanišić, 8 August 1991, Exhibit P613.28a; 8 September 1991, Exhibit P613.44a; 21 December 1991, Exhibit P613.144a; 6 January 1992, Exhibit P613.157a; and 28 January 1992, Exhibit P613.169a; and Intercept of Conversation between Radovan Karadžić and Milan Babic, 8 September 1991, Exhibit P613.46a.

701 Trial Transcript (14 February 2003), 16167.
question the Prosecution tried to answer. The video highlighted that Milošević’s *de facto* power had relied on the loyalty of individuals who held high military and intelligence positions in the state – many of whom were not necessarily his subordinates.

The Kula Camp Video also made a powerful connection between Milošević’s March 1991 reference to special police forces and his actions thereafter. The part of the video that was most important as evidence of this was a speech given by the Commander of these forces, Franko “Frenki” Simatović.\(^702\) In something of a paradox, after years of secrecy about the details and history of his unit, Simatović gave a comprehensive account of its founding and war record, saying:

> It was constituted on 4 May 1991 at the time of the break-up of the former Yugoslavia, and since it emerged has constantly worked to protect national security in circumstances where the existence of the Serbian people was directly jeopardised throughout its entire ethnic area. Its combat operations were anti-terrorist, directed at preventing war crimes, mass retaliation and genocide. …From the first moment of its existence and establishment, the unit has passed through a heroic epic, and its path has been one of the most difficult ones in the history of our struggle. Due to the international circumstances familiar [to us all], we were forced to operate in complete secrecy…fighting with Croatian and Muslim troops, the presence of numerous United Nations international forces – later IFOR and SFOR – and numerous instruments of foreign intelligence services in the field.\(^703\)

Simatović also described the mixed composition of the unit – initially formed from members of the Serbian, RSK, and RS police forces – and confirmed the fact that Serbian combat units were active on territories outside Serbia’s borders, in Croatia and BiH. The speech by Simatović stood alone as compelling evidence, but Milošević’s reaction to the video in court was just as telling. He insisted the JSO had been established after the war, in 1996, and tried to dismiss the video

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\(^702\) Franko Simatović was indicted and tried at the ICTY along with former head of the DB Jovica Stanišić (Case No. IT-03-69). The Kula Camp Video was a key piece of evidence against the two. Still, they were both acquitted in May 2013 in first instance judgements. In June 2013, the Prosecutor filed its notice of appeal.

\(^703\) “Video showing an Award Ceremony with members of the Red Berets, political leaders and military leaders…” Exhibit P390.1. Also see: “Corrected Transcript of Video (V000-3533),” Exhibit 390.3a.
altogether. To the Prosecution, this denial of the unit’s wartime existence and operations revealed a guilty mind.

The Prosecution’s own investigation into the unit revealed that it had changed its official name at least once. From 1991 to 1996, the unit was referred to in official documents as the Unit for Anti-Terrorist Operations (Jedinica za anti-teroristička dejstva, or JATD), before it was renamed in 1996 to the JSO. But it was best known throughout its history as the Red Berets (Crvene beretke) – a confusing term given the fact that many different combat groups wore red berets without necessarily belonging to this special unit of the Serbian MUP. The defining feature of the unit was not its official name, though, but the core group of commanders and soldiers who served in it, who were featured in the video, and whose names were mentioned regularly in evidence during the trial.

Evidence of a Criminal State of Mind

The Kula Camp Video not only showed Milošević listening to Simatović’s speech but subsequently touring the camp compound, guided by Milorad Ulemek Luković, alias Legija, who was later charged and sentenced as the central figure responsible for the murders of both former Serbian President Ivan Stambolić in 2000 and Serbian Prime Minister Zoran Đinđić in 2003. Introduced to veterans of the unit, Milošević shook hands with notorious combatants Vasilije Mijović and Radojica Božović, as well as with Zvezdan Jovanović, known as Zmija, who was also found guilty in 2007 of the murder of Prime Minister Đinđić. When introduced to Božović, one of the commanders of the JSO, Milošević revealed his familiarity with the unit’s activities, telling Božović that he had read his reports.

The fact that the ceremony depicted in the Kula Camp Video took place a year and a half after the end of the war in Bosnia did not diminish its evidentiary value. On the contrary, it was one of the most convincing pieces of evidence presented during the trial on the criminal state of mind of Milošević. The video also clearly showed the faces of a number of top-level officials from both republican and federal institutions, who participated in the ceremony. Their presence indicated

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704 Ibid.
705 Ibid.
their knowledge of the unit’s existence and of its combat activities in the 1990s. Guests of the ceremony included Života Panić, Chief of Staff of the VJ from May 1992 to May 1993; General Aleksandar Dimitrijević, head of the VJ’s Military Counterintelligence (KOS), later re-named the Security Directory (Uprava Bežednosti, or UB), from 1993 to 1999; Vlastimir Đorđević, head of the Public Security Service from 1997 to 2000 and an ICTY indictee; Mihalj Kertes, Head of the Federal Customs Office from 1994 to 2000; and Milorad Vučelić, Head of Serbian Radio Television between 1993 and 1995 and a member of the SPS Main Board from 1990 to 1995.

The video was also important for establishing links between perpetrators, who received awards during the ceremony for bravery on the battlefields of Croatia and BiH. According to Simatović, the war record of the unit had begun with fighting in the RSK. Milan Babić corroborated this, testifying that he had contacted Milošević and requested assistance in forming the RSK MUP. In response, Franko Simatović – along with Dragan Vasiljković, known as Kapetan Dragan – had arrived in Krajina in April 1991 to set up a military camp in Golubić.706 The first generation of Golubić trainees were referred to as the Knindžas and a number of quite notorious combatants came from this original group of 52.707 For example, Veljko Milanović became the leader of the Wolves from Vučjak, a paramilitary group that operated during the war in Bosnia; and Goran “Klempo” Opačić, a Serb from Croatia, was awarded for his bravery by Stanišić in the Kula Camp Video and was identified during the Milošević trial as one of the perpetrators of crimes committed against Croatian civilians in the Benkovac area, where he was the head of the special police.708 Shortly after the formation of the Golubić camp, a second training camp was set up in Erdut in Eastern Croatia under the direction of Željko “Arkan” Ražnatović.709

The Prosecution tendered the Kula Camp Video into evidence though Dragan Vasiljković, alias Kapetan Dragan, who almost irreparably discredited himself in court and, by doing so, nearly compromised this crucial piece of evidence on Milošević’s criminal state of mind. Kapetan

706 Testimony of Milan Babić (20 November 2002), 13106, 13117-13118, and 13163-13164.
707 The name Knindža was a play on the words Knin and ninja (nindža in B/C/S).
708 Testimony of Milan Babić (25 November 2002), 13400-13402. These perpetrators have been idolised by some in Serbia. For instance, in 2007, the Serbian Radical Party proposed renaming a Novi Sad street after Veljko Milanović, for his “contribution to the liberation of Western Slavonia, Modriča and Derventa.” See: HINA News, 4 April 2007.
709 Testimony of Dobrila Gajić-Glišić (21 October 2003), 27849-27852. Also see: Testimony of Milan Milanović (8 October 2003), 27264-27265.
Dragan had been cultivated as a Prosecution witness in great secrecy over several years by a handful of investigators and lawyers responsible for the Bosnian part of the indictment. His testimony in chief started as rehearsed, but as it progressed, he began to colour events quite differently than he had in his signed written statement. When questioned about the Kula Camp Video, Kapetan Dragan readily admitted that he had indeed been present at the ceremony.\footnote{Testimony of Dragan Vasiljković (19 February 2003), 16451.} He was even cooperative in improving the original transcripts of the tape, correcting the names of participants at the ceremony that had been transcribed incorrectly in the original version; but he soon became a hostile witness, taking the Prosecution by surprise. Asked a routine question about the secretive nature of the JSO, Kapetan Dragan became agitated and short tempered. He claimed that Simatović’s speech had been a “staged performance” meant to impress Milošević and that numbers of troops and their activities had been embellished and exaggerated.\footnote{Ibid., 16558-16560.}

In contrast, the cross-examination conducted by Milošević of Kapetan Dragan was completed with perfect harmony between the two, both of whom placed responsibility for all troop activities in Krajina at the feet of Milan Babić.\footnote{Ibid., 16593.} But the Prosecution had an opportunity to re-examine Vasiljković and address the inconsistencies between the account he gave in court and his signed statement. This led to some dramatic courtroom scenes when the witness, looking at his own statement, declared that he never said what was written.\footnote{Testimony of Dragan Vasiljković (21 February 2003), 16735.} When confronted with a particular passage in the statement, Kapetan Dragan reiterated that the words were not his and said that his bad memory of events had been the cause of many errors; eventually, he shouted that he could not accept the statement.\footnote{Ibid., 16736.}

The Prosecution then asked Kapetan Dragan if he had made contact with Frenki Simatović since he had been in The Hague and if they had discussed the Kula Camp Video. His answer was telling:

A. Yes. I called Simatović on his private phone just to say hello, that I’m okay, and we did not -- and I just told him, ‘How did you like what you heard?’ And he says,
‘Well, you just said what had happened.’ And I said, ‘Yes, but it wasn’t very easy to come here and say all this.’ That’s exactly what I said.

Q. How much time did you spend discussing your testimony with Frenki Simatović?

A. I think all of about 20 seconds. And after that was -- after that was a discussion such as we’re going to have dinner when we come back, and we’re going to -- like I said, he’s my friend for 12 years.

Q. When was the last time you spoke with Frenki Simatović while you were in The Hague?

A. Only once that I spoke to him.

Q. And when was that?

A. I think yesterday. Last night, or afternoon, something like that.

Q. This morning, when you said as part of your testimony that you had discussed the film with Frenki Simatović –

A. No, I did not discuss the film. I’m sorry, sir. I mean this morning, yesterday, fifteen seconds just to tell him ‘I’m alive, I’m here.’ You know, ‘Are you watching?’ And that’s it...

Judge Richard May, the British presiding judge, intervened to warn the Prosecution to be careful in cross-examining its own witness as it could destroy his credibility.\textsuperscript{716} This would have made it difficult – if not impossible – for the judges to decide which parts of Kapetan Dragan’s testimony they could rely on. The fact that he had made contact with Simatović in the middle of giving sworn testimony added further to the problem of credibility, and the Prosecution was left with the dilemma of how to reintroduce the Kula Camp Video through other witnesses. Although

\textsuperscript{715} Ibid., 16747.
\textsuperscript{716} Judge Richard May presided over the Trial Chamber until February 2004, when he resigned due to ill health. Judge Iain Bonomy from Scotland then joined the two other judges for the trial – Judge Robinson from Jamaica and Judge Kwon from South Korea – and Judge Robinson became the Chamber’s presiding judge.
several other Prosecution witnesses did testify about parts of the video after the controversial testimony of Kapetan Dragan, in the end it was Defence witness Obrad Stevanović who contributed most substantially to establishing its evidentiary value. At the time of the Bosnian conflict, he was the commander of Special Police Units (Posebne jedinice policije, or PJP) in the Public Security Sector of the Serbian MUP, a post he held between 1994 and 1996.

*The Impact of the Kula Camp Video in Serbia*

In the summer of 2001, the OTP began questioning individuals identified at the Kula Camp ceremony. Word of the existence of the video spread in JSO and MUP circles, causing anxiety among the participants, who knew the recording exposed them to the risk of prosecution at the ICTY and would lead to questions about Serbia’s role in combat in neighbouring countries. Revelations from the recording started a process that, for the first time, seriously challenged the era of impunity for JSO members, protected until then by the Milošević regime and its legacy. Many JSO officers had survived Milošević’s fall from power and continued to hold important positions in the Serbian MUP, allowing them to shield each other from ICTY and domestic investigations; but the emergence of the video threatened their careers. After the arrest of two former JSO members, the Banović brothers, following their ICTY indictment, and alarmed by the commitment of the post-Milošević leadership led by Prime Minister Đinđić to cooperate with the Tribunal, the most prominent members of the JSO mutinied in November 2001. 717 This was the first attempt by JSO veterans to obstruct or end cooperation between Serbia and the ICTY, and it threatened to overthrow the Zoran Đinđić government and bring about a political U-turn. 718 The mutiny was successfully brought to an end, and its instigators, Milorad “Legija” Luković, Zvezdan Jovanović, Dušan Maričić, and others were arrested, though they were released soon afterward. 719

The same group made a second attempt to end cooperation with the ICTY in March 2003. In February 2003 the Kula Camp Video was shown in the courtroom, and about two weeks later, on

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718 Testimony of General Obrad Stevanović (31 May 2005), 40158.
719 The following JSO members were identified by the Serbian Prosecutor as instigators of the mutiny: Milorad Ulemek, Duško Maričić, Zvezdan Jovanović, Mića Petraković, Veselin Lečić, Dragoslav Krsmanović, Dragiša Radić, and Vladimir Potić.
12 March, Serbian Prime Minister Zoran Đinđić was assassinated. In the aftermath of the assassination, Serbia declared a state of emergency and initiated a massive sweep-up operation, known as “Sabre,” the goal of which was to identify the direct perpetrators and organisers of the assassination and prevent further destabilisation of state authority and the sitting government. Investigation into the assassination confirmed the existence of close ties between organised crime, state institutions, and the political and military establishment in Serbia that was still loyal to Milošević.720

The state of emergency lasted 42 days and 13 individuals were eventually indicted and tried for Đinđić’s assassination, in a trial that started in December 2003 and ended in May 2007. After three and a half years, 12 of the accused were found guilty. Milorad Luković and Zvezdan Jovanović were sentenced to 40 years each, and the rest of the perpetrators received sentences from 8 to 35 years. Jovanović – who had actually pulled the trigger – was reported to have given a written statement saying that he did not kill Đinđić for money, but to prevent the extradition of “our people” to The Hague.721 In November 2011, precisely ten years after the mutiny and eight years after Đinđić’s assassination, Serbia’s Special Prosecutor’s Office for Organized Crime completed its investigation into the mutiny, qualifying it as a critical feature of the political background to Đinđić’s murder and filing an indictment in March 2012 against its organisers.722

The intensive investigation into Đinđić’s murder also led to important information about the assassination of former President of the Republic of Serbia Ivan Stambolić in 2000. Milorad Luković’s bodyguard revealed the details of that murder as well as the location of Stambolić’s remains.723 An indictment was issued by the Special Court in Belgrade in September 2003 charging a conspiracy that involved direct perpetrators as well as former head of the State Security Service Radomir Marković, former Chief of Staff of the Yugoslav Army General

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723 Testimony of General Obrad Stevanović (31 May 2005), 40158.
Nebojša Pavković, and Slobodan Milošević. Marković testified in the Stambolić murder trial that Milošević told him in their meetings – which were usually held between just the two of them – that members of the opposition in Serbia were bandits who needed to be liquidated and who should be blown up (with explosives) at a public gathering. Marković said further that, on one occasion, Milošević told him that Stambolić should be “removed” because he was a direct threat to the country. Marković claimed that it was Milošević himself who had suggested engaging Luković to do the job, and that, shortly afterwards, Marković had met with Luković to discuss the liquidation of Stambolić as well as of Vuk Drašković, a fellow Serb politician and severe critic of Milošević and his wife. In the Stambolić Judgement, delivered in 2005, the Court concluded that Milošević had ordered the killing of his political rival in order to retain power. Tens of unsolved murders committed between 1991 and 2003 in Serbia were arguably similarly motivated.

After major efforts to secure a Rump Yugoslavia according to the Belgrade Initiative – with the border at the V-K-K line – proved unfeasible, the ethnic separation that had already occurred was used as the basis for establishment of the Republika Srpska Krajina (RSK) in December. The RSK Constitution defined the territory as the “state of the Serb people and of all the citizens living therein,” and on 26 February 1992, the Assembly of the RSK amended the Constitution to incorporate the SAO of Slavonia, Baranja, and Western Syrmia (SBWS) and the SAO of Western Slavonia into the RSK.

The next chapter deals with the evolving criminality exhibited by Milošević as he worked to achieve the fourth goal of his Plan. This manifested in the creation of the Republika Srpska in Bosnia. The Prosecution cited clear parallels between the establishment of the RSK in Croatia

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724 Pavković and Milošević were not actually tried for the crime.
725 The Judgement in the trial for the Stambolić assassination is available in Cyrillic at: https://reportingproject.net/PeopleOfInterest/documents/Milorad_Ulemek,%20Lukovi%C4%87%20Charges_790.pdf.
726 Ibid.
727 The following is a list of only some of the unsolved assassinations in Serbia during that period: Milan Todorović Kundak, a businessman and JUL member who was close to Mira Marković for some time, was killed in 1997; Assistant Minister of the MUP Radovan Stojičić Badža, who had a war history in Eastern Slavonia and had been close to Slobodan Milošević, was killed in 1997; Slavko Ćuruvija, a publisher and journalist with longtime ties to Mira Marković, was killed in 1999; paramilitary leader Željko “Arkan” Ražnatović, infamous for his wartime activities in Croatia, BiH, and Kosovo, was killed in 2000; and Pavle Bulatović, former FRY Minister of the MUP and later FRY Minister of Defense, was also killed in 2000.
and that of the RS in BiH, where ethnic separation and the homogenisation of Serb-claimed territories again led to crimes against non-Serbs, mostly Bosnian Muslims. The Defence claimed that Serbs were waging a defensive war, concerned with their physical survival in a unitary and Muslim-dominated independent BiH. According to this narrative, ethnic separation and the subsequent creation of the RS were necessary to insure the contiguity of the Serb designated territories in Croatia and BiH in order to link them up with Serbia and Montenegro. And for that purpose, Milošević had initiated the formation of the Federal Republic of Yugoslavia (FRY) – a federation including Serbia and Montenegro – with contingencies in its Constitution for later absorption of other Serb territories.
Slobodan Milošević, Opening Statement, 14 February 2002

Why do you want to make Serbia and Serbs responsible for the war in Croatia and Bosnia and Herzegovina? ...[The international community] broke up Yugoslavia... and now they want all three peoples in Bosnia and Herzegovina to foot the bill...

Chapter VII: The Formation of the Republika Srpska and the Policy of Ethnic Separation in Bosnia and Herzegovina

The Bosnia indictment alleged that Milošević had participated in a Joint Criminal Enterprise from at least 1 August 1991 to at least 31 December 1995, which had worked to forcibly remove the majority of non-Serbs from large areas of BiH and had “planned, instigated, ordered, committed or otherwise aided and abetted the planning, preparation and execution of the destruction” of thousands of Bosnian Muslims beginning on or about 1 March 1992. In some places, the JCE was said to have specifically targeted “educated and leading members” of the Bosnian Muslim community for extermination. Further, it was alleged that thousands more had been detained in the most inhumane conditions, “calculated to bring about [their] partial physical destruction,” and had been tortured, raped, and starved as part of a genocidal process. As a co-conspirator, Milošević was said to have effectively controlled other members of the JCE as well as various armed forces – including paramilitary groups – and was therefore responsible for the murder and forced transfer of non-Serbs in Bosnia, as well as for the intentional destruction of large numbers of cultural and religious institutions, historical monuments, and sacred sites. 729

This chapter examines the war in BiH and the crimes committed there as part of the Serb strategy of ethnic separation as well as the creation of the Serb-controlled territory that became known as the Republika Srpska (RS). Milošević’s de facto and de jure powers during the conflict in BiH were different than during the war in Croatia; and the trial’s focus on individual criminal responsibility led to material that revealed the role Milošević had played in the commission of crimes against non-Serbs in BiH, often through unofficial but de facto links that were discovered only when communications that had been ostensibly confidential were finally brought to light. His de facto role in planning the post-SFRY political future of BiH and his power over Bosnian

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729 Amended Indictment, 22 November 2002. Hereinafter, the Bosnia Indictment.
Serb leaders was exposed, for instance, in intercepted telephone conversations that took place between 1991 and 1992 with Serb politicians from Serbia, BiH, and Croatia. And important evidence about his *de facto* power also came from the records of an ad hoc body, the State Council for Harmonisation of Positions on State Policy (*Savet za usaglašavanje stavova o državnoj politici*), which existed from August 1992 until April 1993. A number of specific strategic questions relating to BiH were discussed in Council sessions and, at times, heated debate between high-level officials forced meeting participants to further clarify their positions, making records of the sessions particularly valuable.

But it was also important for the Prosecution to present evidence of the *de jure* and *de facto* power Milošević had held in commanding the armed forces during the Bosnian conflict, amid changing political and constitutional circumstances. With SFRY structures no longer in existence, Milošević’s *de jure* position during the war in BiH was linked to his role on the Supreme Defence Council (*Vrhovni savet odbrane*), and the Prosecution tendered many records of its sessions into evidence. The Supreme Defence Council (SDC) had been established as the joint Commander-in-Chief of the FRY armed forces by the 1992 FRY Constitution and the SDC’s first session was held in June 1992. It included the Presidents of the FRY and the Republics of Serbia and Montenegro; and as President of Serbia, Milošević was a member of the SDC throughout the war years in BiH.

The content of this chapter exemplifies the paradox that, as large as the trial record is, the exploration of certain topics requires expanding the search into extratrial sources. This was the case when it came to analysis of the crimes committed in Srebrenica in the summer of 1995. Material that sheds more light on the Srebrenica genocide continues to be disclosed all the time and it is a topic that will keep developing and expanding, inside and outside the courts, as has been the case with other historical instances of genocide.

**Pre-War Plans for Bosnia and Herzegovina**

*Courtroom Reconstruction of the Karadağovo Meeting and the Agreement to Partition BiH*

At the PSFRY session held on 9 January 1991, Croatia had been called on to disarm its police forces and punish those responsible for the illegal importation of arms to Croatia. Croatia took no
action by March, and at the PSFRY session held between 12 and 15 March, JNA Chief of Staff and Federal Minister of Defence General Veljko Kadijević proposed the introduction of extraordinary measures in response to Croatia’s noncompliance. These measures – legally required in order to activate the armed forces in times of peace – were intended on this occasion to allow use of the JNA against the legitimately elected Croatian government. Of eight PSFRY votes, five were needed to enact extraordinary measures, and only seven members were present; and so when BiH representative Bogić Bogićević, an ethnic Serb, voted against the proposal – surprising his fellow Serbs – the measures were not passed.\footnote{See: Testimony of Branko Kostić (25 January 2006), 47617-47618 and (8 February 2006), 48189-48190; Testimony of Borisav Jović (19 November 2003), 29293-29294; Testimony of Milan Kučan (21 May 2003), 20956.}

This failure by the Serbian and JNA leadership to impose their will led to a dramatic walkout by Jović, the Serbian representative and President of the PSFRY at the time. In a televised address that followed, Milošević declared that Yugoslavia was finished and that Serbia would no longer be bound by decisions of the federal Presidency.\footnote{Testimony of Stjepan Mesić (1 October 2002), 10538-10544. The PSFRY session took place on 12, 14 and 15 March 1991. Also see: Testimony of Branko Kostić (7 February 2006), 48181-48188; and Borisav Jović, \textit{Last Days of the SFRY}, Exhibit P596.2a, 255-271. For Milošević’s speech, see Exhibit P328.29.} Milošević quickly reversed his position, and most importantly, brought Jović back into the PSFRY; for, in truth, he could not afford to give up the power afforded by the Presidency and the access it provided to the JNA.\footnote{Jović, \textit{Last Days of the SFRY}, 271-278. On page 278, Jović explains why Serbia decided to return to the Presidency, saying that: “Defending the Serb nation’s right to self-determination is realistically impossible without the JNA, because the Serb nation is not armed.” He also cited the risk that the Presidency could have been taken over “by separatists and those intent on destroying Yugoslavia” if they had not returned.}

After these events in March, relations between Serbia and Croatia worsened by the day as armed rebellions by Croatian Serbs spread from the Knin region to Western and Eastern Slavonia. At a meeting with Jović, Croatian PSFRY representative Stjepan Mesić complained about what he saw as concerted efforts by local Serbs and the JNA to destabilise Croatia, warning that if a full-fledged war were to break out, the Serb minority would not be able to stand up to the Croatian majority. According to Mesić, Jović told him that Serbia was not interested in Croatia, but in BiH, and particularly in the 66% of BiH territory that they felt was, and should remain, Serb. Mesić proposed a meeting to identify and resolve these issues through political means, in particular concerning BiH, and a meeting between Presidents Milošević and Tudman was set.\footnote{Testimony of Stjepan Mesić (1 October 2002), 10560.}
Tuđman informed his closest associates at the time, including Mesić, that he had arranged a tête-à-tête with Milošević at Karadorđevo. He invited no one to join him, nor did he later disclose the content or outcome of the meeting.\textsuperscript{734} Tuđman’s view on BiH had changed so completely after the meeting in Karadorđevo that Stjepan Mesić described it in his testimony as an “about turn.”\textsuperscript{735} Before the meeting, Tuđman had been in favour of maintaining the territorial integrity of BiH; but afterward, he advocated for dividing BiH between Serbia and Croatia in order to restore Croatia to its historical glory by re-establishing the borders of the Banovina of Croatia that had existed from 1939 to 1941. Indeed, Milošević had allegedly promised Tuđman the Muslim majority towns of Cazin, Kladuša, and Bihać in the Bosnian Krajina – once, the so-called Turkish Croatia.\textsuperscript{736} Prosecution witness Stjepan Kljući, the leader of the HDZ in BiH – a party affiliated in the 1990s with Tuđman’s Croatian HDZ – gave a similar account of assurances between Milošević and Tuđman over future territories. Kljući was known for his support of the territorial integrity of BiH and his vocal opposition to its division. He also testified that Tuđman told him on one occasion about Milošević’s pledge to give him the part of northwestern BiH that was once Turkish Croatia. Kljući recalled telling Tuđman that such a statement was akin to Milošević offering Sardinia or Sicily as a gift, “because it doesn’t belong to you and it doesn’t belong to Mr. Milošević.”\textsuperscript{737}

Prosecution witness Hrvoje Šarinić – who was Tuđman’s Chef de Cabinet before and during the wars in Croatia and BiH and who met as a special envoy with Milošević many times during the Bosnian war – testified that the date of the Karadorđevo meeting was 26 March 1991.\textsuperscript{738} He said the meeting did not lead to any firm agreements between the two Presidents, but to the establishment of two working groups that were tasked with expanding on the principles agreed upon at the meeting. On the Croatian side, the working group included President Tuđman’s political and legal advisors Josip Šentija, Dušan Bilandžić, Zvonko Lerotić, and Smiljko Sokol. The Serbian group included President Milošević’s advisors Vladan Kutlešić, Kosta Mihailović, Ratko Marković, and Smilja Avramov; all of whom except Kutlešić appeared as Defence witnesses in The Hague almost 15 years later.

\textsuperscript{734} Ibid., 10560.  
\textsuperscript{735} Ibid., 10559-10563.  
\textsuperscript{736} Testimony of Stjepan Mesić (2 October 2002), 10657.  
\textsuperscript{737} Testimony of Stjepan Kljući (15 July 2003), 24393 and 24459-24460.  
\textsuperscript{738} Testimony of Hrvoje Šarinić (21 January 2004), 31263-31268.
Despite three meetings of the working groups, nothing concrete was achieved.\(^{739}\) The first of the meetings was held on 10 April 1991 in Tikveš, a village near the Croatian town of Osijek; the second followed on 13 April, in Belgrade; and the third and final meeting was held one week later in Zagreb. Dušan Bilandžić, of the Croatian working group, wrote on various occasions of his account of these meetings. During its cross-examination of Serbian working group member Ratko Marković, the Prosecution presented him with a passage from an October 1996 article in which Bilandžić had described the tasks laid out by Tuđman for the Croatian working group. According to Bilandžić, Tuđman explained that he and Milošević had come to an agreement on partition in principle but that the working groups were to develop concrete details in the form of maps; which, after many hours of discussions, could not be agreed upon.\(^{740}\) Marković confirmed that the meetings of the working groups were held behind closed doors, but rejected any suggestion of a secret agreement for partition, reached at Karadordevo or elsewhere.\(^{741}\) He denied that such a division was ever discussed at working group meetings he attended, formally or informally, though he did allow that the maps Bilandžić referred to might have been discussed at the third meeting held in Zagreb, which Marković claimed not to have attended.\(^{742}\)

Ratko Marković’s working group colleague Smilja Avramov wrote in her book that two teams had been established to review the political, economic, constitutional, legal, and international law consequences of a possible disintegration of Yugoslavia. She asserted that the major issues to emerge in working group discussions were the problems of borders and the continuity of public law.\(^{743}\) At the meetings she attended, she recalled that there had been discussion about whether existing republican borders could be the basis for drawing new state borders. According to Avramov, the Croats had insisted that Serbs give up the Krajina in Croatia – which was rejected by the Serbian delegation.\(^{744}\)

\(^{739}\) Ibid., 31267.
\(^{741}\) Ibid., 35382.
\(^{742}\) Ibid., 35385.
\(^{743}\) Smilja Avramov, Postherojski rat Zapada protiv Jugoslavije, 140-141. An English translation of these pages of the book was tendered into evidence as: “The Post-heroic War of the West against Yugoslavia,” Exhibit P817a. Also see: Testimony of Smilja Avramov (8 September 2004), 32510.
\(^{744}\) Testimony of Smilja Avramov (8 September 2004), 32510.
According to former SFRY Prime Minister Ante Marković, Milošević and Tuđman were indeed planning for the dissolution of Yugoslavia. He asserted that they discussed two key topics at Karadordevo – the partitioning of BiH between Serbia and Croatia, and how to get rid of Marković. Milošević and Tuđman apparently confirmed this to Marković personally when he confronted them both on separate occasions.\footnote{Testimony of Ante Marković (23 October 2003), 28026.} According to Marković, Milošević told him that BiH was an artificial entity created by Tito, which could not survive, and that most Bosnian Muslims used to be Orthodox but had been forced to convert. When Marković warned him about the potential for bloodshed should BiH be partitioned, Milošević seemed confident that a partition would not cause a conflict because the majority of the BiH population were Serbs and Croats, and moreover, he said they planned to create an enclave for Muslims.\footnote{Ibid., 28026-28027.}

Ante Marković testified that Tuđman had echoed Milošević’s rhetoric; only, Tuđman claimed that the Muslims had been Catholics who converted to Islam. When Marković brought up to Tuđman that a partition could bring violence, he also responded that he did not believe it would lead to a war, but because he thought Europeans would not support a Muslim state in the heart of Europe.\footnote{Ibid., 28027.} Šarinić testified that Tuđman believed Tito had erred in not making BiH an autonomous province of Croatia. A historian, Tuđman claimed that BiH was a historical absurdity that had resulted from Turkish conquests in the 15th century. And during his first election campaign in 1990, Tuđman had expressed an interest in changing the borders of Croatia when he had complained that the shape of Croatia looked like a \textit{kifla}, a crescent-shaped roll popular in Central and Eastern Europe.\footnote{Testimony of Stjepan Mesić (2 October 2002), 10657. In the Trial Transcript, Tuđman is said to have described the shape as an “oblong role.” It should read “oblong roll.” The author was able to decipher the intended meaning by accessing the original quote by Tuđman, when he used the Croatian word \textit{kifla}. For example, see a summary of the ICTY testimony of Josip Manolić, a former Croatian Minister and one time ally of Tuđman who quoted Tuđman’s use of the word \textit{kifla} when appearing in 2006 as a witness at the ICTY trial of six Herceg Bosnia leaders: \textit{“Tuđmanova naklapnja i želje,” Sense}, 3 July 2006.} According to Šarinić, Tuđman proposed broadening the thin strip of land in the south of Croatia by integrating it with a part of BiH territory that was claimed by Croatia on an ethnic basis.\footnote{Testimony of Hrvoje Šarinić (21 January 2004), 31267.}

Particularly valuable testimony about the plans discussed at Karadordevo came from Milan Babić, who testified that Milošević had showed him a map on which the division of BiH, as
agreed between he and Tudman, was marked. But Milošević worked hard in court to downplay the Karadordevo meeting and any evidence of plans to carve up BiH. While he was unable to refute or seriously challenge the evidence given by Prosecution witnesses, he raised the issue when Defence witness Vojisлав Šešelj was on the stand. According to Šešelj, details about the Karadordevo meeting had been invented in order to upset Alija Izetbegović and other Bosnian Muslim politicians, to turn them against and Serbia and Croatia. Yet, when asked by the Chamber to elaborate on who had invented the story, and exactly why, Šešelj responded vaguely. First, he alluded to the Borba newspaper, a pro-communist newspaper that, he alleged, sided with the federal government of Ante Marković and Western powers. When the Chamber then asked him to explain why Marković might spread false rumours, Šešelj – rather unconvincingly – postulated that Marković could have feared that a possible agreement between Milošević and Tudman would keep Yugoslavia together but would eliminate him as its leader. Yet, Marković himself had testified that successful reforms of the federal government might have halted the disintegration of the SFRY and kept all the republics together in one state, something that he felt Slovenia, Croatia, and Serbia no longer wanted.

In his cross-examination of Ante Marković, Milošević confirmed that he and Tudman had indeed met in Karadordevo. He said they shared an appreciation that the chief issue for the future of the SFRY was the relationship between Serbs and Croats or, rather, between Serbia and Croatia; but he denied any discussion of partitioning BiH or removing Marković, suggesting that Marković had accorded himself too much importance and asking why they would consider him at all. Marković replied that Serbia, Croatia, and Slovenia had all embraced the idea of independence by 1991, and that they had schemed about his dismissal because they perceived the reforms he advocated – which were aimed at preserving Yugoslavia – as a threat. As Marković saw it, a common state was no longer an option for Milošević or Tudman and Marković stood in the way of their plans to establish their respective states within ethnically-defined borders, each including territories claimed in BiH. By August 1990, the official view of leading Serb politicians was

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750 Testimony of Milan Babić (20 November 2002), 13111-13113 and 13575-13576.
751 Testimony of Vojislav Šešelj (5 September 2005), 43655-43656.
752 Testimony of Ante Marković (15 January 2004), 30916-30918.
753 Testimony of Ante Marković (23 October 2003), 28026.
that Marković could not be trusted, and they accused him of being an extended hand of the US.\textsuperscript{754}

Milošević also challenged Hrvoje Šarinić regarding his testimony on Karadorđevo, acknowledging that Bosnia was discussed but claiming that the topic of conversation had been the influence of Islamic fundamentalism in BiH. Šarinić corrected Milošević, saying that this particular issue had not been discussed at Karadorđevo but at the follow-up meeting in Tikveš, which Šarinić attended.\textsuperscript{755} He went on to testify that, at that meeting, Milošević had given Tuđman a handwritten note detailing a supposed Muslim axis, which he referred to as the ‘Green Transversal.’ Milošević had asserted that this axis presented a major threat, alleging that it ran through Turkey, Bulgaria, Western Macedonia, Sandžak, and Kosovo, and claiming that Muslims sought a unitary state including BiH where Serbs and Croats would be a minority. According to Šarinić, after that second meeting in Tikveš, Tuđman grew less optimistic about cooperating with Milošević.\textsuperscript{756}

Šarinić also testified that Tuđman had brought attention in Tikveš to the Log Revolution, staged by Croatian Serbs in August 1990, and had protested the fact that it had cut off a large part of Croatian territory from the control of its central authority in Zagreb. Milošević denied that he was behind the Log Revolution and Tuđman challenged him, calling Krajina the Trojan horse of Serbian politics in Croatia and implying that Milošević stood behind the RSK leadership. Milošević continued to deny his involvement, but eventually granted that the Croatian problem could be resolved; leaving Šarinić wondering how Milošević could propose such a resolution if he really had nothing to do with the Log Revolution in the first place.\textsuperscript{757} But what Šarinić learned eventually was that, for Serbia, the Serb national question in BiH was of far greater importance than the Serb national question in Croatia. In 1995, Milošević himself told Šarinić that the creation of the RS had resolved 90% of the Serb national question just as President Tuđman had resolved the Croat national question with the establishment of Herceg-Bosna,\textsuperscript{758} a territory in BiH claimed by Croatia as of November 1991.

\textsuperscript{754} Testimony of Borisav Jović (20 November 2003), 29358.  
\textsuperscript{755} Testimony of Hrvoje Šarinić (22 January 2004), 31334-31335.  
\textsuperscript{756} Ibid., 31324-31335 and (21 January 2004), 31266-31267.  
\textsuperscript{757} Testimony of Hrvoje Šarinić (21 January 2004), 31263-31264.  
\textsuperscript{758} Ibid., 31267-31268.
Although there has been no official and final resolution on the question of whether a partition of BiH was agreed to at Karadordevo by Milošević and Tuđman, the spirit of such a plan was manifested in efforts by both Serbia and Croatia to encourage population transfers within BiH; and these efforts were at least somewhat coordinated. On 8 January 1992, Nikola Koljević, a politician in the Serb Democratic Party of Bosnia (Srpska Demokratska Stranka, or SDS), had informed President Tuđman that a reorganisation of Bosnia was necessary, stressing the need for homogenisation of certain areas and a transfer of property and populations.\(^{759}\) Perhaps the Croatians and Serbians thought a civilised and mutually agreed transfer was possible and preferable, but it was something the Bosnian Muslims could not accept and never did. Muslims in BiH understood that ‘homogenisation’ would amount to ethnically uniform Serb and Croat territories, at the expense of the Muslim population. Later that year, a transfer of populations in BiH was again discussed, in September, between Tuđman and then FRY President Dobrica Ćosić in Geneva.\(^{760}\)

Despite attempts by both Serbia and Croatia to partition BiH, Hrvoje Šarinić insisted that the Croatian approach to BiH was less straightforward than that of Serbia given that Bosnian Croats, unlike Bosnian Serbs, had supported the February 1992 referendum on the independence of BiH.\(^{761}\) And indeed, in support of this position, Croatia was among the first countries to recognise BiH after its declaration of independence in April 1992.\(^{762}\) Serbia, conversely, withheld its recognition of BiH until after the RS was established and internationally approved in 1995.

\textit{Milošević’s Pre-War Plans to Keep BiH in Yugoslavia}

Just as intercepted telephone conversations held significant evidentiary value in establishing connections between Belgrade and Knin for the Croatian part of the indictment, they also strongly reflected the \textit{de facto} power that Milošević held over Serb leaders in Bosnia. The

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\(^{759}\) “Transcript of the meeting between Franjo Tuđman and others and members of the Presidency of BiH,” 8 January 1992, Exhibit P641.3a, 13-14 and 32.


\(^{761}\) Testimony of Hrvoje Šarinić (22 January 2004), 31268.

\(^{762}\) Ibid.
intercepts exposed Milošević’s position on keeping BiH in a reduced Yugoslavia, which was brought to the policy level with the Belgrade Initiative. Introducing the Initiative to Karadžić on 12 June 1991, Milošević instructed him to tell the deputies of the SDS that BiH should remain in Yugoslavia and to stress that the interests of the SDS and Serbia were identical.\(^{763}\)

The success of Milošević’s plan to incorporate BiH into Rump Yugoslavia was crucially linked to securing the support of leading Bosnian Muslim politicians and convincing them that BiH should stay in a Yugoslav state. After Izetbegović refused to cooperate, Serb leaders turned to his rival Adil Zulfikarpašić, reaching a so-called “historical agreement” with him that supposedly ensured the support of Muslims in BiH.\(^{764}\) In reality, Zulfikarpašić did not speak for the Bosnian Muslim population and could not deliver what he agreed to. After initial enthusiasm on the part of Serbs, it quickly became evident that any settlement on the future of BiH would need the endorsement of Izetbegović; but it was unrealistic to think he would even consider the plan advocated by Milošević, which he had qualified as “a capitulation” for Bosnian Muslims.\(^{765}\) The positions of Izetbegović and Milošević grew increasingly incompatible. Izetbegović preferred Bosnian sovereignty while Milošević asserted that BiH could be sovereign only within a new Yugoslavia.\(^{766}\) Concerns among Serbs over losing Bosnia worsened after 3 October 1991, when the BiH Assembly announced that it would organise a referendum on independence. Milošević told Karadžić that Izetbegović would request international recognition – which he considered a catastrophe – and he insisted that Yugoslavia had to be preserved with Serbia as its central pillar.\(^{767}\)

Although Karadžić was happy to carve out the Serb-populated territories in BiH with no concern for the fate of Bosnian Muslims, Milošević remained keen to keep the Muslims on his side. On at least one occasion, telephone intercepts revealed Karadžić disagreeing loudly and emotionally to this approach, and rejecting the idea that Serbs live in the same state with Muslims. His vision was that Serbs would gain control of 60% of Bosnian territory and establish parallel state

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763 Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 12 June 1991, Exhibit P613.8a.
organisations. In late December 1991, in a conversation with Jovica Stanislić, who would head the Serbian MUP from 1992 to 1998, Karadžić brought up the idea of a confederal BiH in which the Serb part would maintain ties with Serbia and the Croat part with Croatia, provided that Croatia would recognise the RSK. 

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The Convention for a Third Yugoslavia: Serbia’s Last Effort to Keep BiH in a Rump Yugoslavia

Milošević’s attempts to preserve a reduced Yugoslavia that included the whole of BiH persisted until January 1992; but in the meantime, the SDS – with Karadžić as its leader – had been developing an alternative plan since September 1991, aimed at achieving ethnic and territorial separation within BiH. On 7 September, the very day the Hague Peace Conference began, the SDS issued a “Decision on the Promulgation of Autonomous Regions.” The formation of Serb Autonomous Regions (SAOs) in Bosnia was to adhere to the example set by Croatian Serbs. A “regionalisation policy” was thus announced, which proposed the creation of regions in which Serbs were an absolute or relative majority. Three days later, on 10 September, Karadžić spoke with Milošević about the possibility of the “regionalisation” or “cantonisation” of BiH.

The next milestone in the ethnic separation project undertaken by the SDS was the establishment of the Assembly of the Serb People in BiH (later known as the RS Assembly) on 24 October 1991 by a majority vote of Bosnian Serb deputies in the BiH Assembly. The RS Assembly then adopted a “Decision on the Serb People of BiH Remaining in the Joint State of Yugoslavia,” which formed a basis for the referendum put to Bosnian Serbs on 9 and 10 November, in which

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769 Intercept of Conversation between Radovan Karadžić and Jovica Stanislić, 21 December 1991, Exhibit P613.144a.
770 The full title of the Decision was: “Decision on promulgation of autonomous regions as unquestionable parts of the federal state of Yugoslavia and as constituent parts of the federal unit of Bosnia and Herzegovina and on separation of settlements of one municipality and their integration into another municipality.” See: Judgement, Prosecutor v. Krajšnik, No. IT-00-39-T, 27 September 2006, 28, para. 57. Also see: “Statute of the Autonomous Region of Krajina...,” 16 September 1991, Exhibit P730a; and “Map of Serbian Autonomous Districts (SAOs),” Exhibit P343.1a.
771 In September 1991, three large areas in BiH – Eastern and Old Herzegovina, Bosnian Krajina, and Romanija – were proclaimed Serb Autonomous Regions (SAOs), followed by Semberija-Majevica, Northern Bosnia, and Birač in November. See: “Decision on Pronouncing and Conducting the Plebiscite of the Serb People in Bosnia and Herzegovina,” 24 October 1991, Exhibit P740a.
772 Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 19 September 1991, Exhibit P613.67a.
an overwhelming majority voted in favour of staying in a Yugoslav state.\footnote{\textit{Decision on Pronouncing and Conducting the Plebiscite of the Serb People in Bosnia and Herzegovina}, 4.} On 21 November 1991, the Bosnian Serb Assembly passed a decision declaring that all places in which over 50% of Serbs had voted in the November referendum should pronounce that they were still a part of Yugoslavia. The Assembly also proclaimed the establishment of five SAOs, describing them as federal units of the SFRY.\footnote{\textit{Decision...to Sanction the Serbian Autonomous Districts Proclaimed in Bosnia and Herzegovina}, No. 37-02/91, 21 November 1991, Exhibit P741a.}

Despite Karadžić’s protests, Milošević was resolute in his insistence that all of BiH had to remain in Yugoslavia. After the European Community encouraged the SFRY Republics to apply for independence in December 1991,\footnote{\textit{EC Declaration Concerning Condition for Recognition of New States}, 16 December 1991, Exhibit P826.5.} the Rump PSFRY launched an initiative on 3 January 1992 called the Convention on a Third Yugoslavia.\footnote{\textit{Yugoslavia for the Third Time}, \textit{Epoha} No. 12, 7 January 1992, Exhibit P808a.} Defence witness Branko Kostić, who officially presided over the Convention in his capacity as President of the Rump PSFRY, described it as a joint effort by nine political parties from BiH.\footnote{Testimony of Branko Kostić (14 February 2006), 48430.} But, while the Convention was presented as the brainchild of Presidency members, intercepted telephone conversations between Milošević and Karadžić revealed that it was actually Milošević’s idea. In December 1991, Milošević and Karadžić had discussed a draft of the Convention, agreeing that it should stress the continuation of the old Yugoslavia. Their concern was to avoid giving the impression that a new state was to be constituted and they agreed that Milošević would give the draft text for review to Ratko Marković and Vladan Kutlešić, both professors of law and close associates of his.\footnote{Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 30 December 1991, Exhibit P613.151a. Ratko Marković appeared as a Defence witness in 2005.}

The Convention on a Third Yugoslavia was ultimately of little significance. Only Serb political parties from BiH were in attendance; and the event might have passed unnoticed were it not for an article in \textit{Epoha} magazine on 7 January 1992.\footnote{Testimony of Branko Kostić (14 February 2006), 48431.} The \textit{Epoha} article explained the stated principles upon which a new Yugoslavia and parts of the old Yugoslavia were to separate in a “just territorial and material manner.” According to Branko Kostić, this referred to drawing new borders between the newly independent states and a new Yugoslavia. He insisted that the quote was not about partitioning BiH but was related to a solution for the Serbs in Croatia whereby a
UN protectorate would be established in the RSK territories.\textsuperscript{780} He testified in court that, at that time, he did not expect war to break out in BiH.\textsuperscript{781} Still, accompanying the \textit{Epoha} article was a detailed map showing Serb majority municipalities in BiH and Croatia, with the BiH municipalities that had opted in the November 1991 referendum to remain in Yugoslavia shown in light blue. This map became important to the Prosecution as evidence of pre-planning for a partition of BiH that corresponded with Serb territorial designs. Commenting on the map in court, Kostić claimed it depicted nothing but results of the November vote.\textsuperscript{782}

\textbf{Map 6: Epoha 12, 7 January 1992, Exhibit P808a}

\textbf{Formation of the RS, Ethnic Separation, and the Commission of Crimes in BiH}

On 19 December 1991, Karadžić’s SDS issued “Instructions for the Organisation and Activity of the Organs of the Serb People in Bosnia and Herzegovina in Extraordinary Circumstances.”\textsuperscript{783} Prosecution witness Miroslav Deronjić, who was a high school teacher before the war and who

\begin{footnotes}
\footnote{780}{Ibid.}
\footnote{781}{Ibid., 48431-48432.}
\footnote{782}{Ibid.}
\footnote{783}{“Instructions issued by the SDS for the Organization and Activity of the Organs of the Serbian people in Bosnia and Herzegovina in Extraordinary Circumstances,” 19 December 1991, Exhibit P434.3a.}
\end{footnotes}
The meeting brought together Serb mayors and deputies of the Bosnian Serb Assembly and was concerned with the establishment of Bosnian Serb governmental bodies in Serb-claimed municipalities. The Instructions laid out two variants: Variant A dealt with municipalities where Bosnian Serbs comprised a majority of the population and Variant B addressed municipalities where the Serb population was a minority. Karadžić explained the precise steps to be taken within the municipalities in order to establish Bosnian Serb control, in two phases of action described in the Instructions. The first required municipalities with a Serb minority to form Crisis Staffs and Serb Assemblies, after which a written order was to be conveyed to chiefs of those Crisis Staffs to implement the second phase. Deronjić testified that implementation of the second phase involved several steps, all of which were clearly taken to prepare for the use of force against non-Serbs in the Variant B municipalities.785

In fact, the arming of Serbs in BiH by the JNA had started as early as the spring of 1991, as intercepted telephone conversations between Milošević and Karadžić would later bring to light. And by early 1992, Milošević had begun to modify his position on BiH as it became clear that Bosnian Muslims could not be enticed into joining a new Yugoslav state. Discussing future strategy with Karadžić in the aftermath of the failed Convention for a Third Yugoslavia, in a telephone conversation on 15 January 1992, Milošević instructed him to tell US Ambassador Warren Zimmerman that the Serbs still favoured keeping the whole of BiH in Yugoslavia, but with “an internal transformation.”786 What an “internal transformation” meant was clarified in a call a few days later between Karadžić and Budimir Koštutić, a law professor at the University of Belgrade and, at the time, the Deputy Prime Minister of Serbia. Discussing the political implications of the Vance Peace Plan for Serbs in Croatia and Bosnia, and for the future of Yugoslavia, Koštutić emphasised that the talks should not establish “eternal state borders” or

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784 Deronjić implemented the Instructions in the Bratunac municipality upon his return from Sarajevo and reported back to Karadžić about the outcome at a meeting in Pale. Deronjić was indicted by the Tribunal and pleaded guilty to charges related to his involvement in the commission of crimes in the Srebrenica area in 1995. After entering his guilty plea, Deronjić testified in several ICTY cases. He was sentenced to 10 years and died in a Swedish prison in May 2007.

785 Testimony of Miroslav Deronjić (23 November 2003), 29632.

divide Serbs between Croatia and Bosnia, saying “we must not in any way deliver Krajina to Croatia.”

Though they interpreted responsibility for events differently, both the Prosecution and Defence contended that the war in BiH was triggered by fallout from the referendum on independence held in February 1992, which the vast majority of Bosnian Serbs boycotted and in which Bosnian Muslims and Bosnian Croats overwhelmingly voted for independence. Based on those results, BiH officially proclaimed its independence. Bosnian Serbs treated the referendum and the subsequent proclamation of independence as unconstitutional, arguing that they were one of the three constituent peoples of BiH and had not agreed to leave Yugoslavia. The Prosecution claimed that war broke out upon Bosnia’s proclamation of independence as a consequence of Bosnian Serb objectives to seize Serb-claimed territories. The Defence argued that the war was triggered by ethnic violence against Serbs, and cited the killing of the father of a bride at a Serb wedding party in the centre of Sarajevo in April 1992 as the spark that lit the fire. In fact, Milošević rejected the notion that Bosnian Serbs or Serbia were at all liable for the conflict and accused Bosnian Croats, Bosnian Muslims, and the international community of having dismissed Serbs in BiH:

There are true historic facts that speak of all of this, and it is nonsensical to accuse the wrong side. Now people speak of three peoples, three nations in Bosnia-Herzegovina, and this is a formula upon which Bosnia rests. And why did you accept a referendum in Bosnia without the Serbs if there are three peoples there, if before and now, the basic principle has been that something can happen only if all three peoples agree? Only when the succession of Bosnia was supposed to take place was it possible to do this without the participation of one people, and that is to say a people who owned more than a third of the territory, of the land of the country and also that comprised more than a third of the population of that country.

787 Intercept of Conversion between Radovan Karadžić and Budimir Košutić, 7 February 1992, Exhibit P613.171a.
788 For example, see: “Proclamation issued by the main board of the Serbian Democratic Party of BiH, inviting all Serbs to abstain from voting in the referendum,” 1 February 1992, Exhibit P731a.
789 Trial Transcript, Defence Opening Statement (14 February 2002), 258.
Defence witness Branko Kostić underlined Milošević’s argument that, despite an overwhelming majority vote of Bosnian Serbs to remain in Yugoslavia of November 1991, the Muslims and Croats had decided to hold a referendum on independence.\textsuperscript{790} He saw the referendum on independence as contrary to the SFRY Constitution because Bosnian Muslims and Bosnian Croats voted for a sovereign and independent state without the participation of Bosnian Serbs.\textsuperscript{791} Nonetheless, the referendum legitimised the Bosnian application for independence and the EU and US recognised BiH as an independent state in April 1992, with UN recognition following in May.\textsuperscript{792}

The Six Strategic Objectives and the War in BiH

Bosnian Serbs, who had never accepted the notion of independence for BiH, had laid out plans for ethnic separation well in advance of the February 1992 referendum. According to Miroslav Deronjić, the implementation of ethnic separation in municipalities where Serbs were not the majority – as envisaged by Variant B of Karadžić’s Instructions – followed a pattern. Irregular or “volunteer” units (Deronjić cited Arkan’s Tigers, for example) would enter a territory and instil fear in the population through the “killings of innocent people, widespread looting, robbing of private property, mainly from people of Muslim faith, resulting in the intimidation of the Muslim community and their fleeing from the area.” According to Deronjić, some people initially saw the arrival of the JNA in Bosnia as positive, assuming that their presence would put a stop to the criminal activities of irregular units, but it soon became clear that the Army had “sided with the Serbs.” This served to deepen the inter-ethnic conflict and increase the flight of the Bosnian Muslim population. Indeed, Deronjić claimed that that JNA had even directly taken part in offensive actions in and around the town of Bratunac.\textsuperscript{793}

Ethnic separation as an official policy was reinforced in a second document, in which the Bosnian Serb leadership listed all the strategic objectives it sought to achieve. Known as The Six Strategic Objectives, these aims were adopted by the RS Assembly in May 1992: 1. Establish

\begin{footnotesize}
\textsuperscript{790} Testimony of Branko Kostić (14 February 2006), 48433.
\textsuperscript{791} Ibid., 48469-48470.
\textsuperscript{793} Testimony of Miroslav Deronjić (26 November 2003), 29633. Also see: Miroslav Deronjić, Witness Statement, 25 November 2003, Exhibit P600a, para. 63.
\end{footnotesize}
State borders separating the Serb people from the other two ethnic communities; 2. Set up a corridor between Semberija and Krajina; 3. Establish a corridor in the Drina river valley, that is, eliminate the Drina as a border separating Serbian states; 4. Establish a border on the Una and Neretva rivers; 5. Divide the city of Sarajevo into Serbian and Muslim parts and establish effective State authorities in both parts; 6. Ensure access to the sea for Republika Srpska.  

Map 7: Six Strategic Objectives. Source: ICTY Karadžić Prosecution team

When the Prosecution asked Defence witness Mihailo Marković to comment on the goal to create corridors connecting municipalities with a Serb majority, he confirmed that the corridors were necessary in order to unite a territory with a mixed population. Yet, when Branko Kostić was asked to comment on the Prosecution’s proposition that Serbs had claimed the Drina corridor because of its geostrategic importance as the link not between Serb territories in BiH but between those territories with Serbia, he responded evasively that it had been “a very bloody civil war...waged between all three ethnic groups,” with all three fighting for territory in BiH. But the corridors referred to in the Six Strategic Objectives were where the gravest crimes had occurred during the war. Their qualification as ‘Serb-designated territories’ on the basis of their strategic significance and not ethnic makeup meant that these areas often had large non-Serb

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795 Testimony of Mihailo Marković (17 November 2004), 33557.
796 Testimony of Branko Kostić (14 February 2006), 48436.
populations. And Kostić, along with other Defence witnesses before and after him, failed to explain why the Bosnian government and its forces would need to fight for its own territory at all. BiH was an internationally-recognised sovereign and independent state and its only credible motivation was to fight to preserve its territorial integrity. Unlike the Serbs, the BiH government and its army were defending BiH territory, not fighting to claim any parts of it.

In December 1992, UNPROFOR produced a map marking the de facto front line between Serb and BiH government forces after eight months of war. This map strongly resembled the map that had accompanied the Epoha article in January of that year; and both maps were used by the Prosecution as evidence of a premeditated plan to capture large parts of BiH territory by force. The war, of course, continued beyond December 1992, by which time Serb forces had more or less achieved ethnic separation, with approximately 70% of BiH territory under their control. A comparison of Map 7 (above), depicting the Six Strategic Objectives, and the UNPROFOR map (below, with Serb-controlled areas marked in light blue) reveals why the Serbs pressed on with war even after taking so much territory – several strategic objectives had yet to be achieved.

![Map 8: Serb-controlled Areas (light blue) as of 30 December 1992, Exhibit P809. Source: UNPROFOR](image)

As 1993 began, the town of Brčko and the Bihać pocket still had to be captured in the Posavina Corridor; the Drina Corridor – Srebrenica, Žepa, and Goražde – was not yet taken; and the besieged BiH capital of Sarajevo was not yet divided and the designated part put under Serb

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797 “Map of Serb controlled areas...as of 30 December 1992,” Exhibit P809.
control. The most important feature of each of these territories was their strategic value as corridors that would secure the contiguity of Serb territories, from Croatia and BiH to Serbia. Efforts to meet the three objectives related to securing these corridors accounted for nearly four, deadly years of sieges – of Sarajevo, the Eastern Bosnian enclaves, and the Bihać pocket – by Bosnian Serb forces. The last strategic objective, calling for access to the sea for the RS, was abandoned early in the war, and no serious attempts to advance from the SAO of Eastern Herzegovina in the direction of Dubrovnik had been made once the Vance Peace Plan for Croatia became effective in 1992.\(^{798}\)

Milošević’s de facto Power and the State Council for Harmonisation of Positions on State Policy

Although Milošević never talked specifically about the Six Strategic Objectives, recordings of his participation at high-level meetings – including of the State Council for Harmonisation of Positions on State Policy – reveal his contributions to the Serb policy in BiH and that he fully understood and supported Serb strategic objectives. The Council for Harmonisation was formed by then FRY President Dobrica Ćosić in August 1992, and existed until April 1993. After Ćosić’s ouster from power and politics in May 1993, his successor Zoran Lilić ceased convening the meetings and the Council simply died out.\(^{799}\) But before that, the Council for Harmonisation met eight times and included participants from the FRY and sometimes from the RS and the RSK. Stenographic notes of these sessions were archived in the FRY Presidential Cabinet Office; and in 2003, notes for six sessions were provided to the Prosecution by Serbia. For the other two sessions, only minutes were provided. Ćosić, as President of the FRY, Milošević, as President of the Republic of Serbia, and Momir Bulatović, the President of Montenegro, were present at all the meetings along with a number of other federal-level ministers.\(^{800}\)

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\(^{798}\) In 1991, access to the sea was discussed indirectly between Serb leadership when commenting on the siege of Dubrovnik and the surrounding area. For example, see: Intercept of Conversations between Radovan Karadžić and Slobodan Milošević, 26 October 1991, Exhibit P613.101a; Intercept of Conversation between Radovan Karadžić and Božidar Vučurević, 14 November 1991, Exhibit P613.116a; Intercept of Conversation between Radovan Karadžić and Gojko Đogo, 12 October 1991, Exhibit P613.88a.

\(^{799}\) Testimony of Zoran Lilić (18 June 2003), 22745-22746.

\(^{800}\) Regular attendees included Đorđe Blagojević, Federal Minister of the Interior; Pavle Bulatović, former Federal Minister of the Interior and Federal Minister of Defence as of December 1992; Nikola Šainović, first as Deputy Prime Minister of Serbia and then as Prime Minister of Serbia as of February 1993; Milo Đukanović, the Prime Minister of Montenegro; and Svetozar Stojanović, Special Advisor to the President of FR Yugoslavia. Occasionally others would join, including, Miloš Radulović, Chairman of the Council of Republics of the Federal Assembly.
Vladislav Jovanović, the Minister of Foreign Affairs for Serbia and later for the FRY, explained in his testimony that the Council was founded in order to harmonise the viewpoints of republic and federal organs in light of the performance of Prime Minister Milan Panić, who Jovanović claimed had acted independently and without a real understanding of the issues. Although Milošević had initially been in favour of the appointment of Panić – a successful businessman who held both American and Serbian citizenship – their relationship cooled quickly; and as early as July 1992, Milošević banned Panić from attending sessions of the Supreme Defence Council. Panić remained in attendance at meetings of the Council for Harmonisation, though – until he lost the December 1992 elections – and he proved himself willing to contradict Milošević, which was quite exceptional among Milošević’s colleagues and spelled the end for Panić. Milošević won this power struggle, and Panić left politics and Serbia to return to the US. But Milan Panić’s presence at sessions of the Council for Harmonisation, where he challenged participants with opposing views and exposed discrepancies between their overt and covert plans, shed considerable light on Milošević’s political designs.

Topics directly or indirectly related to the Six Strategic Objectives of Serbs in BiH were first discussed in Council for Harmonisation meetings in 1992, by political and military leadership from the FRY, which by that time consisted of just Serbia and Montenegro. At the first session of the Council, held on 11 August 1992, General Života Panić, Chief of Staff of the VJ, offered an assessment of the ongoing war in BiH to FRY, Serbian, and Montenegrin leaders, explaining that Serbia and the FRY were seen by the international community as the main culprits behind the war in BiH. He noted difficulties in controlling the Bosnian Serbs and criticised them for their choice of strategic goals, particularly their insistence on taking Sarajevo. Milošević expressed surprise that the idea of capturing Sarajevo had not yet been renounced. One week

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801 Testimony of Vladislav Jovanović (22 February 2005), 36384.
802 “Stenographic transcript of the 3rd session of the Supreme Defence Council (SDC),” 23 July 1992, Exhibit P667.3.1a, 2-4.
803 For notes from the session in B/C/S, see: “Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 11 August 1992, Exhibit P469.41, 136.
later, on 18 August, a more nuanced position on the siege of Sarajevo was expressed by Svetozar Stojanović, a political advisor to FRY President Ćosić, who criticised the Bosnian Serbs for not keeping only the parts of Sarajevo where they were a majority, instead of besieging the entire city. Stojanović implicitly underlined the fifth strategic objective put forth by the Bosnian Serb Assembly, which stated that Sarajevo was to be divided into a Serb and a Muslim part. The central role of Sarajevo in future RS territorial designs had also appeared in a number of important documents. The RS Constitution of February 1992, for example, stated that the RS was part of Yugoslavia, that RS territory consisted not only of Serb ethnic regions but also of territories where genocide had historically been committed against Serbs, and that Sarajevo was the capital of the RS. This was significant given that Sarajevo would be under siege by Serb forces less than two months after the RS Constitution was adopted.

A December 1991 instruction by the European Community that all remaining SFRY republics declare their intention to become independent states by 23 December 1991 had resulted in BiH and Macedonia opting for independence. Serbia and Montenegro instead claimed the right to be the legal successor of the SFRY, maintaining their status as republics. The UN refused to recognise the continuity of the SFRY, though, and compelled Serbia and Montenegro to jointly request recognition, just as all SFRY successor states did, together forming the Federal Republic of Yugoslavia (FRY). The Prosecution argued that Milošević had established the FRY, the Constitution of which was adopted on 27 April 1992, with the expectation that the RSK and RS would join the newly formed Federation, and thus the authors of the FRY Constitution allowed for this possibility. Indeed, Article 2 of the 1992 FRY Constitution left a door open for “other member republics” to join. And from February 1992 onward, the constitutional frameworks of the RS, the RSK, and the FRY were prepared and aligned for their eventual unification in the future. For instance, Article 5 of the RSK Constitution echoed the FRY Constitution’s Article 2,

804 For notes from the session in B/C/S, see: “Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 18 August 1992, Exhibit P469.42, 71.
805 The fifth Strategic Objectives was to: “Divide the city of Sarajevo into Serbian and Muslim parts and establish effective State authority in both parts.” See: “Decision on Strategic Objectives of the Serbian People in Bosnia and Herzegovina,” 12 May 1992, Exhibit P451.12a.
806 Testimony of Ćedomir Popov (16 December 2004), 35514. To read Article 2 of the RS Constitution, see: “Serbian Republic of Bosnia-Herzegovina,” in Blaustein and Blaustein, Constitutions of Dependencies and Special Sovereignties; available as Exhibit 319.1a.
807 “EC Declaration Concerning Condition for Recognition of New States.”
stipulating that the RSK Assembly could choose to join with other Serb territories.\footnote{Testimony of Ratko Marković (24 January 2005), 35504-35505.} Still, Defence witnesses denied the Prosecution’s proposition that an essential factor in the Serb war effort was the aim to join ‘Serb-designated territories’ in BiH with Serbia. Rejecting the notion that Serbia had hegemonic ambitions, Čedomir Popov cited the fact that the RS had remained a part of BiH after 1995; an argument which of course ignores that international negotiations – and not the unselfishness of Serbia – settled the status of the RS.\footnote{Testimony of Čedomir Popov (16 December 2004), 34622-34623.}

The Prosecution argued that plans to include the RSK and RS in a future state had led Serbia and the FRY to refuse to recognise the independence of Croatia and BiH. The international community had made the lifting of sanctions on the FRY subject to the Federation’s recognition of the independence of all the newly independent former Yugoslav republics in their administrative borders, and in particular, that of Croatia and BiH.\footnote{“Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 18 August 1992, Exhibit P469.42, 51-54.} Serbian political leaders discussed the recognition of these republics at the 18 August 1992 session of the Council for Harmonisation. Milošević suggested that recognising Croatian independence be contingent on a referendum in the areas where Serbs held a majority. He also proposed that any recognition of Croatia be conditional, and not include the areas then under UNROFOR protection; in other words, the RSK.\footnote{Ibid., 55.}

Discussion of whether or not to recognise the state of BiH was very heated. FRY Prime Minister Milan Panić saw full recognition as a necessity, while Milošević again recommended recognition only with conditions.\footnote{Ibid., 55-57.} Panić insisted that FRY recognition of BiH should also be accompanied by a declaration that it had no territorial aspirations in Bosnia. But Milošević and his followers instead proposed recognising the state but not its government, arguing that resolution of the Bosnian problem would be determined by the outcome of war waged among the three nations there.\footnote{Ibid., 53-54.}

The Serb Strategy of Ethnic Separation and International Negotiations for BiH
The Prosecution viewed Serb engagement in peace negotiations as motivated by the objective to maximise territorial gains and legitimise the borders of the RS with the blessing of the international community. The Defence narrative presented the involvement of representatives of Serbia and the FRY in peace talks as a genuine effort to stop the ethnic violence. Defence witness Vladislav Jovanović, the former Serbian and FRY Minister of Foreign Affairs before representing the Federation as a diplomatic representative at the UN, claimed that Serbia and Milošević were dedicated to peace and had demonstrated this by accepting all five peace proposals for BiH. In truth, consenting to these proposals had not required any considerable concessions from Milošević; each of the five plans brokered by the international community for BiH was based on a strategy of territorial separation that at least partially aligned with the objectives laid out by Serbs.

The Cutileiro Peace Plan and Ethnic Separation

Milošević had also cited his acceptance of the very first internationally-brokered peace plan for BiH – the Cutileiro Peace Plan, named after Portuguese Foreign Minister Jose Cutileiro – as evidence that his had been a policy of peace toward BiH. The EU-sponsored plan was developed with the hope that it could prevent the outbreak of war and was based on the February 1992 working paper, “Statement of Principles for a New Constitutional Arrangement for BH,” which provided that an independent Bosnia and Herzegovina would consist of three constituent units based upon ethnicity, but without territorial contiguity for any of the three ethnic groups and without a right to secede.\(^{815}\) The Statement stipulated that BiH would maintain its existing borders and that sovereignty would be realised first through the republic and then through the constituent units, leaving BiH internally divided into three ethnic territories. According to the Defence, the equal but divided ethnic separation envisaged in the Cutileiro Plan could have secured a peaceful solution for Bosnia.\(^{816}\) Serbs had in fact insisted that an ethnic division of BiH was necessary before the republic seek independence, and it was only on this basis that Milošević was ready to recognise Bosnia as an independent state.\(^{817}\)


\(^{816}\) For example, see: Testimony of Branko Kostić (7 February 2006), 48110- 48111; Testimony of Vladislav Jovanović (14 February 2005), 36133-36135.

\(^{817}\) Testimony of Vladislav Jovanović (14 February 2005), 36133-36134.
Karadžić was instead in favour of the cantonisation of BiH, also on an ethnic basis. At the peace conference in Lisbon that led to the Cutileiro Plan, he expressed that the Yugoslav crisis could be resolved quickly if a political agreement was reached for BiH that gave full sovereignty to all three constituent peoples in a confederation. Nonetheless, Bosnian Serbs and Bosnian Croats both accepted the Cutileiro Plan, but the Bosnian Muslim leadership opposed the division of BiH along ethnic lines, preferring a unitary and multi-national state. They saw the Cutileiro Plan as endorsing fractures within BiH that would weaken the state, making it easier for Serbia and Croatia to carve it up at some later stage. Despite repeated failures to reach an agreement, negotiations over the Cutileiro Peace Plan continued until August 1992, amid an atmosphere of escalating violence.

After August, negotiations were overtaken by other events, although the Serbs continued to use their acceptance of the Cutileiro Plan as evidence of their dedication to a peaceful resolution of the BiH crisis. But the peacemaking rhetoric of Serbs and their apparently cooperative attitude during the negotiations did not tell the full story. Several statements made later by Karadžić, in 1994, indicated that the Serbs had not actually liked the Cutileiro Plan but wanted it to look as if it was the Bosnian Muslims who had rejected it. At an RS Assembly session held on 24 March 1994, Karadžić reflected on Izetbegović’s rejection of the Lisbon map and declared that this had led to the international community’s realisation that BiH was finished – something Karadžić saw as a great achievement. At a session held on 18 July of that year, Karadžić went further, saying that the maps offered by Cutileiro were completely unacceptable but had been useful as the basis for future negotiations by legitimising Bosnian Serb demands that BiH be divided on an ethnic basis and that they be awarded 45-50% of Bosnian territory.

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Belgrade’s view of the shortcomings and benefits of the Cutileiro Plan was revealed in an official note written by the Federal Ministry of Foreign Affairs, dated 9 August 1994, which stated that all three parties in BiH had initially accepted the Plan but that Bosnian Muslims had rejected it at some later stage. The note went on to say that the Muslims’ rejection of the Plan had been a fatal mistake, not only because it led to war but because all later peace plans, with the exception of the Vance-Owen Plan, proved to be more favourable for the Serbs than for the Muslims. In conclusion, the note read:

…the value of the Cutileiro Plan rested with [the fact] that the International Community already at that time showed its readiness to legalise and verify internationally and legally the borders of Serb territories in BiH. Unfortunately, even after the two-year war in this former Yugoslavia republic, these borders have not been formally recognised.\textsuperscript{821}

For Serbs, the Cutileiro Plan was just a first stepping stone. Even in combination with the Vance Plan – as shown in the map on the right-hand side above – it did not secure optimal territorial contiguity, as the corridors in the north and east of BiH would still have remained predominantly Muslim.

\textit{The London Conference, August 1992}

\textsuperscript{821} Testimony of Ćedomir Popov (16 December 2004), 34621-34622. Also see: Federal Ministry of Foreign Affairs, “Brief Information on the so-called Cutileiro’s Plan for the former BiH,” 9 August 1994, Exhibit P810a.
In July 1992, foreign news media published the first disturbing images of non-Serb detainees in Serb-run detention camps in northern Bosnia, finally broadcasting to the world the violent nature of the war aimed at the civilian population. The international community called for an emergency conference in London almost immediately. The London Conference was scheduled to take place in the last week of August and political leaders from the Republics of Serbia and Montenegro and from the Federation discussed it at the 18 August session of the State Council for Harmonisation. Federal Prime Minister Panić introduced reports about ethnic cleansing in BiH, to the irritation of his colleagues. His boldness in addressing the topic unsettled other participants at the meeting and Milošević interrupted Panić, trying to stop him, but this only emboldened Panić to share more:

This afternoon I received the following information – ethnic cleansing has begun:
fifteen thousand Muslims from Sanski Most were given eight hours to leave their homes and make [it] twenty kilometres to Jajce... This information was received from the UN. They asked me to stop it.

The conclusion of Panić that the FRY was seen as assisting ethnic cleansing provoked Milošević’s agitated protestation. Still, in blunt language, Panić called for FRY and Serbian leaders to stop the war, end the ethnic cleansing, and cut financing for the conflict in BiH. He said he found the argument articulated by Bosnian Serbs, that they were merely defending themselves, unpersuasive. Panić confronted meeting attendees with facts that made it apparent that Serbs were aggressors dreaming of a “Greater Serbia,” described by Panić as the idea that the Serbs in Bosnia would “get rid of the others and join Serbia one day.” Later, he asked how many Serbs lived in BiH; and when he was told they were 45% of the population, he asked why, then, they had 70% of the territory under their control. Kosta Mihailović promptly replied that the Bosnian Serbs were in control of 60% of this territory not due to war, but because that much

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824 Ibid.
825 Ibid., 19.
826 Ibid., 56. In fact, this was not an accurate percentage; according to the 1991 census, Serbs accounted for 33.3% of the population of BiH.
land was owned by Serbs.\textsuperscript{827} During his testimony as a Defence Witness twelve years later, he repeated this claim, which has been widely promoted among Serbian nationalist elites.\textsuperscript{828}

With no unanimous position arrived at in the meeting, the Serbian delegation led by Milošević and the federal delegation led by Dobrica Ćosić and Milan Panić set off for the London Conference, where Milošević and Panić did not present a unified front and even clashed in public. Upon their return to Belgrade, another session of the State Council for Harmonisation was called. Milošević was upset about the outcome of the Conference and disagreed with the final document it had produced, refusing to accept it. His opposition was related to the part of the Conference conclusions that called on the FRY to stop intervening outside its borders, in BiH and Croatia.\textsuperscript{829}

Indeed, according to the final London Conference text, all participants agreed to fulfil their obligations to: cease intervention across their borders; restrain, to the best of their ability, the Bosnian Serbs from taking territory by force and expelling local populations; restore in full the civil and constitutional rights of the inhabitants of Kosovo and Vojvodina and also ensure the civil rights of the inhabitants of Sandžak; use their influence with the Bosnian Serbs to obtain the closure of their detention camps; comply with their obligations under international humanitarian law and in particular the Geneva Conventions; and permit the return of refugees to their homes.\textsuperscript{830} The wording of the text seemed to suggest that the representatives of Serbia and Montenegro, and of the FRY, had agreed with the characterisation that the FRY was involved in interventions across its borders in Croatia and BiH, which were internationally recognised. Milošević was furious about this, arguing in the Council session that if the final version of the document had been discussed, federal and Serbian members of the delegation would have had a

\textsuperscript{827} Ibid.
\textsuperscript{828} Testimony of Kosta Mihailović (17 December 2004), 34775. When questioned about his comments in cross-examination, Mihailović responded that they represented “an historical and economic explanation, which is correct. The Muslims had a privileged position, and they lived in the towns and in river valleys, where the best land was, and the rest of the territory, the hills, belonged to others. That is how the situation arose that the Muslims were concentrated on a smaller -- in a smaller area and the Serbs in a broader area, and they became the owners of that land. It's a fact that Serbs owned over half the land in Bosnia. It's a fact.”
\textsuperscript{829} See notes from the session in B/C/S: “Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 3 September 1992, Exhibit P469.43, 11-24.
\textsuperscript{830} Testimony of Kosta Mihailović (17 December 2004), 34778.
chance to deny their involvement. \footnote{Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 3 September 1992, Exhibit P469.43, 13.} Nonetheless, the London Conference introduced new rules about the conflict and established a new negotiating platform known as the International Conference on the Former Yugoslavia (ICFY), headed by US diplomat Cyrus Vance and his UK colleague David Owen. \footnote{David Owen, \textit{Balkan Odyssey} (Oxford: Indigo, 1995), 180. Owen’s book was tendered into evidence as Exhibit C18.}

\textit{The Vance-Owen Peace Plan (VOPP) and Ethnic Separation}

Negotiations led by Vance, who was appointed on behalf of the UN, and Owen, appointed on behalf of the EU, were held between the summers of 1992 and 1993. Talks began with the presentation of five possible options for the state of BiH; and the option to negotiate terms for a loose federation of ethnic units, which would not be geographically contiguous, prevailed. \footnote{The options were: 1. a centralized state; 2. a centralized federal state with significant functions carried out by 4-10 regions; 3. a loose federal state of three ethnic units, not geographically contiguous; 4. a loose confederation of three ethnically determined republics with significant independence, possibly even in the security field; 5. a Muslim state, created through partition, with Serbian territory becoming part of Yugoslavia and Croat territory becoming part of Croatia. See: Owen, \textit{Balkan Odyssey}, 65.}

Problems arose in the next step of negotiations, when the map had to be drawn. From the start, it was clear that an agreement on the shape of ethnic units would not be easy to come to. The Bosnian Serbs initially proposed a contiguous territory comprising 75\% of BiH for themselves. This would include all the areas where Serbs were a majority and where they owned the majority of the land. They also added areas where they would have had a majority – according to their own calculations – were it not for genocide committed against Serbs during the Second World War. They did not elaborate on how the territory they claimed could be divided into provinces or how the remaining land could be divided between Bosnian Croats and Bosnian Muslims. \footnote{United Nations Security Council, \textit{Report of the Secretary-General on the International Conference on the Former Yugoslavia}, No. S/25015, 24 December 1992.}

The official Vance-Owen Peace Plan (VOPP) map was a compromise that accounted for the territorial desires of all three parties. It divided BiH into ten provinces, the boundaries of which were drawn according to ethnic, geographic, historical, and other relevant factors, including economic viability. The provinces were not necessarily ethnically contiguous and, in some instances, their borders cut through municipal boundaries. In an attempt to avoid ethnic labels,
The provinces were assigned only numbers and place names. The provinces would be ethnically mixed, but each ethnic group would have a majority in three of the ten provinces, per the 1991 census. Sarajevo, in which Muslims were the majority, would be given an “open” status and would be administered equally by the three constituent peoples.

Despite all the factors under consideration, the internal borders seemed to be based primarily on ethnicity. The Bosnian Croat delegation greeted the proposal with enthusiasm, accepting the constitutional principles, the ceasefire agreement, and the map. The three proposed Bosnian Croat provinces were large territories bordering on Croatia and extending into Central Bosnia. In addition, these provinces incorporated territories already under their control as well as additional areas where Bosnian Muslims were the majority population.

The Bosnian government delegation accepted the constitutional and military principles of the proposal, but opposed the map. The Bosnian Serb delegation expressed several reservations about the proposal, but accepted the map as a starting point for further negotiations.

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835 Owen, Balkan Odyssey, 94-97 and 141.
837 Owen, Balkan Odyssey, 98.
838 Silber and Little, The Death of Yugoslavia, 226.
840 Ibid. Also see: Owen, Balkan Odyssey, 98.
major objection to the map was that it lacked the corridor they desired in order to guarantee the contiguity of Serb territories. To that end, the Bosnian Serb delegation insisted on widening the Posavina Corridor in Northern Bosnia. They also demanded territory on the left bank of the Neretva River in Herzegovina as well as the municipalities of Foča, Rogatica, and Višegrad in Eastern Bosnia, along with Skelani and Bratunac and an enclave of Goražde – all of which were Muslim majority municipalities.\textsuperscript{841} Not only did the VOPP fail to produce a peaceful settlement in BiH, but the mere consideration of it seemed to incite more violence between the three warring parties, especially between Bosnian Croats and Muslims, each of whom sought to gain control over territories that would have been allocated to them under the peace proposal.

\textit{Milošević and the V OPP Negotiations}

Arguably the two most interesting joint meetings of Bosnian Serb, Croatian Serb, and Serbian leaders took place at the sessions of the State Council for Harmonisation held on 9 and 21 January 1993, at which the VOPP was discussed. Milan Panić – who left politics after losing the December 1992 elections to Milošević – was not in attendance; and these were the first meetings to which representatives from the RSK and the RS were invited. The participants at the 9 January meeting included Karadžić, Momčilo Krajišnik, and General Ratko Mladić from the RS, and Assembly President Mile Paspalj and Prime Minister Zdravko Zečević from the RSK, among others. They came together to discuss an “all Serbian” position for the next round of Vance-Owen Peace Plan negotiations in Geneva.\textsuperscript{842}

Krajišnik presented nine points of concern relating to VOPP negotiations, on behalf of the Assembly of the Republika Srpska. Two of these nine issues formed the core of the Bosnian Serb strategy: insistence on recognition of the RS, and integration of all territories that desired to be a part of one state – i.e. Serbia, Montenegro, the RSK, and the RS.\textsuperscript{843} Milošević supported the demands of RS politicians, stressing that what mattered most was achieving acceptance of ethnic separation and recognition of the notion of “constituent peoples.”\textsuperscript{844}

\textsuperscript{841} Owen, \textit{Balkan Odyssey}, 57, 61-62.
\textsuperscript{842} See notes from the session in B/C/S: “Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 9 January 1993, Exhibit P469.40.
\textsuperscript{843} Ibid., 6-9.
\textsuperscript{844} Ibid., 34-38.
Dobrica Ćosić articulated that formation of a state or a federation of states was the main political goal and the long-term objective, but he emphasised that this could be achieved step by step.\textsuperscript{845} Milošević interrupted Ćosić to clarify what the unity of Serbs implied:

Dobrica, please let me interrupt you. Paspalj said there has to be unity of the Serbian people. We \textit{de facto} have that because objectively and according to our relations, such as political, military, economy, cultural and educational, we have that unity. The question is how to get the recognition of the unity now, actually how to legalise that unity. How to turn the situation, which \textit{de facto} exists and could not be \textit{de facto} endangered, into being \textit{de facto} and \textit{de jure}.\textsuperscript{846}

Milošević concluded that, without war, the goal of ethnic separation never would have been realised.\textsuperscript{847}

Although the border of the RS along the Neretva and Una Rivers had been among the strategic objectives of Serbs, Karadžić said in this session that he was willing to give it up. However, RS leadership was not prepared to give up the Posavina corridor in northwest Bosnia and the Drina corridor in the eastern part of the country:

Neretva is disputable, we can live without Neretva. However, we cannot live without Podrinje and Posavina. Without them we have no chance of establishing the state and integrating in the future.\textsuperscript{848}

The record of the next session of the Council, on 21 January 1992, contained compelling evidence on the approval of ethnic separation in BiH by the political and military leadership of the FRY, the Republics of Serbia and Montenegro, and the RS and RSK. Serbian Foreign Minister Jovanović gave a long speech, supporting the division of BiH, saying:

What is more important is to make the territory that we get ethnically homogeneous as soon as possible, but not by means of ethnic cleansing and so on. Ethnic cleansings are palm-offs. So, we should use the peacetime process of the

\begin{footnotesize}
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\item \textsuperscript{845} Ibid., 68.
\item \textsuperscript{846} Ibid., 69.
\item \textsuperscript{847} Ibid., 70.
\item \textsuperscript{848} Ibid., 94-95.
\end{itemize}
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exchange of inhabitants, in other words migration and immigration, which will flow.\textsuperscript{849}

However, what he meant by a ‘peacetime process’ was explained by Jovanović as follows:

What is important is that life in that future Bosnia becomes impossible and that everybody understands that individually, so that they rush off to their original provinces. This is a strategic goal to which we should aspire, and which should be achieved... Everything else is then a matter of technique, including the break-up of Bosnia into three parts.\textsuperscript{850}

He went on to predict that the ethnic homogenisation of BiH could be achieved in a couple of years.\textsuperscript{851}

There were some concerns raised in the session about the impossibility of justifying all Serb territorial claims on the ethnic principle alone. Bosnian Serb leaders Momčilo Krajišnik and Nicola Koljević agreed that the Serbs should use economic arguments when negotiating peace agreement maps to avoid having to give back any territory they had taken.\textsuperscript{852} General Života Panić, Chief of Staff of the VJ, had concerns as well, about preserving the pretence that the FRY was not involved in the war in BiH while Eastern Bosnian territory was at risk of being lost – the acquisition of which was one of the Six Strategic Objectives. General Panić noted that Serbs in Eastern Bosnia were not prepared to fight:

...you should know, Mr President, that this is a disgrace for the Serbian people.
They are running away, leaving everything. The help we are giving in weapons, ammunition, is located in some houses in villages. We could not pull it out. We are preparing to destroy it. We are helping as best we can.\textsuperscript{853}

\textsuperscript{850} “Decision on Strategic Objectives of the Serbian People in Bosnia and Herzegovina,” 12 May 1992, Exhibit P451.12a.
\textsuperscript{851} Ibid.
\textsuperscript{852} “Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 21 January 1993, Exhibit P469.39, 22-23.
\textsuperscript{853} Ibid., 34.
While he felt that “[VJ] manpower should not be allowed to go into foreign territory,” he was determined to hold on to strategic gains made by Serb forces, saying that “…volunteers should be found, people who will rescue that part of the territory... We must not lose control.”

The VOPP was also discussed at a meeting of the Supreme Defence Council on 12 March 1993. Milošević reported on the VOPP talks held in Paris, expressing his satisfaction over the prospect that the Serbs might get between 45% and 47% of Bosnian territory despite their constituting only 32% of the population. His advice to Karadžić and the RS leadership was to allow for radical cuts to their overall territory but to remain firm about any territory that was necessary to meet their strategic objectives, such as the left bank of the Drina, the Posavina corridor, and Bosnian Krajina. He also counselled against trying to obtain all of Sarajevo province.

*Failure of the VOPP*

With the leaders of the three ethnic groups unable to reach an agreement, Cyrus Vance and David Owen turned to Milošević for help in convincing the Bosnian Serbs to accept their Plan. Milošević was willing; the map they proposed essentially honoured ethnic separation and, though it did not establish territorial contiguity, he considered it a good start. And, he had grown concerned about the international isolation of the FRY and the Republic of Serbia that had resulted from the imposition of UN sanctions. His calculation was very simple – if he persuaded the Bosnian Serbs to accept the VOPP, it could lead to the end of sanctions, while his non-cooperation could lead to more UN sanctions and further isolation.

As a consequence of pressure from Belgrade and the international community, Karadžić signed the two remaining documents of the Vance-Owen peace agreement package – the Provincial Map and the Agreement on Interim Arrangements – on 2 May 1993. However, he stipulated that his signature would become invalid if the RS Assembly did not accept the Plan at its next
session, later that week. At the session of the RS Assembly held on 5 and 6 May 1993, in the presence of federal and republican dignitaries as well as Greek Prime Minister Kosta Mitsotakis, Bosnian Serb leadership debated the VOPP. Karadžić described the Plan as catastrophic, claiming it denied Bosnian Serbs their right to self-determination; still, he concluded his speech by saying that the Assembly had to accept the VOPP or risk an attack by NATO forces. His fellow Bosnian Serbs spoke, each in strong opposition to the Plan. In an attempt to save the VOPP, Milošević spoke twice, urging its acceptance. He said that the goal of Serbs had only partly been achieved, referring to the need to establish local Serb authorities and Serb police in the areas assigned to Serbs in the Plan. He stressed that the ultimate goal would be reached, but that it should not be achieved at a cost to the people of Serbia, who had been faced with UN sanctions for almost a year.

Milošević did not succeed in convincing the RS Assembly and, in the end, the Assembly decided to let the Bosnian Serb population make the final decision on the VOPP through a referendum. The referendum was held from 15 to 16 May 1993 and Bosnian Serbs voted overwhelmingly against it. Although the idea of a UN court that would take on cases of mass atrocities had been floating around since August 1992, international officials tasked with addressing the conflict had prioritised a negotiated peace settlement over justice for victims. Indeed, if the RS Assembly had voted to adopt the VOPP, instead of putting it to a public vote, a UN war crimes court may never have come into being. But with the VOPP definitively failing and the war intensifying, the UN established the International Tribunal for the Former Yugoslavia (ICTY) on 25 May 1993 in Resolution 827, with a mandate to investigate and prosecute individuals accused of crimes committed in the conflicts that occurred in the breakup of the SFRY. The peace process had actually delayed establishment of the ICTY as some states – in particular Great

858 “Transcript of minutes... [of] the 30th Session of the Republika Srpska National Assembly,” 5 and 6 May 1993, Exhibit P538.9.1a.
859 Ibid., 94-97. Also see: Testimony of Robert Donia (11 November 2003), 28747-28749; and (12 September 2003), 26495-26496.
860 Owen, Balkan Odyssey, 164.
861 Scharf, Balkan Justice, 32 and 44. Scharf quotes Cherif Bassiouni, who said that a political settlement was the priority at the time and that justice was not perceived to be “an inducement to that end.” Also see: Stephen, Judgement Day, 89-92.
Britain – resisted the idea, believing that if charges were brought against Serb leaders, the negotiation process would be disrupted.862

The Owen-Stoltenberg Peace Agreement, 1993

With all its attention put toward the peacemaking effort, and huge expectations vested in the VOPP negotiations, the international community and the UN resisted pressure from public opinion around the world to engage in peace enforcement. As a result of the UN weapons embargo imposed in 1992, the official Army of BiH remained weak compared to the Serb and Croat forces, and became dependent on costly and clandestine weapons imports from countries such as Iran. That reality moved the Clinton Administration to push for a “lift-and-strike” initiative in 1993, by which the weapons embargo for the Bosnian Muslims was to be lifted and air strikes launched from outside the territory, to protect the Bosnian Muslim population from atrocities. The US saw this as a way to attack Serb military positions from the air without engaging NATO troops on the ground; a task that would be left to the Bosnian Muslims, who would finally be adequately armed to do so. On 29 June 1993, a draft lift-and-strike Resolution was put before the UN Security Council that, if adopted, would have exempted BiH from the arms embargo so that it could exercise its “inherent right to self-defence.” No country actually opposed the Resolution, but it was defeated by a majority of abstentions; and the UN weapons embargo remained in force until the end of the war in 1995.863

According to President Bill Clinton, the US had trouble convincing European allies to adjust or end the weapons embargo, which disadvantaged the Bosnian Muslims and made them an easy target for the well-equipped Serb forces. Clinton said that European countries used humanitarian grounds as public justification for the embargo, reasoning that more arms would mean more bloodshed, but privately objected to it on the basis that an independent BiH would be “unnatural” because it would become the only state in Europe with a Muslim majority. According to Clinton, French President Francois Mitterrand was very blunt in articulating that BiH did not belong in

862 For example, see: Scharf, Balkan Justice, 76.
Europe, and some British officials spoke explicitly of a need to restore a “Christian Europe.” Clinton felt that they favoured the embargo precisely because it worked to disadvantage BiH. After the failure of the VOPP, Cyrus Vance was succeeded by Norwegian diplomat Thornvald Stoltenberg. Stoltenberg worked with David Owen in the next round of negotiations, in Geneva, which led by late August 1993 to an Action Plan, known as the Owen-Stoltenberg Peace Proposal. It envisaged a division of Bosnia into a Serb Republic with 53% of the territory, a Muslim entity with 30%, and a Croat unit with 17%. Predictably, the Bosnian Muslims rejected it. The RS Assembly, however, unconditionally accepted it the day after it was presented, and discussed a proposal for an exchange of territories in which “traditional Serb territories” on the left bank of the Neretva River and the right bank of the Una River be incorporated into the RS.

On 28 August 1993, the Croatian Republic of Herceg-Bosna was proclaimed in Grude, in southwestern Bosnia, and the Assembly of this self-proclaimed republic was established. The Bosnian Croats endorsed the Action Plan negotiated in Geneva but demanded more territory; especially since the territories given to Croats were the poorest in natural resources, were inhabited by less than 50% of the Croats living in BiH, and lacked a single large city, advanced communications, and any industrial, scientific, cultural, and religious facilities. There were two additional attempts to broker an agreement, but negotiations failed by the end of 1993. It was clear that a completely new approach was needed.

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864 Taylor Branch, The Clinton Tapes: Wrestling History with the President (New York: Simon & Schuster, 2009), 9-10. Clinton said that Germany and its leader Helmut Kohl held a different view and were in favour of adjusting the UN arms embargo, but that it failed in part because Germany did not hold a seat in the UN Security Council.
865 “Transcript of minutes of the RS Assembly Meeting 34th session,” 27 August-1 October 1993, Exhibit P538.13.1a.
867 “Fax to ICFY from President of the Chamber of Economic Affairs of the Croatian Community of Herzeg-Bosna,” 30 August 1993, 15.
868 The next attempt was the so-called “Invincible package” of September 1993, and the third attempt was the European Union Action Plan (EUAP) of November 1993. On 5 November 1993, the EUAP was presented in a paper entitled “Joint Action on the Former Yugoslavia,” which outlined 28 issues on which future discussions should focus, capturing all major points as developed from the EC’s first involvement in the former Yugoslavia in 1991 through the shaping of the Invincible Package in the summer of 1993. See: Owen, Balkan Odyssey, 204, 208, 232-234, 237-241.
The turning point in peace negotiations came with the active involvement of the US, resulting in an agreement between the Bosnian Muslims and Bosnian Croats known as The Washington Agreement. The Agreement, signed on 1 March 1994, outlined a framework for a federation of majority Bosnian Muslim and Bosnian Croat areas in BiH. It also contained a preliminary agreement for a confederation between the proposed federation and Croatia. The Washington Agreement made the creation of a Muslim-Croat Federation a milestone for future peace talks and it ended the war between Bosnian Croats and Bosnian Muslims for increased territory, which had been triggered by the VOPP maps and a conflict resolution model based on ethnic division of territories. This was an important juncture in Croatian politics toward BiH that forced President Tuđman to distance himself from previous plans to partition the country.

The Contact Group Plan, 1994

In April 1994, this fresh approach to international negotiations spurred the formation of the Contact Group, consisting of representatives from the Russian Federation and the US, with appointees from the ICFY, the UN, and the European Union – which was represented by France.

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Germany, and the UK. In July, the Contact Group presented its map to representatives from the Bosnian Muslim-Croat Federation and to the Bosnian Serbs. The territorial distribution between the Federation and a Bosnian Serb entity was nearly even, with 51% going to the Federation and 49% to the Bosnian Serbs.

The Contact Group informed the parties that the proposed map would have to be accepted as presented unless the parties could agree on changes between themselves. After significant pressure from the UN Security Council and the EU Council of Ministers, as well as from governments and NGOs worldwide, the Bosnian Muslim-Croat Federation accepted the proposed map at the end of July 1994. But despite public lobbying on behalf of the Contact Group Plan by Belgrade, Bosnian Serb leadership did not accept it.

The next month, at a Supreme Defence Council meeting, Milošević explained the political motivations that led to his endorsement of the map, expressing some frustration with the defiance of RS leaders who had rejected it. And, while summarising Serb political designs for BiH, he expressly cited a “unanimous policy” among Serbs in the FRY, BiH, and Croatia – revealing that Serb leaders had indeed shared a common plan, as alleged by the Prosecution:

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871 Owen, Balkan Odyssey, 272, 300-308.
By pursuing a unanimous policy, and quite successfully in my mind, we have managed to save [the FRY] from war, and at the same time rendered as much support as possible to our people across the Drina in creating Republika Srpska, in creating the Republic of Srpska Krajina, and in winning them a normal status in the negotiations leading to an ultimate goal, which now even the international community has offered to recognise. And that is Republika Srpska, stretching over a half of the territory of the former Bosnia and Herzegovina!  

Milošević explained that the real victory of the war in BiH was to see territorial conquests recognised by the international community and he called Serb conquests, “the maximum that many have never even dreamed of.”

Showing more pragmatism than politicians from the RS, Milošević appreciated how crucial it was that the Contact Group Peace Plan be accepted; and he felt it was impossible to expect that the Serbs would be granted more than half of BiH territory. He rebuffed the complaints of RS leaders that they could not accept the map offered by the Contact Group because their territory was not compact. Milošević reminded them:

...when you put together Serbia and Montenegro, then the whole eastern part is more than compact, because there is a territorial corridor – not the United Nations corridor – but a corridor with territorial sovereignty permitting the passage of military convoys and everything else needed for a very compact western part!

Further, he warned, there were dangers in conquering too large a territory, because the population to territory ratio could make it difficult to “cover it with settlers” after the conquest. Besides, he said, having taken half of Bosnian territory was an achievement to be proud of; adding, “Republika Srpska is twice the size of Montenegro, one-and-a-half the size of Slovenia.

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874 Ibid., 39.
875 Ibid., 37.
876 Ibid., 46.
and it is being disputed as not big enough?!” Milošević was not only satisfied with the amount of territory seized by the Serbs, but he anticipated that it would be united with the FRY:

We have actually been offered to expand the territory by one-fourth – because Yugoslavia’s territory is 102,000 square kilometres – and to increase the population by one-tenth! And to legalise it as well! ...In this manner, we shall be legally entitled to defend the borders. At the same time, there is an offer to create a military alliance with Russia, which would ensure supply of military and other equipment and set up a safe and solid defence system, a single strongest army in the Balkans... Leaders of the Republic of Serbia and the FRY publicly promoted the Contact Group Plan and, under pressure of the international community, ostensibly sanctioned the Bosnian Serb leadership for its rejection of the plan by imposing a blockade on the RS. Historians and legal scholars often use this as proof that Milošević did not control Bosnian Serb leaders and that his relationship with Karadžić and Mladić was dysfunctional and vitriolic. And indeed, there were periods of disagreement; but even in the most strained of times, aid from Belgrade kept reaching the Bosnian Serbs. The sanctions announced in August 1994 were never really imposed, as Milošević himself confirmed at a closed meeting held one year later when, responding to the suggestion by Bishop Irinej that the blockade be lifted, Milošević was recorded as saying that the blockade was merely a formality and that “aid flows daily.” This was an important revelation in court, for leaders in Belgrade had insisted that they had ended their cooperation with the RS.

Some interpreted the evolving relationship of Milošević and the FRY leadership with Karadžić and the Bosnian Serb leadership as having a “good cop-bad cop” dynamic, but it was more complex than that. And although Karadžić’s stubbornness might have given the impression of a deeper rift, Milošević was always able to exercise his ultimate control on the most important issues. The Prosecution articulated this point, saying:

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\(^{877}\) Ibid., 53.
\(^{878}\) Ibid., 41.
\(^{880}\) “Notes from a meeting held in Dobanovci (Serbia) between Slobodan Milošević and the Bosnian Serb leadership,” 29 August 1995, Exhibit P469.20a, Meeting Record, 11.
Milošević and the Bosnian Serb leadership may have had their differences, but the evidence suggests that his influence over them – when he wanted to use it – continued through to 1995. …Whatever the personal relationship, the evidence shows that the reality was that Milošević exercised influence and control over the Bosnian Serb leadership and events in Bosnia through – at the very least – his total and absolute support of the RS economy and its war.  

In May 1994, Karadžić explained his views on disagreements with Milošević to the RS Assembly, saying that “without Serbia nothing would have happened, we don’t have the resources and would not have been able to make war.” He admitted, though, that serious disputes had accompanied the Vance-Owen negotiations. Prosecution witness Michael Williams, who engaged with Serb political and military leaders in his capacity as UNPROFOR Spokesman in BiH during the war years, testified that Milošević had a profound influence over Bosnian Serb political and military authorities. However, he did notice a change in this relationship after the purported economic blockade was imposed in August 1994. The source of disagreement, as Williams saw it, was not related to the specific territorial conquests Serbs felt they needed in BiH to insure the contiguity of Serb lands, but how to achieve this. Milošević espoused a more cautious approach meant to first achieve the principle goal – ethnic separation – and address other details at a later stage. Still, even if the relationship between Milošević and Karadžić did begin to deteriorate starting in 1994, the relationship between Milošević and Mladić remained strong.

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883 Testimony of Michael Williams (25 June 2003), 23071-23073 and 22910-22911.
884 Ibid., 22910. Williams testified, for instance, about a meeting Milošević had with Mladić on 21 April 1995 in Belgrade without Karadžić’s knowledge.
885 For example, see: “Transcript of minutes of RS Assembly Meeting, 42nd session,” 18 and 19 July 1994, Exhibit P538.21.1a, 9.
886 See: Testimony of Witness Hrvoje Šarinić (21 January, 2004), 31279-31280. Borislav Mikelić, a Croatian Serb politician and a close associate of Milošević, told Šarinić that Mladić was “two hundred percent” loyal to Milošević. This was significant because it was clear Milošević had realised that, in Bosnia, he had to play the military card. Mikelić claimed that, on 11 January 1995, he had personally brought Mladić by car to see Milošević. Also see: Hrvoje Šarinić, Witness Statement, 6 December 2003, Exhibit P641.2a, para. 42-44; and “Minutes of the 42nd session of the Supreme Defence Council,” 23 August 1995, Prosecutor v. Perišić, Exhibit P00713.E.
The Srebrenica Genocide: A Precursor for Dayton Peace Negotiations

Though the Contact Group Plan represented a significant gain for Bosnian Serbs regarding territorial contiguity, Serbs still had reason to drag out negotiations while they created a situation on the ground that concretely assured them several crucial strategic territories, which had to be seized by force. This included the Muslim majority enclaves in Eastern Bosnia. By mid-1993, the vaguely-defined term “ethnic cleansing” had entered the lexicon of official texts, along with descriptions of other crimes such as “forcible expulsions” and “mass killings.” It was an important development when UNSC Resolution 819, issued on 16 April 1993, included the term “genocide” for the first time in condemning the actions of Serb paramilitary units in Eastern Bosnia; requiring Serbia and Montenegro – as the FRY – to take all measures within its power to prevent its commission. This Resolution also proclaimed Srebrenica a UN-protected Safe Area, with UNPROFOR tasked to regulate the humanitarian situation in the enclave. Some states, including the US, supported Resolution 819 only on the condition that the term Safe Haven was replaced by Safe Area, because Safe Haven presupposed full military protection for which 15,000 ground troops would be needed while a Safe Area was simply assumed to insure a “certain degree of security,” the level of which was never explained in detail, but should have been.

UN debates on the status of Srebrenica led to a Security Council fact-finding mission under the leadership of Ambassador Diego Arria of Venezuela, at the end of April 1993. Ambassador Arria testified as a Prosecution witness and recounted that he and his UN colleagues had witnessed what resembled an “open air prison” when they visited the enclave. Arria described Srebrenica as a place where “slow motion genocide” had been taking place and said the suffering of the people in the area took the Mission by surprise; they were unprepared for, and shocked by, what

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890 NIOD, Srebrenica: A ‘Safe’ Area, 774-775.

The Mission recommended that the UN proclaim five other places in BiH as UN Safe Areas as well, all of which were under threat of being taken over by Serb forces. Upon their return to New York, UN Resolution 824 of 7 May 1993 added Goražde, Žepa, Tuzla, Sarajevo, and Bihać to the list of UN Safe Areas in Bosnia, with the intent to protect civilians and obstruct Serb strategic designs.\footnote{United Nations Security Council, Resolution 824, No. S/RES/824, 6 May 1993.} Bihać, Srebrenica, Goražde, and Sarajevo were of particular strategic importance to Serbs in achieving territorial contiguity.

In the months and years that followed, it became obvious that the proclamation of Srebrenica as a Safe Area did not protect civilians there from the attack of Serb forces. And in the summer of 1995 – despite seeking refuge at the UN compound six kilometres northwest of Srebrenica, in Potočari – women and children were separated from the men and older boys by Serb armed forces, in the presence of Dutch UN peacekeepers.\footnote{See: Mark Danner, “Bosnia: The Great Betrayal,” \textit{New York Review of Books}, 26 March 1998. For a more detailed reconstruction of the role of the UN and Dutch peacekeepers, see: NIOD, \textit{Srebrenica: A `Safe’ Area}, Parts II and III.} Neither the UN’s diplomatic response nor the presence of peacekeepers on the ground prevented the gravest massacre and only official genocide in Europe since 1945, when the execution of some 8,000 Bosnian Muslim men followed the Serb takeover of the enclave.\footnote{See: Half-Time Judgement, para. 202-219. Also see: Judgement, \textit{Prosecution v. Popović et. al.}, No. IT-02-88 (10 June 2010). Six people were tried for the crime of genocide in Srebrenica in the \textit{Popović et. al.} case and the Judgement stated that the number of executions following the fall of Srebrenica could have been as high as 7,826, although the Trial Chamber noted that 5,336 individuals were positively identified as having been executed. All six Accused were found guilty by the Trial Chamber; their Appeals Judgement is expected to be pronounced in 2015.}

Evidence presented at the ICTY pertaining to the takeover of Srebrenica was summarised in the 16 June 2004 Half-Time Judgement, delivered at the end of the Prosecution part of the case. It described the sequence of events leading to the fall of the enclave as having started with Radovan Karadžić’s “Directive for Upcoming Operations,” addressed to the Command of the 1st Krajina Corps and including specific details regarding the engagement of the Drina Corps, which
was tasked with operations in Eastern Bosnia. The Directive called for “...well-thought-out combat operations [that] create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa.” Prosecution witness General Rupert Smith, who was the Commander of UNPROFOR at the time of the takeover of Srebrenica, testified that the Directive gave instructions to “squeeze and compress, both physically and in terms of a way of life, the existence of those enclaves.” Further, the Directive stated that if UNPROFOR left the Safe Areas, “...the Drina Corps command shall plan an operation . . . with the task of breaking up and destroying the Muslim forces in these enclaves and definitively liberating the Drina valley region,” which General Smith understood to mean that, if the UN withdrew, the enclaves would be “done away with.”

On 6 July 1995, Serb forces launched an attack on Srebrenica that lasted five days. Bosnian Muslim forces present in the area, many of whom had surrendered their weapons to peacekeepers, did not have the military capabilities to resist and were easily outgunned. On 11 July 1995, Srebrenica fell. VRS Commander Ratko Mladić stated:

> Here we are on the 11th of July 1995 in Serbian Srebrenica. On the eve of one more great Serbian holiday we present this town to the Serbian people. …the moment has finally come for us to take revenge on the Turks here.

The consequences of this revenge were tragic for Bosnian Muslims and the demographic map of BiH was drastically changed.

*The Republika Srpska and War-related Losses*

Maps depicting the ethnic composition of the country before and after the war offered a compelling graphic display of the gravity of the crimes committed in BiH in territories that were

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896 Testimony of General Rupert Smith (9 October 2003), 27304.
898 Testimony of General Rupert Smith (9 October 2003), 27304.
900 Ibid.
901 “Transcript of Video clip of Mladić and Krstić walking through Srebrenica (V000-0642 & V000-1605),” Exhibit P514.7, 9. Also see: Testimony of Dražen Erdemović (25 August 2003), 25148-25150.
later to become part of the RS. A number of municipalities coloured in green and brown on the 1991 map – depicting areas with an absolute or relative Muslim majority – were seized and the ethnic structure of their populations altered in order to achieve Serb strategic goals. Those municipalities that were once green and brown but were coloured on the later map in red – depicting Serb majority areas – were also the municipalities that featured in the Bosnia indictment against Milošević as the sites of mass atrocities.

![Ethnic Distribution in BiH Before (1991) and After (1997) the War](image)

This changing ethnic distribution in BiH as a consequence of the war has been among the most damning evidence of the planned nature of the crimes committed by Serb forces in the pursuit of their strategic goals. For example, there were 29,198 inhabitants in Srebrenica in 1991, of which 73% were Muslim. In 1997, the total population of Srebrenica was only 7,442 and just 7 inhabitants were Muslim.⁹⁰² And demographic evidence presented at the trial showed that the population shifts that occurred throughout the part of BiH that became the Republika Srpska were drastic. In 1991, there were 344,803 Muslims living in that territory; in 1997-1998, there were 7,933 Muslims living there, or about 2% of the pre-war total.⁹⁰³ Preliminary results of Bosnia’s 2013 census – the first official census since 1991 – indicate that the population of Muslims has increased considerably in Eastern Bosnia since the immediate post-war period, to

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⁹⁰³ Half-Time Judgement, para. 232.
over 190,000. And in Srebrenica, of 15,242 inhabitants, over 8,000 are now Bosnian Muslims.\footnote{Samir Karić, “Od 200.000 Bošnjaka, u Foči ostale 3.000,” Oslobodjenje, 10 November 2013. Available at: http://www.oslobodjenje.ba/vijesti/bih/od-20000-bosnjaka-u-foci-ostale-3000.}

Still, after nearly two decades of NGO- and government-sponsored refugee return efforts, returnees continue to face intimidation and even violence, especially in the case of ‘minority returns’ – in which people who now represent minorities come home to their communities of origin.\footnote{Astri Suhrke and Mats Berdal, eds., The Peace In Between: Post-war violence and peacebuilding (New York: Routledge, 2012), 80-83.} Pre-war versus post-war demographic statistics in Eastern Bosnia illustrate the point Milošević made in a November 1993 conversation with Croatian envoy Hrvoje Šarinić, when he said that the creation of the Republika Srpska alone would nearly resolve Serbia’s national question.\footnote{Hrvoje Šarinić, Witness Statement, para. 25. Also see: Testimony of Hrvoje Šarinić (21 January 2004), 31267-31268.}

Šarinić recalled asking Milošević in 1995 why Serbia had not yet recognised Bosnia, and Milošević replied: “Which Bosnia? Whose Bosnia? What kind of Bosnia?”\footnote{Ibid.} Serbia would not recognise BiH until after the signing of the Dayton Peace Agreement in December 1995, in which the ethnic partition achieved by war was formalised by giving the RS official status as a separate territorial entity. Šarinić saw the establishment of the RS as the result of an official Serb policy of ethnic separation in BiH, which he felt was preparation for eventual annexation by Serbia.\footnote{Testimony of Hrvoje Šarinić (21 January 2004), 31268.}

Estimates by various authors of deaths due to the war in BiH range from about 25,000 to 329,000. The OTP Demographic Unit arrived at an estimate of 102,622 war-related deaths in BiH, of which 47,360 (46%) were military and 55,261 (54%) were civilian victims. This figure, measuring “war-related” deaths includes not only those killed and missing, but those who died due to harsh living and working conditions during the war. Still, a minimum number of those killed by direct war actions is 67,530; of this number, 40,948 were military and 26,582 were civilian, and 45,980 were Muslims, 12,642 were Serbs, 5,629 were Croats, and 3,279 were “others.”\footnote{The latest ICTY number of victims of the war in Bosnia and Herzegovina – which does not break down the military versus civilian deaths – is 104,732 persons, of which 68,101 were Muslims, 8,858 Croats, 22,779 Serbs and 4,995 others. See: Ewa Tabeau and Jan Zwierzchowski, “A Review of Estimation Methods for Victims of the}
After Srebrenica

There was confusion within the international community about how to react to the fall of Srebrenica. French President Jacques Chirac offered the most radical solution, suggesting reversing the military conquests of Serbs to regain Srebrenica by force and return it to the Muslims. The question was who would take the initiative to do so. British Foreign Secretary Malcolm Rifkind repeated on several occasions that UN forces in BiH were not there to take up arms. The Americans backed the French initiative in principle, but were not willing to assist with material support. And many of Chirac’s colleagues, as well as the media, interpreted his initiative as political grandstanding that was never meant to go beyond rhetoric. While the international community debated how to respond to Srebrenica, Serb forces took over another Safe Area, Žepa, on 24 July 1995. Goražde, the last remaining Bosnian Muslim enclave and UN Safe Area, was surrounded on all sides by Serb forces and was set to become the next military target. In truth, the Serbs did not even need to bother with Goražde; Milošević had stated in very blunt terms that it did not need to be taken by force because it would “blend into the Serbian surroundings without a fight.”

In Srebrenica, the deportation of Bosnian Muslims had begun immediately after Serb armed forces entered the town on 11 July 1995. The next day, the UN Security Council passed Resolution 1004, demanding that Serbs suspend their offensive and allow UN humanitarian assistance into the civilian populations in the region. But the Resolution did not lead to any response on the ground and the presence of UN peacekeeping forces was inadequate to prevent mass atrocities. By August 1995, satellite images disclosed the traces of fresh burial sites and

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910 Parts of this chapter have been previously published. See: Nice and Tromp, “Bosnia and Herzegovina” in The United Nations Security Council in the Age of Human Rights.
911 Diplomatic Cable, 17 July 1995.
912 NIOD, Srebrenica: A ‘Safe’ Area, 2423.
914 “Notes from a meeting held in Dobanovci (Serbia) between Slobodan Milošević and the Bosnian Serb leadership,” 29 August 1995, Exhibit P469.20a, Meeting Record, 5.
mass graves in the vicinity around Srebrenica. UN Resolution 1010 of 10 August 1995 noted reports of breaches of international humanitarian law and many reports of missing persons. It demanded that the Bosnian Serbs allow the UNHCR and the ICRC to enter both Srebrenica and Žepa to register detainees, and that Serb forces guarantee these detainees’ safety. However, at the time the Resolution was passed, Serb forces had already been engaged for weeks in mass executions of Bosnian Muslim men and boys, and in covering up these crimes.

By August 1995, the US had taken the lead in negotiations and, for the first time, an aggressive negotiation style was matched by military threat: if Serb artillery forces did not withdraw, NATO would bomb their positions. This US military threat eventually led to Operation Deliberate Force, a NATO intervention consisting of air strikes on Bosnian Serb heavy artillery positions meant to pressure the Serbs into accepting US conditions for a political settlement of the crisis, or risk military defeat. Bombardments lasted two and a half weeks; long enough to prove to Serb forces that the international community was serious, and long enough to convince Milošević to somehow compel the Bosnian Serbs to agree to negotiations – which he did, eventually gaining their authorisation to act as their representative.

Serbian politicians called as witnesses at the trial made distinctions between the moment they claimed to have first heard about the fall of Srebrenica and the moment they claimed to have learned about the atrocities committed during and after the takeover. At the trial, both Prosecution and Defence witnesses who had held high-level positions in the FRY government during the relevant period tried to justify their own inaction and that of Belgrade in preventing the killings by saying that they first knew about the fall of Srebrenica several days after it occurred. Defence witness Vladislav Jovanović gave 13 July as the date when he learned about the fall of the enclave, and testified that he met with Milošević immediately afterward to

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917 For example, see: Judgement, *Prosecution v. Popović et. al.*
919 NIOD, *Srebrenica: A ‘Safe’ Area*, Appendix XIII.
920 Testimony of Vladislav Jovanović (16 February 2005), 36354; Testimony of Zoran Lilić (17 June 2003), 22616-22617.

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discuss it. According to Jovanović, Milošević appeared to be very surprised and angry about it, especially because he had reportedly tried to dissuade General Mladić from completing the takeover.\footnote{Testimony of Vladislav Jovanović (16 February 2005), 36349-36350.} The testimony of Prosecution witness David Harland, who served as a Political Advisor to the Commander of UNPROFOR and was Head of Civil Affairs for the UN in BiH from 1993-1998, indicated that Milošević had indeed met with Ratko Mladić in Belgrade just four days before Srebrenica fell.\footnote{Testimony of David Harland (18 September 2003), 26981.} However, General Rupert Smith testified that Milošević had also received a coded cable on 11 July 1995 – as the enclave was being taken – stating that “the BSA [VRS] is likely to separate the military-age men from the rest of the population.”\footnote{Testimony of General Rupert Smith (9 October 2003), 27316; “Code Cable Z-1139 ‘UNFP Policy, and Information for the Security Council’,” 11 July 1995, Exhibit P553.15.}

According to General Smith, Milošević met with Mladić just four days after the enclave fell, too, on 15 July 1995.\footnote{Testimony of General Rupert Smith (9 October 2003), 27329.} Yet, the killings in and around Srebrenica went on for weeks, and Belgrade did not undertake any action to stop them. On the contrary, as the takeover of Srebrenica increasingly occupied international diplomatic, military, and political discussions, Serb forces advanced to seize nearby Žepa. A report sent from New York and Washington to Belgrade by FRY diplomats on the day Žepa fell, summarised the UNSC discussion on the enclave, calling a statement on Žepa by the Contact Group “routine” and qualifying it as aimed at satisfying the Muslims by demonstrating that the UNSC took the situation seriously. Nobody was going to make any fuss about Žepa, it said; and indeed, Žepa fell on 25 July, followed by an unrestrained ethnic cleansing of the area.\footnote{FRY Diplomatic Cable, 25 July 1995, Exhibit P826.47. This exhibit is not yet available in the ICR. According to ICTY demographer Ewa Tabeau, 116 people from Žepa were killed in atrocities that followed its fall. See: Velma Šarić, “Demographics of Bosnian War Set Out,” IWPR, Tribunal Update, no. 739, 4 May 2012, https://iwpr.net/global-voices/demographics-bosnian-war-set-out (accessed 4 April 2015).}

**Obscured Evidence about Srebrenica Crimes**

Before the fall of Srebrenica occurred, there were plenty of indicators that should have alarmed international observers, such as the number of empty busses moved from Serbia to Eastern Bosnia, in which many civilians were later transported to killing sites. After the takeover, the executions of Bosnian Muslim men and boys took place for weeks at locations in Bosnian Serb-
controlled territory as far as 150 kilometres away from Srebrenica. The intelligence capabilities of some states have left lingering questions about whether the UN and other countries received information beforehand that the takeover was likely; and a lack of evidence for the period before or during the weeks of mass atrocities has led to speculation about why details of political and military activity was suppressed.

The UN has no intelligence capacity of its own and depends on the services of its member states, most notably the US and Canada, and to a lesser extent the UK. Various sources have confirmed the existence of US intelligence, including recordings of intercepted telephone conversations between FRY and RS military leaders from 17 June 1995. And the Dutch Institute for War Documentation (NIOD), investigating the role of Dutch UN peacekeepers in the fall of Srebrenica on behalf of the Dutch government, noted that a meeting took place between Carl Bildt – who succeeded Lord David Owen as the EU representative in negotiations – and former US Vice President Al Gore, along with two others, on or about 3 August 1995 at the White House. At this meeting, intercepted communications between Milošević and General Ratko Mladić relating to the “fall of the Safe Area” were specifically referred to and read from by Gore. Officially, though, the US denied the existence of intercepted communications related to Srebrenica, through a statement made by then Director of the CIA John Deutch. But records of an SDC session held in August 1995, which were unavailable to the US when Deutch made his denial, made it clear that Milošević and Mladić had indeed spoken at that time, as Milošević referred to one of their conversations himself. One plausible reason for the official denial of the existence or awareness of intelligence indicating the intent of Serb forces to commit crimes, or which revealed that crimes were in process, may be that knowledge of such

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927 See: Zumach, “US Intelligence knew Serbs were planning an assault on Srebrenica.” Zumach writes that US intelligence services intercepted communications starting 17 June 1995 and listened daily to conversations between Perišić and Mladić, who were planning the attack on Srebrenica. Zumach is quoted in Wiebes, 221.
929 Deutch wrote a reply to Charles Lane and Thom Shanker for their article, “In Bosnia: What the CIA Didn’t Tell Us.” He wrote: “...rumors of intercepted communications between Generals Perisic and Mladić last summer, which have circulated since last fall, remain exactly that – rumors the US Government cannot substantiate, because it has no information to do so.” See: John Deutsch, “The CIA and Bosnia: An Exchange,” New York Review of Books, 6 June 1996.
intelligence before the crimes took place could expose states to allegations of complicity in genocide, since it is the duty of any and every of state to prevent that crime.\textsuperscript{931}

The “Swap of Territories” Strategy

From at least June 1995, the recognition that Safe Areas in Eastern Bosnia could not be defended had been expressed publicly by representatives of the international community. Sandy Vershbow, a US diplomat in charge of Bosnia policy at the National Security Council, had called Srebrenica’s future “gloomy” and said that international negotiators were seriously considering a swap of territories – i.e., Eastern Bosnian enclaves would be given to Bosnian Serbs in exchange for larger territories elsewhere to be given to Bosnian Muslims, in order to make the map “more coherent.”\textsuperscript{932} Indeed, Milošević had talked as early as August 1994 about an exchange of territories, at a meeting of the SDC in which he displayed detailed knowledge of the ethnic composition of BiH:

...the Serbs need Ozren, Doboj, and perhaps Derventa and some other parts, which in my judgement could easily be acquired in negotiations between the two sides in exchange for some vital features that the Muslims need in order to secure access to Tuzla, Zenica, and Mostar; that means Vogošća, Illiaš and Hadžići.\textsuperscript{933}

One month later, at an SDC session in September 1994, Milošević commented on the importance of Sarajevo and several other strategic areas to the “swap of territories” approach he believed the US would endorse:

So, I believe that the following will be the general idea of the American initiative: to correct the maps, to give the eastern enclaves and to widen the corridor, they have to give parts of Sarajevo, without which Sarajevo is of no use for Muslims because it is suffocating now with no communications, neither with Tuzla nor with Zenica. Izetbegović does not need a state there if there is no road communication [between] Sarajevo with Tuzla and Zenica – because he cannot fly over the Serbian territories. Therefore, they will insist on that reciprocity for the

\textsuperscript{932} Silber and Little, \textit{Yugoslavia: Death Of A Nation}, 352.
eastern enclaves and on widening of the corridor. I think that in these circumstances there are additional reasons for accepting the Contact Group Plan. Because the idea of the Republika Srpska military leadership that the “land that a Serbian soldier acquired with his rifle – as Mladić said – has to be kept” is unacceptable. It is unacceptable to the international community....

Speaking in April 1995 to the RS Assembly, Radovan Karadžić explained that Serbs were in complete control in municipalities where they were a majority and held municipal power. In the municipalities where Serbs were a minority, he said, they had set up secret governments, municipal boards and assemblies, and military detachments. He praised the achievements of the Bosnian Serbs since 1992, boasting that the RS had forcibly incorporated many areas where Serbs were not previously the majority, but warning that areas where Serbs had always been a majority had to be retained:

We absolutely cannot let ourselves get any ideas about them taking our traditional territories from us. To tell the truth, there are towns that we’ve grabbed for ourselves, and there were only 30% of us. I can name as many of those as you want, but we cannot give up the towns where we made up 70%.

He continued:

Don’t let this get around, but remember how many of us there were in Bratunac, how many in Srebrenica, how many in Višegrad, how many in Rogatica, how many in Vlasenica, in Žvornik, etc. Due to strategic importance they had to become ours, and practically no one is questioning it anymore.

Following the fall of Srebrenica and Žepa in BiH as well as Knin Krajina in Croatia in the summer of 1995, it appeared that the international community would indeed accept military conquests as the basis for a final peace settlement. Among the most telling statements about how the fall of Bosnian enclaves was viewed by international negotiators came from Warren

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937 Ibid.
Christopher, the US Secretary of State involved in the negotiations, who said in the aftermath that their takeover had “created a circumstance that in some ways, tragically enough, makes the shape of the peace simpler than it would have been in the past.”\textsuperscript{938} Christopher also talked in similar terms about the recapture of the RSK in August 1995 by Croatian Armed Forces in Operation Storm and the subsequent exodus of Croatian Serbs from the area. Christopher said that these developments were “simplifying matters,” implying that ethnic homogeneity was necessary in the contested territories in order to resolve the conflict and achieve peace.\textsuperscript{939}

A relatively open discussion at a meeting of the SDC held in the wake of Operation Storm revealed irritation and disapproval on the part of Serbian and FRY leaders regarding how weak and inadequate they felt the defence of Knin had been. RSK Minister of Defence Milan Martić had ordered an evacuation of the civilian population one day before Croatian forces started Operation Storm; and the timing of the order hinted at an agreed abandonment of the RSK with prearranged evacuation of the Serb population from the area to BiH, Kosovo, and Serbia.\textsuperscript{940} Milošević sharply criticised the conduct of RSK leaders, and especially Martić, for having compelled civilians to leave the Krajina and for the fact that the SVK had not engaged with Croatian forces at the front line. Milošević claimed that the position of the SVK and the decision by RSK leaders to flee would have prevented Belgrade from coming to the rescue of Croatian Serbs, even if they “had done a stupid thing on that day and decided to help them,” alleging that “nobody could reach that area because of [SVK] columns with which they blocked all the roads while fleeing together with the population.” According to Milošević, more Croatian Serb forces were killed by fleeing than if they had remained on the front. He did not shy away from inferring that SVK and RSK leadership had capitulated, saying: “This was supposed to be the reason for Yugoslavia to rush to that area and defend those territories, which they left running away as fast as they could?!”\textsuperscript{941} Yet, Milošević did not do anything to reverse the military defeat in the RSK, further fuelling rumours that he had in fact agreed to a swap of territories.

\textsuperscript{940} For the text of the Evacuation Order, see: “Orders by Milan Martić dealing with planned evacuation of the population,” 4 August 1995, \textit{Prosecutor v. Gotovina et al.}, No. IT-06-90, Exhibit D00137.E.
The final round of peace negotiations took place between 1 and 21 November 1995, in Dayton, Ohio. The principle negotiators were Alija Izetbegović, President of BiH; Franjo Tuđman, President of Croatia; and Milošević, President of the Republic of Serbia, on behalf of the Bosnian Serbs. According to US General Wesley Clark, Milošević revealed during negotiations just how knowledgeable he was about BiH terrain and how much influence he held over RS leaders. In carving out the map of Sarajevo, Milošević had decided which parts of Sarajevo he was willing to return to the Federation of Bosnia and Herzegovina, which parts should be given to the RS, and where a sovereign road should be allowed between Sarajevo and the Bosnian Muslim enclave of Goražde, without consulting anyone from the RS. When the time came to verify the Dayton Agreement, Milošević gave his signature as a guarantee, saying that he would produce the signatures of Bosnian Serbs later, which indeed he did.

The negotiations resulted in a final map of the division of BiH into two entities: the Bosnian Muslim-Croat Federation was awarded 51% of BiH territory and the RS was granted 49%. In other words, the Dayton Peace Agreement accepted the situation on the ground as a fait accompli.

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Testimony of General Wesley Clark (15 December 2003), 30379-30380.

Ibid., 30380.
accompli, cementing Serb military gains as the basis for an internal partition of BiH and validating, for some Serbs, the legitimacy of the war’s objectives.

The Dayton negotiations also put Milošević in a rather positive spotlight as the principle negotiator for all Serbs. In court, General Clark testified about the *de facto* power Milošević had held over the Bosnian Serbs. Clark recalled a meeting he attended with Milošević, together with US envoy Richard Holbrooke and other members of the Belgrade delegation, on 17 August 1995. When Holbrooke asked Milošević whether he should be dealing with Milošević or directly with the Bosnian Serbs, Milošević replied that the terms of the agreement should be given to him and that he would hold a referendum on the agreement in Serbia. He asserted that the Bosnian Serbs would not disobey the will of the Serbian people. This bold statement prompted General Clark to ask why, despite his influence over the Bosnian Serbs, Milošević had allowed Ratko Mladić to kill so many people in Srebrenica. Milošević answered, “Well, General Clark, I told him not to do it but he didn’t listen to me.” Clark was stunned by this admission, for it revealed that Milošević had prior knowledge of the crimes to be committed in the enclave.

*Srebrenica and the Six Strategic Objectives*

The Six Strategic Objectives adopted by the RS Assembly in May 1992, which outlined the goals of Serb forces on Bosnian territory, were never explicitly cited in any meeting of the Supreme Defence Council. However, the Sarajevo area, the Drina valley, and the Posavina corridor – all named in the Objectives – were all discussed in SDC sessions. And although Milošević never openly espoused the Six Strategic Objectives, he did refer to them. He even mentioned the strategic importance of the Posavina corridor in connecting the “eastern and western parts of Republika Srpska” and linking the RS “further to the east with Serbia” in his Opening Statement at the ICTY on 14 February 2002, suggesting that regular discussions about the corridor by international negotiators meant that military operations there had been justified:

The corridor near Brčko; why was it portrayed yesterday as some kind of a criminal operation, so to speak? It’s included in the indictment. This corridor near

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944 Ibid., 30371.
945 Ibid., 30373.
946 Ibid., 30489.
947 Ibid., 30495.
Brčko was the subject of at least 50 conversations between Owen and Stoltenberg and the representatives of the Muslims, Serbs, and Croats in Bosnia: Karadžić, Izetbegović, Boban. I was present and so was Tuđman as well. At least 50 times this was discussed...\textsuperscript{948}

The siege of Sarajevo, which was maintained throughout the war, was a recurring topic at SDC meetings, especially later in the conflict as FRY leaders suspected a wider Muslim offensive was planned. But discussions about the fall of Srebrenica and Žepa brought forth some of the most vigorous exchanges, and criticism of the VRS. At the first SDC session after Srebrenica fell, held on 29 July 1995, General Perišić offered an assessment of events that had taken place in both Srebrenica and Žepa, qualifying them as a “response to the provocations” from people in those enclaves:

> The unprincipled conduct of the international community adds more grist to its mill in the numerous mistakes of the RS and RSK. The failure to adopt the Contact Group Plan is being used to justify all the measures taken against the Serbian people. The capture of hostages resulted in the arrival of the rapid reaction force. Their response to the provocations issuing from Žepa and Srebrenica provided the West with a pretext to proceed with preparations for massive air strikes.\textsuperscript{949}

In the next session, on 14 August 1995, references to the fall of Srebrenica and Žepa were again made but were never accompanied by condemnations or calls for an investigation, despite the fact that the execution and transport of men and boys from Srebrenica was still ongoing at the time. In the meeting, Milošević revealed that he had been in communication with Mladić before and after the fall of Srebrenica, but also “on the occasion of the attack.” He recounted warning Mladić at the time that even though the military price of the attack had been “inexpensive...the political price could be a million times higher,” and he told the SDC that there had been an

\textsuperscript{948} Trial Transcript, Defence Opening Statement (17 February 2002), 257.
unfortunate “lack of synchronization” between military and political acts. His chief concern was upcoming peace talks and the threat of NATO bombing if the Bosnian Serbs did not agree to negotiate on the basis of the situation on the ground. He warned of the consequences if the VRS continued to try to seize more territory by force and implied that failed attempts by Mladić to do so were foolish:

A few months ago I asked Mladić: “All right, Ratko, tell me now – what is the result of the plan’s rejection? Did you conquer the territories?” He says: ‘No, to the contrary, we lost the territory.’ I asked: “Have you suffered any losses?” and he replied: ‘We suffered heavy losses!’ [I asked:] “What is the result then?” [He said:] ‘The result is negative!’ When I asked him, “Why do you go for negative results?” he just shrugged his shoulders.

While Milošević was critical of Mladić’s actions, it was clear he had been in direct communication with him throughout the attacks on the enclaves in Eastern Bosnia. And, though he questioned Mladić for making choices with “negative results,” it was the high political price – not the atrocities – that troubled Milošević, who was by that time seeing the repercussion of these events begin to play out.

Despite Milošević’s criticism of Bosnian Serb leaders and of Mladić, no one at the meeting proposed looking into what had happened in Srebrenica and Žepa, in order to ascribe individual responsibility for Europe’s worst massacre since the Second World War. Instead, their concern was concentrated on the possibility of a further escalation of the war if Croat forces and Bosnian Muslims joined together to win back territory under Bosnian Serb control. Regarding this possibility, Perišić assessed that the greatest risk would be military cooperation between the Bosnian Muslim Army with Croatian and Croatian Serb forces in Sarajevo, Goražde, and the Posavina Corridor.

950 “Stenographic transcript of the 41st session of the Supreme Defence Council,” 14 August 1995, Prosecutor v. Perišić, Exhibit P00797.E, 24. The presentation of this evidence represented the first time Milošević’s own words betrayed that he had indeed communicated with RS leadership during the attack, despite repeated denials of this fact.


Though they had been protected from the public, the full collection of SDC records was at the disposal of the Trial Chamber when deciding the 2004 Half-Time Judgement, in which the judges determined whether there was enough evidence to continue with the charge of genocide against Milošević in the Defence part of the case. Their Judgement was that these charges were to be upheld in the following municipalities: Brčko, Prijedor, Sanski Most, Srebrenica, Bijeljina, Ključ, and Bosanski Novi; and the Trial Chamber concluded that there was sufficient evidence showing that Milošević was a participant in a Joint Criminal Enterprise – together with Bosnian Serb leadership – with the intention to destroy, in part, the Bosnian Muslims as a group.953

This Judgement essentially sealed the fate of Milošević, even if the trial had come to a conclusion. He never would have had time to introduce evidence on the BiH part of the case, and the Half-Time Judgement would probably have been the basis for the Final Judgement. As it is now, the Half-Time Judgement is the closest thing to a judgement in the Milošević trial. It remains a valuable legal document that offers a very good summary of the law, legal theories, and evidence of the case.

Evidence on Milošević’s *de facto* and *de jure* Power during the Conflict in BiH

*SDC Records as Evidence of Individual and State Responsibility*

Notes from SDC sessions were first made available to the OTP by Belgrade authorities in August 2003, but only for inspection by OTP researchers. After they were assessed to be relevant, an official request for all SDC records was made. When the documents were finally handed over in December 2003, the Prosecution initially planned to tender a large portion of these records into evidence through General Momčilo Perišić, who was interviewed as a potential Prosecution witness in late 2003 and early 2004. In the end, General Perišić was not called as a Prosecution witness and the SDC records were therefore submitted as part of a report that analysed their content, substance, and relevance.

953 Half-Time Judgement, para. 289. Also see: para. 309.
While minutes were provided for all SDC sessions, stenographic notes were not provided for twenty-one of those sessions. It appeared that in seventeen of those twenty-one meetings, for reasons that remain unclear, no stenographic recordings had been made at all, or at least not officially. Prosecution witness Zoran Lilić, who was the presiding member of the SDC from 1993 to 1997, was asked why no stenographic notes had been taken at so many meetings of such an important nature. He answered that this was usually at the initiative of Milošević, who maintained that the topics under discussion were so sensitive that no “outsider” (referring to the personnel tasked with recording the meetings on audio tape and making stenographic notes) should be in attendance. The Chief of the Military Cabinet, who was automatically the secretary of the SDC, was responsible for sending invitations, determining the agenda, and collecting and distributing working material for SDC meetings, which had usually been prepared by the General Staff of the VJ. He was also responsible for keeping records of the sessions.

Notably, most of the missing records were from 1995, the year when the atrocities in Srebrenica were committed and Serbs worked to consolidate their territorial gains in BiH. Eleven of the eighteen sessions held in 1995 were not recorded by a stenographer, but for only nine of these sessions was a note of their absence made in the minutes. Two 1994 sessions for which there were no stenographic notes were the meetings immediately before and after the supposed imposition of sanctions on the RS by the FRY, in August 1994.

SDC Documents and Protective Measures

Negotiations between the Prosecution’s trial team and Belgrade on terms of the handover of SDC records delayed their procurement by the OTP. Belgrade was willing to relinquish the stenographic notes of Council sessions only under the condition that Serbian officials be allowed to redact parts that they estimated were a risk to “vital state interests” because of their potential use in the genocide lawsuit filed by BiH against Serbia at the International Court of Justice (ICJ). The OTP’s trial team rejected Serbia’s request for protective measures, making clear that the transparency of the legal process could not, and should not, be compromised, especially not in

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954 For the sessions dated 23 April 1996, 21 May 1996, and 18 February 1997 (the 52nd, 53rd, and 61st session respectively), the OTP did not request records and nothing at all was provided.
955 Testimony of Zoran Lilić (17 June 2003), 22580-22581.
order to protect Serbian national interests in another lawsuit before another UN court. In December 2002, the trial team decided to pursue the Rule 54 bis procedure – by which the Court can issue an order compelling states to produce documents – and submitted its request on 6 May 2003, making the position of the OTP clear regarding any connection between ICTY proceedings against Milošević and the ICJ lawsuit facing Serbia:

The Prosecution submits that Serbia-Montenegro’s collateral interest in the ICJ case cannot excuse its non-cooperation with the production of documents concerning the most serious war crimes in this case. When this issue was first raised, the OTP provided a short paper to the then-FRY pointing out that the FRY’s involvement in the ICJ case should have no bearing on cooperation with this Tribunal.957

The Prosecution quoted FRY Minister of Justice Nebojša Šarkić, who had explained that the Prosecution would not be furnished with documents regarding Milošević’s arrest in Belgrade because they would be released only “upon termination of disputes of the FRY with BiH and Croatia before the ICJ.”958 In a written motion submitted on 20 May 2003, the Prosecution team responded to issues raised by Belgrade, and a court hearing was scheduled for 3 June.

The OTP’s trial team was confident of success in the courtroom but was taken by surprise when, on 24 May, contrary to the written recommendation of Prosecutor Nice – who was in charge of the trial – ICTY Chief Prosecutor Carla del Ponte wrote to Serbian Minister of Foreign Affairs Goran Svilanović agreeing not to object to the protection of selected parts of SDC documents.959 Issues that surrounded the acquisition of SDC materials were an example of a broader question at the ICTY, namely: What is the value of the evidence in mass atrocities trials if it remains hidden from the public? Obviously, material sought by the OTP was important to the Tribunal’s goal of delivering final judgements and one could reason that as long as judges had access to it, there should be no objection to the evidence being protected from public view. Yet, evidence presented at trials that deal with political violence and mass atrocities should arguably be

958 Ibid., para. 12, footnote 15.
particularly accessible to the public and to anyone seeking to know the truth, regardless of whether final judgements are reached.

These alternative perspectives combined with non-cooperation by Serbia triggered a dual – and conflicting – approach by the OTP, on the one hand legal and on the other political. Proponents of the legal approach advocated transparency of court proceedings and a focus on public access to the evidence. They insisted that states must cooperate with ICTY rules and practices, and made every effort to ensure that as much evidence as possible would be tendered without any protective measures. Prosecutor Nice did not see a legal basis for del Ponte’s letter to Svilanović; and he considered any direct deals with Belgrade not only unnecessary but potentially counterproductive because they could have created unintended precedents that would have affected the acquisition of requested documents in the future.960

The political approach was pursued by Chief Prosecutor del Ponte through direct dealings with politicians and state representatives of Serbia.961 Proponents of this approach within the OTP, including del Ponte and a number of diplomatic, political, and public relations aides, were directly involved in the creation of the OTP’s cooperation policy. They argued – with support from outside the ICTY – that some documents would never have been handed over to the ICTY if not for political pressure and negotiations conducted behind closed doors.962

The fact that Serbia had requested the protection of documents would have remained buried inside the OTP if it were not for public interest that was triggered by the February 2007 ICJ judgement in BiH v. Serbia and Montenegro. The Judgement – which determined that the crime of genocide had indeed been committed in BiH but did not find Serbia responsible for its commission – was made without the ICJ judges having had access to the SDC records. Still, the Judgement did hold Serbia responsible for failing to prevent genocide under the Genocide

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961 The politicisation of the OTP under del Ponte’s mandate has been praised by some and criticized by others. For example, see: Simons, “Serbia’s Darkest Pages Hidden from Genocide Court;” Geoffrey Nice, “Hidden from Public View,” New York Times, 16 April 2007; and Lisa Clifford, “Del Ponte Denies Belgrade Deal Claim,” IWPR, Tribunal Update, no. 498, 27 April 2007.
962 Serge Brammertz, former Deputy Prosecutor at the ICC who followed del Ponte as Prosecutor of the ICTY, was quoted in The Guardian as saying that, “Linking EU enlargement to the arrest of the fugitives has been a really successful tool in the past, and has been instrumental in the arrests of the fugitives of the last years.” See: Julian Borger, “The Hunt for the Former Yugoslavia’s War Criminal: Mission Accomplished,” The Guardian, 3 August 2011.
Although the topic of the protected SDC records had been addressed in November 2005, in an article by the Institute for War & Peace Reporting, it was an April 2007 article in *The New York Times*, in the aftermath of the ICJ Judgement, that triggered heated public debate on the issue. Carla del Ponte confirmed to the article’s author that she had written to Goran Svilanović on 24 May 2003, saying that it had been a long fight to get the documents and, in the end, they agreed to the protections because the documents were of such great importance in the conviction of Milošević.

Former Prosecutor Geoffrey Nice, who was no longer an OTP staff member at the time of the *New York Times* article, responded to del Ponte’s explanation of why she had agreed to the protective measures by publishing his own account of events. He said he had opposed del Ponte’s agreement with Serbia because he found that there was no legal basis for it. Del Ponte reacted promptly through official OTP channels and released a press statement in which she claimed, *inter alia*, that it was not the Prosecutor – only judges – who could decide on the protective measures that would keep material from the public view.

Although there is some merit in the suggestion that the deal with Belgrade was helpful in bringing requested documents into the courtroom, any consent to protections by del Ponte before 3 June 2003, when the question was to be litigated, was arguably premature. Her choice to make the deal when legal possibilities had not yet been exhausted led to the impression that the ICTY suffered from a lack of respect for transparency and the administration of justice, as well as for the right of victims and the public to know what had happened and how. And the questions raised by the deal meant that Serbia profited the most – criticism of the ICTY became particularly biting and parts of the SDC records were kept from use as evidence in the ICJ lawsuit.

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965 Del Ponte was reported to have agreed to “accept that ‘reasonable’ portions of the records be kept under seal.” See: Simons, “Serbia’s Darkest Pages Hidden from Genocide Court.”
966 Nice, “Del Ponte’s Deal.”
Lifting the Protection of SDC Records and the Legacy of the Perišić Judgement

In 2006, Momir Bulatović published his book Unspoken Defence, in which he recounted the time he had spent with Milošević as he prepared for testimony as a Defence witness. The book referred to various documents Milošević had planned to tender during Bulatović’s testimony; and an analysis of the book completed by the OTP in October 2006 showed that Bulatović had quoted from protected portions of a number of SDC transcripts. However, the OTP made no efforts to challenge the original decision on protection or to sanction Bulatović – who was not investigated or indicted for contempt of the ICTY – and Serbian authorities were silent, taking no steps to try him in domestic courts for divulging state secrets.

Bulatović’s book would have been more or less ignored by the public if not for an article written by Edina Bećirević, a scholar from BiH, who had also noticed that a number of the redactions were published. Bećirević wondered how it was possible that neither the team who presented the Bosnian genocide case before the ICJ, nor the ICTY Prosecution team, had used the publication of these protected parts to initiate legal proceedings to lift the protections. Still, it would be almost five more years before the majority of the protected portions of the SDC documents were made available to the public, through the trial of General Momčilo Perišić, the Chief of Staff of the VJ from 1993 to 1998. On 24 March 2011, as closing arguments were made in the Perišić case, media broke the news about the Trial Chamber’s decision to lift the seal from a number of protected SDC documents. Though not every protected record was made public, the decision represented a huge leap forward toward transparency.

What Formerly Protected Parts of SDC Records Revealed

968 Momir Bulatović, Neizgovorena odbrana: ICTY vs. Slobodan Milošević (Belgrade: Zograf, 2006). The book was published in English as Unspoken Defense.
971 Decision on Prosecution Request for Change in Status of Certain Exhibits Admitted under Seal, Prosecutor v. Perišić, No. IT-04-81-T, 23 June 2011. Parts of the collection have been made available online by the Sense News Agency at: http://www.sense-agency.com/home/icty.59.html. Protections were lifted from transcripts of selected sessions relevant to the Perišić case, namely the 5th, 6th, 9th 12th, 14th-22nd, 25th, 27th, 28th, 30th, 31st, 35th, 37th, 38th, 41st, 44th, 56th, and 58th. Protections were also lifted from the minutes of the following sessions: 9th, 12th, 14th-16th, 18th, 21st-25th, 27th, 31st-33rd, 35th, 37th, 39th, 41st, 44th, 45th, 56th, and 58th.
The protected parts of the SDC records presented at the Milošević trial covered a variety of topics, and included facts, views, and decisions related to the planning and execution of strategies that concerned territories in BiH and Croatia. The largest number of redactions were of portions related to the status of VJ officers serving in the Serb armies in Bosnia and Croatia – the VRS and the SVK. Transcripts of lengthy debates that took place at Council sessions revealed the considerable effort SDC members had made to hide the true nature of engagement by VJ officers in these armies; and it is clear they were concerned with being implicated as a warring party in conflicts taking place in neighbouring states that were by then recognised as independent.972

The SDC records also showed the chronology of the decision-making process that eventually led to formation of the 30th and 40th Personnel Centres – established to administer the VRS and SVK respectively – within the General Staff of the VJ, beginning with a first extended discussion on the topic in December 1992. General Risto Matović, Head of the VJ Personnel Department, reported that there were not enough officers from the VJ willing to serve in the VRS, and any transfer to the VRS had to be voluntary. The discussion indicated that the practice of Yugoslav Army officers serving in the VRS and SVK had been ongoing since May 1992, but SDC meeting participants all expressed concerns about the lack of regulations for the status of officers already serving in these Serb forces. According to Matović, crimes committed by Serbs in BiH were due to poor organisation of the VRS and a lack of commanding officers.973

In response to a remark by President Ćosić that the Serb leadership in Herzegovina, the southern part of BiH, was complaining about a lack of officers, Matović explained that there were some 1,800 former JNA officers in BiH, but that there were just two former JNA Generals in the VRS, in addition to Ratko Mladić, and three former JNA Generals in the SVK. Over time, the interoperability of forces from the FRY, Serbia, Montenegro, the RS, and the RSK was discussed regularly. And Milošević himself suggested in December 1992 that RS and RSK leaders should

972 ICTY rulings and the Bandinter Arbitration Commission have determined the date of recognition for Croatian independence as 8 October 1991, and not 15 January 1992, as the Defence claimed. The independence of BiH was determined by the ICTY to have been recognised as of 7 April 1992.

be invited to discuss matters concerning the defence of those two entities and the support that they could get from the FRY.\footnote{Ibid., 19.}

How to regulate the status of officers serving in the VRS and the SVK remained unresolved for over a year before a permanent solution was found in the autumn of 1993. At the session held in June 1993, the VJ General Staff informed the SDC that the status of these officers was based on the 6 May 1992 Decision of the Presidency of the SFRY that had addressed the transformation of the JNA into the VJ, according to which members of the JNA who remained on BiH territory were entitled to the same rights as other JNA members.\footnote{"Stenographic transcript of the 9th session of the Supreme Defence Council, 2 June 1993, Prosecutor v. Perišić, Exhibit P00789.E, 8.} In February 1992, anticipating the independence of BiH, the PSFRY had ordered the JNA to return all Bosnian military conscripts who were serving in Serbia, Macedonia, and Montenegro to their original locations in BiH.\footnote{Branko Kostić, Not To Be Forgotten, Excerpt, Exhibit D333.72e, 179-180.} Branko Kostić later explained that the PSFRY had no legal basis to compel JNA officers and non-commissioned officers originally from BiH to return there; so instead, they offered all those officers the option that they be deployed in BiH on a voluntary basis. In April 1992, before the FRY was constituted at the end of that month, the PSFRY issued a Decision on JNA Withdrawal from BiH that called for 15\% of the total number of troops – all of which were military conscripts from Serbia and Montenegro – to be withdrawn from BiH. Those who remained in BiH were originally from there, and by leaving behind JNA military infrastructure to the Bosnian Serbs, the PSFRY laid the foundation for formation of the VRS.\footnote{Ibid.}

General Ferenc Vegh, a retired General and former Commander of the Hungarian Defence Forces who appeared as an Expert Witness on military issues for the Prosecution, gave evidence regarding the participation of the JNA (and VJ) in events in Bosnia and Herzegovina. Commenting on the JNA transition that was the foundation of the VRS, he asserted that “as long as the military organisations stationed on the territory of BiH were subordinated to the JNA, they operated on the theory and practice of ‘one army.’”\footnote{General Ferenc Vegh, Expert Report, 23 December 2003, Exhibit P644, 57.} With the withdrawal of the JNA and the creation of the VRS, Vegh concluded, the two officially independently functioning armed forces

\footnotesize{\begin{itemize}
\item \footnote{Ibid., 19.}
\item \footnote{"Stenographic transcript of the 9th session of the Supreme Defence Council, 2 June 1993, Prosecutor v. Perišić, Exhibit P00789.E, 8.}
\item \footnote{Branko Kostić, Not To Be Forgotten, Excerpt, Exhibit D333.72e, 179-180.}
\item \footnote{Ibid.}
\item \footnote{General Ferenc Vegh, Expert Report, 23 December 2003, Exhibit P644, 57.}
\end{itemize}}
“co-ordinated and harmonised activities and support” and operated in “exceptionally close cooperation.”

A Protected Witness for the Prosecution testified to just how closely tied the two armies were, saying that upon the JNA’s formal withdrawal from BiH, JNA officers who remained simply became officers of the VRS. This witness reported having spoken in autumn 1992 with a VJ reservist who said that he had been mobilised in Belgrade and would have lost his job if he did not respond to the call-up. General Morillon, Commander of UNPROFOR during the war in BiH, also testified that the JNA was “repainted” into the VRS in May 1992. He said it consisted of the same officers and equipment; and therefore all the ammunition, fuel, logistics, and weapons used by the VRS came from the JNA. The disintegration of the SFRY meant that the JNA also officially ceased to exist, but by many accounts, its personnel and equipment were simply divided into three separate but connected Serb armies: the Army of Yugoslavia (VJ), which was the official army of the newly-formed FRY, along with the Serbian Army of Krajina (SVK) and the Army of Republika Srpska (VRS). General Morillon was convinced that Belgrade had continued to exercise authority over the VRS for the duration of the war in BiH, through General Ratko Mladić.

The Commander-in-Chief of the VRS was Radovan Karadžić, President of the self-proclaimed Republika Srpska and therefore in charge of commanding the army in war and peace. Karadžić’s formal position and powers started to develop when he became Chairman of the National Security Council (Savet za nacionalnu bezbednost, or SNB), established on 27 March 1992. Just weeks later, in early April 1992, the SNB developed into an executive organ issuing instructions to, and receiving reports from, municipal Crisis Staffs and Territorial Defence Units throughout Bosnia. As of 12 May 1992, Karadžić’s political authority took shape and made him the highest civilian and military authority in the RS, a position he shared at first in a collective presidency with Nikola Koljević and Biljana Plavšić. From 17 December 1992 onward, Karadžić became

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979 Ibid.  
980 Testimony of Witness B-127 (16 July 2003), 24597 and 24623.  
981 Ibid., 24598  
982 Testimony of General Philippe Morillon (12 February 2004), 31963 and 32000.  
983 Ibid., 32003-32004.  
984 On that date, the RS Assembly passed a law instituting a three-member Presidency. The law was temporary until a President of the Republika Srpska could be elected.
the sole President of the RS and Supreme Commander of the VRS, until 19 July 1996. The executive command body of the VRS was the General Staff, under the leadership of General Mladić. Mladić, who was paid by the 30th Personnel Centre of the VJ throughout the period relevant for the Bosnia indictment, ended his formal and active service in the VJ as late as February 2002.

In unfolding discussions at SDC meetings on the topic of the VRS, Momir Bulatović supported Milošević’s position that 890 officers serving in the VRS should be given a choice of whether they wanted to be officers of the VJ. They were originally JNA officers who had stayed on in BiH to establish the VRS as the JNA withdrew, and according to Bulatović, they had remained because they were obliged to be there while Serb political and military leaders pursued a unified common state policy. The April 1992 Decision on Withdrawal had been adopted before the FRY was created, but there was concern nonetheless that if the arrangements for keeping VJ officers in the VRS were ever to become public they would hurt the interests of the FRY by confirming the suspicion of its military engagement in BiH. Milošević was among those who expressed this concern, and in doing so also revealed his desire to continue supporting the efforts of Serb armies abroad:

> We carried a great burden in order to help them form their military formations over there. The decision now is to recognise the fact that we have our officers over there, [and that] poses a great danger, from the point of view of the international community. We are talking about financial assistance. Even if we invited those men to come back, that would be counter-productive, because we are talking them into abandoning very responsible duties they perform over there. Thus, Yugoslavia will get them into a very difficult situation. They indeed are the members of the RS Army to whom we extend material support, but we cannot provide that kind of support any longer. We shall simply stop providing material assistance, and that’s it. If some of them want to show up here and

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986 General Ratko Mladić was officially retired on 28 February 2002 and received a Serbian state pension until 24 March 2005, when it was suspended due to pressures from The Tribunal. See: “Mladiću penzija još nije odmrznuta,” B92, 2 June 2011, http://www.b92.net/biz/vesti/srbija.php?yyyy=2011&mm=06&dd=02&nav_id=516252 (accessed 6 October 2014).
988 Ibid., 25.
return to the posts in their military formations, those men should be taken back. There is no problem about it. Yet, we should not invite them to come back, as it could be interpreted that we are calling them here in order to weaken their combat readiness over there. It could prove fatal for some units. ...We should send them some general-purpose aid, and it should be up to them how to spend it. The assistance that we are going to supply is not about the amount of one’s salary, or how many of them will receive salaries, etc. We have sent them assistance amounting to 19,000 billion [dinars]. That amounts to 50 percent of the budget, i.e. 2 million dinars per citizen of this country. 

Although regulation of the status of VJ officers serving in the VRS and SVK was eventually agreed upon, in October 1993 the question was on the agenda yet again. General Perišić summarised the problem, and a possible solution:

We have 3,612 people there whose status has not been regulated under the new law. In order to have a foothold, we have paved the way for the President of the state, in his capacity as Supreme Commander, to issue an order regulating their status and that of officers here. And in order to avoid having anyone criticise us, we have devised a temporary formation in the Yugoslav Army. We appoint them here; they are not actually here but are performing their duties over where they are stationed. We wanted to give this just to the Supreme Commander, but I wanted you to know too. We must create a stronghold so that the General Staff can work on these issues to a certain extent within the spirit of the law, even though this is not entirely in conformity with the law. But we cannot see a better solution.

In the discussion that followed, a spectrum of concerns was raised about the exact wording and formulation of a new Decision. It was obvious that top FRY political and military leaders were very much aware of its illegality and the ramifications they may face from the international community if their involvement with the Serb armies was discovered. Bulatović went so far at one point as to warn the meeting participants that the FRY could be under sanctions for ten years.

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989 Ibid., 30-31.
991 Ibid., 33-36.
if their management of VRS and SVK officers was ever made public. Bulatović was also concerned with the part of the developing Decision that would have allowed for coercive measures against officers who refused to serve outside the FRY:

...this element of coercion is the most controversial – if they won’t go, then we expel them from the Yugoslav Army. I am in favour of a slightly different approach, in view of the sensitive nature of the problems and the unfavourable experiences we are faced with. We cannot protect the secrecy of this information, but it is in the vital interest of the state that it be protected. I am in favour of a more flexible approach. We have around 7,000 Serbs and Montenegrins who were born there. Half of them refuse to go there. If we force them to go, we are exposing ourselves to certain risks. I am in favour of applying certain restrictive measures to those who fail to respond to a call-up to defend their people over there, but not in such a direct manner. I am assuming that these people could not advance any further in their service or would lose the positions they have. But they should not lose their jobs because they don’t want to go over there. We must not make any kind of precedent...  

At the following session, a draft Order regulating the status of VJ officers serving in the VRS and the SVK was prepared for signing. General Perišić explained the implementation in more detail:

We’ve solved the problem as follows: there’s the 40th Training Centre and all officers of Republika Srpska who appear on our lists are there. An officer is appointed there as per the formation elements and the like, like in our case but he in fact works in Republika Srpska. We also have the 41st Centre, which is for the Republic of Serbian Krajina. They have all the rights as if they were in the Yugoslav Army here, with regard to everything, except that they are physically absent, they’re on the front. We had to do it this way because the Law on Service in the Yugoslav Army doesn’t offer any alternative to the problem and it doesn’t

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992 Ibid., 36.
993 Ibid., 34.
fall within my competence to resolve anything for them without backing from a higher level and that’s you as the Supreme Defence Council.  

Momir Bulatović pointed out a contradiction between two Articles of the Order. Article 2 reflected that officers would be left to voluntarily deploy to the RS and RSK, while Article 4 still implied that those officers who did not voluntarily deploy could be punished. Milošević was also opposed to an explicit mention of punishment for officers who refused to serve in the VRS and the SVK, but not to an application of those sanctions in practice. He suggested that Perišić should strike out Article 4 from the text but act in silent accord with the spirit of the Article.

The solution proposed by General Perišić, of establishing the 40th and 41st Educational Centres, was adopted, and they eventually became the 30th and 40th Personnel Centres within the General Staff of the VJ. Zoran Lilić, FRY President at the time and primus inter pares among the three SDC members, actually signed the Order. He testified as a Prosecution witness that the Centres were indeed created in an SDC Decision in November 1993. Lilić explained in his testimony that soldiers of the JNA who were not citizens of either Montenegro or Serbia were brought under the 30th Personnel Centre to resolve their status.

Lilić’s testimony also addressed some of the nuances of the Decision, such as its legality as far as it led to the VJ actively participating in the deployment of officers who were FRY citizens to active duty in military formations in neighbouring states. He stressed the administrative function of the Personnel Centres for servicing the salaries of VJ officers and providing social benefits for their families while they served in the VRS and SVK. But Lilić did not delve deeper into the background of the transformation of the JNA into the three Serb armies nor did he discuss the combat activities of members of the VJ Personnel Centres and the reports of crimes committed in Croatia and BiH by the armies in which they served.

SDC records showed that financial, military, and political assistance from the FRY to the RS and RSK was vitally important to maintaining the capacity of Bosnian Serb and Croatian Serb military formations to wage war and take control of huge territories. And this assistance

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995 Testimony of Zoran Lilić (17 June 2003), 22591.
996 Ibid., 22591-22592.
continued long after the end of the wars in Bosnia and Croatia, in 1995. Minutes of the 56th SDC session, held on 5 September 1996, revealed that the 30th Personnel Centre was still an important part of RS military infrastructure at that time, almost a year after the signing of the Dayton Peace Agreement. In that session, the Council decided that all VJ officers who had been serving in the 30th Personnel Centre and whose term had expired would need to remain in BiH until the elections were held later that month, after which they could return to their original units or deploy to other posts.997

The SDC and Evidence on VJ Combat Units in BiH

Political and military leaders of the FRY and Serbia and Montenegro insisted throughout the 1990s that they were not a party to the wars in Croatia or BiH.998 Milošević even highlighted this position in his Opening Statement, saying:

I heard yesterday the Prosecutor literally mocking the fact that Serbia was not at war with Croatia or with Bosnia. Gentlemen, Serbia was not at war with Croatia or with Bosnia. Why do you want to make Serbia and Serbs responsible for the war in Croatia and BiH? And now in your indictment you have been moving from one event to another in Bosnia and Croatia and neither I, nor anyone in Serbia, know anything about this. Many people, as a matter of fact, in Bosnia itself hardly know anything about this except people locally. Of course, I'm not talking about major events. They just knew that there was fighting going on there, and that we were making an effort to make an end to the fighting as soon as possible.999

However, SDC records in combination with the testimonies of a number of Prosecution witnesses provided valuable evidence on the role of the VJ, both directly and indirectly, in combat operations in Croatia and BiH from 1992 to 1995, and beyond.

Among the most compelling accounts of Yugoslav military activities in BiH came from a Protected Witness for the Prosecution who was a VJ combatant in the 72nd Brigade. The unit

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999 Trial Transcript, Defence Opening Statement (14 February 2002), 256-257.
was trained in the Serbian town of Pančevo, and the trainees supervised members of a special police unit from Knin – a clear example of inter-army cooperation.\footnote{Testimony of Witness C-175 (2 September 2003), 25919 and 26032-26033. Also see: Reynaud J.M. Theunens, The SFRY Armed Forces and the Conflict in Croatia & JNA Activity in BiH and JNA (VJ) Support to Bosnian-Serb Forces, Expert Report, 16 December 2003, Exhibit P643.1.} The Witness testified that sometime during the night in January 1993, approximately 300 men from the VJ’s 72nd Brigade crossed the border into Bosnia; but before they did, they changed their uniforms, replacing the VJ insignia with symbols of the VRS given to them by their superior officers. Once across the border, they met the VJ’s 63rd Parachute Brigade from Niš and joined them in an attack on the village of Skelane in Eastern Bosnia, across the Drina River from Serbia. The soldiers drove people from their homes by launching hand-held rockets, then set fire to haystacks and shot at fleeing villagers. Eventually, they threw grenades into houses to make sure that no one was hiding inside.\footnote{Ibid., 25917-25930.}

The deployment of VJ units in Bosnia was discussed at the SDC session held in February 1994 when Momir Bulatović, the President of Montenegro, requested an explanation for the fact that several young Montenegrins had been killed in combat in BiH. This led to extensive debate about the presence of VJ units there without the authorisation of the SDC.\footnote{See: “Stenographic transcript of the 18th session of the Supreme Defence Council,” 7 February 1994, Prosecutor v. Perišić, Exhibit P00782.E, 55-61.} And this was not a new topic; at a session held on 9 December 1992, a VJ representative had stated that there were no plans to engage VJ combat units on BiH territory but that if direct engagement of FRY forces was needed, the VJ would require a political decision taken by the SDC to engage.\footnote{“Stenographic transcript of the 6th session of the Supreme Defence Council,” 9 December 1992, Prosecutor v. Perišić, Exhibit P00788.E, 17.} In the February 1994 session, Perišić and Milošević tried to minimise the protests raised by Bulatović over VJ units having been mobilised in BiH without the knowledge of the Council. At first, Perišić denied that there was even a single VJ unit in the RS or RSK, except for officers born in that area. When Bulatović insisted a parachute brigade from Belgrade had been sent there, Perišić admitted this was true but insisted the soldiers had all gone voluntarily.\footnote{“Stenographic transcript of the 18th session of the Supreme Defence Council,” 7 February 1994, Prosecutor v. Perišić, Exhibit P00782.E, 56.}

Bulatović contended that these soldiers hadn’t known where they were going when they deployed, and Perišić replied that if they had known, they probably wouldn’t have agreed to
go. Perišić insisted that their deployment must be kept secret. But Bulatović and FRY Prime Minister Radoje Kontić, a fellow Montenegrin, stressed that there was no point in refuting that these forces had been deployed because it was well known that several young men from the Montenegrin town of Nikšić had been killed in combat in BiH; and as the discussion continued, Bulatović was adamant that, regardless of how they had ended up there – voluntarily or not – the SDC had to take a position on the issue. He described his embarrassment when he was confronted by Serbian politician Vojislav Šešelj, who lectured him about the deaths of these soldiers. Bulatović knew about the deaths through other channels, but he told the Council, “When Šešelj knows, everyone knows.”

Milošević admitted the Montenegrin soldiers had been killed but said that it was a state secret, and that if Šešelj knew state secrets, something was wrong. This pattern of deflection and denial exhibited by Perišić and Milošević was part of the strategy of FRY and Serbian leaders to avoid exposing information that betrayed the direct involvement of the VJ and its police units in neighbouring states. If the FRY was directly engaged as a warring party, the war in BiH would qualify as an international armed conflict, which FRY authorities wanted to steer clear of. They preferred to be able to claim that the conflict in BiH was a civil war and therefore an internal armed conflict, subject to different standards.

From both a historical and legal point of view, participants at SDC meetings were right to be cautious about the consequences of the presence of VJ armed formations in Croatia and BiH. VJ personnel could have legally engaged outside of FRY territory only with the consent of the federal government, in the service of the UN or a competent international organisation, or on the basis of a bilateral or multilateral agreement on military co-operation with the states in question. The 30th and 40th Personnel Centres were set up to administer forces in the RS and RSK even though neither enjoyed state sovereignty and therefore could not establish such co-operation agreements, and the FRY was not officially at war with any of its neighbouring states.

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1005 Ibid.
939 Ibid.
1007 Ibid., 58.
1008 Ibid.
1009 See: Chapter V, supra note 517.
Further, FRY laws stipulated that all members of the VJ had to be FRY citizens, which applied to forces administered by the 30th and 40th Personnel Centres just as it did to the rest of the Army.\textsuperscript{1011} Addressing the political ramifications of conducting military combat operations across the border of another independent state, General Ferenc Vegh wrote in his Expert Report that it constituted a violation of territorial sovereignty. He testified that, in his opinion, every action of an armed force could be considered the action of a state; and armed forces, which are under political control, could cross a border only as the result of a political decision.\textsuperscript{1012}

\textit{The SDC and the Promotions and Retirement of VJ Officers serving in the VRS and SVK}

The testimonies of Zoran Lilić, Borisav Jović, and Branko Kostić – who had all served as members of the Presidency of the SFRY or FRY – were helpful in explaining the policy used by Serbian political and military leaders to implement their plan for borders in post-Yugoslav ‘Serb-designated territories.’ But they did not fully account for how officers of the JNA, and later the VJ, became the keystones of military structures in the RS and the RSK, and the guarantors of their military successes. SDC records filled in the gaps by providing evidence on the relationship between the VJ and the VRS and SVK.

It was clear from SDC session notes, for instance, that war engagement in Croatia and Bosnia was seen as an asset toward the promotion of officers. On numerous occasions, contributions on the battlefields in Vukovar, the Dubrovnik area, Knin Krajina, Eastern Bosnia, and other sites of notorious atrocities were referred to when an officer was recommended for promotion. In June 1993, General Panić recommended Jevrem Cokić for a promotion, citing his achievements on the Dubrovnik battlefield when JNA units under his command reached the Ćilipi airport, successfully fulfilling a task set by the JNA General staff and the Supreme Command.\textsuperscript{1013} In September 1993, General Perišić recommended Dušan Lončar for promotion in the VJ, introducing him as a Serb from Gospić, a small town in the former RSK, who had spent his

\textsuperscript{1011} Ibid.
\textsuperscript{1012} Vegh, Expert Report, 22.
whole career in those parts and was a veteran of the war in the Drina Valley. SDC records show that not only did the VJ continue sending much-needed personnel to the VRS and SVK throughout the war, but that the SDC promoted VJ officers serving in the VRS and SVK during the same period.

The fact that Belgrade authorities had chosen to protect portions of the SDC records dealing with the promotions and retirements of officers serving in the VRS and SVK was telling. These redacted parts revealed that the SDC had verified the promotions of VJ officers serving in the VRS and SVK as proposed by RS and RSK civilian and military authorities. At the SDC session held on 11 October 1993, the promotions of some well-known VRS and SVK officers were confirmed, including those of Bogdan Subotić and Dušan Kovačević, both of whom served as RS Ministers of Defence – Subotić from 1991 to 1993, and Kovačević from 1993 to 1994. The list that day also included Mile Novaković, the Chief of Staff of the SVK between 1993 and 1995. The minutes of the session recorded the promotion of 14 officers serving in the Republika Srpska and the Republika Srpska Krajina to the rank of general, as per the proposal of the Chief of the VJ General Staff.

At a 7 February 1994 SDC session, among the promotions and appointments discussed was that of Rear Admiral Dušan Rakić, who had been appointed Minister of Defence of the RSK on the recommendation of the SDC. New RSK leaders had refused to continue his appointment, prompting Milošević to make an irritated comment about the irresponsibility of RSK leadership. He alleged that their behaviour would allow Tuđman to use the appointment as an argument at the Geneva negotiations that the FRY and Serbia had been involved in the war in Croatia.

Milan “Mrgud” Milanović – who was first appointed as Assistant Minister of the SAO of Slavonia, Baranja, and Western Syrmia in November 1991 and was reappointed for the last time

1016 Ibid.
1018 Ibid., 14.
in October 1995 – testified that he was paid by the VJ for that entire period of time, as were other functionaries of the Ministry of Defence, both civilian and military. Milanović told the court:

It is well known that officers of the Army of the Republic of Serbian Krajina were active-duty officers of the Army of Yugoslavia and that they were deployed and assigned to work in the Republic of Serbian Krajina, or they went there voluntarily, and they received their salaries from the Army of Yugoslavia. Since the Ministry of Defence is a specific body that is closely linked to the Army, the decision was taken that all the people in the Defence Ministry of the Republic of Serbian Krajina should be employees of the Army of Yugoslavia.  

Another example of direct inter-army cooperation was the case of General Mile Mrkšić – an active VJ officer until August 1995 who was indicted, tried, and convicted by the ICTY for, *inter alia*, crimes committed in Vukovar in the autumn of 1991 by JNA units under his command. In September 1993, Perišić recommended Mrkšić for promotion from Commander of the VJ Special Units Corps to Chief of Training Administration, noting his war history in Vukovar as partial justification. In June 1994, while proposing him for another promotion, Perišić mentioned not only Mrkšić’s contribution in Vukovar, for which he had been awarded a promotion to the rank of general, but also his contributions “particularly in Eastern Bosnia,” a euphemism for the genocidal campaign by Serb forces in the Srebrenica and Žepa areas.

One of the SDC sessions that provided the most significant evidence of the extent of the power and influence its members had on promotions in the Serb armies was held in June 1995, just a month before the fall of Srebrenica. General Perišić shared the list of 12 officers who were put forward by the Main Staff of the 30th Personnel Centre for promotion, proposing to endorse only six. But the minutes of the session make it clear that Milošević’s word was the ultimate authority for the promotion of officers to senior ranks in the VRS and SVK, and that Karadžić, as President of the RS and Commander-in-Chief of its armed forces, accepted the decisions of

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1019 Testimony of Milan Milanović (8 October 2003), 27245.
Milošević and the SDC. This record was an important example of how the SDC exercised power as a *de facto* superior body to the Main Staff of the VRS.\footnote{1022}{See: “Stenographic transcript of the 37th session of the Supreme Defence Council,” 13 June 1995, *Prosecutor v. Perišić*, Exhibit P00786.E.}

The promotion of General Ratko Mladić in 1994 was another compelling illustration of the active role played by the SDC in deciding the advancement of officers. His promotion was discussed at the SDC session on 11 July 1994 when President Lilić raised concerns that it had been decided by the SDC before it was requested from RS authorities. The decree on Mladić’s promotion was dated 16 June 1994 and signed by Lilić, but was rejected, and according to Lilić, RS President Radovan Karadžić had issued a second decree on his promotion about 10 days later.\footnote{1023}{“Stenographic transcript of the 22nd session of the Supreme Defence Council,” 11 July 1994, *Prosecutor v. Perišić*, Exhibit P00784.E, 35.} Indeed, a decree issued by RS President Radovan Karadžić twelve days later, on 28 June 1994, promoted Mladić to the rank of Colonel General and Commander of the Main Staff of the VRS.

**The SDC and Call-ups of Conscripts**

The extent of the involvement of the FRY in the military affairs of the RS was also demonstrated by the eagerness of FRY authorities to help to solve the problem of manpower in the VRS. At the 25 December 1993 session, Perišić proposed that all men from the RS and RSK who were living in the FRY should be registered as conscripts and do military service. He estimated that there were a total of 19,765 conscripts on FRY territory.\footnote{1024}{“Stenographic transcript of the 16th session of the Supreme Defence Council,” 25 December 1993, *Prosecutor v. Perišić*, Exhibit P00781.E, 14.} Milošević, keenly engaged, offered details of a solution:

> The local military organs are to call up the 19,765 conscripts, round them up and in agreement with the Republika Srpska leadership, which will establish a mobilisation centre in Zvornik, take them to Zvornik as military deserters, hand them over to the mobilisation centre and send them to serve in the Republika Srpska Army. This is a whole corps of military deserters who are involved in crime across Yugoslavia while avoiding defending their own country. ...it is

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ridiculous that volunteers are going from here while these people wander around Belgrade and Serbia. I believe that the number is somewhat larger than 19,000.\textsuperscript{1025} Further discussion on mobilisation for the needs of the VRS took place during the next SDC session, held in January 1994. Milošević informed the SDC that he had talked to Karadžić and Krajišnik about the call-up centres in Zvornik he had proposed a month earlier:

I have told Karadžić and Krajišnik that they must send the decision of their Government to our Government, requesting that the call-up papers issued by the Republika Srpska Army and the Army of the Republic of Serbian Krajina be delivered to their citizens in our territory; these are their call-up papers, not ours; we do not call them up to the Yugoslav Army. There is probably a certain percentage of people who report themselves when they get the call-up papers. It is not necessary to go arresting people if some of them will report as a matter of course. Those who fail to report by a certain date will be brought in, as it was done here – you do not bring in every person you call up to be drafted; once they fail to report having received the call-up, they are brought in as a favour for the organs of the Republika Srpska or the Republic of Serbian Krajina. That is why I told them, “...You have to make a recruit assembly point in Zvornik, and then when a hundred of your conscripts have been gathered, they will be loaded onto two buses and handed over to you...”\textsuperscript{1026}

Perišić was cautious of using the VJ to deliver people to the VRS and the SVK, proposing instead that recruits should be sent back by the Serbian police force in cooperation with the RS police force. The other SDC members agreed, and Milošević concluded that the exchange should be interpreted simply as one government asking another government to hand over citizens subject to military service.\textsuperscript{1027}

\textit{The SDC and Financial Support for the Wars in Croatia and BiH}

\textsuperscript{1025} Ibid.  
\textsuperscript{1027} Ibid., 40-44.
Financial support by the FRY was essential to RSK and RS war efforts and Prosecution witness General Rupert Smith underlined the controlling power of a paymaster, saying “the man who pays the cheque is usually the person who is in command.” The SDC records show that, following the proclamations of the RSK and RS, the armies were primarily financed from the FRY budget. One of the first comprehensive and official accounts of the extent of financial aid paid from the FRY to the RSK and RS was given by General Panić in February 1993:

There are 2,500 of our commanding officers in the Army of Republika Srpska. They come from those areas, but also from our units. They will return here after three or four months; then we will send other [officers], etc. We have sent 700 commanding officers to the Army of the Republic of Serbian Krajina – they are still there; they are volunteers and they come from those areas. We have prepared and armed 3,000 volunteers that we have sent to the Republic of Serbian Krajina. …Mr President, we have been receiving on a daily basis a lot of requests for ammunition and weapons. We send what we can. There have been great demands for the infantry ammunition, but... The biggest problem is with the purchase of the artillery ammunition and tank ammunition. We manage this through different channels – sometimes we manage to do that, and sometimes we don’t; all that is paid in dollars or in exchange.

Panić pleaded that money be found to finance the production of ammunition to meet the needs of both the VJ and the VRS. Although the FRY was not officially at war, the greatest part of its budget went to the VJ and much of the VJ’s stock to the RSK and RS, through the channels General Panić mentioned. Federal Prime Minister Kontić, who was in charge of the federal budget and its distribution, was alarmed by the financial strain being created by expenses of the VJ and requests from the Serb Republics in Croatia and Bosnia. He explained:

This is an extremely complex problem. The expenditures of the Army are by far the largest in the budget of the Federation. Of course, there cannot be any

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1028 Testimony of General Rupert Smith (9 October 2003), 27368.
1030 Ibid.
consolidation of the budget of the Federation in a situation where the budget of the Federation has to bear such costs.\textsuperscript{1031}

As time progressed, the financial burden for the FRY became almost unbearable and led to the printing of money, resulting in hyperinflation. In June 1993, financial aid to the RSK and the RS was discussed again in detail in a session of the SDC, with a focus on payment of the salaries of approximately 890 VJ officers who were serving temporarily in the RS and an additional 1,500 men serving in the VRS, whose salaries had been stopped until further notice as a consequence of budget shortfalls. Financing these salaries became a serious problem as the state budget for 1993 was constrained by, among other things, UN sanctions and the absence of import and customs revenues. Kontić called the situation “more than catastrophic” and suggested that FRY leaders needed to assess how to continue to issue dinars and “still avoid collapse.”\textsuperscript{1032}

Four months later, in October, the financing of the VJ through the printing of money was again on the SDC agenda. Kontić was strongly opposed to continuing the practice, which he said was leading to inflation. Milošević, on the other hand, supported continued financial backing for the Army by any means, saying “the Army is not interested where the federal budget will secure the funds...the essential thing is that the Army gets the money.”\textsuperscript{1033}

On several occasions in court, most notably during his cross-examination of Prosecution Expert Witness on finance Morten Torkildsen, Milošević denied that the FRY had financed the military infrastructure and war effort by printing money – or as it was officially termed, by “primary emission of money.” He claimed that he had opposed this practice, saying:

...I was always against it. If I hadn't been, then the 1994 programme could not have been enforced. As you know, that was a political decision that the budget must not be financed out of primary issue. That is how we stabilised the situation.

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\textsuperscript{1031} Ibid., 29. \\
\textsuperscript{1032} “Stenographic transcript of the 9th session of the Supreme Defence Council, 2 June 1993, Prosecutor v. Perišić, Exhibit P00789.E, 9. \\
\end{flushleft}
How can a professional be in favour of using primary emission without control? How can a professional be in favour of using primary emission without control? But former FRY President Zoran Lilić testified that the primary emission of money had been an important source of financing after the introduction of UN sanctions in 1992, and said that it was President Milošević who wielded the greatest influence regarding decisions of that kind. Despite reforms that were introduced in 1994 to control hyperinflation in the Federation, the financial demands from the RSK and RS remained a serious threat to the financial stability of the FRY. In March 1994, General Perišić expressed his concerns about financing the Serb armies, saying that the RS had requested 522 million dinars for equipment, scientific research, construction of military facilities and housing, the levelling of terrain, and strategic war reserves for the VRS. A total of 829 million dinars were requested by the RS and RSK together, and Perišić stressed that the SDC needed to decide how much the FRY could afford to pay. In July 1994 an extensive discussion on aid to the Serb armies was again undertaken by the SDC when members reviewed the minutes of a meeting with the Ministers of Defence of the RSK and RS. One of the arguments for continuing the aid was the 4,000 kilometre-long frontline, of which more than 2,000 kilometres were in the RS and included the enclaves around Sarajevo, Žepa, Goražde, and Teslić. And indeed, military aid to the SVK and the VRS appears to have continued to flow from the FRY, but was centralised though the Federal Ministry of Defence. The SDC declared that Serb entities must conduct “negotiations and the delivery of weapons and military equipment...through the Federal Defence Ministry and the Yugoslav Army General Staff, and not by dealing directly with producers.”

The SDC and FRY Sanctions against the RS, August 1994

1034 Trial Transcript, (11 April 2003), 19069.
1035 Testimony of Zoran Lilić (17 June 2003), 22622.
1038 Ibid., 2.
Tellingly, discussions referring to the blockade purportedly imposed by the FRY on the RS in August 1994 were also marked as protected by authorities in Belgrade. The 24th SDC session, on 9 August 1994, occurred just around the time the blockade was introduced, after the refusal of RS leadership to accept the Contact Group Peace Plan. Minutes of that session revealed that the blockade never did really sever aid to the RS and its army; in fact, both the VRS and SVK were said to be serving “the interests of the Serbian people.” Despite their diplomatic disagreement with RS leaders, the VJ General Staff still favoured continuing to provide assistance to the VRS in order to prevent its defeat and maintain the territorial integrity of the RS. In the next SDC session, the VJ anticipated, and wished to prevent, the risk that offensive operations carried out by the Muslim-Croat coalition, perhaps assisted by NATO air support, could damage VRS positions and result in a possible loss of territory.

At the SDC session held in September 1994, discussion was concentrated on how to deal with RS leaders and whether the 30th Personnel Centre should be abolished. Due to the problems that straightforward payment of VJ officers serving in the VRS could cause for the FRY if they continued, some of the meeting participants proposed introducing a sort of social warfare program for the families of serving officers. Pavle Bulatović was against this idea, because he felt their employment would have to be terminated first. But, Momir Bulatović felt the 30th Personnel Centre had become a liability to “the realisation of political objectives,” and therefore should be closed.

Still, the stream of aid into the RS continued. In April 1995, when Ratko Mladić reported on the condition of the VRS to the RS Assembly, he stated that the VJ was providing the VRS with weapons and other equipment amounting to 50% of its needs. Evidence of the nature and extent of aid to the RS, and to the RSK, was actually provided by Milošević himself in the years after the wars in Bosnia and Croatia. In his statement to the Investigative Judge of the District Court of Belgrade after his arrest in March 2001, he addressed these expenditures:

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1042 Ibid., 95.
1043 “Transcript of the 50th session of the RS Assembly,” 15 and 16 April 1995, Exhibit P538.22.1a, 18.
As regards the resources spent for weapons, ammunition, and other needs of the Army of Republika Srpska and the Republic of Serbian Krajina, these expenditures constituted a state secret and because of state interests could not be indicated in the law on the budget, which is a public document. The same applies to the expenditure incurred by providing equipment from a needle to an anchor for the security forces and special anti-terrorist forces, in particular from light weapons and equipment to helicopters and other weapons which still remain where they are today. And this was not made public because it was a state secret, as was everything else that was provided for the Army of Republika Srpska. In my opinion, these matters could not -- these matters should still constitute a state secret but court organs can certainly look into them. These anti-terrorist forces today still carry the heavy burden of security-related tasks in the south of Serbia.\textsuperscript{1044}

The insistence by political and military leaders on absolute secrecy regarding the extent and details of Serbia’s and the FRY’s involvement in the war in BiH showed that they understood how wrong – if not criminal – their actions were.

\textit{The SDC and the Fall of the SAOs}  

Despite Serb leaders’ attempts to conceal their wartime collaboration, SDC records revealed the effort that had been made from Belgrade to control military developments in the RSK and the RS. The loss of the first of the three SAOs in Croatia – the SAO of Western Slavonia – to Croatian forces in May 1995 prompted General Perišić to develop a series of proposals regarding what action to take in the event of an attack by Croatian forces on the SAO of Krajina and its capital Knin. He told SDC meeting attendees that, before such an attack could take place, the SDC would need to order Serbian state organs to gather all refugees originally from Croatia who were fit for army service and send them to serve in the SVK. Further, Perišić proposed that RSK leadership must seek prior approval from FRY leaders before making important political and military decisions and brought up the possibility of VJ engagement in Croatia in the event of aggression against the RSK, especially in Eastern Slavonia, suggesting that a partial state of

\textsuperscript{1044} “Statement by Milošević in relation to financial matters,” Exhibit, 427.3a, 2.
emergency should be proclaimed. In the event of an escalation, Perišić called for mobilisation and said that refugees from the RSK and volunteers from the FRY could be equipped and formed into military units and sent to fight in the SVK through the RSK bureau in Belgrade, and with the assistance of the Ministry of Internal Affairs and other authorities. All of Perišić’s proposals were adopted by the SDC.\textsuperscript{1045}

Several months after the fall of Western Slavonia, Croatian forces launched an attack on the central part of the RSK and on Knin, in August 1995. The operation, known as Storm, began six days after a 29 July session of the SDC at which Perišić offered an extensive assessment of upcoming Croatian operations. He reported that Croatian forces planned to carve up RSK territory along several key axes and concluded that if the Croatian Army should succeed, the SVK would be obliterated and the RSK dismantled.\textsuperscript{1046} As Perišić predicted, Operation Storm led to a swift military defeat of the SVK. The political and military consequences of this defeat were discussed at the SDC meeting held in August 1995, where Milošević criticised the Croatian Serb forces for not defending the RSK successfully.\textsuperscript{1047}

Yet, despite the fall of the RSK, the SAO of Slavonia, Baranja, and Western Syrmia (SAO SBWS) remained in Serb hands and the attention of SDC members turned to how to raise the capability of the VJ’s 11th Corps, which was operating there. Again, VJ Generals proposed a call-up, this time of all professional military servicemen who had previously served in the SVK and were fit for military service.\textsuperscript{1048} But strategies to strengthen the Serb military presence in Croatia in the aftermath of Operation Storm did not materialise. On the contrary, at the 29 August 1995 session of the SDC, the status of officers, non-commissioned officers, and civilians employed in the 40th Personnel Centre was discussed and decisions were taken to abolish the


\textsuperscript{1048} Ibid., 20.
Eventually, the SVK was abandoned and the FRY continued to finance and support only the units of the VJ’s 11th Corps in SAO SBWS.

Beginning in October 1995, the SDC became increasingly concerned with developments in Eastern Slavonia. At the time, the political and military elites participating in SDC sessions still believed that they could keep the SAO SBWS – located in northeastern Croatia, on the border with Serbia – under Serb control. General Perišić reported on the military situation in both the RS and SAO SBWS and re-emphasised the danger of a Croatian-Bosnian Muslim military alliance. He said that Croatian forces were concentrated on the front near the Slavonia-Baranja Region as well as near Eastern Herzegovina and warned that they could launch an offensive in Western Bosnia. Perišić proposed several measures to protect the territory of the FRY: further strengthening the 11th VJ Corps, stationing more troops in the SAO SBWS, increasing the protection of the state border, and raising the level of combat readiness of the VJ.

By January 1996, the war in BiH was over and the SAO SBWS was peacefully integrated into the Croatian state. UN protection forces were due to arrive to monitor the peace. At the SDC session held that month, the progress of the withdrawal of the Serb armed forces from Eastern Slavonia was discussed, marking the end of the armed conflict in Croatia that had lasted from 1991 to 1995.

The Value of SDC Records as Trial Evidence

The March 2011 Decision to lift many of the protections on SDC records had focused public attention on them; and the weight of SDC evidence came under public scrutiny again after the Appeals Chamber acquitted Perišić in February 2013. Had the debate about the significance of the SDC documents been overstated? What did an acquittal say about the content of the records, their importance, and the reasons for their initial redaction? Why would FRY authorities bother

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1051 Minutes of the 46th session of the Supreme Defence Council, 11 October 1995, 5.
to insist on redactions of SDC records if those parts were not perceived as potentially damaging for Serbia?

Perišić had been indicted for aiding and abetting crimes committed by the SVK and the VRS in Croatia and BiH. According to the Judgement of the Appeals Chamber in the Perišić case, the decision to provide Yugoslav Army assistance to the VRS was adopted by the SDC before Perišić was appointed Chief of the VJ General Staff in 1993. This assistance, and its discussion at SDC meetings he attended, continued throughout Perišić’s term of office, during which time he reviewed both particular requests for assistance and the general policy of providing aid to the VRS and the SVK. The Chamber did find that the VRS was linked to crimes against civilians but that not all VRS activities were criminal in nature. They decided that evidence relating to the contribution by Perišić at meetings of the SDC did not suggest that he advocated to specifically direct aid to support VRS crimes, but simply that he supported the SDC policy of assisting the VRS.1053 Thus, the Judgement determined that the policy of providing assistance to the VRS war effort did not necessarily mean that aid was directly aimed at facilitating the VRS crimes committed in Sarajevo and Srebrenica.

The Judgement did not deal with the overall common plan of Perišić and other SDC meeting attendees – leaders of the RS, the RSK, the FRY, and Serbia – but any failure of the Judgement to do proper justice is partly the responsibility of the OTP and its formulation of the indictment in the case. It did not cite a Joint Criminal Enterprise of the kind noted in the indictments against Milošević, General Ratko Mladić, and others, which did reflect a common plan. There was no good reason that the JCE doctrine was excluded from the Perišić indictment, but Perišić’s name is curiously omitted as a member of the JCE from all related indictments that did allege one.1054

The Appeals Chamber Judgement determined that Perišić, who was Chief of Staff of the VJ when crimes charged in the Bosnia indictment were committed, was subordinate to then FRY President Zoran Lilić. Further, it concluded that although Perišić was a participant at SDC meetings, final decisions were taken by the President of the FRY, and the Presidents of the Republics of Serbia and Montenegro.1055 Had the OTP decided to indict all three voting members

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1053 Ibid.
of the SDC together with Perišić, the course of the trial and the evidence it led to might have resulted in a very different judgement. Instead, with Perišić acquitted, Milošević dead, and other SDC members never indicted, the historical record has left the FRY and Serbia free to claim that they were nothing but observers of the tragedies that took place in neighbouring states.

The first critical appraisals of the final Perišić Judgement raised concerns about the establishment of judicial precedents regarding aiding-and-abetting liability, which had previously required two elements of proof beyond a reasonable doubt: first, that the Accused knew that his conduct had a substantial likelihood of aiding a crime, and second, that the aid provided had a substantial effect. The Perišić Judgement introduced a third element – that the Accused “specifically directed” the crime.1056 The basis of the Judgement was the premise that the VRS had been engaged in a legitimate military effort and that Perišić was aiding legitimate war activities.1057 This was seen to have potential far-reaching practical legal consequences for other similar cases held before international criminal courts involving political and military leaders in conflicts yet to come. By failing, for whatever reason, to focus on the detailed contents of SDC meeting records, a number of issues related to military assistance for groups engaged in the commission of mass atrocities were not explored properly, or at all, and the criminal responsibility of those attending SDC sessions was never properly tested.

The acquittal of Perišić also prompted questions about the real value of the SDC records. Had the Prosecution accurately assessed them when it argued that they exposed the military hand of Serbia in the most ghastly excesses of the Bosnian Serb-Bosnian Muslim conflict? Or were they actually of little value, as suggested in the Perišić Judgement, in which no such hand – at least not that of Perišić – was found to be involved? But why, then, had they had been deemed worth protecting by Belgrade in 2003? Is it possible the ICTY judges failed to fully appreciate what the SDC documents revealed? Had Belgrade’s efforts to protect the documents primarily been focused on obscuring evidence of a Joint Criminal Enterprise from ICJ judges and shielding Serbia from liability in the state-versus-state lawsuit brought by BiH? (Indeed, the 2007 Judgement in the case vindicated Serbia from responsibility for genocide in Bosnia.) These and

similar questions offer a starting point for the thorough analysis and evaluation of SDC records, the significance of which remains unsettled.

**What the Evidence Revealed about Discord between Milošević and RS Leaders**

Away from the courtrooms of The Hague, some trial observers, historians, and legal scholars have expressed the view that the Prosecution’s evidence on Milošević’s influence over Karadžić and Mladić was only relevant for the period up to early 1993 and then from August to December 1995. They suggest that the Prosecution presented no evidence on Milošević’s involvement in and criminal responsibility for crimes committed from early 1993 to late July 1995, crucial to proving the charge of genocide in Srebrenica. But, while it’s true that serious disagreements may have tempered the relationship between Milošević and Karadžić – first in August 1994, and then again a year later in the aftermath of the Srebrenica massacre and during preparation for peace talks in Dayton – General Mladić remained on good terms and in regular communication with Milošević for the duration of the war.

Further, Milošević had openly expressed his willingness to bring Karadžić forcefully in line if needed, revealing even to Western diplomats just how much *de facto* power he held and just how far he was willing to go to get his way. On one occasion, UK diplomat Ivor Roberts recorded a June 1995 meeting with Milošević regarding the UN hostage crisis – when Serb forces captured and held some 400 UN troops in an attempt to pressure the international community not to engage in air strikes against Bosnian Serb positions. Roberts had been instructed to meet with Milošević to negotiate the release of the hostages, and Milošević agreed to help, saying he would send Jovica Stanislić, then Head of the DB, to threaten the Bosnian Serbs. When Roberts inquired as to what threats Milošević would use, he told him: “Stanislić will tell Karadžić that I will have him killed if he doesn’t release the hostages. He knows I can do it.”

While this heavy handedness may have played a role in the discord that developed between Belgrade and RS leadership, internal disagreement among RS leaders was also a factor. Mladić attended the 42nd SDC session, held on 23 August 1995, and was asked to offer his opinion on

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1058 For example, see: de Graaff, “The Difference between Legal Proof and Historical Evidence,” 505.
the international community’s refusal to deal with Karadžić in negotiations. Mladić said that RS leadership was deeply divided and blamed Serb “enemies” for attempting to create a schism among Bosnian Serbs between “Karadžić’s men and Mladić’s men.”¹⁰⁶⁰ He proposed that a meeting be held between the leaders of the FRY and the RS to reach an agreement on how to present their shared interests in upcoming peace negotiations.¹⁰⁶¹

A meeting was held two days later at Dobanovci. Though the meeting – which was essentially an extended SDC session with RS representatives in attendance – took place in the wake of the crimes in Srebrenica and Žepa, the fall of the enclaves was not addressed. All participants were sworn to secrecy upon the arrival of General Mladić, and the discussion that followed included no criticism about what Mladić’s troops might have done. On the contrary, Milošević praised all the RS generals for doing their work with honour.¹⁰⁶² Obviously satisfied with the territorial gains that had already been made, and ready to seal them off, he said that if Muslims refused the peace solution, it would be made clear to them that they would be left with “the sword of Damocles hanging over them in the form of General Mladić.”¹⁰⁶³

A second extended SDC meeting was held, again in Dobanovci, on 29 August. The main focus was the composition of the Serb delegation at forthcoming negotiations in Dayton. Discussing the common political goals of Serbs, Milošević demonstrated a keen interest in the RS joining the FRY; however, he seemed to be more realistic than RS representatives when it came to his territorial appetite. Milošević felt that because the RS bordered on both Serbia and Montenegro, it represented a compact territory even if it was not so compact within BiH alone. Milošević made a list of positions to be defended at Dayton as priorities of the negotiations: the (Posavina) corridor, the compactness of territory, as many towns as possible, and access to the sea. Karadžić insisted on adding three specific areas to the list: the territory between Grmeč and Kozara, the Neretva River basin, and the Serb part of Sarajevo.¹⁰⁶⁴

¹⁰⁶¹ Ibid.
¹⁰⁶² “Notes from a meeting held in Dobanovci (Serbia) between Slobodan Milošević and the Bosnian Serb leadership,” 29 August 1995, Exhibit P469.20a, Meeting Record, 8.
¹⁰⁶³ Ibid., Meeting Record, 5.
¹⁰⁶⁴ Ibid., 19.
Under the mediation of Orthodox Patriarch Pavle, an agreement was reached according to which Milošević would represent all Serbs at Dayton, side-lining Karadžić from the negotiations. Eventually, though, Milošević’s leadership in this role was accepted by both Karadžić and Mladić. And they had little choice; by the time talks began at the Dayton negotiating table, they had each been indicted by the ICTY and would have been apprehended for transfer to The Hague if they had travelled.

At a session of the RS Assembly held in December 1995, just weeks after the Dayton Peace Agreement was signed in Paris, Momčilo Krajišnik discussed the fate of Serbs who would be living outside the newly recognised borders of the RS. He expressed that a (new) first strategic goal moving forward was to divide Serbs from Muslims and Croats, saying that no one had the right to make them to stay together. He also rejected any solution that did not recognise the existence of a Serb Sarajevo. But with the Dayton talks concluded, Milošević felt that Serbs in Bosnia had achieved success and he hailed the victorious creation of a Serb “state.” Speaking at an SDC session on 6 December, Milošević stressed that there never had been a Serb majority from Zvornik to Foča, but that the Serbs “took all of it,” and that despite being a minority in Sarajevo, too, the Serbs had gotten the southeastern part and Pale, which “covers as much territory as the entire Sarajevo does.” He explained:

...I am telling you all of this to make you understand that when a state is being created, as Republika Srpska was created in half of the territory, one cannot insist on particular spots, such as: “This quarter is Serbian, so we should annex it to this side.” We cannot insist on particular quarters, meadows or hills. Well, then they [Muslims] should also ask: “Where is Zvornik? Where is Foča? Where is Žepa? Where is Srebrenica? Where is Bijeljina?”

Milošević remained critical of RS leaders who were not content with the amount of territory the international community had offered, and insisted that the obligations of the Dayton Peace Agreement be implemented “strictly and in accordance with the documents we agreed to.”

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1065 Ibid., 16-19.
1067 “Stenographic transcript of the 47th session of the Supreme Defence Council, 6 December 1995, Exhibit P667.47.1a, 10.”
felt that the creation and preservation of the Republika Srpska was a triumph and reminded the Council that he had said two years earlier that over half of Bosnian territory could not belong to Serbs, who represented only one-third of the population. He called the war a “defensive war,” but said that if more territory had been taken, the Serbs would have been fighting a war of conquest because “more than half of the territory does not belong to us.” He moralised that:

You must not take away something that belongs to someone else. By taking away something that belongs to someone else, you are digging graves for your future grandchildren and preparing a new war. How can you imagine that two thirds of the population could be jammed in 30% of the territory, while you find that 50% are not enough for you? Is it humane? Is it fair?\(^\text{1068}\)

Yet, he also spoke triumphantly about the fact that the RS had been legitimised at Dayton, admitting that the territory had in fact never been “Serbian” before:

...Republika Srpska has been created in the area where no Serbian country had ever existed before! It is a historic achievement; it is two times bigger than Montenegro and one and a half times bigger than Slovenia – extending over 25,000 square kilometres with a million inhabitants, which makes 40 inhabitants per square kilometre. We should send refugees back to inhabit that area. A great victory has been simply won and the result of it is that Republika Srpska has been created, occupying half of the territory of Bosnia and Herzegovina.\(^\text{1069}\)

Milošević’s sense of triumph was justified; by the end of 1995, the RS was not only ethnically homogenous, but covered almost half of BiH territory, despite Serbs constituting only 33% of the population. And, he had another reason to feel he had prevailed, as it seemed at first that he would not be indicted by the ICTY for crimes committed by Serb forces in BiH.

In the aftermath of Dayton, as Milošević celebrated the double victory of the creation of Republika Srpska and its acceptance by the international community, it is possible that he had a real chance to pursue a second phase of his career without culpability for political violence and mass atrocities. But, he failed to pass the test of Kosovo. The political potency of Kosovo had

\(^{1068}\) Ibid., 9.
\(^{1069}\) Ibid., 6.
remained unchanged among the Serb nationalists on whose votes and support he relied. Any compromise from Milošević on the issue of Kosovo bore the risk of being seen as weakness among his nationalist supporters, which would have affected his ability to retain power.

The next chapter addresses the fifth of Milošević’s goals – the domination of Kosovo – a project that began early in his tenure and, though it may have taken a backseat to conflicts in neighbouring states, continued throughout the 1990s. Efforts to achieve this goal became increasingly ineffective in the face of rising opposition from the majority ethnic Albanian population, leading to a full-scale war in 1999. And as Serbian forces attempted to alter the ethnic composition of Kosovo by displacing and expelling Kosovo Albanians, these forces committed grave crimes against the civilian population.
I wonder what your objective here is, and why are you saying or how you dare say that Kosovo borders with Serbia? Kosovo does not border with Serbia. Kosovo is Serbia. 

Slobodan Milošević, Opening Statement, 14 February 2002

Chapter VIII: The Plan for Kosovo – Keeping Kosovo in Serbia by Changing the Ethnic Composition in Favour of Serbs

The Kosovo indictment alleged that, from 1 January 1999 to 20 June 1999, Milošević was a participant in a Joint Criminal Enterprise, the purpose of which was to expel a significant number of Kosovo Albanians from Kosovo in order to ensure Serb control of the province. FRY forces allegedly operated “at the direction, with the encouragement, or with the support” of Milošević during this time; and their efforts to create an “atmosphere of fear and oppression” were said to have resulted in the displacement of some 800,000 civilians. These forces were also accused of having systematically destroyed homes, farms, and cultural and religious institutions; and worse, of murdering Kosovo Albanian civilians and raping Kosovo Albanian women. As President of the FRY during the period in question, Milošević exercised command authority over the VJ and the MUP.¹⁰⁷⁰

This chapter examines the period between 1990 and 1999, relevant to the Kosovo indictment, during which the major goal of Serbian policy in Kosovo was to keep the province under Serbian rule – by maintaining the status quo, creating an apartheid system, and then enforcing this policy through violence when all else failed. The Prosecution saw the conflict in Kosovo and the mass atrocities committed by Serb forces there in 1998 and 1999 as a part of Milošević’s strategy to hold on to Kosovo despite its predominantly ethnic Albanian population. Through competing courtroom narratives, the Prosecution and Defence both addressed the issue of how the conflict began. According to the Prosecution, Serbia was determined to ensure that Kosovo Albanians did not regain any form of autonomy and used the resistance of the Kosovo Albanian majority as an excuse to respond with disproportionate force in 1998. The Defence claimed that it was the Kosovo Liberation Army (KLA) that had unleashed violence, in 1997, and that Serbia and the FRY responded to acts of terrorism as any state would.

¹⁰⁷⁰ Second Amended Indictment, 16 October 2001. Hereinafter, the Kosovo Indictment.
In the trial record, the Kosovo conflict can be seen through the lens of various events, against the contrast of two opposing views. Controversy surrounds a number of issues, including the Račak massacre and its role in triggering subsequent events – including the Rambouillet negotiations, the failure to negotiate a peace, and the NATO military intervention – as well as the question of culpability for crimes that occurred during the conflict. As was true for the Croatia and BiH indictments, it was important to reconstruct Milošević’s *de facto* and *de jure* powers during the years pertinent to the Kosovo indictment; though, during the Kosovo conflict, he tried to obscure decision making processes related to the use of force and mass violence so that he could not be directly linked to crimes. And although he was President of the FRY at the time of the war in Kosovo and bore responsibility for deployment of the armed forces, it was again his *de facto* power that was more important to understanding his actions and his state of mind.

In establishing the role Milošević played in the Kosovo conflict, the Prosecution followed the trail of an ad hoc body known as the Joint Command for Kosovo and Metohija (or just the Joint Command). After having requested documents related to the Joint Command from Belgrade for many years, some of them finally arrived during the Defence part of the case and were used in the cross-examination of Defence witnesses. Milošević called a number of VJ and MUP officers who had been engaged in combat in Kosovo in 1998 and 1999, and who referred in their testimony to contemporaneous documents relating to combat there. These documents were of significant evidentiary value, as they exposed the military objectives of Serb forces in Kosovo and their use of violence against civilians. The fact that obtaining these documents had been such a challenge also exposed Serbia’s post-war effort to keep evidence of its wartime policies from the ICTY and the public.

**Serbia’s Policy of Maintaining the Status Quo in Kosovo**

To reinforce Serbian rule, Serbian authorities in Kosovo had introduced a whole range of discriminatory laws aimed at marginalising the Kosovo Albanian majority, beginning in 1990. On 26 July of that year, the Parliament of the Socialist Republic of Serbia passed the “Law on Labour Relations in Special Circumstances,” which allowed for dismissals based on arbitrary criteria and at the same time legalised the recruitment of Serbs only – and not ethnic Albanians –
The Law further obliged workers of Albanian origin to sign a document attesting that they accepted the political and other measures taken by Serbian authorities in Kosovo.\footnote{See: “Law on Labour Relations Under Special Circumstances,” 26 July 1990, Exhibit P526.14a.}

Serbia governed Kosovo through an expensive model of administration that relied on a large police force, creating a system of repression and oppression that amounted to a police state.\footnote{Testimony of Frederick Abrahams (3 June 2002), 6100. The Prosecution also dealt extensively with the notion of a ‘police state’ in the cross-examination of Police General Obrad Stevanović. See: Testimony of General Obrad Stevanović (31 May 2005), 40154. Also see: Helsinki Committee for Human Rights, “Report on the Escalation of Repression on Serbia,” Belgrade, 2000, Exhibit P446.9.}

Blatant abuses of the individual and collective human rights of Kosovo Albanians by Serbian lawmakers, political institutions, and police were recorded by various national and international NGOs, which routinely sent reports of these abuses to Milošević and other Serbian and FRY politicians, officials, and government agencies.\footnote{Testimony of Frederick Abrahams (3 June 2002), 6102.} Once in The Hague, his receipt of these reports meant that Milošević could not claim he hadn’t known what was occurring in Kosovo. In legal terms, he was shown to be ‘on notice.’ The fact that he had possessed knowledge of the crimes and did nothing about them contributed to proving the criminal intent and criminal state of mind of Milošević.

Human rights reports on discrimination against Kosovo Albanians, some of which were tendered into evidence, were corroborated and complimented by the testimonies of several Prosecution witnesses.\footnote{See: Tadeusz Mazowiecki, \textit{Situation of Human Rights in the Territory of the Former Yugoslavia}, United Nations, Nos. A/47/666 and S/24809, 17 November 1992, Exhibit P771a.} Over the course of a couple of years, a number of laws had been adopted that set the ground for an apartheid society and Prosecution witnesses described the process through which ethnic Albanians had been dismissed in favour of Serbs and Montenegrins. Speaking often from their own experience, witnesses testified about the unemployment that affected Kosovo Albanians starting in the early 1990s, when large numbers of employees in public enterprises and institutions – such as hospitals, media organisations, and schools – were let go.\footnote{Ibid., paras. 100, 105–106, and 113.} Several Prosecution witnesses also testified about mass dismissals of Kosovo Albanians from positions in industry, and their replacement by Serbs. And in some cases, employees of Kosovo Albanian
origin were told to sign a declaration of loyalty to state authorities or face dismissal.\textsuperscript{1076} Albanian-language media was targeted, too, when the broadcasts of Albanian Radio and Television were restricted and influential newspapers were closed.\textsuperscript{1077} This led to the establishment of parallel systems of public services – an official system for Kosovo Serbs and another unofficial system for Kosovo Albanians.

One of the most visible and disturbing consequences of Serbian apartheid politics in Kosovo was the exclusion of ethnic Albanian children from the school system. A new school curriculum was introduced in 1990 and 1991 by the Serbian authorities and Kosovo Albanian teachers who refused to implement it were dismissed.\textsuperscript{1078} And Prosecution witness Sabit Kadriu – a teacher himself – testified that by the start of the school year in September 1991, Kosovo Albanian teachers were prevented from entering school premises at all.\textsuperscript{1079} As a consequence, approximately 400,000 children did not attend school for almost two years, during which a parallel education system was formed, with classes held in private homes.\textsuperscript{1080}

The University of Priština was affected as well, by a Serbian Assembly decision adopted in June 1991 that led to the dismissal of a considerable number of professors and administrators of Kosovo Albanian origin. They, too, were replaced by non-Albanians. The University Assembly and several faculty councils were dissolved, and provisional organs staffed predominantly by Serbs were established instead.

\textit{Failed Negotiations to Normalise Life in Kosovo, 1996-1998}

Serbia’s strategy to maintain the status quo in Kosovo faced little serious opposition from Kosovo Albanian political leadership for many years due to the non-violent resistance espoused by Ibrahim Rugova, the President of Kosovo between 1992 and 2000. Although the Kosovo Albanian majority never accepted Serbian rule, Rugova was determined to avoid conflict. Rugova’s party, the Democratic League of Kosovo (LDK), which won unofficial parliamentary

\begin{footnotes}
\footnote{1076}{Testimony of Adnan Merovci (23 May 2002), 5442-5444; Testimony of Ibrahim Rugova (3 May 2002), 4194-4195.}
\footnote{1077}{Testimony of Veton Surroi (18 April 2002), 3370-3372 and 3439-3440.}
\footnote{1078}{Mazowiecki, \textit{Situation of Human Rights in the Territory of the Former Yugoslavia}, para. 105.}
\footnote{1079}{Testimony of Sabit Kadriu (6 March 2002), 1618-1619.}
\footnote{1080}{Ibid., 1619-1620; Testimony of Ibrahim Rugova (3 May 2002), 4198-4199. Also see: Baton Haxhiu, Rule 92 \textit{bis} Witness Statement, 22 May 2002, Exhibit P169; and Testimony of Rahim Latifi (22 April 2002), 3637-3640.}
\end{footnotes}
elections held in May 1992, did not take action against the deteriorating social and economic position of ethnic Albanians and accepted the parallel system that emerged, creating *de facto* Kosovo Albanian government structures, schools, and health services, paid for by a voluntary solidarity tax that was largely collected from Kosovo Albanian diaspora.\textsuperscript{1081}

This diaspora rapidly expanded in the early 1990s as younger generations of Kosovo Albanians, unable to get an education or job at home, began leaving the province in large numbers and settling abroad.\textsuperscript{1082} The UN reported that 300,000 Kosovo Albanians had left Kosovo by the end of 1992 and expressed concerns about discrimination against the ethnic Albanian population that remained, citing allegations that ranged from torture and mistreatment in detention to restrictions on freedom of information.\textsuperscript{1083} The escalating human rights situation and dissatisfaction among Kosovo Albanians meant that changes had to be made in order to normalise the situation. Yet Serbia was reluctant to engage in dialogue with Kosovo Albanians for fear that it would inevitably lead to political compromises and probably to a change in the status of the province.

Bilateral talks were eventually scheduled in 1996 and included representatives of several Serbian political parties, though Milošević’s SPS did not attend. Instead, the Serbian delegation included participants from the New Democracy Party (*Nova demokratija*, or ND), a coalition partner of the SPS, which implied support from Milošević for the talks. The talks were mediated by the Bertelsmann Science Foundation and a diplomatic organ from the Vatican led by Monsignor Paglia of the Community of San Egidio. The negotiations went reasonably well, until Milošević decided to withdraw his support.\textsuperscript{1084}

Veton Surroi, a Kosovo Albanian publisher-turned-politician and owner of the influential daily *Koha Ditore*, was also involved in the talks. He testified that the Kosovo Albanian delegation was motivated to begin negotiations by an understanding that, unless they worked together with Serbs toward improved living conditions, Kosovo was on a path to a war.\textsuperscript{1085} Serbian negotiators expressed a similar view, that the status quo could not be maintained and that a wave of violence

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\textsuperscript{1081} Testimony of Ibrahim Rugova, (3 May 2002), 3999-4000.
\textsuperscript{1082} Mazowiecki, *Situation of Human Rights in the Territory of the Former Yugoslavia*, para. 100 and 104.
\textsuperscript{1083} Ibid., para. 99-113.
\textsuperscript{1084} Ratomir Tanić, Witness Statement, 19 July 2000, Exhibit P151, 1 and 9.
\textsuperscript{1085} Testimony of Veton Surroi (18 April 2002), 3382-3383 and 3450-3451.
was imminent without some sort of change.\textsuperscript{1086} The negotiations resulted in a document titled “Joint Recommendations on the Kosovo Conflict,” which was meant to serve as the basis for future talks about the status of the province.\textsuperscript{1087} But the most concrete outcome of the talks was the so-called San Egidio Education Agreement, according to which the school system was to be normalised and Albanian teachers and students were to return to classrooms.

The Serbian delegation submitted the “Joint Recommendations” to Milošević, and eventually he and Rugova both signed the Education Agreement in September 1996.\textsuperscript{1088} However, no tangible steps were taken to implement the Agreement and Kosovo Albanian students took to the street in late 1997, in protests that were violently quelled by the Serbian police with tear gas and beatings. On 23 March 1998, a follow-up document laid out implementation measures for the Agreement and the Institute of Albanology reopened on 31 March 1998, but hardly any other faculty or institution followed suit. International mediators began to openly question the goodwill of Serbia; and despite several more, albeit half-hearted, attempts to address the implementation of the Education Agreement, it lost any relevance by 1998 as violence rapidly spread across Kosovo.\textsuperscript{1089}

\textit{A Failed Strategy to Change Kosovo’s Ethnic Composition through Reforms}

It became obvious that Serbia would do everything it could to prevent a change in Kosovo’s status and maintain control over the province, but the Kosovo Albanian majority remained an obstacle. In her Expert Report for the Prosecution, Historian Audrey Budding wrote that the communist Partisans had made serious efforts during the war to win the support of Kosovo Albanians and had ensured after the war that Kosovo became an autonomous province that Serb interwar colonists could not return to.\textsuperscript{1090} The emigration of Serbs from Kosovo and the immigration of Albanians to Kosovo during the Second World War did indeed change the ethnic composition in the province to the advantage of Kosovo Albanians. And from the 1950s, there

\textsuperscript{1086} Ibid., 3384.
\textsuperscript{1087} See: “Joint Recommendations on the Kosovo Conflict, Halki meeting 1997, Bertelsmann Science Foundation,” Exhibit P102.
\textsuperscript{1088} Testimony of Veton Surroi (18 April 2002), 3385.
\textsuperscript{1089} Ibid., 3386, 3389, and 3441-3445.
\textsuperscript{1090} Budding, \textit{Serbian Nationalism in the Twentieth Century}, 10.
was a steady rise in their numbers.\textsuperscript{1091} By 1961, Kosovo Albanians constituted 67\% of the population and ten years later, more than 70\%. Kosovo Albanian political and intellectual elites flourished, and after 1966, they took over leadership of the province.\textsuperscript{1092} Further, an explosion in Albanian-language education took place from the late 1960s, leading to an extensive educational exchange with Albania.\textsuperscript{1093}

These demographic realities from the 1950s, favouring Kosovo Albanians, were understood by Serbia’s nationalist elites as the result of an intentional anti-Serb effort meant to create an ethnically homogenous, i.e. Albanian, Kosovo. This interpretation became one of the most powerful motifs in Milošević’s post-communist propaganda. Demographic research conducted in the 1990s showed that despite improved living standards, Kosovo did not see lower birth rates as might have been expected; and this was used to bolster the claims of Serb nationalists that the rise in the Kosovo Albanian population was, indeed, a purposeful demographic expansion.\textsuperscript{1094}

The Defence alleged that high Kosovo Albanian birth rates combined with what it described as a systematic expulsion of the Serb population from the province beginning in the 19th century amounted to a political strategy of ethnic cleansing. Defence Expert Witness on Kosovo, Slavenko Terzić, summed up this argument, saying:

There are many examples of biased interpretations of various events in Balkan and European history but it is almost impossible to find an instance of such ethnic cleansing by the Serbs; instead, it is the Serbs, unfortunately, who were the victims of large-scale ethnic cleansing carried out by the Albanians in the 19th century (especially from 1878-1912) under Ottoman rule, during WWII (1941 to 1945) within the framework of a fascist Greater Albania sponsored by fascist Italy and Nazi Germany, and in the period after WWII, with the support of the communist regime of Tito's Yugoslavia.\textsuperscript{1095}

\textsuperscript{1092} Ibid., 29.
\textsuperscript{1093} Ibid., 30.
\textsuperscript{1095} Terzić, \textit{Kosovo and Metohija in the 20th Century}, 47.
Terzić framed changes in the ethnic composition of Kosovo as a conspiracy that had been kept alive by Yugoslav communists in the province:

The final phase of the ethnic cleansing of Kosovo and Metohija was carried out under communist rule by the political leadership of the autonomous province of Kosovo and Metohija. All power was concentrated in the hands of the Albanians in the province, and instead of taking advantage of autonomy to promote the multicultural and multi-ethnic nature of Kosovo and Metohija, they strove to ethnically cleanse all Serbs from these Serbian areas. Out of opportunism, academic circles have not dealt with this great drama of the Serbian people in Old Serbia.\(^\text{1096}\)

In 1968, Dobrica Ćosić wrote that the ethnic majority of Kosovo Albanians had to be acknowledged as an unchangeable reality, and he was the first to suggest splitting Kosovo into Serbian and Kosovo Albanian parts.\(^\text{1097}\) Ćosić again raised this option in September 1990 when he said that Kosovo could not be saved in its entirety. His concept of division was not based on ethnic criteria; instead, he suggested a pragmatic approach by which Serbia should retain those parts of Kosovo where there were ore mines and Serbian holy places such as Gračanica and Gazimestan. He also advised that a plan for separation should be prepared and ready to implement at an appropriate time.

Ćosić’s plan envisaged eastern and central Kosovo for ethnic Albanians, and the northern and western parts for Serbs, with the Ibar River as a border. But his proposal was ignored, overshadowed by the triumph of Milošević when he succeeded in revoking Kosovo’s autonomy. Still, Ćosić continued to make the argument for partition in similar terms in his book, *The Writer’s Notes*, published in 1992, in which he stated that it would lead to a lasting solution to the Serb-Albanian question in Kosovo.\(^\text{1098}\) His idea was picked up by Aleksandar Despić, then President of SANU, who stated in an address to SANU members in 1997 that Serbia was at a historical turning point and that the partition of Kosovo solved a problem that had become too

\(^\text{1096}\) Ibid., 50.
\(^\text{1097}\) For example, see: Dobrica Ćosić, *Kosovo*, Excerpt, Exhibit P802a, 8. Ćosić’s position on a partition of Kosovo as a permanent solution for the Kosovo problem was discussed during the testimony of Slavenko Terzić. See: Testimony of Slavenko Terzić (9 December 2004), 34400-34419.
\(^\text{1098}\) In B/C/S, see: Ćosić, *Pišćevi zapisi*, 21 and 231. Ćosić writes on page 21 that he presented the idea of a partition of Kosovo to Milošević in January 1992 but he rejected it. On page 231, he reports also having presented the idea to Cyrus Vance and David Owen in January 1993.
heavy a burden for Belgrade. Dušan Bataković, a diplomat and expert on the history of Kosovo, took the idea further. In early 1998, he advocated for the cantonisation of Kosovo – the same model Serbs had espoused for the partitioning of BiH. He argued that this would allow for the preservation of the multi-ethnic composition of Kosovo while enforcing distinct rights for cantons with a Serb majority.

After the war in Kosovo and Serbia’s loss of the province in 1999, Ćosić amended his position. In his 2004 book, Kosovo, Ćosić reflected on the post-1999 ethnic composition in Kosovo and the shrinking Serb population, writing that borders should be revised as a democratic and productive way for all the people of the former Yugoslavia to achieve a permanent peace in the aftermath of the SFRY’s disintegration. He also suggested that Serbian monasteries should retain self-rule even if they were on territory held by the Kosovo Albanians. In its cross-examination of Slavenko Terzić, the Prosecution alluded to this particular proposal by Ćosić, asking how, if Kosovo was so important to the Serbs as a holy land, they could accept its partition; after all, the loss of historically religious Serb territory had been a major argument for Serbia’s territorial claim to Kosovo for decades. Terzić, a historian, refused to give his opinion on partition, saying that he would be taking a stand on a major political issue if he did so.

Milošević never considered the partition of Kosovo an option. He also never accepted demographic realities in the province. Indeed, his politics from 1990 onward were concentrated on establishing Serb dominance through the imposition of laws and decrees that would alter the demographic balance there. First, he created a fund to finance the return of Serbs and Montenegrins to Kosovo. This was complemented in 1991 by the “Decree on the Conditions, Ways and Means for Distributing Agricultural Land” to citizens wanting to live and work in Kosovo, which made loans available to Serbs to encourage them to move there. In 1992, the “Programme for the Development of Kosovo” was adopted, providing further financial

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1099 Testimony of Mihailo Marković (17 November 2004), 33479. Marković acknowledged the existence of such plans among Serbian elites, naming Ćosić and Aleksandar Despić, President of the SANU at the time, as proponents of partition and adding that he criticised Despić’s ideas on the issue.


1101 Ćosić, Kosovo, 6. Also see: Jović, Last Days of the SFRY.

1102 Testimony of Slavenko Terzić (9 December 2004), 34400.

1103 Official Gazette of the Socialist Republic of Serbia, No. 35/90, item 555.

1104 Official Gazette of the Republic of Serbia, No. 43/91, item 553.
assistance to Serbs, to build houses, establish private businesses, and create cultural establishments, schools, communications, and infrastructure.\textsuperscript{1105}

Despite protestations and warnings by human rights observers and Kosovo Albanian politicians about these attempts by Serbian authorities to gain greater influence in Kosovo through government-sponsored settlement programmes, they continued, though with little success.\textsuperscript{1106} Another effort, a resettlement program for refugees from the RS and RSK, also failed. According to Milošević, the number of refugees that resettled in Kosovo amounted to a mere 0.7\% of the total number of refugees that entered the FRY before the Dayton Agreement.\textsuperscript{1107} In light of this small number and given the size of Kosovo, he took the position that one could therefore not assert that he or the Serbian authorities had implemented a policy to change the demographic structure of the province. For their part, Kosovo Serb political leaders expressed sharp criticism regarding Belgrade’s failure to fulfil its promise to bring 100,000 Serbs back to Kosovo. Instead, the trend of Serbs leaving Kosovo continued well after 1990.\textsuperscript{1108}

\textit{Kosovo after 1995}

Negotiations in Dayton shifted the dynamics of the Kosovo conflict. Milošević succeeded in keeping Kosovo out of the talks, but this did not secure the status quo there. In fact, by ignoring Kosovo at Dayton, a space was created for an alternative approach to the conflict by a new generation of Kosovo Albanians. Ibrahim Rugova’s peaceful approach to the conflict had failed to bring results and, prior to the talks in Dayton, Rugova’s LDK had engaged in a public campaign claiming that the Kosovo issue would be resolved there, creating an impression among Kosovo Albanians that Kosovo’s independence was a matter of days away. Veton Surroi testified that his newspaper had disputed the LDK’s public pronouncements; Surroi saw Rugova’s policy of peace as one of passivity that in fact eventually devalued peaceful politics and paved the way to violence.\textsuperscript{1109}

\begin{itemize}
\item \textsuperscript{1105} Official Gazette of the Republic of Serbia, No. 54/92, item 1360.
\item \textsuperscript{1106} Mazowiecki, \textit{Situation of Human Rights in the Territory of the Former Yugoslavia}, para. 104.
\item \textsuperscript{1107} Trial Transcript, Defence Opening Statement (15 February 2002), 302.
\item \textsuperscript{1108} See the interview with Momčilo Trajković in \textit{NIN}, 15 July 1994, 14-16.
\item \textsuperscript{1109} Testimony of Veton Surroi (18 April 2002), 3373.
\end{itemize}
Still, the political situation in Kosovo did not catch the full attention of the international community until 1997. Serbia and the FRY, preoccupied with the wars in Croatia and BiH, had been careful not to engage in yet another armed conflict. But failure by the international community to deal with the Kosovo crisis in the first half of the 1990s had undermined Rugova’s political authority. Younger Kosovo Albanians, dissatisfied with the slow progress of Rugova’s policy of non-violence and dialogue, took up arms, organising themselves into the Kosovo Liberation Army (KLA). The first violent incidents ascribed to the KLA took place in 1995, escalating by 1997 in frequency and scope. By the spring of 1998, clashes between Serbian police forces and the KLA became more frequent and violent, and various human rights organisations monitoring the conflict reported on a fully-fledged armed conflict as early as March.

The turning point for the intensity and extent of the conflict was a massacre at the family compound of Adem Jashari, a local KLA commander in the Drenica area who had become notorious for his attacks on Serbian security forces. In an attempt to capture Jashari, Serbian police forces attacked the entire Jashari family compound in early March 1998, killing not only Adem, but nearly every member of his family, including women and children. Shocking pictures of the victims were disseminated via the Internet by Kosovo Albanian activists, launching Jashari as a martyr and the Serbian authorities as villains.¹¹¹⁰ For many Kosovo Albanians, Jashari’s death became the personification of their struggle for freedom against Serbian oppressors.

Two months after the massacre, in May 1998, a Kosovo Albanian delegation met with Milošević in Belgrade. When they brought up the massacre of the Jashari family, Milošević responded that it was insane to think the Serbian police would kill children and said that Adem Jashari was a criminal who had killed his own family. When the delegation suggested that an independent forensic team should be called to investigate, Milošević made no promises, replying only, “We’ll see.”¹¹¹¹ Milošević also insisted that the state had to respond appropriately to terrorists.¹¹¹²

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¹¹¹⁰ Prosecution Witness Adnan Merovci exclaimed during cross-examination by an amicus curiae that Jashari should have received a Nobel Prize for his contributions to freedom and democracy. Testimony of Adnan Merovci (24 May 2002), 5516.
¹¹¹¹ Testimony of Veton Surroi (18 April 2002), 3392.
¹¹¹² Testimony of Ibrahim Rugova (3 May 2002), 4215.
The Defence Narrative on the Proliferation of Violence in Kosovo

In November 1992, the Serbian Assembly had issued a Declaration on the Rights of National Minorities, in which Albanian separatists were blamed for the human rights situation in Kosovo and for allegedly having made efforts to forcibly change the ethnic makeup of Kosovo over several decades. The Declaration described the recent history of Kosovo as one of “ethnic cleansing of Serbs and Montenegrins” meant to achieve the secession of Kosovo and the creation of a “Greater Albania.” Milošević echoed this same logic at the trial. In his Opening Statement, he summed up the evolution of Albanian nationalism from the infamous League of Prizren of 1878, which has been considered a benchmark for the creation of a Greater Albanian state as well as for anti-Serb policies. Milošević quoted historical sources, saying that 150,000 Serbs – a quarter of the total Kosovo Serb population – were expelled from Kosovo between 1878 and 1912, and he claimed that hardly anything had changed since then regarding the methods used to de-Serbianise the territory.\footnote{Ibid., 32223.} Milošević also emphasised the suffering of Kosovo Serbs during the Second World War, referring to plans to expel them from Kosovo and transport them to concentration camps in Albania. He asserted that 10,000 Serbs had been killed and hundreds of thousands expelled from Kosovo between April 1941 and August 1942, and that a similar number of Albanians were relocated from Albania to Kosovo.\footnote{Trial Transcript, Defence Opening Statement (31 August 2004), 32222-32223.} These arguments were further elaborated by Slavenko Terzić, who described Greater Albania ideology as professing racial hatred and intolerance toward the Slavic population.\footnote{Terzić, Kosovo and Metohija in the 20th Century, 48-50.}

Prosecution witnesses rejected the idea that Greater Albania ideology was a major threat to the security of the Balkans.\footnote{For example, see the exchange between Milošević and Merovci on this issue: Testimony of Adnan Merovci (24 May 2002), 5484-5488.} Mahmut Bakalli, a Kosovo communist politician and functionary who appeared as the first witness of the trial, testified that a Greater Albania was not the political goal of Kosovo Albanian politicians but was merely Serbian political propaganda aimed at casting the Albanians as people to be feared.\footnote{Testimony of Mahmut Bakalli (19 February 2002), 633-663.} He said political efforts to create an independent Kosovo or a Republic of Kosovo within the FRY were not part of any scheme to eventually realise a Greater Albania, explaining:
When we are talking about Kosova, we are talking about 90 percent of its population being Albanian, and their rights can be granted only if they have their independence from Serbia. But by establishing the Republic of Kosova, we are not saying that they are establishing the Albanian Republic of Kosova. We will establish the Republic of Kosova, composed of all the nationalities, all the ethnic groups, who have equal rights. It would be absurd to say that there are two national states. The Republic of Albania is an Albanian state, Kosova is state of Kosovars, where 90 percent are Albanians.  

When cross-examined by Milošević about the existence of a Greater Albania during WWII, Bakalli replied that it was a fascist and Nazi creation, not representative at all of Albanians, the majority of whom joined anti-fascist movements in Albania, Macedonia, and Kosovo.  

Ibrahim Rugova also testified, saying that his Party’s primary objective in the early 1990s was democracy for all Kosovo’s citizens with a secondary objective to create a Kosovo republic in the SFRY. In October 1991, Rugova’s LDK Party issued a document titled “Statement with Three Options,” in which three possibilities for the status of Kosovo were laid out in the event of internal changes to SFRY borders resulting from the independence of some Yugoslav republics. The first option was a Republic of Kosovo within Yugoslavia, the second was independence for Kosovo, and the third was a common state for all Albanians living in the SFRY – similar to the goal espoused by Serbia for Serbs across the former Federation. Rugova testified that the preferred option of the LDK was an independent Kosovo.  

In his cross-examination, Milošević presented Rugova with a Memorandum allegedly written in the 1990s by Kosovo Albanian intellectuals, in which they demanded the redrawing of borders in order to create an independent state that would unite all ethnic Albanian territories. He asked Rugova to comment on the map attached to the Memorandum. Rugova replied that there were many such maps in circulation, but that his party had sought independence above all else since the dissolution of Yugoslavia began.

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1118 Ibid., 605-606.
1119 Ibid., 634.
1120 Testimony of Ibrahim Rugova (3 May 2002), 4192.
1121 Ibid., 4195-4196.
1122 Testimony of Ibrahim Rugova (6 May 2002), 4337-4339.
Nonetheless, Milošević maintained that Rugova and the Kosovo Albanian leadership supported a Greater Albania. The Defence identified the emergence of the KLA as a threat to Serbian state borders and qualified the Greater Albania policy it alleged was pursued by Kosovo Albanian leaders as a plan to incorporate not only Albania and Kosovo but also parts of Macedonia. Shukri Buja, a former KLA commander who was called as a Prosecution witness, testified that the objective of the KLA in the early 1990s had indeed been to liberate occupied Albanian territories that included areas in Macedonia, Serbia, and Montenegro. But the negative response of international policy makers compelled the General Staff of the KLA to reconsider their political objectives and the decision was made to concentrate only on Kosovo.

**Internationalisation of the Kosovo Conflict**

Throughout the 1990s, Milošević kept Kosovo out of international mediation and diplomacy by insisting that tensions there were an internal matter to be dealt with by Serbian and FRY authorities. The first time the Kosovo conflict was addressed in an international setting was at a September 1997 meeting of the Contact Group – the informal group of representatives from influential countries created to supervise policy in southeastern Europe. Although the Contact Group had been mandated to monitor implementation of the Dayton Peace Agreement, the alarming security situation that was developing within Serbia’s borders led to the inclusion of the Kosovo conflict on their agenda, and they issued a joint statement calling on authorities to begin dialogue and create conditions for the return of refugees. They also voiced support for implementation of the San Egidio Education Agreement. And, while the Contact Group did not support independence for Kosovo, they called for enhanced status for the province. Beginning in January 1998, the Contact Group met every month to evaluate the quickly evolving situation in Kosovo, especially focusing on reports of escalating violence and human rights abuses.

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1123 Ibid., 4339-4340.
1124 Testimony of Shukri Buja (5 June 2002), 6353.
1125 For example, see: “Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 11 August 1992, Exhibit P469.41, 95 (in B/C/S). Milošević insisted that Kosovo be treated as an internal political issue.
1127 For example, see statements on Kosovo from the Contact Group: on 8 January 1998, Exhibit P791.2; on 25 February 1998, Exhibit P791.3; on 9 March 1998, P791.4; and on 25 March 1998, Exhibit P791.5.
The Jashari family massacre in March 1998 intensified diplomatic activity. The Contact Group condemned the Belgrade authorities’ use of violence, called for independent forensic experts to investigate, and asked the FRY to prosecute and punish those responsible for the killings. A majority of Contact Group representatives had dealt directly with Milošević in the past, and they called upon him personally to take rapid and effective steps to stop the violence and engage in finding a political solution through dialogue. Moreover, they imposed a deadline of ten days for the withdrawal of Serbian special police units from Kosovo and threatened new international sanctions for the FRY if it wasn’t met. Contact Group meetings were marked by the strong dissenting voice of Russian Minister of Foreign Affairs Yevgeny Primakov, who echoed the rhetoric of Milošević; he was adamant that Kosovo be treated as an internal Yugoslav affair and that secession of the province was out of question.

Primakov later appeared as a Defence witness. Commenting on the meeting held in March 1998, he testified that the US, UK, and other European countries had proposed imposing economic sanctions on the FRY, to his dismay. Primakov felt that they wanted to discipline Milošević, or even depose him. The alternative presented by Russia was to limit sanctions but impose an arms embargo. On 31 March, the UN banned arms sales to Serbia, imposed economic sanctions, and – in UNSC Resolution 1160 – established a committee to monitor the situation in Kosovo.

At the April 1998 Contact Group meeting, the Group stated firmly that it opposed the independence of Kosovo and called for the start of dialogue. For the first time, reference was made to the excessive use of force by the VJ, which was said to mark a significant change in the extent and nature of the conflict. Contact Group members also observed that representatives of both Belgrade and Priština had expressed a general willingness to begin dialogue but were yet to agree on parameters for the talks.

The Contact Group next tried the ‘carrot and stick’ approach, promising Belgrade full integration into the international community – including participation in the OSCE – if it met the Group’s demands. This was particularly tempting for Serbia because so-called outer wall sanctions meant that the FRY could not become a member of international organisations such as the UN or the

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1129 Yevgeny Primakov, Years in Big Politics, Excerpt of pages 338-358, Exhibit P794.2a, 5-6.
The other side of this equation was that if the FRY did not comply with the conditions that had been laid out by the Contact Group in March, a freeze on funds held internationally by the FRY and Serbian governments would be imposed; in other words, if Belgrade exhibited non-compliance and blocked dialogue with the Kosovo Albanians, the FRY would be subject to a series of economic sanctions. The Russian Federation distanced itself from these measures and proposed, instead, to condemn Kosovo Albanian terrorism and preserve the territorial integrity of all countries in the region.

A strongly worded Statement on Kosovo issued by the foreign ministers of the Contact Group in London on 12 June 1998 was indicative of yet another level of alarm in the international community. For the first time, the Contact Group demanded access to Kosovo, noting that:

Security forces have again intervened indiscriminately, causing many civilian casualties and forcing tens of thousands of inhabitants to flee their homes. Ministers condemned Belgrade’s massive and disproportionate use of force, which has resulted in widespread destruction and the deliberate displacement of large numbers of people. They also condemned the failure by Belgrade to take concrete steps to reduce tensions.

Serbia turned to Russia for advice and support. Then President of the Russian Federation Boris Yeltsin called for a meeting with Milošević on 16 June 1998, after which they issued a Joint Statement reaffirming their commitment to the territorial integrity and sovereignty of the FRY and condemning all forms of terrorism and separatism. Yeltsin pressed Milošević to accept the internationalisation of the Kosovo conflict and to allow OSCE monitors into Kosovo. Primakov characterised the meeting as a triumph of Russian diplomacy that had averted a military intervention against Belgrade. But for Serbia, the meeting was a disappointment because Russia did not support Serbia’s military approach to the Kosovo crisis. Milošević knew

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1132 Primakov, Years in Big Politics, Excerpt, 8-9.


1135 Primakov, Years in Big Politics, Excerpt, 11.
that he could not count on Russian support for armed action and, even if the FRY were ultimately to win the conflict by force, it would still face total international isolation.

The July meeting of the Contact Group used the Yeltsin-Milošević meeting and its outcomes to press for an increase in the OSCE Monitoring Mission presence in Kosovo. In its conclusions, the Contact Group warned those outside the FRY to stop supplying financial support, arms, or training to the warring sides, in compliance with UNSC Resolution 1160.\textsuperscript{1136} Under the threat of military intervention for defying UNSCR 1160, and then demands of a ceasefire in Resolution 1199, Milošević engaged in a series of meetings with American diplomat Richard Holbrooke, reaching a final agreement on 13 October 1998 that was unofficially known as the Milošević-Holbrooke Agreement.

The Agreement consisted of eleven points and included a very strict implementation timetable. Addressing the Serbian public, Milošević announced that an accord had been reached to resolve the problems in Kosovo by peaceful political means. Further, he said, the threat of military intervention against the FRY had been eliminated.\textsuperscript{1137} The Agreement envisaged an international presence in Kosovo and concentrated on two major issues – a political solution based on Contact Group principles defined on 2 October 1998, and establishment of rules and procedures for elections in Kosovo to be held by November 2009.\textsuperscript{1138} The OSCE was asked to engage as part of a peaceful settlement of the Kosovo conflict, and an agreement on the newly formed Kosovo Verification Monitors (KVM) was signed on 15 October.\textsuperscript{1139}

The KVM arrived with a mandate to verify compliance by all parties in Kosovo with UNSC Resolution 1199, as well as to report progress or non-compliance to the OSCE Permanent Council, the UNSC, and other organisations. Various Prosecution witnesses involved with the KVM testified that Serbia did not cooperate with international monitors. For instance, Milošević made a habit of ignoring queries of a technical nature, such as requests to provide information regarding the strength and equipment of the armed forces in Kosovo, needed for a fair

\textsuperscript{1136} “Statement on Kosovo of the Contact Group Foreign Ministers,” 7 July 1998, para. 4 and 6.

\textsuperscript{1137} See: Marc Weller, \textit{The Crisis in Kosovo 1989-1999} (Cambridge, UK: Documents & Analysis Publishing, 1999), 279. The page was entered into evidence as Exhibit P94/1.

\textsuperscript{1138} Ibid.

\textsuperscript{1139} Testimony of Knut Vollebaek (8 July 2002), 7641-7642.
assessments of whether the military presence was increasing or decreasing.\footnote{1140} And, according to witnesses, the KVM were never given unlimited access to MUP and VJ sites and even had difficulty getting information on training schedules for VJ exercises or advance notice of troop movements, despite official agreements.\footnote{1141} Moreover, as time progressed, the KVM reported continuous breaches; combat involving MUP and VJ forces simply continued.\footnote{1142} Serbia complained that implementation of the Milošević-Holbrooke Agreement required a reduction of its military units, and that the KLA was relying on this reduction to seize more territory.

\textit{From the Račak Massacre to Negotiations in Rambouillet}

By the end of 1998, the threat of a humanitarian catastrophe in Kosovo became a reality. Independent reports from all sides estimated that by November of that year, there were about 300,000 internally displaced persons in Kosovo facing a severe winter and no prospect of a quick return to their homes.\footnote{1143} A UNHCR survey showed that between the end of 1998 and 23 March 1999, some 349,000 Kosovo Albanians were displaced altogether, with 200,000 displaced internally.\footnote{1144}

The Račak massacre, which took place on 15 January 1999, was a defining moment and it led the international community to change its rules of engagement and demand a political solution from the parties to the war. Otherwise, military intervention to stop the humanitarian catastrophe was on the table. The massacre, which resulted from the same Serbian police techniques used at the Jashari compound, was triggered by information that three KLA terrorists suspected of killing

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\footnote{1140}{For example, see: William Walker, Rule 92 \textit{bis} Witness Statement, Exhibit P228, 39-40; Testimony of William Walker (11 June 2002), 6780-6781; Testimony of Major General Karol John Drewienkiewicz (11 April 2002), 2842-2843.}

\footnote{1141}{Testimony of Major General Karol John Drewienkiewicz (11 April 2004), 2853-2854; Testimony of Colonel Richard Ciaglinski (16 April 2002), 3169-3171.}

\footnote{1142}{Testimony of Major General Karol John Drewienkiewicz (11 April 2004), 2853-2855; Testimony of Colonel Richard Ciaglinski (16 April 2002), 3147-3148. Also see: John Crosland, Rule 92 \textit{bis} Witness Statement, 9 July 2002, Exhibit P253A.}


\footnote{1144}{Neil Wright, Rule 92 \textit{bis} Witness Statement, 5 February 2002, Exhibit P234.}
two Serbian policemen were hiding in Račak. Serbian police forces surrounded the village in the middle of the night and killed approximately 45 unarmed people.\footnote{See: Kosovo Indictment, para. 66 and Schedule A.}

The Contact Group condemned the Račak massacre at its meeting on 22 January 1999 in London, stating that no amount of provocation could justify what had taken place. It also called on the FRY to stop all offensive actions in Kosovo and facilitate the safe return of refugees from the Račak area. Further, the Contact Group requested full cooperation with the ICTY from the FRY, in order to ensure that those responsible for the massacre were brought to justice. At a meeting one week later, the Contact Group insisted that the parties to the conflict accept principles of a peaceful settlement set out by the Group, which offered substantial autonomy to Kosovo. Negotiations to refine the proposal were scheduled for 6 February at Rambouillet Castle, near Paris.

*The Failure of the Rambouillet Negotiations*

The Prosecution argued that the Rambouillet talks – which took place through mid-March – were evidence of Serbia’s unwillingness to come to a political compromise on the status of Kosovo. Serbia ostensibly, and for the first time, appeared agreeable to negotiations under international mediation on the issue. But a number of witnesses at the trial testified that Serbia never took the negotiations seriously.

The 15-person Kosovo Albanian delegation consisted of representatives from Rugova’s LDK, representatives from the KLA, and independent delegates such as Veton Surroi. Professor Fehmi Agani, who was murdered by Serbian security forces in May 1999, headed the delegation.\footnote{Testimony of Veton Surroi (18 April 2002), 3405-3408, 3412-3413, and 3457-3461. Agani was known for his role as the architect of the parallel system of Kosovo Albanian institutions that arose in response to Serbia’s discriminatory policies in the province. While Rugova was the face of the LDK, Agani held great influence behind the scenes, shaping much party policy. For more on Agani and his murder, see: Gabriel Partos, “Fehmi Agani,” *The Guardian*, 27 May 1999.} Hashim Thaci, head of the political directorate within the KLA General Staff, led the representatives of the KLA.\footnote{Testimony of Shukri Buja (5 June 2002), 6350-6351.} The Serbian delegation was represented by republican and federal officials, including Milan Milutinović, then President of Serbia; Ratko Marković, Deputy...
Prime Minister of Serbia; and Nikola Šainović, Deputy Prime Minister of the FRY; along with other officials who had close ties to Milošević.1148

The Rambouillet Peace Proposal, presented as the last resort for finding a political solution to the Kosovo problem, was based on the Dayton Peace Agreement formula and consisted of both a political component and a military component. The political component did not give full independence to Kosovo, but offered substantial autonomy with a very clear framework for how political and judicial systems would operate and human rights would be respected. The military component was meant to secure implementation of the Proposal.1149

One of the strongest indications of Serbia’s disinclination to cooperate was that the armed conflict in Kosovo intensified as the peace negotiations were underway. Knut Vollebaek, a Norwegian diplomat participating in the OSCE’s Kosovo Mission, testified that there was an increased presence of the VJ in Kosovo by March, in violation of the Milošević-Holbrooke Agreement, and that the local population had lost confidence in the KVM. It became clear to Vollebaek that a military presence tasked with keeping the fighting factions apart was necessary; and this is what the OSCE advocated at Rambouillet. In fact, Vollebaek personally tried to convince Milošević, who was not at the talks, to accept an international military presence.1150

Another sign that the Serbs did not take the negotiations seriously was the absence of Milošević from the negotiating table. Many foreign negotiators who appeared as Prosecution witnesses spoke of how important Milošević’s presence had been for reaching the agreement in Dayton. In Rambouillet, there were two rounds of negotiations – from 6 to 23 February and from 23 February to 15 March – and the FRY and Serbian delegates appeared to be unauthorised to make decisions on their own, contacting Milošević every day. Despite his physical absence, Milošević’s grip on the first round of negotiations was very firm, and he clearly held the ultimate power.1151 Serbian delegates openly stated that they only had the authority to discuss the political component of the agreement, not the military component, and they made it clear that once

1148 There were 12 members in the delegation, representing both FRY and Serbian institutions.
1149 Testimony of Wolfgang Petritch (2 July 2002), 7221-7224.
1150 Testimony of Knut Vollebaek (8 July 2002), 7655-7658.
1151 Testimony of Wolfgang Petritch (2 July 2002), 7219-7221.
political negotiations were completed, Milošević would give them instructions for the next step.\textsuperscript{1152}

Prosecution witnesses who were present at Rambouillet throughout the negotiations testified that there was a change of attitude within the Serb delegation after 23 February. According to Wolfgang Petritsch, an Austrian diplomat in charge of the Rambouillet negotiations on behalf of the EU, the Serbian delegation consisted of well-versed experts with whom international negotiators had been dealing since mid-1998 and who, up to 23 February, were negotiating in good faith.\textsuperscript{1153} Indeed, in a meeting with the Contact Group on 20 February, there were clear signals that Serbia and the FRY could live with the political agreement that had been crafted.\textsuperscript{1154} The strong sense was that the Serbs were ready to sign, as indicated in a letter sent on 23 February by Serbian delegation member Professor Ratko Marković, addressed to the three principle negotiators, Christopher Hill, Wolfgang Petritsch, and Boris Mayorski. Marković praised the positive spirit of the meeting and said that the FRY was willing to discuss the scope and character of an international presence in Kosovo in order to implement the agreement that would be accepted in Rambouillet.\textsuperscript{1155} But things were about to change.

On 8 March 1999, Petritsch accompanied German Foreign Minister Joschka Fischer to a meeting with politicians in Belgrade.\textsuperscript{1156} In private talks – Fischer with Milošević and Petritsch with Milutinović – they realised the Serbs had done an about face and were not only intent on rejecting the military component of the draft agreement but also the political component. Petritch concluded that:

\begin{quote}
...something happened, so to speak, after the 23rd of February when this letter was written to us. There was a total change of attitude. And as was indicated on several occasions to me, it was Mr. Milošević who did not like it and who then obviously in the course of the ensuing weeks between the 23rd of February and the 15th of March, decided not to continue the path of negotiation.\textsuperscript{1157}
\end{quote}

\begin{flushleft}
\textsuperscript{1152} Ibid., 7252-7254.
\textsuperscript{1153} Ibid., 7227-7231.
\textsuperscript{1154} Ibid., 7227-7228.
\textsuperscript{1155} Ibid., 7229-7230.
\textsuperscript{1088} Ibid., 7234.
\textsuperscript{1157} Ibid., 7235.
\end{flushleft}
Kosovo Albanian negotiators who appeared as Prosecution witnesses testified that they never felt that the Serbian delegation had been moving toward an agreement, even prior to 23 February. Ibrahim Rugova, for example, said he had gotten the impression from the outset that the Serbs were not serious.\footnote{Testimony of Ibrahim Rugova (3 May 2002), 4217-4218.} And, it was true that the Kosovo Albanians appeared more cooperative and more prepared to reconcile internal differences for the sake of peace. There was unanimous agreement among members of their delegation that Rugova, Thaci, and Surroi should all sign the agreement, each as representatives of different groups and points of view within the Kosovo Albanian population.\footnote{Testimony of Wolfgang Petritch (2 July 2002), 7289-7290.}

Madeline Albright, the then US Secretary of State, explained to the Kosovo Albanian delegation that if neither they nor the Serbian delegation signed an agreement, the negotiations would be perceived as a total failure; but if only the Serbs refused to sign, the international community would call for military intervention aimed at stopping violence against civilians. Despite the fact that the draft proposal did not allow for independence, the Kosovo delegation signed in the end, with the condition that a clause be added permitting a referendum on the status of Kosovo in three years’ time. This alone gave the Serbs grounds to criticise the draft.\footnote{The Fall of Milošević, directed by Dai Richards, produced by Brian Lapping, BBC, 2001.} Once a referendum was held, the independence of Kosovo was surely to become a reality. The Serbs interpreted the clause as an internationally sanctioned step toward Kosovo’s independence.\footnote{Ibid.}

Milošević complained that the bar at Rambouillet was set higher than Serbia could accept, and perceived it as an ultimatum for unconditional surrender. Responding to Milošević in court, Petritsch denied any bias against Serbia:

That’s not correct and can be proven by the simple fact that definitely the Russian Federation would have never agreed to this in the Contact Group. I want to stress the fact that all the preparations for Rambouillet and throughout Rambouillet, the Russian side was fully engaged and fully informed about this. It would not have been possible otherwise. And this in itself is, in my opinion, ample proof that there was no scam, no dictate, no ultimatum, but difficult negotiations which went for quite some time, quite positive, and unfortunately, after the 23rd of February
Petritsch went on to stress that it had been of great importance to Russia that the negotiation process find a peaceful solution in order to prevent a NATO military intervention. He recalled that the Russian member of the negotiating team even suggested to Milošević at one point that, if it would be helpful, the whole agreement could be re-examined and the negotiating started all over again. Although this suggestion went well beyond the mandate of this negotiator, it showed how keen the Russians were to reach an agreement and prevent a military intervention.

With no political solution reached by 23 February and the international community growing impatient with ongoing violence by FRY and Serbian forces against the civilian population, the prospect of a military intervention grew by the day. And Milošević was increasingly noncompliant. In a message sent on 22 March by Robin Cook and Hubert Védrine, the Foreign Ministers of Great Britain and France, they encouraged him to accept a political resolution of the crisis and avert military intervention. In his reply, Milošević set out the same arguments he reiterated during the trial, accusing the international community of supporting Kosovo Albanian separatism and asserting that the talks in Rambouillet were not negotiations at all. He also expressed open contempt for Kosovo Albanians for the first time:

> Regarding your threats [of] NATO military intervention, your peoples should be ashamed of them, for you prepare yourselves to use force against a small European nation, just because it protects its territory from separatism, protects its citizens from terrorism, and its historical dignity against scoundrels who know nothing about history or dignity.
Milošević further asserted in the letter that the draft agreement had been published in the Albanian language newspaper owned by Surroi before the talks even started, saying that this proved the Rambouillet negotiations were predetermined:

...the text you call the Rambouillet Agreement, was published in the Kosovo press (the Albanian newspaper “Koha Ditore”) before the start of the Rambouillet talks. Belgrade is tolerant, but not stupid. Thanks to the stupidity of someone else, the document, which should have been the result of the talks, which were still to take place, was published. Of course, we have nothing against preparing a draft document before the start of the talks. But we are strongly against not having talks at all, and being asked to sign something…

Milošević also indicated that he had accepted the prospect of a military intervention, framing any Serbian or Yugoslav military movements – those which the international community said were of “great concern” – as a matter of defence. “Is it really possible for a normal person to think that somebody who is being threatened will not show the intention to defend himself?” he asked.

On 23 March 1999, the same day the letter was published, the KVM withdrew from Kosovo completely. It had become impossible for monitors to fulfil their mandate due to the presence of increasing numbers of FRY and Serbian combat forces and the escalation of violence. Prosecution witnesses testified that the numbers of police and VJ forces deployed had been in excess of what was permitted by earlier agreements and that they were engaged in combat operations. According to US General Wesley Clark, Commander of NATO forces at the time, there had been a systematic build-up of units in Kosovo in January and February 1999. The VJ Priština Corps had been heavily reinforced with reserves, elite light infantry, helicopters, heavy artillery, and first-class armoured units from northern Serbia; and it was rumoured that Serbia was planning a “final solution” to the problem of Kosovo.

By March 1999, garrisons were becoming inaccessible to the KVM and FRY and Serbian forces were able to carry out activities without observation. Garrison armed guards were posted to

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1168 Ibid.
1169 Ibid.
1170 Testimony of Colonel Richard Ciaglinski (17 April 2002), 3256-3257.
1171 Testimony of General Klaus Naumann (13 June 2002), 6998-7001.
1172 Testimony of General Wesley Clark (15 December 2003), 30404-30407.
block off all access routes and the KVM were stopped at gunpoint.\textsuperscript{1173} By around 20 March 1999, it seemed that FRY and Serbian forces were fully prepared for combat and all garrisons were being strengthened.\textsuperscript{1174}

The Prosecution argued that the Račak massacre was not an isolated incident and was foreseeable in light of the immoderate military campaign that had started in mid-1998 and had continued despite the KVM presence. But the Defence said the incident had been fabricated, and Milošević made this case in both of his Opening Statements. He called the massacre a creation of the international community meant to justify an already pre-planned military intervention, and said that forensic experts from many countries who had been invited to investigate the crime site had all found that those killed had been members of a terrorist unit, because it was clear that each of them had shot and fired a weapon at the police. Milošević claimed that even the Kosovo Albanian commander in the region had admitted in a speech after the war that it was his fighters who had died bravely in Račak.\textsuperscript{1175}

Pointing a finger at the US specifically, Milošević characterised the Americans as having used Kosovo to pursue an aggressive post-Cold War agenda by siding with local nationalists. He said the American administration had double standards regarding terrorism and asserted that they had planned the NATO intervention in advance but, until media reports of a massacre in Račak, could not justify it.\textsuperscript{1176} According to Milošević, Kosovo Albanians had formed the KLA (which he called a terrorist organisation) with the assistance of the international community, under the leadership of the US and with the guidance of the CIA, with the objective to cleanse Kosovo of Serbs and other non-Albanians:

\begin{quote}
We are talking about the use of terrorism in order to realise the strategic goals of the USA and NATO in southeastern Europe, and the example was Kosovo and Metohija. Clinton’s Administration, with that example, showed that they have dual standards
\end{quote}

\footnotesize
\begin{itemize}
\item \textsuperscript{1173} Testimony of Colonel Richard Ciaglinski (16 April 2002), 3151-3154. Also see: Testimony of Major General Karol John Drewienkiewicz (12 April 2002), 2945.
\item \textsuperscript{1174} Testimony of Colonel Richard Ciaglinski (17 April 2002), 3258.
\item \textsuperscript{1175} Trial Transcript, Defence Opening Statement (15 February 2002), 397-405.
\item \textsuperscript{1176} Trial Transcript, Defence Opening Statement (31 August 2004), 32241-32243.
\end{itemize}
toward terrorism, depending on their own interests. For them…terrorists and freedom fighters depend on the profile of the victim, the terms used, and what the interests are. When the victims are Americans or the people they protect, then the killers are terrorists who deserve the worst possible sentences…. When, on the other hand, the Serbs are victims, as was the case in Kosovo, then, in the worst of cases, those killers were only referred to as the armed Albanians.\textsuperscript{1177}

Milošević offered an interesting set of reasons to back up his assertion that Kosovo Albanians had been strengthened and supported in their struggle not only by the US, but by Islamic extremists, and simultaneously. He cited the powerful Kosovo Albanian lobby on Capitol Hill, the Albanian drug mafia, and sponsorship by Osama Bin Laden, and saw no contradiction in the US and Bin Laden supporting the same cause in Kosovo through the KLA.\textsuperscript{1178} Milošević claimed that Bin Laden’s direct engagement in Kosovo terrorist activities had been exposed when some of his fellow terrorists were arrested and made statements about having recruited and armed their members to fight in Kosovo and Metohija.\textsuperscript{1179} Though he did not explain why Bin Laden would have been motivated to support such a plot, Milošević claimed that deployment of the KVM, the framing of the Račak massacre, and the Rambouillet talks were all parts of a plan by the West to humiliate Serbia and the FRY and rationalise NATO’s aggression.\textsuperscript{1180} But this Defence narrative was in stark contrast to KVM reporting, from which it appeared that, despite being informed of disproportionate and indiscriminate use of violence by FRY and Serbian forces, Milošević had taken no action to stop it.\textsuperscript{1181}

**NATO Intervention and Attempts by Serbia to Change the Ethnic Composition of Kosovo through the Commission of Crimes**

Once NATO bombing began in the end of March 1999 and the mass exodus of Kosovo Albanians became daily news, questions arose as to how NATO and the international community had not taken adequate measures to deal with what many said were predictable consequences of

\begin{itemize}
  \item \textsuperscript{1177} Trial Transcript, Defence Opening Statement (15 February 2002), 404-405.
  \item \textsuperscript{1178} Trial Transcript, Defence Opening Statement (31 August 2004), 32252-32253 and 32240-32242.
  \item \textsuperscript{1179} Ibid., 32245-32247.
  \item \textsuperscript{1180} Ibid., 32209, 32242-32243, and 32251.
  \item \textsuperscript{1181} For example, see: Testimony of Colonel Richard Ciaglinski (16 April 2002), 3151-3154; and Testimony of Major General Karol John Drewienkiewicz (12 April 2002), 2945.
\end{itemize}
the intervention on Kosovo’s civilian population. Considering the amount of intelligence that had been compiled and presented by the KVM and other sources indicating that the military build up by Serbia in early 1999 was a preparation for war, it remains a puzzle as to why the commission of mass atrocities against Kosovo Albanians was not anticipated. Before the intervention, various intelligence sources had referred to a plan, allegedly devised by FRY and Serbian leaders and known as Operation Horseshoe, to cleanse Kosovo Albanians from Kosovo. Milošević denied its existence, saying it, too, was a fabrication of the international community – notably, of Germany – aimed at mobilising public opinion against Serbia in order to legitimise the actions of NATO. As proof of this, Milošević argued that in the original document presented as evidence of the Operation, the word Potkova was used, which he explained is Croatian, whereas the Serbian word for a horseshoe is Potkovica.1182

Prosecution witness Ratomir Tanić, a former Serbian intelligence agent and negotiator, testified that a plan by the name of Horseshoe did exist but said that it was not an official name, rather a colloquial expression. Tanić was not able to say when the term was used first, but connected it with a pre-existing JNA plan that had been prepared in the case of an aggression against Yugoslavia from Southeastern Europe. The plan was designed to protect against the Albanian population of Kosovo taking the side of a foreign aggressor by placing the JNA in seven defensive positions that formed a semi-circle, from which they would neutralise Albanian strongholds. According to Tanić, the plan was pulled from the archives and reactivated in the 1990s.1183

Tanić testified that the purpose of the plan had been altered since there was no foreign aggressor for the Albanian population to take the side of; but he said that there was resistance to the plan in circles close to Milošević. In fact, Tanić claimed that after General Perišić and Jovica Stanišić opposed the plan, they were both dismissed.1184 When asked by the Trial Chamber to explain the opposition of these high-ranking officials to the plan, Tanić replied that they felt the lack of an external aggressor made use of the Army and police special units legally questionable. He said

1182 Trial Transcript, Defence Opening Statement (14 February 2002), 244-245.
1183 Testimony of Ratomir Tanić (15 May 2002), 4949-4952 and 4996-4997.
1184 Ibid., 4936 and 4995-4996.
that those who opposed the plan preferred a political solution in combination with only selective use of force.\footnote{Ibid., 4996-4997.}

Tanić told the court that Operation Horseshoe was meant to provoke a war in Kosovo in which both Albanians and Serbs would suffer. Milošević, appearing somewhat astonished, asked if Tanić was claiming that Milošević had wanted to cleanse all the Albanians and then kill the Serbs as well, and Tanić answered that, indeed, Milošević was interested in holding onto power at any cost.\footnote{Ibid., 5199-5199.} Milošević challenged Tanić’s testimony regarding alleged preparations he had made for ethnic cleansing and the creation of a commission set up for that purpose. Tanić responded that a State Commission for Kosovo had been founded to implement Milošević’s “private will outside the legal institutions,” citing as his source a letter written by General Perišić to Milošević on 23 July 1998.\footnote{Testimony of Ratomir Tanić (21 May 2002), 5198-5199.} Perišić had expressed concern about the tendency to use the VJ outside the system’s institutions and said that the command of VJ units was left to unauthorised persons. He also criticised the practice of passing over command levels in official dialogue with VJ members and avoiding the official hierarchy and chain of command, which the Prosecution saw as evidence of Milošević’s criminality.\footnote{Ibid.} In his letter, Perišić assessed the security situation bluntly, stating:

The situation in Kosovo and Metohija could have been overcome if a STATE OF EMERGENCY had been declared in time on 20 April 1998, when I sent you a proposal in writing…. Since you did not accept it, the situation has escalated and MUP representatives and you yourself asked that the Yugoslav Army be deployed; some small units were directly and indirectly deployed, which is illegal from the point of view of the law, while the repercussions for the state are well-known.\footnote{General Perišić’s letter was published in a book titled *Vatre i Potop* (“Fire and Flood”). An English translation was tendered into evidence. See: “Letter dated 23 July 1998, to Slobodan Milošević from Momčilo Perišić published in the book Fire and Flood,” Exhibit, P150a.}

Perišić insisted that the deployment of armed forces had to be preceded by the satisfaction of constitutional requirements and a proclamation of either a state of emergency or an immediate
threat of war. He pleaded that military facilities and units not be used outside the legal and constitutional framework.\footnote{Ibid.} Perišić also opposed attempts by members of the MUP to have some VJ units subordinated to them, and he condemned the practice according to which leading party functionaries and close associates of Milošević distributed tasks, including to the Commander of the Priština Corps, which he said led to “illegal, unsystematic, and inadequate use of VJ units.”\footnote{Ibid.}

General Božidar Delić, who was called as a Defence witness, testified that there was no need for a state of emergency to be declared in Kosovo, as suggested by Perišić, because VJ units had been deployed there to fight terrorism according to Articles 470 and 473 of the Rules of Service of the VJ, which allowed for peacetime units to be used:

...for the protection of people and property from natural disasters and other calamities; ensuring public communications and facilities of particular importance for the Defence of the country; keeping law and order at big celebrations and parades; struggle against renegades, sabotage, terrorists, and other hostile or enemy armed groups; preventing and eliminating an emergency situation….\[and\] in the struggle against renegades, sabotage, and other hostile groups.\footnote{Testimony of General Božidar Delić (20 September 2005), 44397. Also see: Phillip Coo, “Part I: Organisation and Command & Control Measures (January-June 1999),” \textit{Forces of the FRY & Serbia in Kosovo}, Expert Report, Part I, Exhibit P318.1.} The Defence suggested through Delić that the Rules of Service of the VJ trumped constitutional and other legal provisions for the use of the armed forces. The Prosecution argued that state institutions and the political elites of the FRY chose not to declare a state of war in Kosovo because \textit{de jure} command structures would then place responsibility on Milošević as Supreme Commander and on his subordinates in the chain of command. According to the Prosecution, by obscuring the \textit{de jure} command line, Milošević and his collaborators proved they were aware that what they were doing was wrong and that they needed to hide it from public scrutiny, perhaps hoping to eventually escape criminal responsibility.
Altering Kosovo’s Ethnic Composition through Mass Expulsions and the Commission of Crimes

When resettlement and land reform decrees of the late 1980s and early 1990s did not shift the ethnic composition of Kosovo in favour of Serbs, some parties had pressed for mass expulsions of Kosovo Albanians. Among the first references to this strategy came in the Political Programme of the Serbian Radical Party (Srpska Radikalna Stranka, or SRS), made public in February 1991, which reflected the ideology of SRS leader Vojislav Šešelj and his reinterpretation of Greater Serbia ideology. Šešelj had articulated a long list of goals to be achieved in Kosovo, including suppression of the “uprising” by Kosovo Albanians as well as the expulsion of 360,000 immigrants to Kosovo from Albania and their descendants. He espoused the reallocation of all state subsidies meant to address the ethnic crisis in Kosovo toward financing the return of Serbs and Montenegrins back to the province.¹¹⁹³

During the Prosecution’s cross-examination of Ratko Marković, he was asked to react to a video excerpt of a speech by Šešelj from 27 February 1999. At the time, Šešelj and Marković were both Deputy Prime Ministers of Serbia and the video showed Šešelj saying that “if NATO bombs us, we Serbs will suffer casualties, but no Albanians will be left in Kosovo.”¹¹⁹⁴ Marković was pressed by the Prosecution on the link between Šešelj’s statement and the fact that, after the failure of the Rambouillet talks and the start of the NATO bombing, Kosovo Albanians began to be expelled from the province in large numbers. He answered that people were simply fleeing the bombing:

People try to save their lives. How many times was Kosovo bombed? We watched all of that. How many people left Belgrade, if you wish, and went to other countries? How many people made it possible for their children to go away to be safe, because you didn't know when a bomb would fall. ...People were fleeing in order to save their lives.¹¹⁹⁵

When Šešelj himself testified as a Defence witness, only a few months after Ratko Marković, Milošević asked him to comment on the video as well. Šešelj replied that his words had been taken out of context, insisting that viewing the whole speech was necessary to clarify his

¹¹⁹⁴ “Transcript of Šešelj’s Speech,” Exhibit P821.1. Also see: The Fall of Milošević, BBC, 2001; and Testimony of Vojislav Šešelj (15 September 2005), 44167.
¹¹⁹⁵ Testimony of Ratko Marković (20 January 2005), 35420.
position. He said that the Americans, who he claimed were helping the Muslims and Croats, always caused many civilian casualties, and implied that he had been expressing his concern that US bombing would, yet again, cause such casualties. He said the words he had spoken in the video shown by the Prosecution were actually meant to deter a potential aggression.\footnote{Testimony of Vojislav Šešelj (23 August 2005), 43025-43026.}

The Prosecution introduced a transcript of the full speech during its cross-examination of Šešelj and asked him to read several relevant passages, including:

> We Serbs are a people with democratic traditions. We are divided ideologically, politically in different ways. But when it comes to the fatherland, there is no division. …The Albanians will have a chance only if they orient themselves toward a peaceful, democratic, political road of dialogue…. If there is bombing, in the event of a NATO bombing, in the event of an American aggression, we Serbs shall perish in quite large numbers but there will be no Albanians in Kosovo. Surely the Americans do not believe that if they attack us, we will allow armed bands and disloyal citizens behind our backs who can hardly wait to stab us in the back. We will not allow that...\footnote{Testimony of Vojislav Šešelj (15 September 2005), 44167-44169.}

The Prosecution’s case was that, under the cover of NATO bombings, FRY and Serbian armed forces altered the ethnic composition of Kosovo through a carefully prepared and executed campaign that consisted of mass deportations, destruction of property, and killings of Kosovo Albanian civilians. A report prepared by Prosecution Expert Witness Patrick Ball found that over 10,000 Kosovo Albanians were killed in just March through June of 1999 and that clear patterns of killings and refugee flow were evident during that time. Ball, a statistician, noted the unlikelihood that these patterns “would result simply from ad hoc decision-making” on the part of civilians.\footnote{Patrick Ball, et al., Killings and Refugee Flow in Kosovo, March-June 1999, Expert Report, 3 January 2002, Exhibit P67, 3-4.} But the Defence blamed the exodus of civilians on NATO bombardments that it claimed were on populated areas where there were no military targets. And while the Defence did acknowledge that a major military campaign was conducted by the FRY starting immediately after the NATO air strikes began, it insisted that operations were aimed only at KLA terrorist forces who were using the bombings as strategic support to gain as much territory as possible.
It is worth mentioning that in the ICTY trial of *Milutinović et al.* – known as the case of the ‘Kosovo Six’ – the Trial Chamber was presided over by Scottish Judge Iain Bonomy, who was also one of the three judges in the Milošević case. The Judgement in *Milutinović et al.* recognised that people left their homes for a variety of reasons during the conflict in Kosovo. The judges acknowledged that, in some places, people were instructed by the KLA to leave, that some people left to avoid the fighting between the KLA and FRY and Serbian forces, and some left to avoid NATO bombing close to where they lived.\textsuperscript{1199} However, the Judgement emphasised that Kosovo Albanian witnesses at the trial “gave a broadly consistent account of the fear that reigned in towns and villages across Kosovo, not because of the NATO bombing, but rather because of the actions of the VJ and MUP, and associated forces, that accompanied it.”\textsuperscript{1200} In other words, no witness in the trial who had crossed a border due to the conflict (i.e. those who were externally displaced) said that the NATO bombing had caused their departure from Kosovo. The Judgement also underlined the fact that the NATO bombing in Serbia, most notably in Belgrade, did not lead to an exodus of Belgrade citizens in numbers anywhere near those who left Kosovo. The Judgement did not find, therefore, that NATO bombing was the cause of the mass displacement of Kosovo Albanians from Kosovo. The judges also excluded the ongoing armed conflict between the KLA and forces of the FRY and Serbia as the cause, noting that fighting between these factions had been taking place since mid-1998 but that the many civilians who were displaced as a result had remained in Kosovo as internally displaced people.\textsuperscript{1201}

*Awareness of Criminality and Attempts to Hide Evidence*

The Prosecution claimed that killings and mass expulsions of Kosovo Albanians were among the major objectives of Serbian policy between 24 March and 10 June 1999, and that the activities of FRY and Serbian forces in Kosovo were therefore criminal. The coordinated use of trains and buses – often with two policemen per bus to accompany those being transported out of Kosovo to Macedonia or Albania – was proof, the Prosecution argued, of organisation and planning before the launch of air strikes. The Defence maintained that the flight of Kosovo Albanians was due to the NATO bombardments and failed to explain why trains and buses were full of Kosovo Albanians.

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{1199} Judgement Summary, *Prosecutor v. Milutinović et al.*, 3.
\item \textsuperscript{1200} Ibid.
\item \textsuperscript{1201} Ibid.
\end{enumerate}
\end{footnotesize}
Albanian refugees while Serbs remained in Kosovo or fled to Serbia, despite the fact that Serbia was also being bombed.

In order to control the locations to which Kosovo Albanian refugees fled, Serbian armed forces would surround a village or dwelling and leave only one corridor through which civilians could exit to border crossings, either into Albania or Macedonia or occasionally to Montenegro. Montenegro was not the safest destination for Kosovo Albanians because VJ units controlled the border; but nevertheless, some attempts to cross into Montenegro were made. One such crossing led to a massacre at Kaluđerski laz, where 8 Kosovo Albanian civilians were killed on 18 April 1999 by the VJ.1202

Evidence that Kosovo Albanian refugees were forced to hand over their passports and other identity documents at border crossings when leaving Kosovo was a particularly damning indication that their expulsions had been organised. FRY and Serbian authorities appeared to be insuring the prevention of refugee return, as returnees would be unable to prove their identities, places of birth, or country of origin. Many Kosovo Albanians testified that FRY and Serbian forces confiscated identity documents from Kosovo Albanians specifically, and some witnesses

from within these forces also described the confiscation and destruction of Kosovo Albanians’
documents. The majority of these confiscations took place along the Kosovo-Albania border or
en route to the border, and were not limited to one checkpoint but occurred across different
municipalities.\footnote{\textsuperscript{1203}}

Starting in May 1999, the bodily remains of some Kosovo Albanians killed in Kosovo were
removed for reburial in Serbia. This was further evidence that Serbian officials were aware of the
criminal actions of VJ and MUP forces; for, if the dead in Kosovo were indeed KLA combatants,
and were thus legitimate targets in the conflict, it made no sense that Serbian authorities would
go to the trouble of moving hundreds of bodies across the border. In his book, Momir Bulatović
wrote that this decision was linked to several miscalculations on the part of Milošević.
According to Bulatović, when the intervention started, Milošević had reckoned that the NATO
bombardment would not last longer than a week or so because of public pressure in NATO
countries. But, not only did NATO persist in bombing for over two months, but Serbian ally
Russia aligned itself with the international community. When Milošević was informed by
Russian special envoy Victor Chernomyrdin that Russia would not support Serbia, he finally
understood that his policy had failed and that Serbia would lose Kosovo. It was then, Bulatović
asserted, that Milošević organised a meeting with his closest associates at which they created a
plan to relocate the bodies of Kosovo Albanians killed in the conflict.\footnote{\textsuperscript{1204}}

\textbf{Evidence on Milošević’s \textit{de facto} and \textit{de jure} Responsibility for Crimes in Kosovo}

\textit{SDC Records and Kosovo}

SDC records, especially from 1998 and 1999, were valuable evidence of the development and
implementation of the plan for Kosovo. Despite the potentially explosive situation that existed in

\footnote{\textsuperscript{1203} Nike Peraj, Rule 92 \textit{bis} Witness Statement, 15 February 2002, Exhibit P143Aa, 9 (in B/C/S); Sabit Kadriu, Witness Statement, 10 December 2000, Exhibit P50a, 20 (Kadriu wrote: “I only had...my identification papers by now. The Serb took it and then cursed us and told us to go to the Albanian side of the border. The identification papers of all my companions were also confiscated.”); Rahim Latifi, Rule 92 \textit{bis} Witness Statement, 28 April 1999, Exhibit P107A, 3; and Martin Pnishi, Redacted Rule 92 \textit{bis} Witness Statement, 4 April 2000, Exhibit P299A, 4 (Pnishi wrote: “...civilians were forced to drop their ID cards on the ground.”).}

\footnote{\textsuperscript{1204} Momir Bulatović, \textit{Pravila čutanja}.}
Kosovo throughout all of the 1990s, the attention of the SDC had of course been overwhelmingly on the wars in Croatia and BiH in the early part of the decade. From time to time, though, the Kosovo issue would arise; the province was seen as a chronic security risk during the Milošević era and FRY authorities made sure VJ forces there were sufficiently supplied.\textsuperscript{1205} Indeed, SDC members expressed concerns about the chance that an armed rebellion could be encouraged in Kosovo by “foreign elements” – i.e., Serbian and Montenegrin extremists or Albanian Muslim extremists – well before they turned their full attention to the province.\textsuperscript{1206}

In April 1995, the SDC discussed the number of men that would be needed in case the conflict in Kosovo escalated. Perišić estimated that 130,000 VJ soldiers would be required in the event of a terrorist attack in Kosovo, and Milošević added 100,000 policemen to that number.\textsuperscript{1207} After reassurances by Perišić that every town in Kosovo had a military barracks and an army presence, Milošević praised the safety situation in Kosovo, which he said was preserved by a demonstration of force because “fear keeps the house safe.”\textsuperscript{1208}

By the summer of 1998, Kosovo had become a main agenda item of the SDC. At the session held in June 1998, Perišić offered a security assessment of the situation there, reporting 31 cases of armed conflict near the border since 20 March 1998, of which about half involved the attempted infiltration of Kosovo by terrorists.\textsuperscript{1209} He spoke of casualties including 5 VJ soldiers and 29 terrorists, and the arrest of 10 “real terrorist fighters” along with more than 50 “armed peasants.”\textsuperscript{1210} Perišić estimated that if negotiations with Kosovo Albanian leaders went well, the tension and terrorism could be expected to decline; but if not, he predicted that hostilities would rise in areas such as Srbica, Glogovac, Klina, Dečani, Djakovica, and Peć – in the north and west of Kosovo. He pushed for a political solution, saying that otherwise the reserve forces would

\textsuperscript{1205} For example, see: “Stenographic transcript of the 23rd session of the Supreme Defence Council,” 21 July 1994, \textit{Prosecutor v. Perišić}, Exhibit P00785.E, 9. General Kovačević read a list of “long-term forces ready for operation,” noting that there were “1,580 men with 40 tanks, 36 personnel carriers, 121 artillery weapons, 36 anti-aircraft weapons – equivalent to two battalions” in the Kosovo area.


\textsuperscript{1208} Ibid., 31.

\textsuperscript{1209} “Stenographic transcript of the 5th session of the SDC (chaired by Slobodan Milošević),” 9 June 1998, Exhibit P667.70.1a, 6.

\textsuperscript{1210} Ibid., 6-7.
need to be engaged and a mobilisation eventually called for.\footnote{Ibid., 8.} Milošević suggested that the VJ would intervene as necessary should the Albanian separatist movement in Kosovo intensify, and said that the Army should be prepared for any form of foreign intervention that might threaten the sovereignty and territorial integrity of the FRY.\footnote{Ibid., 10.}

At the next SDC meeting, in October 1998, Perišić reported on difficulties that had followed in the wake of UNSC Resolution 1199, which called for a ceasefire. He underlined the fact that failure by the FRY to fulfil the requirements set out in the Resolution would lead to the use of force by NATO and other UN countries. He also summarised all the possible military scenarios, and said that the international community believed military activity would boost KLA forces and possibly lead to an all-out armed rebellion. Warning that the VJ had enough supplies for only a short period of operations, Perišić recommended that everything possible be done to avoid inviting air strikes.\footnote{“Stenographic transcript of the 6th session of the SDC (chaired by Slobodan Milošević),” 4 October 1998, Exhibit P667.71.1a, 7-8.}

Milan Milutinović agreed with Perišić and was optimistic that tensions might calm in Kosovo, especially since the FRY had already met most of the requirements of UNSCR 1199. Milo Đukanović – participating for the first time as the President of Montenegro and thus a voting member – also supported Perišić, strongly stating the need to immediately fulfil, without question, all conditions of the Resolution. He urged Milošević to make a public statement to that effect, that same day, and suggested the statement should welcome all representatives of international legal institutions, including the ICTY, to investigate allegations of crimes against civilians in Kosovo. Đukanović stressed that the country was not in the mood for a fight, despite the rhetoric of some politicians, and reminded his SDC colleagues that Croatia and Bosnia had already led to a “dramatic process of sobering-up.”\footnote{Ibid., 16.} Momir Bulatović expressed concerns of a financial nature, explaining that the state had no means to re-adjust the budget for the needs of the VJ. He urged the SDC to understand “that there is no money in government safes, that the
social problems are way out of proportion, and that we are not allowed to resort to deficit financing.”

Milošević contended that all demands of UNSCR 1199 had been met by the FRY and that it was those imposed on the Albanians that remained unfulfilled. He claimed that Albania persisted in trying to supply military equipment and ammunition to parties in the FRY, despite “an efficient defence.” And he also asserted that US diplomat and Kosovo negotiator Christopher Hill had said that “the problematic side was not the Serbian side but the Albanian side.”

Six weeks later, Milošević instigated the dismissal of Perišić as Chief of Staff of the VJ at the 24 November SDC session, on the basis that he had held the position of Chief of Staff for “an unusually long period of time.” Đukanović raised his voice against it, calling Perišić a “proven authority,” but to no avail. At the session held on 25 December 1998, new Chief of Staff General Ojdanić gave a detailed report on the political and military situation in Kosovo, listing the problems facing the VJ, including insufficient engagement by the MUP on border security-related tasks. He stressed that the VJ operated in a hostile environment in Kosovo, saying that 90% of the population was aligned with the enemy – meaning the KLA.

When personnel issues were then discussed, Đukanović was critical of the proposal for promotion of General Nebojša Pavković as Commander of the Priština Corps, noting that Pavković was a controversial figure and that the Priština corps had acted outside its legal bounds. But Milošević praised Pavković as “exceptionally capable” and denied that any complaints had been made regarding illegal behaviour by the Priština Corps. He claimed that it was only in the police forces, not in army units, that there had been any problem with what he called a “lack of discipline.”

Đukanović did not attend the last recorded meeting of the SDC, held on 23 March 1999, on the eve of the declaration of war by the Federal Assembly and the start of NATO bombing. The most

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1215 Ibid., 18.
1216 Ibid., 22-24.
1217 “Meeting notes from the 7th session of the Supreme Defence Council,” 24 November 1998, Exhibit P469.29a, 3.
1218 Ibid., 4.
1219 “Stenographic transcript of the 8th session of the SDC (chaired by Slobodan Milošević),” 25 December 1998, Exhibit P667.73.1a, 7.
1220 Ibid., 24.
important issue on the agenda was a change in the Rules of Procedure of the SDC, making the presence of non-voting members – the Federal Minister of Defence and the Chief of Staff of the VJ – obligatory at meetings, and requiring a consensus instead of a majority vote. Zoran Lilić testified about this latter change, saying that SDC decisions had generally been made by consensus even though it was not stipulated by the Rules; but after 1997, certain decisions – such as the dismissal of Perišić, which voting member Đukanović had opposed – had indeed been made by majority vote. On the stand, Lilić said that it was “interesting that this [new policy] was adopted only a day before the bombing.”

Perhaps even more interesting was the fact that although the Rules of Procedure were changed on the eve of the war, Belgrade authorities claimed that the SDC did not meet in the months that followed. Why SDC members would have bothered at all with the rules changes remains an open question. Still, with the SDC apparently non-functioning during the conflict in Kosovo, the Prosecution had to establish which political body or individual was in command of the armed forces during the war months.

The Joint Command for Kosovo and Metohija

Documents of the Joint Command for Kosovo and Metohija revealed the existence of a de facto line of decision making, command, and deployment for FRY forces in Kosovo in 1998 and 1999. The same pattern of concealment used during the Croatian and the Bosnian conflicts, wherein de jure political and military responsibly was obscured, was repeated in the Kosovo conflict. But Milošević’s de jure position for the period relevant to the Kosovo indictment was different than the positions he held during the time of the Croatian and Bosnian conflicts. From June 1997 to October 2000, Milošević was President of the FRY and was therefore the automatic presiding member of the SDC. Lawyers – and probably judges – at the ICTY expected that the crimes committed in Kosovo by Yugoslav armed forces could thus be traced directly to Milošević on the basis of his de jure powers, making prosecution and conviction more straightforward. But proving the case against him was more difficult than expected, not least because the Prosecution

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was given no records for SDC sessions held after 23 March 1999, on the premise that the Council did not meet after that date.

Notably, during Ćosić’s tenure as President of the FRY, which lasted one year, the SDC met eight times. Lilić was President for four years, during which the SDC met fifty six times. But in the three-year presidency of Milošević, the SDC purportedly met only nine times. Serbian authorities have never offered a satisfactory explanation as to which political body took on the role of the SDC as Supreme Commander during the war in Kosovo, after 23 March. As Belgrade presented the situation in its communications with the OTP of the ICTY, it appeared that the VJ had no civilian commander-in-chief during the military intervention in Kosovo.\footnote{Testimony of General Geza Farkaš (10 November 2005), 46435.} The Prosecution challenged the official position of the FRY that the SDC did not meet once the state of war was declared, arguing that it was difficult to accept that state leadership ceased holding meetings of whatever body was in supreme command of the armed forces from the day a war was proclaimed.

Then again, this claim by the FRY made the importance of the Joint Command – the de facto commanding body that had been created – even greater in exposing the involvement of the VJ and the MUP of Serbia in the commission of mass atrocities in Kosovo. Acquiring Joint Command documents did not go smoothly because powerful VJ and MUP lobbies actively tried to prevent their release. And so, despite early expectations that the Kosovo indictment would be easier to prove than the two other indictments, the investigation into political and military command structures relevant to Kosovo led the OTP to three bodies – the Supreme Command, the Supreme Command Staff, and the Joint Command – and this brought the potential for confusion.

Following investigative leads, in April 2001 the Prosecution requested documentation relating to the Supreme Command Staff, the term used for the wartime formation of the General Staff of the VJ. The Supreme Command, to which the Supreme Command Staff was subordinated, was the highest civilian leadership of the military established by the Constitution, and was responsible
for national security.\textsuperscript{1223} The Joint Command, though, remained something of a mystery for some time.

Zoran Lilić testified on the importance of the Supreme Command, explaining that it consisted of all three members of the Supreme Defence Council (the Presidents of the FRY, the Republic of Serbia, and the Republic of Montenegro), the Presidents of both Chambers of the Federal Assembly (the Chamber of Republics and the Chamber of Citizens), the Federal Prime Minister, the Minister of Defence, the Minister of Foreign Affairs, and the Minister of Internal Affairs. According to Lilić’s testimony, two documents adopted by the Supreme Defence Council, the “Strategy of Armed Battle” and the “Military Doctrine of the FRY,” were the basis upon which the President of the FRY formed the Supreme Command. The Supreme Command Staff consisted of the General Staff of the Yugoslav Army during times of war.\textsuperscript{1224}

General Nebojša Pavković, who commanded the Priština Corps at the time of the Kosovo military campaign and was later promoted to Commander of the 3rd Army, offered additional information about how the Supreme Command actually functioned.\textsuperscript{1225} After the Kosovo campaign, he became the Chief of Staff of the VJ and still held that position on 20 October 2000, when he gave an extensive and revealing interview with Serbian broadcast company RTS in which he referred to the President of the FRY as the Supreme Commander and said that it was the President who gave authority to the Chief of Staff.\textsuperscript{1226} Pavković described the Supreme Command as an advisory body, designated by the Constitution to give counsel before decisions were made. As a collective body, it could not issue executive orders; a task that was left to the President of the FRY according to the principle of seniority. Pavković explained that all members of the Supreme Command were “commanders on a certain level” but said that during the Kosovo conflict, “the Supreme Commander – and the President – was Slobodan Milošević, just as now the Supreme Commander is Mr. Koštunica.”\textsuperscript{1227}

\textsuperscript{1223} Phillip Coo, \textit{Forces of the FRY & Serbia in Kosovo}, Part I, Section D, para.1-6.
\textsuperscript{1224} Testimony of Zoran Lilić (17 June 2003), 22569.
\textsuperscript{1225} General Nebojša Pavković was indicted, tried and convicted of crimes committed by Serb armed forces in Kosovo in 1998 and 1999 in \textit{Milutinović et al. See: Judgement, Prosecutor v. Milutinović et al.}
\textsuperscript{1226} “Belgrade RTS Television First Program, 1900 GMT,” 20 October 2000, Exhibit P319.90, 3.
\textsuperscript{1227} Ibid.
The central issues for the Prosecution to determine were who commanded the FRY armed forces during the state of war from 24 March to 10 June 1999 and through which bodies. This required deconstructing the connections between *de jure* and *de facto* command structures and Milošević. Lacking documents about the Supreme Command, the OTP investigation led instead to evidence of a parallel line of command exerted through the extraconstitutional and ad hoc Joint Command. The Prosecution’s position on the role of the Joint Command was expressed in an Expert Report on the forces of the FRY and Serbia during the Kosovo conflict, written by Philip Coo. He wrote that the Supreme Command was atop the chain of command, but he identified the Joint Command as the body responsible for the coordination of activities of the VJ, the MUP, and other armed Serb organisations in Kosovo in 1998 and 1999.\(^\text{1228}\)

Documentary evidence and witness statements drew the picture of a *de facto* line of command of VJ and MUP units for combat purposes in Kosovo that was formed in the summer of 1998, many months before the March 1999 NATO intervention or the proclamation of a state of war.\(^\text{1229}\) The Prosecution asserted that this command had two threads, one moving through the Joint Command and the second through communication that Milošević cultivated with individuals from VJ and MUP leadership.\(^\text{1230}\) General Pavković, who himself was involved in the Joint Command, confirmed that cooperation between police and army units in Kosovo was coordinated through political actors.\(^\text{1231}\)

In April 2002, two months after the trial started, the Prosecution sent a request to Belgrade for documents related to the Joint Command. The response sent by Serbian authorities suggested that the requested documents might have been housed in a building that was destroyed by NATO.\(^\text{1232}\) Still, their reply by itself contained some valuable information. It stated, for example, that the FRY President had formed the Joint Command for Kosovo and Metohija via an oral order in June 1998, without written documentation, and that the Joint Command did not function

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\(^\text{1228}\) Testimony of Philip Coo (10 September 2002), 10004-10005.
\(^\text{1232}\) Trial Transcript, Rule 54 *bis* Motion Hearing (10 March 2003), 17538. Also see: Prosecution Response to the 6 May 2003 Submission by Serbia and Montenegro Regarding Outstanding Requests for Assistance, 20 May 2003, 8, note 27.
after October 1998. Correspondence regarding the request continued, but Belgrade remained resolute, stating that a renewed inquiry with the VJ had not produced any new results and that no documents of the Joint Command could be located for the period between 1 November 1998 and 19 June 1999.

But this official position was contradicted by a chance discovery. On 18 June 2003, Belgrade authorities provided the Prosecution with some 85 documents in response to a completely different request for assistance. One of these documents, presumably included as an oversight, was titled “Military Secret Order (Strictly Confidential 455-148),” dated 15 April 1999. It was clearly issued by the Joint Command for Kosovo and Metohija. For the Prosecution, this was confirmation of the continued existence of the Joint Command after October 1998. The document also carried the stamp of the location where it had been kept – the Military History Institute’s Military Archive in Belgrade. With this new information, a repeat request was sent to Belgrade for Joint Command documents.

Following a long legal battle, a modest collection of some fifteen Joint Command documents was handed over to the Prosecution on 15 November 2005, almost three years after the first request was sent to Belgrade. By then, the Prosecution part of the case was long over and all Defence witnesses for Kosovo had testified, meaning that the majority of the documents could not be put into evidence through a witness before the March 2006 end date of the trial. The documents did not show the command hierarchy leading to the political leadership of Serbia or the FRY and were mostly operative orders regarding combat matters from 22 March to 16 April 1999; yet, despite their limited scope, the existence of the documents at all exposed the insincerity of Belgrade authorities’ initial claims that they had been lost in the NATO bombings and that the Joint Command had not functioned after late 1998.

The evidence that the Prosecution did acquire indicated that the purpose of the Joint Command was to plan military operations in Kosovo against the ethnic Albanian population through a system of local headquarters. The testimony of Alexander Vasiljević, who was reactivated in March 1999 as Deputy Head of VJ Counterintelligence (formerly known as Kontraobaveštajna

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1233 Ibid.
1235 Testimony of Shukri Aliu (5 July 2002), 7597.
služba, or KOS), described his participation at a Joint Command meeting that took place on 1 June 1999 in Priština. He recalled that, among others, those present included Deputy Prime Minister of the FRY Nikola Šainović, Serbian governor of Kosovo Zoran Andelković, and VJ Generals Nebojša Pavković and Vladimir Lazarević, along with MUP Generals Vlazimir Đorđević, Obrad Stevanović, and Sreten Lukić. Nikola Šainović, one of Milošević’s closest political allies in the 1990s, chaired the meeting.\textsuperscript{1236}

Based on testimonies and documentation, the Prosecution’s view was that the Joint Command was an ad hoc body established on the authority of Slobodan Milošević. It functioned under the supervision of individuals from his party, the SPS, such as Šainović and Andelković – both of whom were present at the meeting Vasiljević described – as well as SPS Vice President Dušan Matković and parliamentary leader Milomir Minić.\textsuperscript{1237} The operational activity of the Joint Command was implemented through specific, loyal individuals within selected MUP and VJ units, allowing Milošević to avoid using \textit{de jure} command structures and making it more difficult to prove his responsibility as the political leader of the FRY and Commander-in-Chief of its armed forces during the Kosovo conflict.

Reconstruction of the Joint Command’s history showed that its foundation could not be pinned to one single document, person, or event. Though Belgrade authorities had claimed it was founded by an oral order of the President, the first written evidence of it was from records of the SDC session held on 9 June 1998, when a plan to suppress terrorism in Kosovo and Metohija was drawn up. The plan included a number of actions meant to “combat further escalation of terrorist activity in the region.” General Perišić was recorded saying that whether the engagement of military forces was necessary was a decision that would need to be made by the SDC and other federal organs.\textsuperscript{1238} A day later, on 10 June, at the 16th Session of the SPS Main Board, Milošević appointed a three-member working group, composed of Milomir Minić, Dušan Matković, and

\textsuperscript{1236} Testimony of Major General Aleksandar Vasiljević (12 February 2003), 15967-15969. Šainović, Pavković, Lukić, Lazarević, and Đorđević were all indicted and sentenced by the ICTY. General Obrad Stevanović was never indicted and appeared as a Defence witness.


\textsuperscript{1238} “Stenographic transcript of the 5th session of the SDC (chaired by Slobodan Milošević),” 9 June 1998, Exhibit P667.70.1a, 9.
Zoran Andelković, to coordinate political developments in Kosovo, with plans to expand the team.\textsuperscript{1239}

This was a period during which there was little consensus on how to deal with the Kosovo crisis. General Perišić’s reference to the authority of the SDC and other federal organs reflected his view that the constitutional and legal prescription for use of the armed forces be respected; a position he reinforced in his 23 July 1998 letter to Milošević in which he complained about the unconstitutional use of VJ units in Kosovo. The date of the letter coincided roughly with the formation of the Joint Command, and in it, Perišić drew attention to risky and unjustified shifts from \textit{de jure} to \textit{de facto} decision-making processes for use of VJ forces.\textsuperscript{1240} It was almost exactly four months later that Perišić was dismissed as Chief of Staff of the VJ.

The Prosecution’s position was that the Joint Command had been designed to divert attention from and obscure evidence of the \textit{de jure} responsibility Milošević held for crimes committed in Kosovo from January to June 1999. A number of witnesses, some of whom actively participated in the work of the Joint Command, contradicted this view. Police General Obrad Stevanović, who testified that he participated in about ten Joint Command meetings, understated the role of Šainović in the Joint Command hierarchy and said he had not been in a position to give orders, but merely to express his views at meetings.\textsuperscript{1241} Stevanović also denied that the Joint Command directed actions of the MUP in Kosovo.\textsuperscript{1242} Defence witness General Božidar Delić played down the function of the Joint Command as well, saying that the word ‘command’ implied it had been formed by an order or decree and concluding that no such body existed because the President never issued an appropriate order. General Delić did say that, indeed, there was a group of federal- and republic-level politicians present in Priština at the relevant time and that they were there to observe the situation and engage in talks with the Albanians on various subjects, reporting back to Belgrade. He denied that he ever attended those meetings, and said that to link

\textsuperscript{1239} Testimony of Zoran Lilić (18 June 2003), 22687. Also see: “Minutes of the 16th Session of the Main Committee of the Socialist Party of Serbia,” 10 June 1998, Exhibit D142a.
\textsuperscript{1241} Testimony of General Obrad Stevanović (2 June 2005), 40397- 40399.
\textsuperscript{1242} Ibid., 40410-40421.
the Joint Command to any order given to the units would be incorrect, stressing that he would
never carry out a military order given by a politician.\footnote{Testimony of General Božidar Delić (11 July 2005), 42125-42127.}

Throughout his testimony, General Delić insisted that the Joint Command was only a
coordinating and advisory body. In cross-examination, he was asked to comment on a Joint
Command order dated 6 July 1998, signed by Delić himself, which had been sent to subordinate
brigades and further down to their subordinate units.\footnote{Ibid., 42137.} And to reinforce the point that the Joint
Command was issuing orders to the VJ as of July 1998, the Prosecution also produced an order
issued by the 125th Motorised Brigade in which reference was made to another order of the Joint
Command that banned VJ units from executing any action “without the approval of the Joint
Command for Kosovo and Metohija.”\footnote{Ibid.} Yet, even when pressed to admit that any order by a
superior command was a binding order, and that he was bound to carry it out, Delić continued to
deny the authoritative function of the Joint Command, saying:

I’m telling you now that the Joint Command is just a notion. It is not a command.
It does not have the attributes of a command existing in any army. If I got this
order, and I did get this order from a messenger who brought it from the command
of the Priština Corps, I know that my commander, commander of the Priština
Corps, stands behind it. ...[The] Joint Command, according to my understanding
of the term, was just a coordination body. The command of the Priština Corps was
in Priština in 1998, and the forward command post of the 3rd Army. So those
were the levels of command that I was responsible to and no one else.”\footnote{Ibid., 42138.}

Denial by Defence witnesses of the extent of power of the Joint Command, despite concrete and
persuasive evidence, actually reinforced the significance of that evidence. It is worth noting, too,
that the function of the Joint Command was among the core issues in the \textit{Milutinović et al.} trial,
in which the six defendants were all senior political and military associates of Milošević who
were charged with the same crimes in Kosovo that he was.\footnote{See: Third Amended Indictment, \textit{Prosecutor v. Milutinović et al.}, No. IT-99-37-PT, 19 July 2002; Third Amended Joinder Indictment, \textit{Prosecutor v. Milutinović et al.}, No. IT-05-87-PT, 21 June 2006.}
et al. case was largely based on an exploration of the evidence tendered at the Milošević trial; and the summary of the Nikola Šainović part of the Judgement reads:

The Chamber finds that a body known by some as the Joint Command did come into existence in mid-1998, in order to co-ordinate the activities of the VJ and MUP and other state bodies involved in the Kosovo conflict. Notes of meetings of the Joint Command held between July and October 1998, taken by one of the participants, were entered into evidence, and gave insight into the nature of the body. These Notes reveal that Šainović was an active participant in Joint Command meetings... Indeed, Šainović issued instructions at the meetings, including in relation to matters concerning the activities of the VJ and MUP. There is direct evidence of only one Joint Command meeting in 1999, in June, but military orders were issued with a Joint Command heading, in order to ensure the co-operation and co-ordination of MUP forces with the VJ.1248

In light of the evidence, Milošević’s choice of Defence witnesses remains puzzling. He called witnesses who had participated directly in the military campaigns in Kosovo in 1998 and 1999 and by doing so exposed them to cross-examination based on evidence from the Prosecution case, but also based on the contents of documents they brought to the courtroom. A majority of Defence witnesses confirmed, and occasionally strengthened, the Prosecution’s case against Milošević. At times they also enabled the court to hear evidence that had been requested by the Prosecution from Serbia but had not been received in time to be presented. Milošević’s advisory counsel Dobroslav Ognjanović later explained, for example, that the Defence had called Vojislav Šešelj to testify only in order to have him say a few sentences. It was a considerable risk to call him as a witness because, according to Ognjanović, they knew Šešelj could not be controlled inside or outside the courtroom. And, in the end, Šešelj’s testimony went on for several weeks, exposing him to a lengthy cross-examination.1249

The Production of Documents Contemporaneous to the Kosovo Indictment Period

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1249 Mr. Dobroslav Ognjanović,’s statement. See: Milošević on Trial, directed by Michael Christofferson, 2007.
A number of documents brought into the trial by Defence witnesses exposed the extent that Serbian authorities had exercised control over FRY cooperation with the ICTY. As noted earlier, the post-Milošević political elite cultivated a two-track approach to assisting the ICTY. On one hand, they implemented the proclaimed policy of cooperation by handing over high level indictees, such as Milošević, General Pavković, Jovica Stanišić, and Franko Simatović. On the other hand, Belgrade authorities tried to control the flow of evidence to the ICTY, which was needed to prove charges laid out in indictments – both as far as how and when documentary evidence was provided and whether it was possible to access witnesses. This control was manifested in the struggle the OTP had in obtaining (or not obtaining) requested documents from federal and republic archives, as with SDC and Joint Command records.

Revelations that Serbian authorities had held back important documents from the OTP came to light in the courtroom when Milošević started to call Defence witnesses for the Kosovo indictment and some of them produced material in court that the Prosecution had been unable to tender as evidence, either because it had been requested but not received or had been received after the Prosecution part of the case. The Milošević Prosecution team had submitted several requests, for instance, for the daily reports, combat logbooks, and war diaries of VJ commanders and units operating in the Priština Corps. On the basis of investigative information and witness statements, the Prosecution believed that brigades and units subordinated to the Corps were involved in the sweep-up operation for the Kosovo conflict. But by the time the Defence case began in September 2004, many of the documents that had been requested were yet to be produced by Belgrade, for a number of stated reasons; and the majority of the documents that were provided were either exculpatory or irrelevant because they were outside of the requested period.1250

Serbia rejected the OTP’s implication that the government was hiding or withholding evidence, noting that Serbia had been cooperative despite a heavy toll. A representative of the Serbian government reminded the court that Serbian authorities had arrested and surrendered Milošević, and that late Prime Minister Zoran Đindić had taken responsibility for these actions and had subsequently been assassinated. Indeed, the investigation into Đindić’s murder revealed that a longer list of officials had been targeted, including ministers responsible for cooperation with the

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1250] Trial Transcript, Rule 54 bis Motion Hearing (3 June 2003), 21661.
ICTY. Serbia’s legal representative dismissed the Prosecution’s “armchair perspective” as unrealistic in terms of the tangible challenges faced by the government.1251

The VJ Commission for Cooperation with the ICTY and Attempts to Obscure Evidence

While the battle between the Prosecution and Serbian state authorities over the production of documents was waged in court from December 2002 until the very end of the trial in March 2006, the commencement of the Defence part of the case shifted the dynamics. During Rule 54 bis litigation in 2003 – by which the Prosecution had sought a Court order compelling Serbia to produce certain documents – the Trial Chamber had ruled against the production of war diaries as overbroad, a decision the Prosecution found surprising and never accepted. Arguing for the need to have access to war diaries in their entirety, the Prosecution reminded the Trial Chamber that the OTP had requested them from the authorities in 2002, with no success. The Trial Chamber pointed out that cooperation between the OTP and Serbia was not something for which the Defendant and his Defence team could be held responsible. Indeed, these requests for assistance were sent to the state ex parte, or without notification to Milošević and his legal advisors; thus, the Defence could not know what was requested or provided by the state to the Prosecution.1252

The Prosecution nevertheless maintained that the possibility of different standards being applied by Serbia – one to the Defence and another to the Prosecution – should be explored.1253 This issue was not resolved in court, however, and the Prosecution simply tried to acquire as many documents as it could as they were brought in, identified, or relied on in some way by Defence witnesses. In 2005, some of the documents produced in court by Defence witnesses were indeed war diaries and log books; others included post facto statements of VJ officers involved in the military campaigns in Kosovo, produced for Defence purposes by the VJ Commission for Cooperation with the ICTY, a semi-state body that existed from April 2002 to April 2003.

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1251 Ibid., 21666-21667.
1252 See the comments of Stephan Kay, assigned legal counsel for the Defence: “Disclosure issues between the Prosecution and the government of Serbia have nothing to do with this Accused and Mr. Nice continually makes his complaint as though it’s against the Accused but it is not an issue with which he is concerned, and that must be borne in mind. This is not a matter under his control and therefore to make continually points against the Accused on this matter is indeed unfair.” Trial Transcript (26 October 2005), 45746.
1253 Trial Transcript (26 October 2005), 45750.
The Prosecution team was intrigued by the appearance of any genuine contemporaneous documents from the indictment period, but was concerned about *post facto* statements, reports, and maps, which might have offered new and unexpected interpretations of the Kosovo evidence and could have cast reasonable doubt on the crimes charged. During cross-examination, the Prosecution dealt with each document introduced by Defence witnesses, while at the same time raising questions as to the method of production and the reliability of any documents produced by the Commission – the purpose and function of which it viewed sceptically. Aware of the existence of the Commission since its establishment in 2002, the Prosecution had argued in a written submission to the court in May 2003 that it had actively assisted ICTY indictees in preparing their defences.\textsuperscript{1254} The submission quoted a media report that asserted that a team of VJ officers had been engaged in selecting documents from the military archives in a search for evidence that would favour persons indicted by the Tribunal.\textsuperscript{1255} The report specifically expressed concerns that the Commission had aided Milošević in his defence, noting that the background knowledge that informed some of the precise questions he posed in court would have required that he have access to “sensitive information from the time when he was already in jail.”\textsuperscript{1256}

One of the first opportunities to address the function of the VJ Commission in preparing documents and witnesses for the Milošević trial came with the testimony of retired General Božidar Delić. Milošević’s examination of Delić was based on hundreds of pages of reports, statements, and maps that had been produced under the guidance and support of the Commission. This material, along with the testimony of Delić, exposed the role of the Commission in preparing evidence intended to assist the Defence and not meant to fulfil the truth-seeking mandate of the ICTY more generally. Explaining in court how he had prepared for his testimony, General Delić said that he had received a list of events from the Commission that he was asked to address in graphic and textual form.\textsuperscript{1257} In order to help him do that, the VJ Commission had provided him access to all the original documentation he needed, including some that had been requested by the Prosecution but had not been provided by Belgrade.

\textsuperscript{1254} Prosecution Response to the 6 May 2003 Submission by Serbia and Montenegro Regarding Outstanding Requests for Assistance, 20 May 2003, para. 15.

\textsuperscript{1255} Ibid.

\textsuperscript{1256} Ibid. The original article referenced by the Prosecution was: “Army Commission for Cooperation with the ICTY Abolished,” *Defence & Security*, no. 75 (April 2003).

\textsuperscript{1257} Testimony of General Božidar Delić (11 July 2005), 42087-42088.
Following Delić’s first day in court, the OTP trial team sent an urgent request to then Serbian Minister of Defence Pravoslav Davinić, requesting documents relating to the establishment, functioning, and dissolution of the VJ Commission for Cooperation with the ICTY. Despite the high urgency of the request, sent on 6 July 2005, it was not until two months later that 24 documents were handed over. The documents described the Commission as an advisory and organising body tasked with analysing and studying the work of the ICTY, in order to make proposals as to the type and extent of cooperation of the Yugoslav Army and the Defence Ministry with the Tribunal. The founding of the Commission was prompted by the trial of Milošević and the fact that it would deal with crimes allegedly committed by members of the JNA (VJ) in Croatia, Bosnia, and Kosovo. The Commission was also tasked with proposing measures the VJ should take in order to prevent possible harmful effects of cooperation with the ICTY, such as, for instance, a stipulation “not to carry out requests which could endanger state security without the consent and the decision of the Supreme Defence Council...”

The Commission’s Expert Team consisted of VJ officers and other specialists, some of whom served as active officers in the Army of Republika Srpska. One of the members was General Milan Gvero, who, at the time the Commission was formed, had already been charged by the ICTY, and was subsequently tried and sentenced for crimes committed in Srebrenica in 1995. General Delić praised Gvero in his testimony, calling him a professional soldier whose role on the Expert Team had been to deal with “issues related to Republika Srpska.” According to Delić, the Commission consisted of 40 members in total, most of whom were active duty

1259 Yugoslav Army General Staff, “Analysis of the hitherto trial before the Hague Tribunal, problems and proposals of measures,” 20 February 2002, P921.8a, 1.
1261 See: Yugoslav Army General Staff, “Analysis of the hitherto trial before the Hague Tribunal, problems and proposals of measures,” 2-4.
1262 Testimony of General Božidar Delić (28 September 2005), 44762- 44764. Prosecutor Nice asked Delić about Gvero’s role as the VJ commission’s expert dealing with VRS matters, noting that he had been indicted at the ICTY for crimes in Srebrenica. General Delić replied that, “General Gvero has been active in political work all his life, and he headed the sector for morale, religious issues, and probably psychological propaganda. A man of that kind could not possibly have had any role in command. I know him because he worked at the centre of higher military schools at the time when I was a student there.” Judge Bonomy interceded, reminding Delić that “the question was whether he was a member of the VJ commission dealing with matters affecting the Republika Srpska,” prompting General Delić to answer affirmatively: “I haven't seen the list, but I think his job was to deal with issues related to Republika Srpska.”
members with the rank of Colonel and Lieutenant Colonel, along with several Majors, two or three Captains, and five or six retired JNA officers.\footnote{Testimony of General Božidar Delić (10 July 2005), 42108. Also see: “Army Commission for Cooperation with the ICTY Abolished,” \textit{Defence & Security}. The following names were referred to as members of the Commission: Slavoje Terzić, General Geza Farkaš, General Radomir Gojović, Nikola Grujina, Aca Tomić, Slobodan Rajčević, Miloje Pršić, Gvozden Petrović, Radovan Labus, and Dragiša Rašković.}

The Commission was abolished in April 2003 by the decision of Boris Tadić, almost immediately after he became the Serbian Minister of Defence. Yet, in its short-lived existence, the Commission collected over 10,400 documents relevant to the wars in Croatia, BiH, and Kosovo. It also compiled new material, including combat maps and statements taken from VJ officers who were direct participants in combat incidents.\footnote{For example, see evidence brought into the courtroom by General Božidar Delić in Defence Exhibits D300.430-D300.436.} And while original maps contemporaneous to the time of the conflicts still existed and were bound to have been of more value than \textit{post facto} creations to any judge in any trial system, Milošević’s Defence witnesses relied instead on the maps prepared later by the Commission.

During his testimony, Delić showed the court copies of operational logs and the war diary of his brigade, which had been provided to him by the Commission.\footnote{Testimony of General Božidar Delić (10 July 2005), 42100-42101; and (18 July 2005), 42408.} Among these, the Prosecution identified some of the very documents it had sought from Belgrade for over three years, and requested permission to examine full versions of the documents. The judges supported the Prosecution’s request and Delić was compelled to hand over the war diary despite his protestations.\footnote{Ibid., (18 July 2005), 42406-42408; and (19 July 2005), 42481-42483.}

It was clear that the Defence had been given access to documents that had been denied to the Prosecution; and this fact was used by the Prosecution to challenge the intentions of the Commission, suggesting that it had deliberately kept information and materials from the Prosecution. To illustrate this point, the Prosecution produced the notes of a November 2002 meeting between representatives of the Prosecution and the VJ, at which acting Chief of Staff of the VJ General Branko Krga and the President of the Commission for Cooperation with the ICTY, General Zlatoje Terzić, both claimed that the personnel file of General Ratko Mladić was not in the VJ archive. In court, General Delić supported this assertion, claiming that personnel
files were not kept in the military archives but in the administration of each branch.\footnote{1267} What Delić seemingly did not know was that, by the time of his testimony, parts of the Mladić personnel file had in fact been handed over to the Prosecution through official channels; apparently, from the VJ archives in Belgrade. And in the years that followed, the Prosecution received a number of files from the VJ archive of VJ officers who had served in both the VRS and SVK.

Pressed by the Prosecution and seeking to explain discrepancies between the official and actual intent of the VJ to cooperate with the ICTY, General Delić cited difficulties with locating requested documents and attributed this to the bombing of VJ installations and the lack of an electronic register system, which he explained could make the search for some documents take months if not years.\footnote{1268} But it did not pass unnoticed in the courtroom that Delić seemed to have been more successful and expedient in locating documents about crimes allegedly committed by the KLA in the same time period. He explained to the court that he had been collecting documentation related to the KLA because he was the only VJ officer who had been asked to testify as an expert at the ICTY in a case against KLA members, including former Kosovo Prime Minister Ramush Haradinaj.

Delić had indeed been asked by the Prosecution team on the Haradinaj et al. case to write an expert military report – a fact originally kept from the Milošević Prosecution team – and the VJ Commission had facilitated access to any documents the General deemed relevant.\footnote{1269} This was viewed by the Prosecution for the Milošević case as a display of selectiveness or bias in the search for and production of documents, an allegation which eventually made it impossible for Delić to appear in the Haradinaj trial. Further, by appearing as a witness on behalf of Milošević, Delić exposed himself to the scrutiny of a cross-examination in which the Prosecution addressed evidence that Delić had been seen by a witness destroying an undefended house with a tank in 1999.\footnote{1270} Still, General Delić’s testimony was initially evaluated as positive for Milošević with

\footnote{1267}{\textit{Ibid.}, (11 July 2005), 42109-42110.} \footnote{1268}{\textit{Ibid.}, 42077.} \footnote{1269}{\textit{Ibid.}, (20 July 2005), 42675-42676; and (21 June 2005), 41232.} \footnote{1270}{\textit{Ibid.}, (12 July 2005), 42248-42254.}
some media calling it a serious blow to the Prosecution’s case.\textsuperscript{1271} And Delić himself seemed to be very satisfied with his appearance in court, bragging in an interview that he had refuted the testimony of 26 Prosecution witnesses.\textsuperscript{1272}

In truth, the Haradinaj Prosecution team should never have accepted General Delić as an expert witness because of his position as a commanding officer during the time period relevant to the indictment. Given his participation as an active VJ officer during the Kosovo conflict, and one who was accused by other witnesses of committing crimes, he could be called to the stand only as a fact witness. Not only was he unable to be objective about the subject of his expert testimony, but his PhD dissertation indicated that he was biased against and hostile toward Kosovo Albanians; and this also emerged in cross-examination. The General’s PhD thesis, entitled “Preparation and engagement of Defence forces in the prevention and crushing of armed insurgency in Kosovo and Metohija,” was written sometime between 1996 and 1997 and was produced in court by the Prosecutor. In a paragraph discussing the demographic structure of Kosovo, General Delić used the derogatory term Šiptars to refer to Kosovo Albanians, writing:

In Kosovo and Metohija, the mother country of the Serbian people, the ethnic space of Serbs was continually reduced in the past centuries by the systematic advance of Albanians from the neighbouring Albania and the expulsion of the Serbian population. In the past decades, the process culminated in a phenomenon unique in Europe, the goal of which is to expel the remaining Serbian population through biological (demographic) expansion based on a high birth rate among the Šiptars...\textsuperscript{1273}

\textsuperscript{1271} For example, in B/C/S, see: “Dokazao sam da Ešdaun laže,” Internet Novine Srpske, http://www.srpskadjaspora.info/vest.asp?id=6383 (accessed 30 October 2014). In English, this headline reads, “I have proof that Ashdown is a liar.”
\textsuperscript{1272} Delić said, \textit{inter alia}, “I have taken 26 ‘scalps’… I have refuted the testimonies of 26 Prosecution witnesses – among whom were colonels and generals from Western countries…I have proved on the spot that they were forgers, amateurs, and complete ignoramuses. That troubled the prosecutors and the judges. Whenever they [presented] evidence, I said it was a forgery and I succeeded to prove my claims.” (This article appears in Serbian and was translated by the author.) See: P. Stojković, “Zemlju nema ko da brani,” \textit{Arena 92}, 26 February 2008, http://revija92.rs/code/navigate.php?id=599&editionId=15&articleId=70 (accessed 4 April 2015).
\textsuperscript{1273} Testimony of General Božidar Delić (11 July 2005), 42119.
When asked by the Prosecution if his belief in 1997 had been that the high birth rate among Kosovo Albanians was deliberately aimed at expelling the Serbian population, General Delić replied, “It is a fact. It is an incontestable fact.”\textsuperscript{1274}

The Prosecution also asked General Delić to elaborate on who the enemies were whose insurgency had to be prevented and crushed – referring to the dissertation title – and Delić could not provide a straightforward answer, admitting that it could not be the KLA since they appeared on the scene after he wrote his thesis. He was subsequently asked to explain another paragraph of the thesis in which he addressed the arming of Serbs and Montenegrins in Kosovo:

Serbs and Montenegrins in Kosovo and Metohija who have not been given their assignments as…military conscripts…in the units of the VJ and the VTK and the MUP have been issued light infantry weapons with a single of ammunition. Thus the resistance in the settlements where Serbs and Montenegrins live has been ensured, as they can offer resistance and defend their homes and families….\textsuperscript{1275}

When asked to clarify if that meant that the Serb and Montenegrin population had already been armed as he described in 1997, General Delić confirmed that they were armed by that time as civilian defence units.\textsuperscript{1276}

Several years after his testimony, the fate of General Delić took an unexpected turn, during the Serbian general elections held in 2008. Delić had started a political career as a member of Šešelj’s Serbian Radical Party (SRS) and was put forth in 2008 as the party’s candidate for the post of Defence Minister. But his popularity among nationalist and radical voters changed overnight after the Serbian daily \textit{Blic} published a copy of a letter Carla del Ponte had sent on his behalf to Serbian authorities, and Delić was denounced as an ICTY collaborator, in opposition to his Party’s public rhetoric that the Tribunal is an anti-Serb institution.\textsuperscript{1277} The SRS lost the

\textsuperscript{1274} Ibid.
\textsuperscript{1275} Ibid., 42120.
\textsuperscript{1276} Ibid.
\textsuperscript{1277} “Kandidata SRS za ministra odbrane plačao Tribunal,” \textit{Blic}, 8 May 2008. This episode had a huge impact on Delić’s political career, and on his lack of success in the elections in May 2008. He cost the Serbian Radical Party many votes when the \textit{Blic} article revealed that Delić was paid by the Tribunal to prepare his Expert Report for case \textit{of Prosecutor v. Ramush Haradinaj et al}. The article also published details about the letter of support sent by Carla del Ponte on his behalf to Serb authorities, in which she pleaded not to pension off the General. Also see: “Delić molio Karlu del Ponte da mu ponisti odluku o penziji,” \textit{Blic}, 10 May 2008; and see Delić’s reply to these accusations: “Hajka zbog 11. Maja,” \textit{Glas javnosti}, 11 May 2008.
election and Delič’s political career became uncertain as Šešelj’s party split in the aftermath of defeat, with dissenting SRS members forming the Serbian Progressive Party (Srpska napredna stranka, or SNS), led by Tomislav Nikolić. The SNS would eventually win the 2012 presidential and parliamentary elections.

The Boomerang Effect of Defence Evidence: VJ War Diaries and Daily Combat Reports

Although the VJ Commission was abolished in 2003, the materials collected from the archives as well as those prepared under its supervision remained in VJ custody; and those relating to the Kosovo indictment period were used by Defence witnesses as late as 2006. The Prosecution urged the court to disregard post facto documents created by the Commission, in favour of materials contemporaneous to the events in question. This approach eventually bore fruit as several Defence witnesses produced parts of original war diaries and operational logs of their units when pressed about the nature of their post facto statements. Some of these original documents had been requested from Belgrade since 2001 in vain; and the court successfully compelled these witnesses, and in some cases the Serbian authorities, to provide the war diaries of particular brigades and units in full.

Questions as to how war diaries and daily operational logs suddenly appeared in the courtroom despite having previously been requested but not received by the OTP were resolved to some extent by witness testimonies. Several Defence witnesses testified that they had received selected parts of documents from Zdenko Tomanović, Milošević’s out-of-court Defence Counsel, who got them either from private sources or relevant state authorities. Curiously, though, the Defence seemed to have expected to be able to refer to selected parts of war diaries without anticipating that the Prosecution would request to see them in full, as happened.

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1278 Members of the VJ involved in the Kosovo campaign and called as witnesses for the Defence included: General Božidar Delič, General Miloš Došan, General Milan Kotur, Colonel Vlatko Vuković, Major Janoš Šel, Husein Sarvanović, Krsman Jelić, and Zlatko Odak.

1279 For example, see: Trial Transcript and Testimony of Colonel Vlatko Vuković (27 October 2005), 45836-45839, 45871-45872, 45876-45877, and 45929-45930. Before his testimony, the production of General Delič’s and General Došan’s war diaries was discussed; and Colonel Vuković’s diary was discussed during his testimony. Also see: Testimony of Major Janoš Šel (30 November 2005), 46831-46842. Major Šel, after several initial confusing and evasive answers, eventually admitted to having kept daily operative reports in two notebooks and directed the Court to the official location where they were kept. Subsequently, the Court issued an oral order to the Serb authorities on the following day to provide a copy of the notebooks.

1280 For example, see: Testimony of General Miloš Došan (19 October 2005), 45472-45473; Testimony of Colonel Vlatko Vuković (27 October 2005), 45874 and 45930.
Once the full versions of the war diaries of General Delić’s 549th Motorised Brigade, as well as those of other brigades and units commanded by General Miloš Đošan, Colonel Vlatko Vuković, and Major Janoš Šel, were made available, they together provided the basis for some of the most compelling evidence heard at the trial. The war diaries showed that VJ combat units had planned and started combat actions in Kosovo, in cooperation with MUP forces, immediately after the NATO air strikes began on 24 March 1999. The NATO bombardment started just before 20.00, and a state of war was proclaimed by Federal authorities at 23.00.\textsuperscript{1281} The Prosecution case was that, in anticipation of the NATO attacks, a plan was devised to implement a sweep-up operation by FRY forces consisting of both VJ and MUP units, and NATO attacks were then used as a cover to expel as many ethnic Albanians as possible from Kosovo in order to change its ethnic composition and enable political rule by the Serb minority.

The war diary of the unit commanded by Colonel Vuković noted that Combat Group 2 carried out a mission according to a confidential order dated 23 March 1999. A Prosecution source claimed that Vuković had told his men when assembling them on 24 March that the Albanians had to be driven from Kosovo and that there should “not be even an Albanian ear” left in the province.\textsuperscript{1282} The Defence position – which was supported by every VJ officer called to testify – was that the NATO air campaign caused the humanitarian catastrophe in Kosovo. In fact, Defence witnesses asserted that NATO had fabricated the notion of Serbian crimes to cover for its own indiscriminate aggression, as Colonel Vuković asserted during his cross-examination. He said that accusations of Serb crimes “enabled NATO to target everything in Kosovo and Metohija indiscriminately…. whenever there were cases when civilians tried to go back home, they were targeted by NATO aviation.”\textsuperscript{1283}

This view was shared by many Defence witnesses. Former FRY Military Prosecutor Radomir Gojović had testified before Vuković and also attributed the fleeing of civilians to NATO aggression. The BBC and CNN had aired images alleging instead to show the ethnic cleansing of Kosovo Albanians by the VJ, and these were played in court. Asked by Milošević if any such

\textsuperscript{1281} “War Diary of the 2nd Motorised Battalion,” Excerpt, Exhibit D322.3e, 2.
\textsuperscript{1282} Trial Transcript (12 December 2005), 47294.
\textsuperscript{1283} Testimony of Colonel Vlatko Vuković (27 October 2005), 45928-45929.
activity had ever been brought to the attention of the military judicial system, Gojović insisted that there “was no evidence of ethnic cleansing” in Kosovo and Metohija.1284

The Semantics of the Evidence: Cleaning up, Sweeping up, Mopping up, or Ethnic Cleansing?

The term ‘ethnic cleansing’ had been used throughout the Prosecution part of the case by witnesses referring to the crimes committed by Serb forces in Croatia, BiH, and Kosovo. In his Opening Statement at the start of the Defence case, Milošević asserted instead that if there was a history of ethnic cleansing in Kosovo it had been systematically conducted by the Kosovo Albanian majority against Serbs and Montenegrins.1285 Vladislav Jovanović, the former Serbian Minister of Foreign Affairs, also articulated this view when asked by Milošević about the origin of the term, claiming its use had risen from fears among Serbs that they would be cleansed from Kosovo:

The term “ethnic cleansing” was first used in the 1980s, in early 1980s, during the demonstrations organised by Kosovo Albanians when they used slogans “Kosovo Republic” and “Kosovo for Albanians only.” We at the time publicly condemned any activity that would resemble ethnic cleansing or anything similar. …For example, after the conference in London, you declared that you strongly condemned any activity, any kind of ethnic cleansing, any forcible moving out of population from one place to another. And you said that if there was any such activity going on, it needed to be halted immediately. And this is something that was frequently repeated at all levels by representatives of the Serbian government....1286

Yet, Defence assertions on this issue did not reflect historical facts about the origins of the term or evidence from war diaries, in which VJ officers regularly used the word čišćenje – which was translated in a number of ways by different ICTY translation and interpretation services, as “cleaning,” “cleansing,” “sweeping up,” or “mopping up.” The Defence rejected the allegation that the term referred to a cleansing of the Kosovo Albanian civilian population, and said it had

1284 Testimony of General Radomir Gojović (22 March 2005), 37615-37616.
1285 Trial Transcript, Defence Opening Statement (31 August 2004), 32222-32223.
1286 Testimony of Vladislav Jovanović (15 February 2005), 36171-36172.
only been used to imply a military “mopping up” of territory after anti-terrorist actions that involved enemy combatants. But, in the contemporaneous documents brought to the attention of the court by Defence witnesses, various interpretations of the term emerged.

The Prosecution tracked the use of the term čišćenje in the war diary entries of Colonel Vuković’s unit and General Delić’s and General Đošen’s brigades. The diary of the unit commanded by Colonel Vuković offered some of the most explicit evidence of forced expulsions of the civilian population from Kosovo villages, with the term čišćenje accompanying descriptions of operations that could hardly be passed off as mopping-up activities on the battlefield. For instance, in a series of entries from the end of March 1999, villages named in the Kosovo indictment as sites of atrocities and deportations were listed day after day as locations of operations that followed a similar pattern – FRY forces would “intervene” in an area, “seal off” towns and villages, and thousands of civilians would move en masse toward the border. The entry for 28 March 1999 noted that “during the day about two thousand people passed by in the direction of the Čafa Prušit border crossing.”\[1287\]

Day after day, the entries were almost identical. On 29 March 1999: “…forces are at the ready for intervention along the Orahovac–Oštrozub axis. …during the day about a thousand people passed by in the direction of the Čafa Prušit border crossing.”\[1288\] On 30 March, two thousand people from four more villages were said to have moved toward Čafa Prušit; and on 31 March, a thousand more from two others.\[1289\]

When Colonel Vuković testified as a Defence witness, the Prosecution challenged him in cross-examination with evidence of crimes committed in Bela Crkva on 25 March 1999, including the execution of villagers on a river bank, asking:

> Now, the allegation, you will know, is that large numbers of villagers, escaping from the attack on their village, went along that streambed. First there was an attack on a large -- on a number of family members... Second, there was an incident where women and men were separated from each other, the men were

\[1287\] “Map reflecting entries in Vuković’s diary,” Exhibit P930.1. Also see: “War Diary of the 2nd Motorised Battalion,” 6-7. Towns named in both the diaries and in the indictment include Bela Crkva, Celine, Nogavac, Velika Kruša, Retimlje, Randubrava, and Rogovo, among others.
\[1288\] Ibid.
\[1289\] “War Diary of the 2nd Motorised Battalion,” 6.
made to strip, were robbed of their property, and then were shot in large numbers. Were you present in the area of Bela Crkva at the time, early on the morning that it is said this happened, or not? It’s March the 25th, early in the morning....

Vuković answered that his combat unit had passed through Bela Crkva between 5.00 and 5.30 without engaging in fighting, because they did not encounter any terrorists there. Referring to the war diary entry of his brigade from that day, which used the word čišćenje in relation to Bela Crkva, the Prosecution asked the witness to explain what had needed mopping up if no terrorists had been present there. In fact, of five KLA strongholds in the area, four of them – Drenovac, Dragobil, Nišor, and Mališevo – were not attacked at all. An attack on the fifth, Mađare, was noted in the 31 March entry, which stated that seven terrorists had been corralled into a house there and destroyed by tank fire. Colonel Vuković, explaining the use of the word čišćenje in his diary, offered the same definition given the day before by Air Force General Đošan, who had explained it as the process of separating the good from the bad. Vuković told the Court:

...on the 25th as well, if you want to -- me to use the word, we cleaned, or cleansed, the villages of Celine and Nogavac and Bela Crkva of terrorists. Of terrorists. So this refers to “čišćenje,” the cleaning or cleansing, exclusively as part of an operation against the terrorists, just as you use the word “cleaning” in everyday life where you’re separating...something good from something bad.”

The previous day, the Prosecution had asked General Miloš Đošen – another Defence witness who participated in combat in Kosovo – if the word čišćenje could mean “mopping up” as well as “cleaning.” He also answered that it meant “separating the good from the bad” or, in concrete terms, “separating the terrorists from the rest of the population.” He rejected the idea that čišćenje could be used to mean “ethnic cleansing,” and echoed many other Defence witnesses by asserting that any ethnic cleansing in Kosovo had been conducted by Kosovo Albanians against the Serb population. When presented with entries from the war diary of his unit in which the word čišćenje was used, General Đošen replied:

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1290 Testimony of Colonel Vlatko Vuković (1 November 2005), 46075-46076.
1291 “War Diary of the 2nd Motorised Battalion,” 6.
1292 Testimony of Colonel Vlatko Vuković (1 November 2005), 46119.
1293 Testimony of General Miloš Đošen (31 October 2005), 45950.
1294 Ibid., 45950-45951.
I think that the word “čišćenje” in a way was a clumsy choice, but it was used very often. Whoever kept the diary, the operations officer, often used it -- or, rather, this word was often used irrespective of what was actually being done. Specifically, the word itself, “čišćenje,” really has a very broad meaning, but it was customary. It was used often, and sometimes quite simply it was used in order to record things faster, to write them down faster. ...in the concrete context; it means that this was fighting against terrorists, Šiptar terrorists, in certain places where an action was being carried out. So that means that this was only fighting against terrorists who were fighting against our units, who were resisting them, et cetera. This does not mean at all that the population were the targets of the military and the police.\textsuperscript{1295}

When asked by the judges to confirm that the word was used only in relation to terrorists, General Đošan answered:

\begin{quote}
Terrorists only, yes. When it says “čišćenje,” it meant removing them, taking them captive, and even killing terrorists in a war. That is to say, destroying terrorists… If they could be taken prisoner, of course they were taken prisoner, but fighting went on. But it was terrorists only.”\textsuperscript{1296}
\end{quote}

When Colonel Vuković responded the same way about use of the term on the following day, Prosecutor Nice intervened, asking him if “separation” was the dictionary definition of the word or if he was offering this definition after discussing the evidence with someone else.\textsuperscript{1297} The Prosecution brought the matter up with the judges and, addressing the witness, suggested that he had either spoken with General Đošan or “with someone else who has explained to you how you’re going to get round the problem of this use of the word ‘čišćenje.’”\textsuperscript{1298} The Prosecution added that, in Croatian/English or Serbian/English dictionaries, “separate” was not offered as a translation of the word.\textsuperscript{1299}

\begin{footnotes}
\item[1295] Ibid., 45966.
\item[1296] Ibid., 45966.
\item[1297] Ibid., 46129-46130.
\item[1298] Ibid., 46152.
\item[1299] Ibid., 46153.
\end{footnotes}
As the term čišćenje became increasingly troublesome for the Defence, Milošević asked Colonel Vuković to clarify in what sense the word had been used in military documents relating to the combat period. Vuković answered, as he had before, that it referred only to the “mopping up” of terrorists. Milošević also raised the issue with the next witness, General Geza Farkaš, who gave the following definition:

Well, when soldiers use the term, that means searching the terrain. This word is used in our rules, and our rules exactly explain the term “čišćenje.” Say the clearing of a minefield; that is one form of “čišćenje.” Then “čišćenje” in the sense of terrorists is mopping up. So this is a term that is used for military actions, for the military carrying out combat tasks.

However, evidence from the war diaries and operational logs spoke for itself and the diary of General Đošan’s brigade was an important example of how the Prosecution’s evidence was sometimes confirmed, reinforced, and even expanded upon by Defence witnesses. His brigade’s diary shed more light, for instance, on crimes committed in the village of Meja on 27 April 1999. The indictment alleged that FRY and Serb armed forces had launched an attack against the Kosovo Albanian population there, driving the civilian population away and compelling them to join convoys of refugees. In Meja, Korenica, and Meja Orize, a large number of Kosovo Albanian civilian males were separated from the others and executed. Approximately 300 persons remain missing, but the bodies of seven others who were last seen in Meja on 27 April 1999 were found in a mass grave in Batajnica, near Belgrade, where a number of mass graves were discovered in 2001.

Reconstruction of these events, assisted by entries in the war diary of General Đošen’s brigade, showed that the Meja massacre was part of a broader military action known as Reka. General Đošen described it as an assignment to prevent the grouping of “Šiptar terrorist forces,” who were rallying in the Carragojs valley. But the diary entry for 21 April 1999 noted that 21
members of the MUP had been killed or seriously wounded in Meja.\textsuperscript{1304} Prosecutor Nice challenged General Đošen on the stand, suggesting that the killings in the village one week later had been in retaliation for these Serb casualties. But General Đošen denied this, saying that what occurred in Meja had been combat against terrorists and that terrorists and his soldiers had both been killed.\textsuperscript{1305}

\textit{Sanitising the Terrain or Hiding the Crimes?}

During the investigation into the crimes alleged in the Kosovo indictment, the Prosecution stumbled upon valuable evidence in the form of a wartime notebook belonging to Serbian Police General Obrad Stevanović. The notebook was not a war diary \textit{per se}, but contained entries about Stevanović’s appointments as well as lists of tasks. When Stevanović appeared as a Defence witness, the Prosecution used the opportunity to explore the contents of the notebook in cross-examination, bringing forth powerful evidence about plans to remove the traces of crimes committed by Serbian forces.

Milošević understood the evidentiary significance of Stevanović’s notebook. Some entries included the word \textit{asanacija}, or sanitation, which the Prosecution contended may have referred to the removal of corpses. When questioning Stevanović, Milošević pre-emptively addressed the word \textit{asanacija} himself:

\begin{quote}
    General, I'm going to ask you a few questions now with regard to the sanitisation of the terrain. The concept of sanitisation of the terrain is brought into, is linked with the persons that lost their lives. Now, what does this term mean, mop-up or sanitisation of the terrain? Could you explain that to us?
\end{quote}

Stevanović replied that this was a standard military procedure, explaining:

\begin{quote}
    Mop-up of the terrain or sanitisation is a well-known military concept. Other terms might be used in other languages... But sanitisation means the burying of corpses after battle in the legally prescribed manner as well as livestock that were killed and generally cleaning up the area from mines, radioactive devices, chemical devices, and
\end{quote}

\begin{itemize}
  \item \textsuperscript{1304} Ibid., 45945.
  \item \textsuperscript{1305} Ibid., 45946-45947.
\end{itemize}
dealing with the debris and blockage of roads, the aim of which is to protect the people to ensure their safety and security and normal functioning of life in general and communications and moving around the area.\footnote{Testimony of General Obrad Stevanović (26 May 2005), 39908-39909.}

They went on discussing the meaning of the term *asanacija* as it appeared in the Military Encyclopaedia of 1970, agreeing that its meaning was in compliance with the Geneva Convention of 1906 and the second Hague Convention of 1907, each of which referred to the obligation of all parties to find, identify, and bury the dead after battle. Milošević asked outright if *asanacija* could refer to covering up a crime and Stevanović resolutely rejected this possibility.

The exchange continued:

Q. Now, the cases that were mentioned, the transportation of bodies from Kosovo to the territory of central Serbia, for example, several hundred kilometres away from Kosovo, and burying them, does that come under the concept of clearing up the battlefield when corpses are found?

A. Events of that kind do not come under the concept of clearing up the battlefield and they have nothing to do with the concept of clearing up the battlefield and sanitisation of the terrain as I explained it a moment ago.

Q. Now, do you have any explanation at all for that or do you have an explanation for [the bodies that were found] there?

A. For a long time I did not believe that it was true at all. I have absolutely no explanation for what happened because it is quite illogical that somebody would dig up some people who had already lost their lives in order to bury them so far away from Kosovo. To my mind that is still a great mystery.

Q. Who could have had a motive? Who could have done anything like that?

A. Well, the person with the motive was anybody who had the intention to prove alleged crimes and ascribe them to the country and not to somebody who wanted to cover them up at all.
One page of Stevanović’s notebook consisted of shorthand from a meeting, including the notes “President,” “No corpse – No crime,” “They will use evidence of crimes to justify aggression,” “Simultaneous cleaning up of territories,” and “Clearing up the terrain is the most important.” Stevanović was asked about the word “President” and whether it was probably a reference to a meeting at the President’s office, and if the President was the Accused, Milošević. He answered affirmatively to both propositions, saying: “That’s something I can accept.” The implication that planning for the cover-up of crimes had taken place in his office was powerful evidence of Milošević’s criminal state of mind.

Stevanović had also written “Izbica” in his notebook, which was significant for the Prosecution. The remains of Kosovo Albanian civilians who were killed at Izbica had been discovered in 2001 in a secondary grave in Serbia. The relocation and reburial of killed civilians demonstrated recognition that their killings had been criminal. And Stevanović confirmed in cross-examination that some of the victims from Izbica were indeed found in the mass grave in Batajnica.

1307 Ibid., (2 June 2005), 40378-40382.
1308 Ibid., 40382-40383.
1309 A “secondary grave” is the grave of a victim who was originally buried elsewhere before they were exhumed and reburied.
1310 Testimony of General Obrad Stevanović (6 June 2005), 40495-40496.
Figure 1: Facsimile of page from Stevanović's notebook, with entries written in Cyrillic

Map 21: Distance from Izbica to Batajnica (approximately 245km), where civilian victims were reburied
The Milutinović et al. Judgement of 1999 – which dealt with many of the same crime scenes as were addressed in the Milošević indictment – qualified the reburial of over 700 civilians killed in Kosovo and transferred to secondary burial sites in Serbia as a crime for which the FRY and certain government officials were responsible, naming Milošević, Serbian Minister of Internal Affairs Vlajko Stojiljković, and Chief of the MUP Vlastimir Đorđević, among others. The Judgement concluded:

The fact that the persons involved felt this concealment to be necessary in the first place also leads the Chamber to conclude that they knew that the great majority of the corpses moved were victims of crime, as opposed to combatants or people who perished during legitimate combat activities...1311

The Scorpions Video

The cross-examination of Obrad Stevanović, who had helped the Prosecution establish the evidentiary value of the Kula Camp Video, was crucial to the presentation in court of another damning piece of video evidence that showed the killing of six Bosnian Muslims from Srebrenica by members of the Scorpions, a Serbian paramilitary group, formed originally in 1991 in Eastern Croatia. The Scorpions were also engaged in the Kosovo war in 1999 and Prosecution witnesses had already referred to the unit’s crimes there. Yet, the Prosecution was not sure that the judges would allow the video to be introduced in the Defence part of the trial, and asked General Stevanović for his assistance. He readily agreed, unaware of the Pandora’s Box he was helping the Prosecution to open.

The extraordinary video showed the executions of six Bosnian Muslim boys and men that took place some three weeks after the fall of Srebrenica in the small village of Godinjske Bare, in the Trnovo municipality, several kilometres from Sarajevo and some 150 kilometres from Srebrenica. The video first came to the attention of the ICTY through a Tuzla-based lawyer who approached OTP investigators and offered it for sale on behalf of a client. The lawyer was told that the OTP was not in a position to pay for evidence without first viewing it and evaluating its importance, and agreed to hand over a copy. An investigator later returned the video claiming

1311 Ibid.
that the OTP was not interested; but in reality, the video had been duplicated and the OTP had made contact with two Scorpions insiders who agreed to give detailed statements about its contents.\footnote{The Bosnian daily \textit{Dnevni avaz} identified the lawyer as Enver Hotić. See: Almasa Hadži, \textit{``Snimak strijeljanja Srebreničana dao advokat iz Tuzle,''} \textit{Dnevni avaz}, 10 February 2010. The video was registered in the official OTP database on 13 September 2004.}

The video helped confirm accusations made by Prosecution witnesses about crimes committed by the Scorpions and proved that the unit had operated over a number of years and across a wide territory. Combined with the testimony of these witnesses, the video verified connections between the Serbian MUP and members of the Scorpions who fought in the wars in Croatia, BiH, and Kosovo over a period of eight years. In light of what the Scorpions had done in Croatia in 1991 and BiH in 1995, the exposure of the Scorpions Video raised important questions about why Belgrade had called on them again in 1999 to fight in Kosovo, if not for exactly the same purpose?

\textit{The Impact of the Scorpions Video inside the Courtroom}

The Milošević trial team showed the Scorpions Video during its May 2005 cross-examination of Stevanović, and its effect was felt immediately inside and outside the courtroom. As a rule, such evidence of direct probative value would have had to be tendered into evidence during the Prosecution’s part of the case, which had concluded in February 2004. Thus, in order for the video to have been officially admitted into evidence, the Prosecution would have had to request that its case be re-opened. Theoretically, the Prosecution could have tried to establish the authenticity and relevance of the video as evidence in its cross-examination of Stevanović, who was seen as a key witness related to evidence on the participation of the Serbian MUP in the wars outside Serbian borders. He had a long professional career in the MUP and headed its Public Security Sector, and was therefore privy to information of particular value to the trial. However, the OTP team had decided that their primary focus was getting some of the video shown in court, not getting it tendered as evidence.

The Prosecution laid the foundation to play the video by first asking the witness to comment on contemporaneous documents that concerned various MUP units from Serbia – including the
Scorpions – that were involved in combat activities on Bosnian territory in the summer of 1995. The video began with close-up shots of the unit’s members, showing their faces as a local Orthodox priest blessed them before they departed to fight in BiH. The Prosecution already knew the identities of these Scorpions members from an informant. The tape was stopped and Stevanović was questioned as to whether he knew any of them; and he vehemently denied that he did.\textsuperscript{1313} When asked if he could allow for the possibility that a unit subordinated to the Serbian MUP and calling itself the Scorpions had operated on RS territory and had been involved in killing people from Srebrenica, Stevanović answered that he did not allow for the possibility that they were subordinated to the MUP Public Security Sector, which he had worked for, though he said he would not know if they were part of the State Security Sector.\textsuperscript{1314}

The Prosecution presented Stevanović with a document from the RS MUP that said that the Serbian MUP had sent 350 members of the Special Purpose Police Units (PJP) to be engaged on 27 June 1995 on the Trnovo front, where the Scorpions had filmed the crimes they committed, and Stevanović claimed that it had to be mistake.\textsuperscript{1315} Further documentation of connections between the Serbian MUP and the Scorpions brought further denials from Stevanović that he had any knowledge of them.\textsuperscript{1316} He again insisted on making the distinction between the State Security and Public Security Sectors of the Serbian MUP, the latter of which was in charge of border crossings. Unable to find a credible explanation for the content of the reports he found himself reading, Stevanović went so far as to claim that whoever wrote them may possibly have been delusional.\textsuperscript{1317}

The Prosecution then asked Stevanović whether he knew who Vasilije Mijović was. He confirmed knowing him and identified him as an instructor at the training camp for special police at Mount Tara. However, when confronted with documents signed by Mijović as commander of Serbian Special Anti-Terrorist units (\textit{Specijalna Antiteroristička Jedinica}, or SAJ) in the Trnovo

\textsuperscript{1313} Testimony of General Obrad Stevanović (1 June 2005), 40283-40286.
\textsuperscript{1314} Ibid., 40287.
\textsuperscript{1315} Ibid., 40251.
\textsuperscript{1316} Ibid., 40254-40256.
\textsuperscript{1317} Ibid., 40255.
area, Stevanović denied that Mijović had ever worked for MUP State Security.\footnote{Ibid., 40263-40264.} Yet, Mijović was featured in the Kula Camp Video shaking hands with Milošević.

This lengthy preparation by the Prosecution was required to provide the groundwork to justify showing the part of the Scorpions Video that included the executions of six young Bosnian Muslim civilians from Srebrenica. And indeed, after the first of these distressing images were played, Stephen Kay, the Defence counsel, objected to the video and qualified it as sensationalism, saying:

We haven't established any foundation for this. To my mind, this looks like sensationalism. There are no questions directed to the witness on the content of that film in a way that he can deal with it. It's merely been a presentation by the Prosecution of some sort of material they have in their possession that has not been disclosed to us and then it has been shown for the public viewing without any question attached to it. It’s entirely sensationalism. It’s not cross-examination.\footnote{Trial Transcript (1 June 2005), 40278.}

Prosecutor Nice responded that he was suggesting that the film showed the Scorpions, allegedly linked to the MUP, executing prisoners from Srebrenica.\footnote{Ibid., 40279.} Stevanović responded with shock and denial:

...I have to say that this is one of the most monstrous images I have ever seen on a screen. Of course I have never seen anything like this in -- live. I am astonished that you have played this video in connection with my testimony because you know full well that this has nothing to do with me or the units I commanded. ...I'm not saying that you do not have the right to do this, but I have to say that I am really upset...\footnote{Testimony of General Obrad Stevanović (1 June 2005), 40279.}

Pressed by Judge Robinson to answer the Prosecutor’s suggestion that the victims were prisoners from Srebrenica, Stevanović said that he did not intend to cast doubt on what the Prosecutor was...
saying but that he did not know any person appearing in the video.\footnote{Ibid.} The Prosecutor then asked Stevanović if he had ever met Slobodan “Boca” Medić, the leader of the Scorpions, and Stevanović said that he had actually met him several times in 1995, when he visited the small town of Erdut in the Baranja part of the Croatian SAO of SBWS with Milan Milanović, alias Mrgud.\footnote{Ibid., 40269-40270.} Erdut was the base and training camp run by Željko “Arkan” Ražnatović, and was supervised and financed by Radovan Stojičić, the head of the Serbian MUP Public Security Directorate.

Asked by Judge Bonomy to comment on his previous testimony, in which he had refuted any possibility that the Scorpions were affiliated with the Public Security Sector of the Serbian MUP, Stevanović firmly persisted in his denial of any such possibility.\footnote{Ibid., 40290.} But it would become clearer and clearer that this affiliation was a fact. In the days that followed the presentation of the video, the Prosecution pursued several leads on links between the crimes shown in Trnovo in BiH, in July 1995, with crimes committed in Podujevo in Kosovo, in March 1999, by members of the same unit. In Podujevo, women and children from several families had been ordered to line up against a wall, and were shot; 14 were killed and 5 children were seriously wounded.\footnote{Judgement, \textit{Prosecutor v. Đorđević}, No. IT-05-87/1-T, 23 February 2011, 483-500.} The Prosecution obtained documents that had appeared as evidence in a 1999 domestic criminal trial of two Scorpions members for these murders. In fact, it was the Serbian MUP that had prepared both documents for the earlier trial, upon request of the domestic court.

The first document was a report stating that the two accused men were indeed members of the Scorpions and that the unit was formed of 128 volunteers, with Slobodan Medić, alias Boca, as its commander and Srđan Manojlović, alias Srle, as his Deputy. According to the report, the Scorpions unit was transferred to the reserve formation of the MUP SAJ with the approval of Police Colonel-General Vlastimir Đorđević, who was the head of the Public Security Directorate of the Serbian MUP at the time and who was indicted in 1999 by the ICTY for crimes committed in Kosovo in 1998 and 1999. The report noted that the Scorpions were put under the command of Zoran Simović, commander of the Belgrade SAJ on 27 March 1999, one day before the killings in Podujevo took place. In court, Stevanović insisted that he knew nothing about this and said
that the law did not allow for the possibility of drafting a complete unit into the reserve forces.\textsuperscript{1326}

The second document repeated the history of the Scorpions unit, underlining the fact that it had been engaged in the past by the SAJ for certain tasks on the territory of Eastern Slavonia, in the SAO of SBWS.\textsuperscript{1327} The reservists were said to have been activated on 25 May 1999 and given uniforms of the PJP. The document also referred to the fact that the unit had been sent back to Serbia on 8 April 1999 and was then re-engaged on 25 April 1999, when 108 members of the unit were sent to Kosovo Polje, only to be discharged again as soon as 9 May 1999.\textsuperscript{1328} Witnesses indicated that the unit had been sent back to Serbia for the second time because they had once again committed crimes during operations.\textsuperscript{1329}

Stevanović did not have too much choice but to accept the facts as written by his colleagues from the MUP. He insisted that the reserve police could only recruit individuals, and not units, but said that if such a unit was indeed drafted into the reserve composition of the SAJ against the existing law, it would require the authorisation of a government minister.\textsuperscript{1330} What was not presented to Stevanović during the last part of the cross-examination, but was already in evidence, was an entry in his own notebook from 22 April 1999, which said that men from Šid were coming in PJP uniforms; an obvious reference to the Scorpions.\textsuperscript{1331} This was an important entry because various Serbian human rights organisations had previously identified Šid, a small town in Vojvodina, in the north of Serbia, as the place where members of the Scorpion unit had moved in 1995 after the reintegration of the SAO of SBWS into the Republic of Croatia.\textsuperscript{1332}

Milan “Mrgud” Milanović, who was the Minister of Defence in the SAO of SBWS until the end of 1995 and who knew the Scorpions well, testified as a Prosecution witness in October 2003, one year before the OTP obtained the Scorpions Video. Although he was not examined on the Scorpions crimes committed in BiH, Milanović explained some very interesting links between

\begin{itemize}
  \item \textsuperscript{1326} Testimony of General Obrad Stevanović (1 June 2005), 40541-40543.
  \item \textsuperscript{1327} Ibid., 40543-40544.
  \item \textsuperscript{1328} Ibid., 40545-40546.
  \item \textsuperscript{1329} Testimony of General Geza Farkaš (10 November 2005), 46449-46450.
  \item \textsuperscript{1330} Ibid., 40435-40437.
  \item \textsuperscript{1331} “General Obrad Stevanović’s personal diary,” Exhibit D299. 440a, 84. Also see; Testimony of General Obrad Stevanović (7 June 2005), 40610.
  \item \textsuperscript{1332} For more on the history of the Scorpions, see (in B/C/S): Škorpioni od zločina do pravde (Belgrade, Humanitarian Law Centre, 2012). Available at: http://www.hlc-rdc.org/wp-content/uploads/2012/06/Skorpioni.pdf
\end{itemize}
the police and military structures of Serbia, the RSK, and the RS and named a number of individuals who had played roles in every stage of the armed conflicts from 1991 to 1999. He described how, after the fall of Vukovar, he was asked by the director of the oil company later known as Oil Industries of Krajina to organise security for the company’s oil fields, which were on the line between RSK and Croatian forces. Milanović went to the nearby village of Banovci and talked to the local Territorial Defence commander, Slobodan Medić, who was just 21 years old at the time. Milanović also testified to meeting Živko Trajković in 1992. Trajković was the MUP official who was in charge of the Scorpions in March 1999 when they committed their first crimes in Kosovo. When Milanović visited the oil fields in Đeletoveci, he would take Trajković with him, and that was how Medić and Trajković had met.

Apparently, Medić named the unit the Scorpions (Škorpioni) in 1994. The unit originally consisted of 100 to 150 men who were frequently mobilised by the SVK and, as a part of its Slavonia-Baranja Corps, fought regularly. Milanović was responsible for organising the Scorpions to fight in the 1994-1995 Operation Spider in the Bihać pocket, an area in Western Bosnia of great strategic importance for the Serbs as a corridor connecting the RSK and RS. He testified that the Scorpions were subordinated in the Bihać region to the SVK, but to the RS MUP in Trnovo – where they also fought in 1994 – and to the Serbian MUP in Kosovo in 1999.

According to Milanović, it was Radovan “Badža” Stojičić, the Head of Public Security of the Serbian MUP, who approached him in 1994 with concerns about problems in the RS. Stojičić asked him to organise a battalion from Eastern Slavonia to help out. Milanović approached Medić and subsequently the Scorpion unit was engaged in the Trnovo area, where they operated for 30 days. Obrad Stevanović’s testimony that he had met Slobodan Medić through Milanović in 1995 confirmed the role of Milanović as the link between the Serbian MUP and the Scorpions.

1333 Testimony of Milan Milanović (8 October 2003), 27241 and 27254.
1335 Ibid., 32.
1336 Testimony of Milan Milanović (14 October 2003), 27431.
1337 Milan “Mrgud” Milanović, Witness Statement, 32.
1338 Testimony of General Obrad Stevanović (1 June 2005), 40281.
Milanović was again instrumental in the deployment of the Scorpions during the Kosovo war in 1999, when Medić offered the services of his unit on the condition they be subordinate to the Serbian MUP and not to the VJ. Milanović claimed that Momir Gavrilović, alias Gavra, a Serbian MUP official active in the SAO of SBWS who was dead at the time of Milanović’s testimony, had warned him that MUP leaders planned to pin the killings of Albanians in Kosovo on some volunteer groups. Several days later, Milanović received a call from Vlastimir Đorđević informing him of the killings in Podujevo.\footnote{Milan “Mrgud” Milanović, Witness Statement, 33.} According to Milanović, Đorđević called Medić only three weeks later to redeploy the Scorpions in Kosovo.\footnote{Ibid., 34.}

In Milošević’s examination-in-chief of General Stevanović, which took place before the video of the Scorpions killings was shown, Milošević asked if any paramilitary formation had been under the control of any state authority. Stevanović denied that possibility, but said that there could have been uniformed or un-uniformed armed groups committing occasional criminal acts. He explained that if paramilitary groups were active or present, it would have been against the law and they never would have been under the control of the police or the army.\footnote{Testimony of General Obrad Stevanović (26 May 2005), 39958-39961.} This was an unsustainable assertion, though, given evidence that connected all the major paramilitary groups – including the White Eagles, the Serbian Volunteer Guard (Arkan’s men), the Serbian Radical party units, and the Scorpions – with the Serbian MUP. It was not surprising that witnesses such as Stevanović, a state official, denied direct contact and cooperation with paramilitaries. The whole concept of “unruly” paramilitaries was constructed in order to deflect responsibility from the armed forces and from any official chain of command that for the mass atrocities committed between 1991 and 1999. Ton Zwaan, who testified for the Prosecution as an expert on genocide, explained the “monopoly of violence” exercised by states. This monopoly is normally centralised, but if it is not functioning or if certain groups are deliberately excluded from it, some groups or organisations may claim their own monopoly and use unlawful violence for their own ends. Similarly, in the commission of mass atrocities or genocide, a state may encourage and allow violence as a means to support its political goals; but Zwaan concluded that in some genocidal processes, central authorities may no longer maintain the monopoly of violence but instead give permission, directly or indirectly, to groups of
perpetrators to commit mass atrocities. According to Zwaan, the actual murder and killing that takes place, which he calls the “ultimate phase” of a genocidal process, “may be done by state agents, often special units of police and/or military personnel, put in a special position, exempted from the rule of law, and usually also from normal military discipline, but also by special auxiliary or paramilitary groups indirectly linked to the central state authority.” Further, there is what Zwaan describes as a “flywheel effect” that occurs as a consequence of impunity – meaning that once a genocidal process is under way, the commission of crimes can gather speed like a flywheel, running more smoothly as time passes and as perpetrators become more experienced and efficient.

Collateral Trials for Crimes Committed by the Scorpions in BiH and Kosovo

The presentation of the Scorpions Video in court elicited unprecedented reactions in Serbia, where the state’s participation in the wars of the 1990s had been kept from the public as much as possible. The excerpts played in court were followed by a broadcast of the entire videotape on Serbian television the same evening, unleashing a public debate on the role of Serbia in the conflicts in Croatia, BiH, and Kosovo. However, instead of resulting in a catharsis – triggering a shift in attitudes and a public accounting for Serbia’s political and criminal responsibility for the mass atrocities committed against non-Serb populations in those countries – the initial shock and any guilt it activated was soon diluted by counter narratives produced by nationalist elites and state bureaucracies that portrayed Serbs as having been the primary victim nation in the Balkans for centuries. Serb victims in the Srebrenica area were even instrumentalised, often with their numbers inflated.

Nonetheless, Serbian authorities were left with little choice but to respond to the crimes exposed in the videotape. The perpetrators of the killings could be easily identified and were all Serbian

1343 Ibid., para. 30.
citizens. Within 24 hours of the video’s airing on Serbian television, several Scorpions members were arrested and, in October 2005, five of them were indicted. Slobodan Medić, Pera Petrašević, Aleksandar Vukov, Branislav Medić, and Aleksandar Medić were charged with the killing of six men from Srebrenica in a crime that was described as having been committed under the direction of an unidentified VRS commander. In the trial, no connection to the Serbian MUP was addressed.\textsuperscript{1347}

The trial attracted a lot of media attention, raising high expectations not only regarding the pursuit of justice but also concerning the reaction of Serbian authorities and the Serbian public regarding mass atrocities committed by Serbian armed forces in BiH. However, the narrow scope of the indictment insured that any criminal responsibility was applied only to the perpetrators themselves; it demanded no accountability from higher-level authorities and made no mention of genocide in Srebrenica. The Medić et al. Judgement, pronounced on 10 April 2007, reflected these limitations and was seen as a letdown by families of the victims, even though four of the five accused were found guilty of war crimes. Slobodan Medić and Branislav Medić were each given 20 years in prison; Petrašević, the only one who confessed to the crime, was sentenced to 13 years; Aleksandar Medić was sentenced to five years; and Vukov was acquitted.\textsuperscript{1348}

Informed observers, such as local NGOs, criticised the Judgement and said that justice had not been done because, while the criminal responsibility of the perpetrators was exposed, their ties to state officials and organisations were obscured. This allowed elites to carry on using the rhetoric of victimisation as a buffer against state responsibility, framing the West as blindly determined to collectively punish Serbs. For example, now Prime Minister of Serbia Aleksandar Vučić, who was then the Secretary General of Šešelj’s SRS, stated in 2005 that a “media campaign against the Serb people and state” was intended to lead to the “unobstructed arrest of Ratko Mladić and the formal abolition of Republika Srpska.”\textsuperscript{1349}

\textsuperscript{1347} Belgrade District Court War Crimes Chamber, Indictment (Amended), Medić et al., No. KTRZ 3/05, 9 October 2006. Available at: http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2006_10_09_ENG.pdf.


\textsuperscript{1349} “Vučić: ‘This is an anti-Serb campaign,’” 6 June 2005, Kurir, as quoted in: “The Scorpions Case: Denial of Genocide,” 457.
Scorpions members were not charged in the domestic courts with genocide, but with war crimes. This was also true at the ICTY, where Jovica Stanišić and Franko Simatović were charged with crimes against humanity. The ICTY indictment did, however, refer to the Scorpions as having been a special unit of the Serbian MUP’s State Security while fighting in BiH, and of the Serbian MUP’s Public Security while fighting in Kosovo. During the joint trial of Stanišić and Simatović, former Scorpions member Goran Stoparic testified as a Prosecution witness that the unit had been transferred to Trnovo on the orders of Belgrade and had been paid by the Serbian DB. Stoparic, considered one of the most important insiders for the Prosecution, readily agreed with the Defence proposition that the actual perpetrators on the video were not regular members of the Scorpions, but were connected by friendship and family ties. He said that at the time of the killings, the regular members of the unit were at the front line several kilometres away. In April 2013, Stanišić and Simatović were acquitted of all crimes in a first instance Judgement, meaning that the Scorpions killings are not a part of the ICTY record in any conviction that ties Belgrade to mass atrocities in BiH.

Crimes committed by Scorpions members in Kosovo were also included in the ICTY indictment of General Vlastimir Đorđević. The Đorđević Prosecution team introduced extensive evidence during the trial regarding the unit and their status, resulting in a detailed reconstruction of the crime that is encapsulated in the Đorđević Judgement, in which the Scorpions are said to have served with the SAJ to assist in an operation in Podujevo at the end of March 1999. Controversies and contradictions regarding the status of the unit were addressed in the Judgement; and the judges determined that it had functioned as a separate unit in Kosovo, wearing the same uniforms as the SAJ, but with a Scorpions insignia on the arm. The court found that Đorđević had played a key role in the incorporation of the Scorpions into the MUP, ordering their deployment to Kosovo in March of 1999 as well as their redeployment in April 1999, despite his knowledge that members of the unit had committed crimes in Podujevo on 28

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1350 Ibid., 266-268.
1353 Judgement, Prosecutor v. Đorđević, para. 1928.
1354 Ibid., para. 206.
March.\textsuperscript{1355} The fact that the unit was redeployed is a powerful illustration of the climate of impunity that existed among Serbian authorities for perpetrators of war crimes.

\textsuperscript{1355} Ibid., para. 1930.
A lot of money is in circulation and great privileges are granted to those who should accept all that is against this country – loss of independence, separation of Montenegro, Kosovo and Vojvodina, humiliation and annihilation of the Serb people, handing the national heroes to the new Gestapo headquartered in The Hague. ...The task is being carried out in a perfidious manner, from the inside, seeking to pit as many people as possible against each other.

Slobodan Milošević, Closing Statement at the 5th SPS Congress, 25 November 2000

Chapter IX: The Unmaking of the Leader

Milošević’s former associates testified that he became obsessively concerned about his status and power over time, showing intolerance toward fellow party members and perceiving their public success as rivalry. Borisav Jović wrote about the methodical way Milošević dealt with potential competitors or those who expressed opposing views, marginalising or eliminating them before they gained too much political influence. According to Jović, Milošević had no scruples about carrying out political purges of his associates when he felt threatened by them.1356 Indeed, open political clashes had become a hallmark of Milošević’s political style by 1995, and he used state-controlled media to publicly denounce individuals while simultaneously applying pressure through political institutions to isolate or simply dismiss them. Jović himself was dismissed 1996, immediately upon the publication of his first book in the mid-1990s, initially from the position of SPS Vice-President before Milošević also asked him to resign as a member of the Serbian Parliament. Jović did as he was asked; he knew from experience that Milošević would get his way.1357

Zoran Lilić gave a similar account of the changing atmosphere in the SPS, underlining Milošević’s intolerance of opposition within his own party. SPS members who opposed policies advanced by Milošević, his wife, and his inner circle very quickly ceased to be party members, either of their own free will or because they were forcibly expelled.1358 Immediately after the signing of the Dayton Peace Agreement, there had been a showdown among his closest associates, some of whom were critical of the power-sharing arrangement Milošević had with his

1356 Jović, Book on Milošević, 19.
1358 Testimony of Zoran Lilić (17 June 2003), 22557.
wife. Milošević believed he could afford the standoff given his newly acquired patronage by the West.\textsuperscript{1359}

Milošević also failed to address the challenges of Serbian society that could have helped him win back the popular support he had once enjoyed. Serbian citizens, weary of the domestic problems that accumulated over years of negligence and corruption – and augmented by the regional and international isolation of the FRY – expected changes that would improve their daily lives. But Milošević’s regime was not ready, capable, or willing to tackle these problems.\textsuperscript{1360}

Milošević survived mass protests against his regime by Serbian political opposition in 1991, 1992 and 1993. But any anti-war discourse failed to seriously challenge his power or his bellicose politics. In fact, Milošević responded to anti-war opposition by insisting that Serbia was not at war, arguing that his policies had actually been successful in preventing an escalation of neighbouring conflicts into Serbian territory. And while his open support to Serbs outside of Serbia was condemned by some people inside Serbia, it was expected by many others and by a number of opposition parties – which criticised Milošević whenever he exerted public pressure against RSK or RS leaders. Some party leaders such as Vojislav Šešelj, were actually more militant and extreme than Milošević. Thus, most of the persistently democratic, non-nationalist, and anti-war opposition to Milošević came from civil society and not from within political parties.

It was after Dayton that Serbian voters seem to have finally grown weary of the poverty that resulted from UN sanctions and the wars in Croatia and BiH, as well as the criminalisation of Serbian society that had occurred during Milošević’s rule. Local elections held in the autumn of 1996 were a test of domestic support for Milošević, and a coalition of opposition parties – the Democratic Movement of Serbia (\textit{Demokratski pokret Srbije}, or DEPOS) – won in several major cities including Belgrade. When Milošević and his political allies tried to alter the election results, they provoked the largest and most persistent street protests Serbia had ever seen. The protests lasted for three months – into 1997 – and eventually Milošević had to accept the election.

\textsuperscript{1359} Jović, \textit{Book on Milošević}, 163-167.
\textsuperscript{1360} Jović, \textit{Book on Milošević}, 169-170.
results, bending under combined domestic and international pressure. He remained in power, though, and after Serbia’s presidential elections in December 1997, was appointed by the Federal Assembly as President of the FRY; with Milan Milutinović stepping into Milošević’s old role as President of Serbia.

The Path to Self-Destruction

Like many other politicians with extensive and autocratic powers, Milošević fell into the trap of self-isolation, relying on a shrinking circle of people over the course of his tenure. Eventually, he operated in an environment that resembled a royal court, with individuals competing to ingratiate themselves to Milošević as if to a monarch. He grew accustomed to the flattery, even seduced by it, accepting uncritical and untruthful representations of political reality that fawning loyalists offered him.

In 1998, he turned to Kosovo again, apparently believing that Serbia could resolve the simmering conflict there by trying to remake the demography of the province and then govern it from Belgrade. This was not only a grave political miscalculation but it also exposed the irrational and unrealistic side of his political strategy. How could such a goal be achieved? And did he really think he could get away with another war on another non-Serb population? His choice to use force against civilians in Kosovo reflected the criminality he had displayed during the conflicts in Croatia and BiH, reversing any mercy he had been offered after Dayton. What had seemed in 1990 to be a political triumph for Serbia and for Milošević personally led nine years later to the capitulation of Serbian Kosovo policy and to the political downfall of Milošević, marking out his path to political self-destruction.

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1361 The Prosecution did not deal in detail with this period of Milošević’s political tenure. The majority of evidence on this time was introduced through Jović’s Book on Milošević (see 167-169, especially). For more on events in 1996 and 1997 in B/C/S, also see: LEX, PIŠTALIKE I LAŽI: Hronologija gradjanskog i studentskog protesta 17.11.96-04.02.97 (Belgrade, Helsinki Committee for Human Rights, 1997).
1362 Ibid., 158.
1363 The Prosecution charged that Milošević’s policy in Kosovo at the time was meant to modify the ethnic composition of the province through displacement, deportation, forced removal, killings, and other crimes against Kosovo Albanian civilians.
Following defeat in Kosovo at the hands of NATO and the KLA, Milošević faced opposition at home and isolation abroad, and he clung precariously to power. The last stage of Milošević’s rule was characterised by rash decision-making as well as a paranoia that left him trusting of only a few people beyond his wife and members of Serbian State Security (the DB). In 2000, still in office and still convinced of his superior political authority among Serbs, he called for elections to be held one year early. It remains unclear why he decided to take such a gamble. In July 2000, the FRY Assembly adopted amendments to the Constitution according to which the President of the FRY would no longer be appointed, but would be elected by Serb citizens in a direct vote; thus, if he had not called for early elections, he would have held on to power at least until the end of 2001.1364

Nevertheless, early elections were held, and Milošević – ill-advised, over-confident, and disconnected from reality – lost. With tanks under the command of trusted General Božidar Delić waiting on the outskirts of Belgrade to start moving toward the city centre, Milošević chose not to engage the armed forces to defend his regime.1365 Instead, he simply walked away, accepting his electoral defeat and surrendering his power against the advice of his wife, who urged him to make use of the military.1366 In the aftermath of the loss, he did not offer his resignation as President of the SPS, which Jović noted would have been “totally natural,” but called for a party congress.1367 He was re-elected as SPS President, but the party no longer held any significant power and Milošević did not even seek a seat in the Assembly. This may have provided him with a level of impunity and postponed his arrest; but Milošević seemed almost reconciled to what was to come.

A Common Criminal

The Milošević regime had commissioned crimes against non-Serbs in Croatia, BiH, and Kosovo using official military and police infrastructures as well as seemingly ad hoc paramilitary groups

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1364 Jović, Knjiga o Miloševiću, 182-185
1365 Delić was allegedly stopped by General Nebojša Pavković, Chief of Staff of the VJ and his superior; though Delić later denied that he had been awaiting an order to move. For his comments, see: Stojković, “Zemlju nema ko da brani.”
1367 Jović, Knjiga o Miloševiću, 182.
that operated with impunity. The “fly-wheel” effect of this impunity apparently ran smoothly as long as the regime was willing to protect those who engaged in such crimes. And individuals from armed formations that operated during the wars – many of whom appeared with Milošević in the Kula Camp Video – continued to commit crimes on behalf of Milošević in peacetime, against his political opponents. A number of politically-motivated murders carried out in Serbia during his leadership exposed him as a common criminal; and predictably, any impunity enjoyed by Milošević and his supporters while he was in power did not endure regime change in 2000.

By 2003, the criminality of the former regime was laid bare in several court cases that demonstrated the importance of facing the past not only to ensure an accurate historical record but also to support domestic stability and security. It was after the assassination of Prime Minister Zoran Đinđić in March of that year that the full extent of political violence and intimidation tactics used by Milošević loyalists was uncovered. The investigation into Đinđić’s murder led to several notorious JSO members, who revealed information during questioning that helped resolve several other political assassinations that had occurred in the course of Milošević’s reign – including that of Ivan Stambolić. In the Stambolić Judgement, delivered in 2005, the judges concluded that Milošević had indeed ordered the killing of his political rival and one-time mentor in order to retain power.1368

From leading the project of Serb nationalism to ordering the killing of his political opponents, Milošević seemed to believe he would never be held accountable for his actions. And so, years after his ouster from power, skeletons from the Milošević era keep haunting Serbia, exposing how his criminality developed over time, as did his attempts to conceal it. In January 2014, for instance, based on information given to the police by Milorad “Legija” Ulemek, two former State Security (DB) officials were brought into custody as suspects in the 1999 murder of journalist Slavko Ćuruvija.1369 Ulemek offered his account of Ćuruvija’s murder – true or false – while he was already in prison for the roles he played in the murders of Đinđić and Stambolić and in the attempted murder of opposition politician Vuk Drašković. Ulemek named Radomir Marković,

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1368 The Judgement in the trial for the Stambolić assassination is available in Cyrillic at: https://reportingproject.net/PeopleOfInterest/documents/Milorad_Ulemek,%20Lukovi%C4%87%20Charges%20790.pdf.
former Head of the Serbian DB, as a third suspect in Ćuruvija’s assassination. Marković was already serving a 40-year sentence for his part in the 1999 conspiracy to murder Drašković.

Milošević’s Courtroom Performance

Milošević was arrested on 31 March 2001 by Serbian police, and on 28 June, he was transferred to The Hague. It was St. Vitus’ Day, when Serbs commemorate the lost Battle of Kosovo Polje; and also the day, only twelve years earlier, on which he had given his historical sabre-rattling speech at Gazimetan and had announced new battles ahead for Serbs that could not be won “without the resolve, bravery, and sacrifice of the people.”

On 12 February 2002, Milošević sat in a courtroom in The Hague, representing himself against heinous charges, including genocide. The trial proceedings revealed Milošević as a man who refused to see the consequences of his political actions, defending in court the very same views that had led him to engage in multiple conflicts. Still, he was ready to put up a good fight against the international community and its Tribunal. Daily broadcasts of the trial made him a symbol of resistance not only in Serbia but among newly-won supporters worldwide, who cheered him for what they saw as his struggle against the new world order and globalism.

Appraisals of Milošević’s courtroom performance have ranged from “bad” to “brilliant,” with authors from Serbia tending to see it in a particularly positive light. Borisav Jović praised Milošević for a brilliant defence strategy and felt that he had successfully defended both Serbia and the Serbian people. This favourable assessment is shared by Serbian scholar Slobodan Antonić, who argues that Milošević had to defend himself not before the ICTY but in the court

1370 “Speech, Gazimestan,” 28 June 1989, Exhibit D251.1e
1372 Between 2009 and early 2015, two books published in the Serbian language have dealt with the trial record, Milošević’s courtroom performance, and events in the aftermath of his death. See: Antonić, Slobodan Milošević and Jović, Od Gazimestana do Haga. In Jović, see especially the chapter titled: “Odbrana pred Haškim tribunalom” (“Defence before the Hague Tribunal”); “Tragičan ishod i reagiranje javnosti” (“A Tragic Outcome and the Reaction of the Public”); and “Svedočenje pred haškim tribnalom” (“Testimony before the Hague Tribunal”) (these titles have been translated from Serbian by the author).
1373 Jović, Od Gazimestana do Haga, 200.
of history.\textsuperscript{1374} According to Antonić, Milošević skilfully examined Defence witnesses and uncovered the deceit of Prosecution witnesses.\textsuperscript{1375} He dedicates an entire chapter in his recent book, \textit{Slobodan Milošević: It Isn’t Over Yet}, to evaluating the testimonies of Prosecution witnesses as untruthful.\textsuperscript{1376} For Antonić, Milošević exposed the trial as a farce.\textsuperscript{1377}

The attitude Milošević took on in the courtroom undoubtedly contributed to positive assessments by his sympathisers. He was not intimidated by the seriousness of the charges against him or worldwide interest in the trial. In fact, he manifested a sense of superiority and displayed a haughtiness that he expressed as contempt for the court, the Prosecution, and the international community. In one of his first courtroom appearances, he taunted:

…if the Court will ignore these falsehoods presented by the Prosecutor, and if you are really a part of that machinery, then please read out those judgements that you have been instructed to read and don’t bother me and make me listen for hours on end to the reading of texts written at the intellectual level of a seven-year-old child – or rather, let me correct myself – a retarded seven-year-old.\textsuperscript{1378}

His most extreme language was not directed against Croats, Bosnian Muslims, or Kosovo Albanians but against the international community, accusing Europe of a “lack of honour and cannibalism” for what he perceived as media attacks on his children and attempts by NATO to kill him and his family. He reminded the court that “according to international law, and according to US law, the murder of a foreign head of state is a crime.”\textsuperscript{1379}

Milošević’s loyalty to Mira Marković remained unwavering. He could find no fault in her, and he became doting and emotional in court when he talked about her and their family. In fact, he paid tribute to her in his February 2002 Opening Statement, praising her achievements before the judges and the world and deriding the media focus on his family in general, saying:

My wife, who is a university professor and was a university professor at a time when I didn’t delve in politics at all, whose books have been published and

\begin{footnotes}
\item[1374] Ibid., 448.
\item[1375] Ibid., 454.
\item[1376] Ibid., 476-478.
\item[1377] Ibid., 448.
\item[1378] Trial Transcript, Status Conference (30 October 2001), 147.
\item[1379] Trial Transcript, Defence Opening Statement (18 February 2002), 469-471.
\end{footnotes}
translated in Russia, China, the United States, England, France, Germany, Greece, Italy and so on and so forth...[and] translated into over 30 languages throughout the world...are testimony of the superhuman efforts, public efforts of an intellectual against war, against national conflicts, against violence and primitivism.... And she is the subject of the most savage media campaign, with the most grievous lies and fabrications being bandied about; forgeries and slander. My daughter, who never dealt with politics, was forced to stop working, and she lives – continues to live – in an isolated fashion because she cannot take the violence against her and all the rest of us. And against my son, the media are exerting a horrific campaign.... And he is also always considered a good comrade, a person with a high sensitivity for solidarity. He helped everyone, did everything he could. He has this avalanche of media hatred come down on his head, and he has left the country and, with him, his newly established family, his young wife and small son.¹³⁸⁰

The affection and loyalty Milošević expressed for his immediate family showed his capacity to be a loving, proud, and protective husband and father, but starkly contrasted with the aloof and arrogant demeanour he exhibited in court toward the judges, lawyers, the international community, and even victims. And, in courtroom grandstanding, Milošević liked to emphasise that it was not he alone on trial, but the entire Serb nation – framing Serbs as victims and further dismissing the impacts of his wartime policies.

Indeed, Milošević never demonstrated in the courtroom that he understood the extent of suffering he had inflicted on ordinary people through the violence of war. He seemed detached from the realities depicted by the evidence and by witness testimonies, and showed no sign that he cared that strategies he employed had left Croatia, BiH, and Kosovo in shambles. Most of the time, he remained controlled in court, as if wearing a mask. Once in a while, though, he would let an especially cold and emotionless side of his personality appear when cross-examining victim witnesses. The way he occasionally challenged the truthfulness of victims’ accounts revealed his lack of empathy for their suffering. As time passed, he toned down this aggressive approach.

¹³⁸⁰ Ibid.
possibly because his treatment of victims had not gone unnoticed.\footnote{1381} In fact, Prosecutor Nice recalled later that:

...when a woman testified whose children were killed before her eyes, it was astonishing that Milošević showed no feelings whatsoever for her. Sometimes I asked, on behalf of witnesses and through judges that we compel Milošević to show more respect for such witnesses. I tried to achieve that not to make Milošević look nice, but because of the witnesses. However, after all, I can say that Milošević had a heart of stone.\footnote{1382}

Throughout the trial, Milošević played the role of a wronged politician who had to defend his political legacy against slander, distancing himself from his influence over the military. Unlike many other political leaders in the region, Milošević was never spotted wearing a military uniform and never seemed at ease among soldiers. His preference was for a dark suit, white shirt, and tie; the uniform of a political bureaucrat. Images of Milošević at the Dayton negotiations in 1995 showed a politician at ease in the company of his foreign colleagues.\footnote{1383} He obviously enjoyed and appreciated being treated as their equal.

Timothy McFadden, head of the UN Detention Unit, observed Milošević daily once he was transferred to The Hague. He described Milošević as disdainful of lower-level witnesses as well as court and Prosecution officials and said he most relished the opportunity to deal with high-level witnesses.\footnote{1384} In a courtroom exchange with former RSK President Milan Babić – who Milošević had always viewed as a political subordinate – Milošević could not hide his pleasure in mocking Babić. Babić had testified for the Prosecution that politicians had used code words to refer to arms, including the terms “planks,” “wooden bars,” “flour,” “sugar,” and “batteries.” During his cross-examination, Milošević revisited this claim, asking Babić what terms were used...
for actual blankets, flour, oil, sugar, medicines, and all the other things that were sent as aid. “If ‘flour’ was used as a term for ammunition,” Milošević asked, “what term was used to denote flour proper?” Babić answered: “Well, flour was called flour.” Milošević clearly felt a sense of triumph; he felt he had scored a point. But while Milošević did take a certain predictable satisfaction from outmanoeuvring witnesses over whom he once held political authority, facing the international diplomats and politicians who testified against him should have represented the ultimate humiliation. General Wesley Clark, Lord David Owen, Lord Paddy Ashdown, and many others with whom he had met frequently when he was President no longer saw him as a political partner. They represented the world of powerful men, and he, a defeated politician who had gambled his power away.

Nonetheless, or perhaps because of this, Milošević “took on the task of a lawyer with enthusiasm.” According to Prosecutor Nice:

He liked to cross-examine the witnesses. He was noticeably ruthless with the witnesses of a lower – I cannot use the word ‘class’ because it is not applicable in the case of the Serbian society – but of a lower social and material standing. In some cases I had to intervene. He showed considerable respect towards individuals of authority, even when their testimonies did him great harm. Was he a worthy opponent? He was an appalling defence attorney. He made wrong decisions....Also, he should have used the weapon we all knew he possessed – his charm. He should have been charming, not aggressive. He might have been surprised with the effect that could have left on the judges.

In court, Milošević was apt to invent and evade to get out of uncomfortable and unfavourable situations; and when he was caught, he would simply continue as if nothing had happened or as though he had not tried to obscure the truth. This denial or distortion of reality – which may have been effective when he was an omnipotent leader – did not work to Milošević’s advantage in the courtroom, where every accusation he made had to be supported and every word he spoke could be challenged by counter evidence.

1385 Testimony of Milan Babić (22 November 2002), 13292-13293; and (3 December 2002), 13758-13759.
When his cross-examination strategy was shown to be flawed on several occasions, Milošević curiously pressed ahead without acknowledging his error, as if he did not grasp the legal consequences of such mistakes. One such instance came in early 2003 during Milošević’s cross-examination of Prosecution witness General Aleksandar Vasiljević, the former Head of JNA Counterintelligence, whom he questioned about the involvement of Momir “Gavra” Gavrilović, a Serbian DB official, in the war in Croatia.\footnote{1387} Understanding very well that introducing this tricky topic might hurt him by exposing Serbia’s direct involvement in the war in Croatia, he asked Vasiljević how he knew Gavrilović’s war history. Vasiljević explained that, when working for JNA Counterintelligence, he had received information that Milošević had given his permission for a group of officers to go to the province of Slavonia and Baranja and among them was Gavrilović.\footnote{1388} Vasiljević went on to say that Gavrilović had been assassinated in Belgrade in August 2001 and that the assassins had never been identified. Milošević said he didn’t know about the assassination, leading Vasiljević to exclaim with disbelief that the whole country knew of the infamous killing, and that every newspaper had written about it.\footnote{1389}

What made it more absurd for Milošević to deny knowing Gavrilović’s name and circumstances was the fact that, only four months earlier, on 17 October 2002, Gavrilović’s assassination had been a subject of his cross-examination of Prosecution witness Jovan Dulović, a wartime reporter for the Serbian independent weekly \textit{Vreme}. Dulović had met Gavrilović in 1991 in Vukovar and Erdut, where Gavrilović worked with the paramilitary unit known as the Tigers, led by the notorious criminal Arkan. Dulović had learned through reliable sources that Gavrilović was one of the members of the Serbian DB who worked as an instructor for local Territorial Defence and paramilitary forces.\footnote{1390} In his testimony, Dulović spoke of rumours circulating around Serbia that Gavrilović had been assassinated after visiting FRY President Vojislav Koštunica and providing him with information about ties between State Security and the Mafia.\footnote{1391}

Another notable example of Milošević’s handling of difficult evidence concerned his approach to the Kula Camp Video. In the 1997 video, Red Berets leader Franko Simatović was recorded addressing Milošević, the guest of honour, and saying explicitly that his unit had been formed on 4 May 1991 at the time of the break-up of the former Yugoslavia. Milošević was also seen and heard on the video remarking that he had read the reports of a senior Red Berets officer. The video was dramatic, irrefutable evidence of Milošević’s knowledge of the establishment of a paramilitary unit engaged in unlawful activities from 1991. But, for the purposes of a criminal trial, his reaction to the video in court was almost more telling. He continued to insist that the unit was established only after the war, in 1996. The absurdity of this challenge revealed more about his guilt than an experienced courtroom lawyer representing him would ever have allowed.

These courtroom episodes were reflective of Milošević’s character and political conduct. Witnesses painted a picture of a politician who was pleasant and well informed at meetings, yet manipulative and dishonest when it suited him. He was capable of denying the obvious and twisting facts to fit his agenda. In his testimony, former head of the Kosovo Verification Mission William Walker recalled an example of Milošević’s capacity to ignore plain truths. Walker had received a letter from the FRY Foreign Ministry with instructions about what the KVM could and could not do, and where. As Walker put it, this was “totally out of line with the agreement,” and so he mentioned the letter to Milošević, who denied knowing of it and, even after Walker showed him a copy, said, “I haven't seen the letter. It doesn't exist.”

Milošević’s cross-examination of Walker put his inexperience in the courtroom on display. At one point, he showed Walker photographs of some of the victims who died during the Račak massacre in January 1999. Milošević contended that the photographs, which the Prosecution had already tendered as evidence, had been staged. He asked Walker to identify evidence of blood in the pictures he was shown, and Walker pointed to very visible blood stains. Milošević then asked Walker again and repeatedly whether the photographs he had shown him – which were not taken by Walker – had been “rigged,” finally prompting an intervention by Judge May, who told Milošević, “If you make allegations of that sort, you must support them with evidence.”

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1392 Testimony of William Walker (11 June 2002), T 6786-6787.
Later, during his cross-examination of US General Wesley Clark, Milošević seemed to come dangerously close at times to introducing potentially inculpatory lines of questioning. Clark had testified about his experience in negotiations with Milošević, which took place not long after the fall of Srebrenica, and had recalled challenging Milošević’s authority to control the Bosnian Serbs in upcoming peace talks, asking him: “Mr. President, you say you have so much influence over the Bosnian Serbs, but how is it then, if you have such influence, that you allowed General Mladić to kill all those people in Srebrenica?” According to Clark, Milošević told him: “I warned Mladić not to do it, but he didn’t listen to me.”1394 Challenging this important evidence – which indicated Milošević’s prior knowledge of what took place in Srebrenica – Milošević denied that he and Clark had ever discussed Srebrenica at all. Milošević also denied that he had ever been in the position to give orders to General Mladić. This was not something General Clark had suggested, but Milošević knew very well that evidence of this authority could hurt him. Judge May interrupted, telling Milošević that, if he wanted, he could give evidence on this issue in due course, but that he had to limit his cross-examination to only matters the witness could address. Still, as if he could not help himself, Milošević directed a response to General Clark, saying, “General Mladić did not order any execution of people in Srebrenica. I believe that this was done by a group of mercenaries.”1395

Amateur mistakes such as these allowed the judges to make determinations about Milošević’s character and motives that would not have been possible if he were represented by professional counsel. And his lack of legal experience not only manifested in what were sometimes bewildering and bizarre courtroom exchanges, but also in inefficiencies that hindered the pace of the trial, which was due to be concluded by the end of April 2006. This was a dire prospect for Milošević, who had introduced little evidence on the BiH indictment, meaning that the genocide charges against him would have been judged based on evidence presented by the Prosecution. That evidence had been examined by the judges for the Half-Time Judgement, and they had concluded that genocide charges were indeed warranted for several places, in north and east Bosnia, in 1992 and 1995.1396

1394 Testimony of Wesley Clark (15 December 2003), T 30372-30373.
1395 Ibid., T 30490
1396 See supra note 82.
In the last month of the trial, Milošević was a man struggling with his health and with an enormous workload. He had spent the previous five years of his life in his small prison cell in Scheveningen, in The Hague, which had also served as his office. Not surprisingly, his daily life – structured by a rigid daily prison routine – had been scrupulously recorded by detention authorities. On court days, he rose around 7.00 and called his wife around 7.30. By 8.00, he would leave for court, where he would remain from 9.00 to approximately 14.00. Back in the detention unit, he would have a meal and one hour of exercise before spending most afternoons in meetings with legal advisors, preparing for his next court appearance. In the evenings, Milošević liked to read thrillers by bestselling authors such as John Grisham.1397

When he was not in court, Milošević slept longer, took more time for exercise, and sometimes even visited an art class before starting his work. He listened to Frank Sinatra, or watched DVDs he received from visitors who would have needed to smuggle them in. Although Milošević had use of a computer, he was not allowed to access the Internet or use e-mail, and so he could communicate with the outside world only over the phone. All of his phone calls and visits, except those with recognised legal advisors, were monitored.1398

Milošević’s health was a great concern of UN Detention Unit managers. He had arrived with diagnoses of hypertension and a heart condition, which were manageable, but only with medication. Presenting his own case had forced Milošević to work hard to meet procedural deadlines and prepare his courtroom performance, and his blood pressure rose so dangerously as a result that the court reduced the trial schedule to a three-day week. Curiously, he was still allowed to smoke despite his condition; something the Prosecution addressed in its filings.1399

Concerns about periodic depression that had also been occasionally voiced by former close associates of Milošević, who had noticed that he would disappear from Belgrade for days at a time, persisted while he was in detention. But Detention Unit head Timothy McFadden felt that

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1397 See: “ICTY: AN INSIDE LOOK INTO MILOŠEVIĆ’S HEALTH AND SUPPORT NETWORK.”
1398 Ibid.
1399 Ibid.
Milošević had only a “limited inclination toward depression.” And, although Milošević refused to see a psychiatrist individually, he did attend group sessions with other prisoners, in which signs of depression or any other significant clinical problem were not observed in him. Instead, Milošević’s moodiness and unhappiness were ascribed to the limited contact he had with his wife and family.

Even with considerable distance between them, the relationship between Milošević and his wife remained very close. McFadden – who had access to reports of all of Milošević’s telephone conversations, including his daily talks with his wife – commented on their “extraordinary relationship” and wondered how Milošević was able to manipulate a whole nation but could not manage his wife. She was very much engaged in overseeing his legal and political contacts and when she pressed Milošević to do something he did not want to do, Milošević rarely pushed back; though he was apt to ignore her instruction. When he failed to follow her advice, she would scold him and remind him that many bad outcomes could have been avoided if he had listened to her in the past. McFadden described her as “very volatile.” Yet, for Milošević, his wife remained his most trusted and appreciated source of “information, comfort, motivation, and strategy” and he relied on her guidance until the end.

When the situation for Milošević’s family became difficult in 2003 after the assassination of Zoran Đindić, worries about their well-being put additional strain on his health. Facing legal battles in Serbia, Mira Marković moved to Russia in order to avoid a trial, and this self-imposed exile made it impossible for her to travel. And so, her visits to The Hague stopped. Her presence in Milošević’s life was perceived as so important that when his health subsequently deteriorated, McFadden suggested to his superiors that one antidote may be to bring Marković from Russia with some sort of deal for her immunity from arrest. But this would never have been possible, given the criminal investigation against her in Serbia.

Marković had helped Milošević maintain his links with the SPS, and support of the party was especially important for Milošević at this time. When the family’s financial situation worsened in the spring of 2003 and he could not pay his Belgrade household staff or afford airline tickets for

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1400 Ibid.
1401 Ibid.
1402 Ibid.
his rotating legal associates, the SPS mobilised to generate funds. And with his wife in exile, Milošević took over communications with the various national and international groups that were providing him with legal and other assistance.

The daily surveillance of Milošević’s behaviour revealed, and sometimes confirmed, sides of his personality that are important to understanding his previous political conduct. Complaining at one point that his legal associates from Serbia made him feel he was “surrounded by fools,” he candidly reflected that the problem was of his own making, for he had surrounded himself with fools throughout his career for fear of being challenged by those more competent and intelligent.\textsuperscript{1403} Indeed, his ten-year political tenure was marked by regular fallings out with anyone who expressed criticism of Milošević, his family members, or his political tactics or strategies, leaving room only for those who would not contradict him. His inability to accept and consider criticism was a sign of his irrationality, for he refused to do so even when this could lead – and eventually did lead – to his loss of power.\textsuperscript{1404}

Contrary to the disdain Milošević was said to have felt for low level legal staff and which he displayed in the courtroom toward the \textit{amici curiae}, McFadden reported that Milošević was actually “fond” of the \textit{amici}, and it was true that his legal associates did coordinate with them to discuss defence strategy and the questioning of witnesses.\textsuperscript{1405} By hiding the fact that he was making use of the services of a substantial legal team, Milošević maintained the appearance of a disproportionate judicial proceeding in which he was just one man against the rest of the world. His rejection of imposed Defence counsel can in fact be analysed though this lens; for not only would this have denied Milošević very important air time on national and international television, but it would also have undermined the David and Goliath dynamic that had brought him sympathy from a number of powerful international lawyers, writers, activists, and politicians. A committee, known as Freedom for Slobodan Milošević, was formed and hosted brunches attended by national and international supporters. The committee was active in analysing evidence and promoting the Defence narrative. And, beyond the committee, Milošević developed an interesting following of prominent intellectuals including Noam Chomsky, Peter

\textsuperscript{1403} Ibid. It is not clear whether Milošević said this directly to McFadden or if McFadden repeated what someone else told him.  
\textsuperscript{1404} Ibid.  
\textsuperscript{1405} Ibid.
Handke, and Diana Johnstone, all of whom were on his list of potential Defence witnesses.

McFadden’s reports from the Detention Unit reveal Milošević’s amicable character, which had been commented on by people like Stambolić and Jović – who had known him in his early days in politics – but also by international mediators who had worked with Milošević over a decade of various peace negotiations. In detention, Milošević was described as cooperative, and his easy-going nature made him popular among the other detainees, who liked and respected him and even concerned themselves with his health and diet. But the Prosecution had maintained throughout the trial that the charming façade Milošević wore hid his more sinister nature, and presented evidence of the discrepancies between his words and deeds. A US Embassy employee, reporting on the work Milošević did while in detention, underlined this, noting his masterful ability to work “behind the scenes, through third parties, and leave few fingerprints.” This behaviour was consistent with his conduct during the conflicts, when his tactical manoeuvring sometimes obscured and undermined strategic objectives.

Despite his capacity for manipulation and duplicity, former associates of Milošević described him as only a mediocre tactician and a poor strategist. In fact, his lack of strategic thinking was criticised by his allies and used by his opponents. Borisav Jović observed that Milošević’s strategic failures were due sometimes to bad strategy and sometimes to his misjudgement of a situation; but he was usually able, by resorting to pragmatism or scheming, to find his way out of hopeless situations. Over time, Jović felt this had given Milošević a false confidence that he was invulnerable to any difficulty or any seeming dead end.

This belief Milošević had in himself, which at times surpassed the bounds of reality, led him to feel that he was winning in the courtroom, and this fired him up so that he was combative and willing to work despite his unstable health. His sense that he was out ahead in the trial may partly explain his choice of Defence witnesses. Or maybe, by the time his Defence case started in September 2004, he was simply putting on a show, aware that it really did not matter anymore what he did in court. With his wife in Russia, his health deteriorating, and the financial strains of his defence mounting, he may have given up hope of any favourable outcome. His persistent

1406 See: “ICTY: AN INSIDE LOOK INTO MILOŠEVIĆ’S HEALTH AND SUPPORT NETWORK.”
1407 Ibid.
1408 Jović, Book on Milošević, 21.
requests to receive medical treatment in Russia seemed his only means to fulfil his desire to be reunited with his wife again.

In the months before his death, evidence against Milošević was mounting, sometimes through the testimonies of his own witnesses. It was set to mount further when Momir Bulatović took the stand. The Prosecution considered Bulatović to be an ideal witness to cross-examine; he had firsthand knowledge of many important events discussed at the trial and had also been a regular participant at many of the important meetings that were featured in evidence. In fact, the Prosecution had approached Bulatović in 2003 and asked him to appear as a witness for the Prosecution, but Bulatović had refused, explaining that it would be more logical for him to appear for the Defence. Still, until the very end, the Prosecution could not be sure that Milošević would risk calling Bulatović and give the Prosecution the opportunity to cross-examine him on key evidence for all three of the indictments Milošević was charged in. It would have been a major exercise, and one which would have provided much of the structure for the Prosecution’s closing arguments, as Bulatović’s testimony was expected to have covered all ten years of Milošević’s political tenure.

Milošević spent the entire week preceding his death with Bulatović, preparing for testimony – an exercise known by lawyers as ‘proofing.’ On the Friday evening of 10 March 2006, Bulatović left the prison after working the whole day with Milošević. The next morning, Milošević was found dead in his cell and the prison record noted that the last person who had seen him alive was his faithful comrade Momir Bulatović. In his 2007 book Unspoken Defence, Bulatović referenced a report made available by Professor Miloš Stojiljković from the University Hospital in Odense, Denmark, which noted that traces of Rifampicin – a medicine that was not officially prescribed to him – had been found in Milošević’s blood stream in January 2006. The question remains of who provided Milošević with the drug and whether he knew he was consuming it. Stojiljković’s report indicated that Rifampicin could have interacted with other medications that were prescribed to Milošević to control his hypertension, and could have been

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1409 Bulatović published the full text of the proofing in Neizgovorena odbrana.
1410 Ibid., Chapters XVII and XVIII.
1411 Rifampicin is a bactericidal antibiotic commonly included in the drug cocktail used to treat tuberculosis and meningitis.
the reason those medications were ineffective.  

Upon Milošević’s death, some fellow detainees signed a joint letter, in memoriam. Among the signatories were Croatian General Ante Gotovina, and Bosnian Croat Commanders Mladen “Tuta” Naletilić and Ivica Rajić. Reacting to criticism that he had signed, General Gotovina replied through his lawyer that he offered condolences to the Milošević family based on his Catholic and humanist principles of forgiveness. Three other Croatian detainees, Dario Kordić, Vinko Martinović, and Miroslav Bralo – who were in a different part of the detention unit and had no contact with Milošević – did not sign. Kordić stated through his lawyer that he had not done so out of respect for the victims. Milošević’s funeral was held in the courtyard of his family house in Požarevac. It was a private ceremony without the military or state honours usually reserved for a former head of state. In place of the national anthem, his friends and loyal supporters said their goodbyes with the Russian song “Moscow Nights.” Notably absent were his wife, son, and daughter. Mira and Marko – indicted in 2003 and still fugitives – faced criminal charges if they returned to Serbia. In the Požarevac main square, an additional 20,000 people from across Serbia and beyond paid their last respects to a political leader they still saw as a hero.

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1414 “Kako su sahranjeni Tito, Tuđman i Milošević,” Danas, 3 October 2014.
1415 Ibid.
Conclusion

What would the postconflict period in the former Yugoslavia have looked like if there had been no ICTY? While ongoing discussion often weighs the debatable legal, political, and social effects of the Tribunal, this research is concerned with its documentary output – the trial record – which stands as an unprecedented collection of historical materials. And from that perspective, it is obvious that without the investigations and procedures of the ICTY, the Yugoslav conflicts would never have been recorded so thoroughly. Slobodan Milošević was the first former head of state indicted and tried for the commission of mass atrocities in an international criminal court. He was indicted in three indictments, each dealing with separate yet related crimes covering a period of almost ten years. No other single trial, at the national or international level, has addressed the mass atrocities committed by Serb forces in Croatia, BiH, and Kosovo. And this scope meant that his trial, even unfinished, left an exceptionally extensive record, serving to remind us that any mass atrocities trial is meant not only to punish perpetrators but also to shed light on past events that led to crimes and suffering.

The role of history inside and outside the courtroom has been contemplated and deliberated since the Nuremberg trials. This study shows that history is important inside the courtroom for at least two reasons: to help judges understand the political and historical context in which mass atrocities have taken place and to help prove the criminal intent of an individual responsible for the planning and execution of those crimes, especially where a motivating ideology has been conceived and developed over a long period of time. The record of a trial, finished or unfinished, endures as a valuable historical source not least because trial proceedings often expose materials that would normally be kept from the public. Indeed, evidence produced as a consequence of a court’s power to compel individuals and states to cooperate may include confidential documents that would otherwise be concealed for many decades. By increasing access to sensitive documents from state and other archives, a trial can shorten the temporal distance conventionally assumed to accompany the writing of history. And, outside of the courtroom, the trial procedures and evidence that shape this history often reveal new details of a conflict and sometimes clarify ongoing controversies.

In the Milošević trial, the evidence provided important and fascinating insights into the social and political changes that took place in Yugoslavia, especially in Serbia, in the 1980s. This study
shows that when a trial record is used as a primary historical source, it can add value and depth to an already existing body of knowledge by confirming facts or interpretations or casting them in a new light; and in this particular case, the trial record’s significance was even greater because Milošević chose to represent himself. His comments and interventions in court came close, at times, to testimony and his interaction with witnesses, together with his body language – seen in video recordings of trial proceedings – make the trial record a unique historical source. Still, detailed and daunting as a trial record may seem, the history of events as told and captured in court does not represent a definitive historical narrative. A trial record must be critically assessed like any other source.

The courtroom is a place where political, historical, and criminal responsibility intersect. Any investigator considering whether a crime has been committed and any lawyer prosecuting a criminal case must consider evidence that demonstrates what a suspect thought, did, and compelled others to do and whether those thoughts and deeds represent crimes that should be charged and tried. This approach is similar to that of historians, who search for patterns in the speech and actions of a historical figure; but in the case of a prosecutor, it is only when thoughts, words, and deeds are supported by adequate evidence that a case is brought to trial. In fact, charges should not be brought except in cases where the evidence can ultimately satisfy a trier of fact that a crime is proved beyond a reasonable doubt.

The most apparent difference between legal and historical responsibility is that the assignment of legal responsibility is captured in a judgment and remains frozen in time. Historical responsibility, on the other hand, may develop and change over time with the emergence of new sources. Still, legal narratives influence the shape of historical narratives. In mass atrocities trials, which inevitably deal with events that are in controversy, at least two competing ‘truths’ are presented – in the Prosecution and Defence narratives. These two narratives in the Milošević trial have played a role in shaping collective memory and establishing national histories, and have been traced throughout this study.

Long before the start of the trial in 2002, the historical and political debate about Milošević’s role had already divided historians into three camps – the intentionalists, the relativists, and the apologists – and the narratives that developed in the courtroom can also be viewed through these
lenses. The Prosecution narrative addressed the intentions of individuals who held power and thereby strongly reflected an intentionalist historical interpretation of the conflict. Intentionalists see the Yugoslav crisis as having been part of a planned strategy by Milošević that depended on violence to meet clear pre-mediated goals.\textsuperscript{1416} From this perspective, Milošević’s failure to achieve these goals does not diminish his political and criminal responsibility for crimes that were committed in the processes of creating the RSK in Croatia and the RS in BiH, and in attempts to hold on to Kosovo. The Defence narrative largely mirrors an apologist interpretation of the conflict, and at times the relativist view; both of which assert that Milošević genuinely sought to preserve Yugoslavia and that his policies were reactive – prompted by developments that were dictated by leaders in other republics and by the international community.\textsuperscript{1417} Relativists are cautious, however, to support their position with authoritative and corroborating sources, which has proven complicated in the case of Milošević, because his overt and covert agendas often clashed. Apologists go further in their defence of Milošević, endorsing his politics and the decisions he made, even in the face of evidence that those decisions brought dire consequences.\textsuperscript{1418}

Apologists also tend to cast Milošević as charming and approachable.\textsuperscript{1419} While some may acknowledge negative characteristics such as vanity, sensitivity, and brittleness, the overall appraisal of Milošević by apologists is positive, and some have even described him as a heroic symbol of resistance.\textsuperscript{1420} Predictably, many Milošević apologists count themselves among Serbia’s nationalist intellectual elite. Their influence on trends within Serbian society cannot be discounted; and thus, it is difficult to say which courtroom narrative – and which historical interpretations of the Yugoslav crisis and of Milošević – will prevail in the end.

\textsuperscript{1416} For example, see: Biserko, \textit{The Fatal Attraction of Serb Nationalism}; Sell, \textit{Slobodan Milošević and the Destruction of Yugoslavija}; and Cigar and Williams, \textit{Indictment in The Hague}.

\textsuperscript{1417} For example, see relativists such as: Cohen, \textit{Broken Bonds}; Cohen, \textit{Serpent in the Bosom}; Jović, \textit{Jugoslavija}; Pavković, \textit{The Fragmentation of Yugoslavia}; and Woodward, \textit{Balkan Tragedy}. For the position of apologists on this issue, see: See: Antonić, \textit{Slobodan Milošević}.


\textsuperscript{1419} For example, Antonić quotes Ivor Roberts, the former UK diplomat who met with Milošević on many occasions in the 1990s and had commented on Milošević’s capability to charm. See: Antonić, \textit{Slobodan Milošević}, 5. Antonić does not mention that Roberts also wrote about a not-so-charming conversation he had with Milošević related to the UN hostage crisis in June 1995, when Milošević told Roberts that he could have Karadžić killed if he did not comply. See supranote 1066.

Almost three decades after his march to power, historical evaluations of Milošević’s leadership have evoked the suggestion of 17th century mathematician Blaise Pascal that the story of world history would have been different if Cleopatra’s nose, which attracted Mark Antony and thereby led to the fall of the Second Triumvirate, had been shorter. Applied to Milošević, the question is: “Would the recent history of the SFRY and its people have turned out differently if Milošević had not visited Kosovo in April 1987?” Although there is merit to the argument that the history of the former Yugoslavia might indeed have turned out differently had Milošević not risen to power, historian Latinka Perović suggests instead that Serbian nationalists – who were seeking a leader for their movement – would have found someone else, if not Milošević, to direct the expansionist programme that had been their objective for over a century.

While Milošević came to power on the wings of an already potent nationalist movement, it is important to underline that he was not simply a puppet of that project. Indeed, once he rose to power, he became its most powerful executor. His agenda to unite “All Serbs in a Single State” was his path to criminality; and yet, at any stage of the aggression and violence, he could arguably have stopped or severely impeded the Serb war effort by cutting military aid. Instead, he increasingly embraced criminal behaviour in order to address not only cross-border territorial aspirations but domestic political challenges.

It was in 1987 that Milošević discovered his charismatic appeal to the public somewhat accidentally, during his first two visits to Kosovo; and he embraced his newfound influence with the eager vigour of a politician who yearns for power and has found a way to be noticed in a dense political landscape. His metamorphosis from communist functionary to the cult leader of all Serbs occurred in several seconds – just the time it took for him to say those now famous words, “No one is allowed to beat you.” Serbian nationalists, who understood that their emerging movement needed to be validated in order for it to transform successfully into a political force, sought a Serbian communist official who could push their agenda in federal and republican institutions. And so, in 1987, when his pragmatism converged with their ideology in that sound bite in Kosovo, Serbian nationalists found their man in Slobodan Milošević.
The details of this 1987 visit to Kosovo were addressed during the trial. And, while it appears that Milošević spoke those particular words spontaneously (although in a less heroic context than his propagandists might have suggested), events that led up to that utterance and its treatment afterward were reflections of the well-oiled media machine that supported his early rise to power. Speeches prepared in advance by Kosovo Serbs about their suffering in Kosovo were broadcast live, and their allegations became a dominant narrative in Serbian politics. And Milošević’s words, also captured on Radio Television of Serbia (RTS), were aired repeatedly, thereafter etching them into the history books. In fact, that famous statement was the basis for a popular mythologising of Milošević’s leadership.

As much as Stambolić concluded, in retrospect and somewhat reluctantly, that taking his protégé under his wing had been his biggest political mistake, an analysis of Milošević’s political career reveals that his power grew through support on several fronts and not only because Stambolić had been his early champion. But it was one thing to conquer power in Serbia and another to hold on to it; and Milošević’s ability to retain power is partly explained by the dominant political culture in the Yugoslav state, stretching back to 1918. In 73 years, Yugoslavia never experienced democracy and relied heavily on authoritarian leadership. The death of strong leader Josip Broz Tito in 1980 created an opening for another authoritarian leader to emerge; and it was in this space that Milošević materialised as a politician. He was empowered by the communist party, but encouraged and supported by Serbian nationalist elites, who used the political confusion created by Tito’s death as an opportunity to resurrect old grievances about the position of Serbia within the SFRY. They espoused nationalism as the basis for re-defining the constitutional status of Serbia, but in fact used the ideology to legitimise their power and secure Serb domination.

The conflicting influences and interests that shaped Milošević were reflected in his behaviour and observed by others. Warren Zimmerman, former US Ambassador to the SFRY, saw two people in Milošević: an authoritarian leader, ready to use force in the creation of a Greater Serbia, who spoke Serbian and despised Westerners; and a polite, pleasant, and cooperative diplomat who spoke English and reminisced about his banking days in New York. According to Zimmerman, this second Milošević was in charge of correcting the damage that the first Milošević had caused. Reflecting on Zimmerman’s observations of Milošević as two-faced, Slobodan Antonić evokes a Jekyll-and-Hyde analogy; but, in the case of Milošević, it was not a
potion that transformed him from gentleman into beast, but power.\textsuperscript{1421} And, indeed, “power for the sake of power” has been underlined as the most important \textit{modus operandi} of his leadership by a wide spectrum of scholars, diplomats, fellow politicians, ICTY prosecutors, and journalists.\textsuperscript{1422}

\textbf{The Ideology}

A focus on Milošević’s desire for power has fed the widely accepted notion that he held no ideological convictions. Yet, it is more accurate to say that he adopted a mixed ideology, comprised of elements from various ideologies that served his pragmatic purposes and helped him retain power. For example, though he was not driven by nationalism, he readily accepted the agenda of nationalists and allowed them to elevate him as the protector of all Serbs. In this way, he instrumentalised ideology as a tool of power; and therein promoted specific ideological convictions, whether he believed them or not.

So, what were the ideological underpinnings of Milošević’s policies and when did he begin his turn from communism to nationalism? Did it all start in 1986 with the SANU Memorandum? The scholarly debate on the place of the Memorandum in Milošević’s political paradigm qualifies it as everything from a “blueprint for war” to merely an indicator of “a change in attitude toward the common state.”\textsuperscript{1423} Mainstream views of the historiography of the Yugoslav conflict once held that there was no connection between Milošević and the authors of the Memorandum at the time it was written, and it was assumed that Milošević – like the rest of the Serbian leadership – had condemned it. But the trial record includes material that has shed more light on this issue.

In court, the Prosecution underlined that Milošević had been careful not to commit himself publicly to any ideological concept, including ideas laid out in the Memorandum, but argued that the SANU Memorandum had in fact been the roadmap for Milošević’s Kosovo politics. His tacit adoption of the goals of the Memorandum was in part confirmed by Milošević himself, who spoke highly of the SANU and invited some of the Memorandum’s authors to appear on behalf

\begin{itemize}
\item \textsuperscript{1422} See “Power for the Sake of Power” in Chapter II, pages 71-78.
\item \textsuperscript{1423} Dragović-Soso, “Why did Yugoslavia disintegrate?…” 18-19.
\end{itemize}
of the Defence. When its two principle authors – Mihailo Marković and Kosta Mihailović – were called to the witness stand, they repeated the same arguments by which they had legitimised the wars in the 1990s, namely that the Serbs needed their own state as a safeguard against inevitable genocide and physical annihilation where they lived intermingled with non-Serbs. They rejected any suggestion that Milošević had carried out a nationalist agenda; however, they acknowledged a connection between the Memorandum and the views he held. Still, they asserted that the Memorandum had not introduced the Serbian crisis to Milošević but had probably confirmed his own observations.

The trial record also includes discussion about the “leaked” version of the Memorandum that reached the public, supposedly before it was finalised. But the Prosecution saw its distribution at every street corner in Belgrade as a deliberate act that had been aimed at stirring up interest among the masses, and contended that the secrecy associated with the document until its publication actually served at least two specific purposes by design. First, it generated public appeal beyond what the contents really merited and, second, the ‘leak’ of the unfinished report allowed the authors to deny its contents on the convenient grounds that it was never finished or officially adopted. Yet, a comparison of this unofficial version from 1986 and the completed version that was published by the SANU in 1995 revealed only six minor differences.

Milošević was not a leader blinded by his hatred of non-Serbs and therefore determined to destroy Kosovo Albanians, Croats, and Bosnian Muslims. Still, the trial record shows the effects of a decade of his reign – which left over 100,000 dead and many more displaced – and in the face of such numbers, it is natural that both observers and victims of the conflicts he waged wish to attach a clear, even if reprehensible, motive to his actions. This desire to understand the causes of violence is reflected in mass atrocities trial proceedings, which must ask: Why did violence occur and at what point was it sanctioned?

From the early days of the conflict in the former Yugoslavia, Milošević was demonised by his political opponents and the world media. After the conflict in Croatia took a violent turn and subsequently expanded into BiH, *Time* magazine published a June 1992 front-page article titled “Slobodan Milošević: Butcher of the Balkans.” In a sharp analysis, the author attempted to capture the essence of Milošević as a man and as a politician, describing his political tenure – at
the time lasting only a couple of years – with more refinement than the title suggested. The unflattering nickname stuck, though, and not least because Milošević exposed himself as ruthlessly determined to achieve his strategic goals and retain power in the years that followed.

The Plan: When and Why Violence Occurred

The courtroom narrative exposed the pre-mediated nature of the actions of Milošević and other Serb leaders. Valuable evidence on the details of this planning came from Defence witness Ratko Marković, who had articulated two strategies for addressing the Serb national question in 1992. The first and preferred option was a centralised Yugoslavia, and the alternative was a Serb state within ethnically-defined borders – the latter of which, Marković admitted, could only be achieved through violence given the ethnic mix of areas designated as Serb. Milošević’s attempts to resolve the Serb national question mirrored Marković’s strategies and were implemented in five stages: (1) the centralisation of Kosovo; (2) the centralisation of the SFRY; (3) the creation of the RSK, and ethnic separation in Croatia; (4) the creation of the RS, and ethnic separation in BiH; and (5) the retention of Kosovo through forced changes to its ethnic composition. Stages one and two were focused on achieving the first option articulated by Marković. When this strategy failed, the three final stages represented efforts to realise Marković’s alternative option by creating an independent Serb state.

The Plan to Centralise Serbia

After consolidating power in Serbia, first by marginalising Ivan Stambolić and later by succeeding him in 1989, Milošević was in a position to press for radical change. In the spirit of the SANU Memorandum, his immediate political goal was to revoke the autonomy of Kosovo and Vojvodina, which would require that Serbia unilaterally undermine the 1974 SFRY Constitution that defined the provinces as federal units and assured their representation in the eight-member SFRY Presidency. And so, beginning in 1988, Milošević mobilised Serbs from Kosovo to lead demonstrations aimed at toppling the leadership in Vojvodina, Montenegro, and Kosovo through seemingly impromptu ‘happenings of the people.’ Protesting in Novi Sad, the

capital of Vojvodina, and in Titograd (today’s Podgorica), the capital of Montenegro, Kosovo Serbs talked before the TV cameras about hardships they faced in Kosovo. The trial record reveals that even if allegations put forward by Kosovo Serbs about the adversity they faced in Kosovo were truthful, no such complaints were made by Serbs in Vojvodina. Belgrade pushed for revocation of the autonomy of both provinces, though, so that however disguised, it became clear that petitions, speeches, and demonstrations that highlighted the purported suffering of Serbs in Kosovo were meant to topple sitting leaders who were not willing to conform to Milošević’s political agenda.

At arguably the most memorable of these demonstrations, held in front of the Federal Assembly in Belgrade in February 1989, Milošević’s performance in front of hundreds of thousands of Serbs became one of the landmark events of his career and contributed to the popular appeal and political charisma he enjoyed for years. Milošević celebrated this first major political success in a speech in Gazimestan, in 1989. He presented himself to Serbs gathered from all over the SFRY as a leader who could deliver concrete solutions to the problems Kosovo Serbs felt they faced. Moreover, resonating rhetoric from the SANU Memorandum, he called for the protection of Serbs living in other republics and announced the prospect of an administratively and territorially united Serbia.

One year later, in July 1990, Milošević and his communist associates formed the Socialist Party of Serbia (SPS), which facilitated the continued ideological influence of the authors of the Memorandum in Serbian politics after the fall of communism. Concepts articulated in the Memorandum were built into the SPS party platform and several of the Memorandum’s authors became members of the Main Board of the SPS. The protection of Serbs outside of Serbia became one of the major political objectives of the SPS, and one which gained urgency against the backdrop of the disintegration of the SFRY.

Drawing attention to the alleged suffering of Serbs in Kosovo did finally stir up public anger and create legitimacy for the removal of leaders in Kosovo and Vojvodina, as well as in Montenegro, where Milošević’s policies did not enjoy support. In September 1990, a new Serbian Constitution was adopted, and exaggerations that had been introduced by Serb nationalists in the 1980s about the risk of physical annihilation faced by Serbs in Kosovo were used to justify changes to the status of the provinces. These same arguments were repeated in the courtroom by
Defence witnesses some twenty years later and were challenged by the Prosecution and the judges. Still, the 1990 Constitution had successfully centralised Serbia, as the SANU Memorandum had proposed, and in December 1990, the SPS won Serbia’s first multi-party elections, completing what was probably the single most successful year in Milošević’s political career.

The Plan to Centralise the SFRY

The Defence narrative was that, under Milošević’s leadership, Serbia did everything it could to preserve Yugoslavia because this would have kept Serbs in a single state. But the Prosecution presented evidence revealing substantial discrepancies between public proclamations and the reality of actions taken by Serbian political and military leaders. It became essential to the Prosecution’s case to connect overt political and military activities with covert political and military objectives.

The Prosecution argued that if Milošević had really been interested in preserving the SFRY, he would have accepted federal reforms proposed in 1989 and would have engaged in constructive debate at the 14th Extraordinary Congress of the League of Communists (LC). It was at this sitting of the LC that Milošević had expected to bring his opposition from other republics in line. But Milošević miscalculated his influence, and in the aftermath of this failed Congress, the communist leadership from Slovenian and Croatia returned home and decided to hold multi-party elections, ending a 45-year monopoly of communism.

These political shifts in the two republics came as an unwelcome surprise to Milošević. Although he had adopted a nationalist agenda that placed the position of Serbs in the SFRY as the highest political priority, he was also very much a product of the communist system. He understood and appreciated its advantages in controlling the state through the centralised, well-organised, and omnipresent League of Communists infrastructure. And while Milošević had controlled and dictated the pace of developments between 1987 and 1990, he was far less successful in dealing with the breakaway republics. By failing to bring Slovenia back into the fold at the 14th
Extraordinary Congress in January 1990, he lost the opportunity to push through reforms and legislation that would have centralised the SFRY to the benefit of Serbia.\textsuperscript{1425}

By the end of 1990, all six SFRY republics had held multi-party elections. Parties that developed from reformed republic-level Leagues of Communists lost the elections in every republic except Montenegro and Serbia, where Milošević’s newly formed SPS assured continuity of the policies he had started to implement in 1987. Milošević’s rhetorical role as the keeper of communist ideology and of the territorial integrity of the SFRY won him the loyalty of some of the most powerful institutions in the Federation and most notably of the Yugoslav People’s Army (JNA), which risked being eliminated if Yugoslavia disintegrated. This was an important alliance, especially because political developments in the Federation lagged behind those in the republics and multi-party elections were not held at the federal level.

While Milošević maintained in court that he had supported a solution which preserved Yugoslavia, and that this had been the best answer to the Serb national question, the testimony of his fellow politicians – including that of Ante Marković, Milan Kučan, and Stjepan Mesić – cast his intentions in another light. Evidence presented in court showed that Milošević had systematically sought accommodation for the interests of Serbia and of Serbs throughout Yugoslavia, while disregarding those of other Yugoslav peoples and republics. Yet, as Milošević told it, if Yugoslavia was a sinking ship, it was the leaders of other republics who had abandoned the Federation in its time of crisis and who were therefore the cause of later political violence; and he was simply a captain working to keep a damaged vessel afloat. In truth, talks among the new republic presidents on restructuring of the Federation revealed two opposing preferences for the form of a common state. Serbia and Montenegro wanted a more centralised federation, and Slovenia and Croatia advocated a confederation, with BiH and Macedonia left balancing between the two, trying but failing to find an alternative solution that could satisfy both sides.

The debate that preceded the disintegration of Yugoslavia was focused on whether or not a confederative system could be agreed upon. During the trial, Milošević and his Defence witnesses insisted that a confederation was an anachronistic model that never could have worked and was thus designed for failure. But Prosecution witnesses assigned responsibility for the end

\textsuperscript{1425} Testimony of Stjepan Mesić (3 October 2002), 10776.
of Yugoslavia and the subsequent violence to Milošević and Serbian leadership because they had rejected a confederation and, thereby, the internationally-brokered Carrington Plan.\(^\text{1426}\) The European Community had arranged for a peace conference as a last chance for the republics to work together to negotiate the terms of a reformed common state, but it ended with Serbia holding out as the only republic to snub the Plan. In court, witnesses and documentary evidence brought to light that Milošević had originally agreed to the draft Carrington Plan but had changed his position due to pressure from JNA leadership. By rejecting the notion of a confederation, Milošević had effectively reduced inter-republic discussions to little more than window dressing, and by the end of 1991, federal governmental institutions became completely paralysed by division and indecision. In December of that year, SFRY Prime Minister Ante Marković left Belgrade never to return, marking the end of an era.\(^\text{1427}\)

Qualifying the recognition by the international community of the independence of Slovenia, Croatia, Macedonia, and BiH as “premature” was another important part of the Defence narrative. The term “premature recognition” was coined in 1991 and was used to communicate a warning about the potential consequences of hasty recognition on the part of analysts and diplomats, by politicians who preferred that recognition of independence come at the end of a negotiating process. But that was in fact exactly what happened, after talks at Brioni in July 1991. The Defence attributed the violence that followed to the Slovenian and Croatian declarations of independence, which it characterised as unilateral. The Prosecution claimed that Milošević had already reconciled Slovenia’s independence by that time, but argued that he had not been prepared to let all of Croatia go before the Croatian Serbs had a chance to seize Serb territories there – and so, the ensuing violence was motivated by territorial aspirations. Indeed, the Prosecution presented evidence that Milošević had accepted the inevitability of the end of the SFRY and, by agreeing to Slovenia’s independence (and to part of Croatia’s), had created legitimacy for his own political aim to unify all ‘Serb-designated territories.’ Still, attempting to construct a history in which Serb crimes in Croatia and BiH were merely a reaction to aggression by Croats and Bosnian Muslims, Milošević repeated over and over again in court that violence

\(^{1426}\) Trial Transcript, Defence Opening Statement (31 August 2004), 32172. Also see: Testimony of Smilja Avramov (8 September 2004), 32546; and Testimony of Vladislav Jovanović (22 February 2005), 36377.

\(^{1427}\) Testimony of Ante Marković (24 October 2003), 28040-28042.
had resulted from the secession of the republics and that Serbs in Croatia and BiH were forced to take up arms to defend themselves.

The dispute over the nature of and accountability for the disintegration of the SFRY was refereed by an international Arbitration Commission – known as the Badinter Commission – in eleven Opinions on key questions of disagreement. In Opinion No. 1, issued in November 1991, the Commission determined that the SFRY was already in the process of dissolution when the republics started to opt for independence. The Commission’s final Opinion, issued in 1993, established the precise dates of independence of the SFRY successor states – Croatia and Slovenia on 8 October 1991, Macedonia on 17 November 1991, and BiH on 6 April 1992. Serbia and Montenegro did not seek independence but formed a federation in 1992.

From 1987 to 1991, as Milošević worked to centralise Yugoslavia, he had developed and demonstrated his savvy as a populist leader. He was capable of manipulating his adversaries, mobilising the masses to pressure his opponents, and bending the law to achieve what he wanted. But it was not until Milošević and his allies decided to apply a strategy of “ethnic separation” in pursuit of a Serb state – on sovereign territories in Croatia and BiH – that his criminality was exposed. Eventually, this strategy led to the formation of the Republika Srpska Krajina (in Croatia) and the Republika Srpska (in BiH). And, while Kosovo was seen as part of the same strategy, territory there was claimed not on ethnic but on historical and geostrategic grounds.

*The Plan to Carve Out ‘Serb-Designated Territories’ in Croatia*

The Prosecution concentrated on presenting evidence that showed how and when Milošević’s political behaviour first became truly criminal; and in the pre-trial investigation period, as well as in the courtroom, followed evidence that marked the moments and processes by which his criminality had emerged and developed. But this was difficult to prove since, as a sitting political leader using violence outside a constitutional and legal framework, Milošević had been careful not to leave an obvious evidentiary trail. Therefore, investigators worked to identify facts and

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1429 Ibid., Opinion No. 11.
events that exemplified where the line between the legal and the illegal had been crossed, either at Milošević’s instigation or with his knowledge.

Arguably, any political leader determined to create a similar Serb state would have left behind a comparable record of violence against non-Serb populations. In Croatia, efforts to establish the western border of such a state led Serb forces to seize one-third of Croatian territory before undertaking efforts to make it ethnically homogenous – triggering the commission of mass crimes and significant loss and suffering among non-Serb populations. The proclamations of independence by Slovenia and Croatia in 1991 had prompted Serbia to develop the Belgrade Initiative, which called on all parties who wished to stay in a reduced Yugoslavia to lobby for that option jointly. For Croatia, the Initiative meant that Serbs who wanted to remain in the Federation sought to claim territories in which they were a majority and then break away from the rest of the country. Thus, from August 1990 to December 1991, Serb forces established Serbian Autonomous Regions (SAOs) across Croatia, eventually proclaiming the Serb para-state entity of Republika Srpska Krajina (RSK), which existed until August 1995. Serb leadership in Croatia coordinated with officials in Belgrade to implement and enforce ethnic separation between Serbs and non-Serbs.

At its core, the Belgrade Initiative was intended to keep the whole of BiH in a reduced Yugoslavia that included ‘Serb-designated territories’ in Croatia. The Prosecution asserted that this could not have been achieved without violence. In Croatia, any claims made to Croatian territory by Serbs – which presupposed ethnic separation between Croats and Serbs and the eventual partition of Croatia – were bound to cause inter-ethnic violence in areas with a mixed population. And in BiH, the most ethnically diverse republic, success of the Initiative depended on large numbers of non-Serbs essentially agreeing to remain in a Serb-dominated Yugoslavia. Evidence presented in court showed that the map of a Rump Yugoslavia proposed by the Belgrade Initiative closely resembled historical Greater Serbia designs, with the borders of both imagined roughly along the Virovitica-Karlovac-Karlobag (V-K-K) line. A Rump Yugoslavia never materialised, though, because BiH did not agree to remain in the Federation.

The first stage of ethnic separation in Croatia was undertaken with the help of the JNA in the summer and autumn of 1991, with the goal to split Croatia in two along the V-K-K line,
awarding the Dalmatian coast to the Serbs. Eventually, military resistance from Croatian armed forces and condemnation by the international community led Serbs to abandon the V-K-K line and with it the coastal zone that includes the towns of Dubrovnik and Zadar. The role of the JNA in these early operations was examined by the Prosecution, which presented evidence that JNA leadership had been hostile to new authorities in the Republics of Croatia and Slovenia. This was due at least in part to the fact that the secession of these republics undermined the sovereignty of the SFRY, which the JNA was constitutionally obliged to defend; however, evidence revealed that the JNA had started preparing for the possible disintegration of the SFRY as early as 1988, with tactical plans that also featured the V-K-K line. On 17 August 1990, the JNA assisted in organising an uprising by Croatian Serbs that is considered by some to be the start of the war in the former Yugoslavia.

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The Creation of the Republika Srpska in BiH and the Commission of Mass Atrocities

The involvement of Milošević in events in BiH started before violence was unleashed there, and Bosnian territory remained at the centre of his political and military planning from the pre-war period through the conflict. Certain events of particular relevance, such as the 1991 meeting between Milošević and Tuđman at Karadžorđevo, were explored in depth in the courtroom, with new facts and interpretations emerging from the evidence. Indeed, early plans to split BiH between Serbia and Croatia led back to that March 1991 Karadžorđevo meeting; and although neither Milošević nor Tuđman ever confirmed rumours that they had discussed partitioning BiH along ethnic lines, evidence that such a plan may have existed was important to the Prosecution’s effort to prove Milošević’s state of mind regarding Bosnian territory.

It was actually Milošević’s adamant denial that he had ever discussed splitting BiH with Tuđman that hinted at a guilty mind. Why was so much effort put into obscuring the nature of talks that others claimed had taken place if they were evidence of nothing? This caught the attention of ICTY judges, too, who considered the Karadžorđevo meeting important enough to refer to it in their 2004 Half-Time Judgement, calling it a “secret meeting” at which Milošević and Tuđman had discussed “the division of Bosnia and Herzegovina along ethnic lines and its annexation to Croatia and Serbia respectively...” However, plans made at Karadžorđevo were not brought to

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1430 Half-Time Judgement, para. 525.
fruition because Tuđman could not take the risk that ethnic separation in BiH would set a precedent for the similar partition of Croatia, and any such arrangements fell apart by June 1991, when Croatia declared its independence.

The failure to divide Bosnia between Serbia and Croatia led Milošević to focus on keeping all of BiH in a reduced Yugoslavia that would be controlled by Serbia. But this option was also excluded when BiH opted for independence in March 1992 and was subsequently recognised by the EU in April, followed by UN membership in May. As had been true in Croatia six months earlier, recognition of Bosnia’s independence led Serbs to implement a strategy of ethnic separation there, and to establish Serb Autonomous Regions. And, rejection by Bosnian Serbs of independence for BiH was used to legitimise and mobilise support for the ethnic separation policy.

Questions such as which side started the war in BiH and for what purpose were addressed by both sides in court. But two crucial documents revealed that a Serb strategy of ethnic separation and then homogenisation had been developed for BiH even before the conflict there began. The first dates from December 1991 and was known colloquially as the “Variant A and B Document,” in which two plans were made for the BiH territories Serbs sought to take – one for municipalities with a Serb majority (Variant A) and the other for municipalities where Serbs were a minority (Variant B). The crimes committed by Serbs were gravest in the municipalities defined in Variant B. The other important document that served as a blueprint for the commission of crimes in BiH by Serb forces is known as The Six Strategic Objectives, issued by the Bosnian Serb Assembly in May 1992. It identified strategically important regions that would secure the contiguity of Serb-claimed territories in BiH with both Serbia and Serb territories in Croatia, and included areas that had an overwhelming Bosnian Muslim majority. It was in those territories – in municipalities in Northern and Eastern Bosnia – that the most horrific crimes were committed and where Milošević was charged with genocide.

Genocide in Bosnia and Herzegovina

Returning to the question of whether the history of Yugoslavia would be different if someone other than Milošević had taken leadership of Serbia in the 1990s, the simple answer is “yes.”
History may well have taken a different course if he had been less persistent or less adept as an international negotiator; were it not for his success at the negotiating table, the worst crimes of the wars may have been prevented. But his personality and education – accentuated by his fluency in English and his capacity to engage – made him an obvious negotiating partner among international diplomats, and his grip on Serb politicians inside and outside Serbia designated him as the principle negotiator of a peace agreement. And so, he was able to drag out the war in Bosnia by dragging out peace talks, eventually securing ethnic separation for Serbs in BiH in an internationally-brokered accord.

He succeeded in dividing Bosnia with the approval of the international community not just by insisting that territorial gains on the ground be reflected in a peace settlement, but through the skilful use of anti-Muslim rhetoric that warned of a “Green Transversal.” He rarely spoke publicly in derogatory terms about any ethnic group, but preferred to refer instead to global threats of fascist or Islamist domination. His words reflected the private thoughts of some Western politicians, who – according to Bill Clinton’s account – opposed the establishment of a Muslim majority state in the heart of Europe.

*Peace Negotiations and the Strategy of Ethnic Separation*

Milošević’s hold on power in Serbia after the summer of 1995 did not seem to be affected by his failure to deliver his promise of “All Serbs in a Single State.” He basked in having legalised the Republika Srpska in the Dayton Peace Agreement, which he hailed as a victory and a validation. At a high level meeting in December 1995, held immediately after the negotiations, he referred to the great success of Serbs in having created an internationally sanctioned “Serb state” in BiH. For Milošević, Dayton was a triumph that allowed him to reinvent himself as a politician. Internationally, he took on the identity of a peacemaker who had compelled Bosnian Serb leaders to accept the peace agreement. Actually, Radovan Karadžić and General Ratko Mladić had been indicted by the ICTY in July 1995 and were not permitted to travel to Dayton.

Milošević’s attitude toward peace negotiations, which manifested in years of internationally-brokered talks, was more complex than his expressed dedication to peace suggested. His backing of a political – as opposed to a military – resolution to the conflict masked his determination to
transform *de facto* military conquests into *de jure* territorial gains, with the ultimate goal that territories seized by Serbs in Croatia and Bosnia be recognised in a peace settlement mediated by the international community. Thus, in Croatia, the Serbian government’s support for United Nations Protected Areas (UNPAs) had not represented a discontinuity in efforts to unify all Serbs, but was a tactical move meant to achieve ethnic separation in Croatia with both international arbitration and approval. And in BiH, ethnic separation and the preservation of territorial gains were not only important as political and military objectives to Serbs, but were also part of their negotiating strategy during the war. In peace negotiations, Serbs legitimised military conquests, paying special attention to ensuring territorial adjacency so that the RSK and the RS could be connected to Serbia through negotiated corridors. This would be the foundation for later unification as permitted by the FRY Constitution of 1992 – which stipulated that the Republics of Serbia and Montenegro could be joined by other federal units.

Backing for the policy of ethnic division in BiH was in fact remarkably easy to come by among representatives of the international community. Witnesses testified that the rumoured partition agreed to at the 1991 Karadordevo meeting had actually enjoyed European support, because Europe was not prepared to allow the formation of a unitary BiH, with a Muslim majority. In the period from February 1992 to December 1995, international negotiators proposed five peace plans, all of which were based to varying degrees on the principle of ethnic separation. The first, the Cutileiro Peace Plan – proposed almost one year after the Karadordevo meeting and two months before war broke out in BiH – evoked the arrangement Tuđman and Milošević had reportedly discussed at Karadordevo. Ethnic separation of BiH was also the basis of the Vance-Owen Peace Plan of 1993, which proposed the creation of ten cantons. During negotiations for the Vance-Owen Plan, violence escalated as Serbs and Croats fought for more territory, anticipating that it would be awarded to them at the negotiating table. Instead, negotiations failed by mid-1993, as they did for two subsequent peace proposals: the Owen-Stoltenberg Peace Plan of 1993 and the Contact Group Peace Plan of 1994. Although Serbs were pleased with the ethnic separation principle reflected in these plans, none afforded them enough of the territorial corridors they felt they needed in order to later unify a Serb state; so, they fought for more.

1431 Testimony of Ante Marković (23 October 2003), 28027.
Genocide in Srebrenica

The Bosnia indictment was the only one in which Milošević was charged with genocide. The Trial Chamber’s Half-Time Judgement – issued at the end of the Prosecution case in 2004 – did not determine whether genocide was in fact committed in Brčko, Prijedor, Sanski Most, Srebrenica, Bijeljina, Ključ, and Bosanski Novi; its practical implication was that Milošević would have had to present evidence during the Defence part of the case in order to refute genocide charges in those municipalities, and to counter Prosecution evidence and create reasonable doubt. Some of that evidence addressed the relationship between Milošević and Bosnian Serb leader Karadžić, and was important to establish the extent of Milošević’s power and responsibility for events in BiH. The Prosecution insisted that, despite occasional discord, Milošević and Karadžić never abandoned their common project and that the war efforts of Serb forces in BiH were not possible without the constant financial, military, political, and diplomatic support of Belgrade and of Milošević personally. At any time, he could have denied this aid, but he never did; only reconsidering it after the highly publicised fall of Srebrenica and Žepa, when the war was almost at its end.

Evidence of a “Swap of Territories”

The Milošević trial record contributed significantly to military and political reconstruction of the crimes committed in Eastern Bosnia in 1995, and evidence presented in court revealed the complex military and diplomatic circumstances in which these crimes took place. Still, despite this extensive record, fully tracing individual criminal responsibility for the genocide in BiH is still impossible, 20 years later. When he died, almost all the evidence Milošević had presented had been on Kosovo, with evidence on Croatia incomplete, and hardly any at all presented for Bosnia. Had Milošević lived to present all his evidence for the Croatia and Bosnia indictments, the imbalance in evidence presented for the three indictments would be less significant. But this imbalance has meant that, for Bosnia especially, it has been necessary to look beyond the trial record for evidence, especially in respect to Srebrenica.

1432 Half-Time Judgement, para. 246 and 288. Also see: supra note 81.
And so, the case of the Srebrenica genocide is a good example of the paradox that a trial record can, at the same time, be too sizeable for analysis in a single study and yet not exhaustive enough that supplementation by other trial records, academic studies, archival material, or media reports isn’t necessary. For instance, the Prosecution did not address the “swap of territories” strategy in the evidence; though it had emerged during the pre-trial investigation that there may have been a coordinated effort by the international community, Serbia, and Croatia to allow Serbs to take territories in Eastern Bosnia (the RS) in exchange for the return of Croatian territories claimed by Serbs. The ease with which the Republika Srpska Krajina was lost in August 1995 – with hardly any resistance from Serb forces – supports the possible existence and success of a swap of territories approach. Indeed, by mid-1995, representatives of the international community had lauded the ethnic homogenisation achieved by creation of the RSK and RS for “simplifying” the situation on the ground as efforts to reach a permanent peace settlement intensified.

Dubiously, Western intelligence showing movements of Serb military installations that indicated the potential for a major massacre, if not genocide, was also collected in the summer of 1995; but none of the countries privy to this intelligence, including the US, France, and Great Britain, acted to prevent genocide. This may be why crucial intelligence that could lead to a greater appreciation of what happened in Srebrenica and Žepa remains obscured from the public, and thus from the courts, two decades after their fall. While support for a swap of territories did not mean the international community also gave a green light to the crimes committed by Serb forces after they took the two Bosnian Muslim enclaves, more than 8,000 men and boys were captured and killed over several weeks as UNPROFOR soldiers looked on. And in negotiations, the Serbs’ obstinate determination to defer a settlement until they had taken the Drina Corridor – one of their strategic objectives – seemed to pay off. The Dayton Peace Agreement formalised the internal division of Bosnia by incorporating much of the Drina River Valley, which lies along the Serbian border, into the entity of Republika Srpska.

Through this lens, the July 1995 conquest of Srebrenica and Žepa was a particular strategic victory for Bosnian Serbs given the location of these towns on the border with Serbia. Indeed, territorial conquests made in the summer of 1995 led to even greater ethnic homogenisation in both Croatia and BiH. Following the capture of the Eastern Bosnian enclaves by Serbs, Croatian forces had re-conquered the RSK in Operation Storm, compelling Croatian Serbs to leave
Croatia and leaving the Croatian population more ethnically uniform than ever before. The fall of the RSK made the western borders of the RS less relevant, especially since the conquest of the Eastern Bosnian enclaves had allowed for territorial contiguity between the RS and Serbia in the east. And these territorial realities became the basis for peace talks in Dayton. The Bosnian Serbs had successfully deferred a peace settlement until they had established control of the Drina River corridor, and they were rewarded for holding out. The Dayton Peace Agreement accepted conditions on the ground that had been created through the commission of crimes aimed at achieving ethnic separation, and gave the Serbs the territorial corridors they had aspired to in previous negotiations but had never been granted. It divided Bosnia into two entities – the Bosnian Muslim-Croat Federation and the Republika Srpska – affirming wartime conquests and, for some, the means to that end.

The Plan to Change the Ethnic Composition of Kosovo

As the dissolution of Yugoslavia was hashed out at the republic and federal levels and wars were waged in Croatia and BiH, tensions within Serbia over the status of its provinces, especially Kosovo, remained a constant threat to Serbian political stability. Kosovo had been something of a switch Milošević could flip throughout his career to revive his popularity whenever he found himself in a difficult position domestically. From 1990 to 1998, Serbian leaders had mainly concerned themselves with maintaining the status quo in Kosovo; however, this had proved to be very difficult and then impossible, due to the province’s overwhelming ethnic Albanian majority. To counter this, discrimination in favour of Serbs and against Kosovo Albanians had been implemented through a number of decrees, starting in 1990, but none of these measures was enough to encourage Serbs to stay in or move to the province, as had been hoped. Instead, these policies simply amounted to a form of apartheid in which the Kosovo Albanian population was excluded from many spheres of public life. When Kosovo Albanian children were prevented from attending school, parallel Kosovo Albanian structures and an informal government were finally formed. Still, in the face of this discrimination, Kosovo Albanian politicians led by Prime Minister Ibrahim Rugova adopted a policy of peaceful resistance.

The trial record reveals that relations between Serbia and Kosovo were troubled for decades, long before the adoption of the 1990 Serbian Constitution, which revoked the autonomy of the
provinces. Despite a majority ethnic Albanian population in the province, the Serb nationalist paradigm – which was built partly on the claim of Serb rights to Kosovo – offered only two solutions to the ethnic conflict there: to find a way to keep all of Kosovo within Serbia or to accept the Kosovo Albanian majority as a fact and divide Kosovo into Serbian and Albanian parts. Milošević never recognised the latter option, though, and during his political tenure, the retention of Kosovo within Serbia was a key aim. But, the formal constitutional revocation of the autonomy of Kosovo and Vojvodina in 1990 had not been followed by efforts to resolve ongoing social, economic, or political problems in the provinces.

Having failed to include Kosovo on the agenda of the Dayton peace negotiations in 1995, the international community eventually pressured Serbia to start talks with Kosovo Albanian leaders in order to normalise life in the province. But these negotiations failed by 1996 due to the refusal by Belgrade to accept any political settlement that would involve a change in the status of Kosovo. By that time, Rugova’s policy of peace had not borne results and alternative approaches were sought by a younger generation of Kosovo Albanians who chose to resist Serb hegemony by arms, forming the Kosovo Liberation Army (KLA). As Kosovo’s conflict escalated, the KLA gained both notoriety and strength. Serbia attempted to stop the KLA through extensive use of force and the indiscriminate targeting of both Kosovo Albanian civilians as well as KLA fighters, causing a humanitarian catastrophe that displaced approximately 300,000 Kosovo Albanian civilians from their homes by the end of December 1998. In a twist of irony, Defence witnesses argued that these policies were necessary to prevent Kosovo Albanians from uniting with Albanians from neighbouring countries to join in a Greater Albania. The Prosecution saw the expulsions of Kosovo Albanians from their homes as an attempt by Serbia to change the ethnic composition of targeted areas in order to make the governance of Kosovo more manageable for Belgrade.

Milošević succeeded for almost a decade in keeping the Kosovo conflict away from international mediation or interference. By mid-1998, having been reprimanded and criticised by the international community, he turned unsuccessfully to the Russian Federation. Faced with either complete international isolation or international mediation, Milošević finally agreed to allow monitors to enter Kosovo that October. For several months, the Kosovo Verification Mission (KVM) struggled to fulfil its mandate and then, in January 1999, despite the KVM’s presence in
the province, Serb forces attacked the small village of Račak and killed 40 civilians. The Račak massacre led to the first serious initiative to compel the two sides to reach a political solution in Kosovo, and the international community called for a peace conference in Rambouillet, in France, in February 1999. By the end of that month, it was clear that Serbia would not accept the draft Rambouillet Peace Plan and, despite threats of external military intervention aimed at stopping the humanitarian catastrophe in the making, Milošević called the Kosovo Albanians “scoundrels” and refused a last call for cooperation. With the failure of the talks, on 24 March 1999, NATO intervention began.

The NATO bombing lasted ten weeks. According to the Prosecution, Serbia used the intervention to cover up mass forced expulsions and killings of Kosovo Albanians. Indeed, evidence presented in court indicated that there were plans by politicians such as Vojislav Šešelj, expressed as early as 1990, to expel up to 300,000 ethnic Albanians from Kosovo. While the Defence claimed that Kosovo Albanian civilians left Kosovo because of the NATO bombing, the Prosecution contended that the organised nature by which civilians were moved to the Albanian and Macedonian borders by police-escorted buses and trains indicated otherwise. Serbian police even seized identity documents from Kosovo Albanians at border crossings to make it more difficult or impossible for them to return. And, among the most compelling evidence that Serbia had been involved in the commission of crimes was the fact that a number of mass graves were exhumed and bodies reburied in Serbia after it became clear in May 1999 that Serb forces would lose the war. After nearly two-and-a-half months of bombing, Serbia was compelled to sign the Belgrade Peace Agreement on 4 June 1999 and the Kumanovo Military Agreement on 10 June – according to which all Serbian and FRY military forces had to leave Kosovo. With the withdrawal of these forces from Kosovo, it became even more ethnically homogeneous than before the war, reducing the Kosovo Serb population to a few enclaves.

The Evidence

Those of us with a professional interest in international criminal trials must work on the basis that lawyers and judges in international courts are doing their best with the material available to them; but we would be wise to remind ourselves that, sometimes, significant political manipulations influence what evidence is made available. During the Milošević trial, revelations about a deal to protect portions of archival records from Serbia highlighted the
importance of transparency in the way evidence is presented in mass atrocities trials. The protection of evidence should be possible only on the most solid legal grounds, for obscuring the truth from those who are entitled to know it – the public, and especially victims – can undermine the integrity of such a trial, finished or unfinished. And, once a trial such as that of Milošević is over, the trial record remains a monument to generation after generation that has sought justice.

From the number of counts charged to its protracted length, the Milošević trial reflects so many reasons that a more efficient and transparent system for obtaining documentary evidence is necessary. International criminal courts and trials will need to prioritise the creation of systems that allow these materials to be obtained in days or weeks, not in months or years, and make them public as early as possible. This may require that the acquisition of documents (and witnesses) be the responsibility of any political body that establishes a court – a responsibility that would have to be supported by the ability to sanction parties for non-compliance. Beyond adding to legal efficiency and transparency, this approach would improve the quality of trial records and make them more complete.

Evidence on the de facto and de jure Responsibility of a Leader

Trying a former head of state for mass atrocities requires gaining access to insider witnesses and confidential documentary evidence. After all, holders of high political, military, and state positions typically have mechanisms at their disposal to destroy or hide evidence that might point to their criminality. Evidence presented in the trial revealed the trouble that Serbian leaders had taken to keep their wartime political and military plans and activities from the public, and from the ICTY; but some of this evidence was a potent reminder that traces of crimes committed on such a mass scale can never be completely erased, especially not after the political downfall of those responsible. Sooner or later pieces of the puzzle surface, and in the case of Milošević, documents from state institutions that offered proof of Milošević’s de jure and de facto power were important to illustrating his overarching criminal plan.

Milošević’s de jure position changed over the period covered by the three indictments against him. He was President of Serbia from 1990 to 1997 and then President of the FRY from 1998 to 2000, and the Prosecution had to demonstrate both his de facto and de jure powers during each
of the wars. The key to establishing his criminality was to reveal the extent of his power over military and special police units.

For the years encompassed by the Croatia indictment, the Commander-in-Chief of Yugoslav forces was the collective Presidency of the SFRY, and evidence from PSFRY meetings was therefore paramount, especially as it related to decision making about use of the JNA. As President of Serbia, Milošević was not a member of the PSFRY, but he wielded de facto control of the body through four compliant members known as the ‘Serbian Bloc.’ The Serbian Bloc took power over the PSFRY after the representatives from Croatia, Slovenia, Macedonia, and BiH stopped attending meetings on 1 October 1991 as the result of growing political and military tensions. Members of the Serbian Bloc continued to meet, forming a Rump Presidency and assuming all constitutional powers of the Presidency, including that of collective Commander-in-Chief.

During the period covered by the Bosnia indictment, the Supreme Defence Council (SDC) was the Commander-in Chief of the Yugoslav Army after the PSFRY dissolved, and records from SDC meetings were essential to proving Milošević’s knowledge of operations by Bosnian Serb and Yugoslav forces in BiH. SDC records showed that only the thinnest line exists between individual, collective, and state responsibility in the commission of mass atrocities; and the condition set by Belgrade that portions of these records be protected added to the weight of their content. Indeed, these records showed the direct involvement of the FRY in the war in Bosnia.

A state that has been involved in conflict may be seen to owe a duty to itself (as opposed to any responsibility it may have to the international community) to ensure that an adequate record of its own history is left behind. But, for many reasons, states often choose to obscure their role in conflict, and for obvious reasons, their role in the commission of mass atrocities. The nature of Serbia’s cooperation with the ICTY has been an example of how elites may invest great effort over decades to keep evidence from the courts that they fear could implicate a state; in this case, as a party to genocide in BiH.

One might argue that Serbia’s effort to control the flow of evidence that could prove the culpability of the state or its high-level officials in the commission of genocide has been successful. It’s true that the legal history of genocide in BiH as recorded in decisions of the
ICTY and the ICJ exonerates Serbia. It is hardly surprising, though, that no “smoking gun” unequivocally linking Serbia to genocide exists. After all, a state accused and found liable for genocide at the ICJ would most likely be ordered to pay enormous reparations, and would bear the stain of the history told in an associated trial record. By creating a counter narrative, Serbian elites contribute to a false sense of equivalence regarding criminal and historical responsibility for the conflict, or even cast the victims as villains. A refusal by current Serbian leaders to admit to crimes committed by the former regime also frees them up to pursue the ‘unfinished’ geopolitical objectives their predecessors failed to achieve, without having to make the inconvenient admission that these objectives have been linked to mass atrocities. Indeed, for some, the formation of an enlarged Serb state is an ongoing project; and many Serbian political elites still hope to redraw Serbia’s western border through the incorporation of the Republika Srpska – the Bosnian entity that was “homogenised” through the commission of crimes, including genocide, and was then awarded to Serbs in negotiations to end the war.

Serbia’s attempts to keep documents away from the courts and the public may have successfully protected the state from legal responsibility, but one hopes that future efforts to control the legal process and the historical narrative by withholding documents may be less effective now that national and international courts can compel states to cooperate. In the case of the SDC records, obtained by the ICTY in 2003, their redactions remained until the 2011 trial of Yugoslav Army General Momčilo Perišić. Still, since his acquittal on all charges in 2013, the substance of SDC documents – finally accessible to the public – has not been fully analysed.

Reviewing formerly protected parts of these records for the purpose of this research, it was notable that Serbia had chosen to redact details about the links between and interoperability of Yugoslav, Serbian, and Bosnian Serb and Croatian Serb forces. SDC session notes revealed the state of mind of Council members as they sought a solution to the question of how to regulate Yugoslav officers serving in Bosnia, and arrived at the fiction of the 30th and 40th Personnel Centres as the answer. All commanding officers of Serb forces outside of Serbia were thereby paid and managed through these Centres, which were formal parts of the Yugoslav Army (VJ) hierarchy. This meant that officers who were directly involved in ordering the takeover of Srebrenica and in the commission of genocide there – some of whom were later tried and convicted at the ICTY for the crime – were on the payroll of the VJ. Yet, after the fall of
Srebrenica and Žepa in the summer of 1995, Belgrade took no measures of its own to investigate these officers; not even General Ratko Mladić, who commanded Serb forces in BiH. In fact, Mladić remained on the VJ payroll until 2002, when he began receiving a pension.

Among the most compelling parts of the SDC records were those that exposed that the VJ had sent its own units to fight in BiH. The effort of SDC members, and in particular of Milošević, to hide this fact indicated that they knew these operations were unlawful and unconstitutional. Further, given the amount of reporting about mass atrocities committed in BiH, SDC members also had to know that these actions were criminal. Nonetheless, and despite unavoidable evidence of the crimes committed by Serb forces, Belgrade continued to finance the Bosnian Serb war effort.

Though some Bosnian Serb leaders desired more BiH territory than they were awarded at Dayton, as far as Milošević was concerned, Mladić had secured a victory. At the SDC session held on 6 December 1995, with Dayton negotiations behind him, Milošević referred to the success of Serbs in Bosnia, their victorious creation of a Serb state, and its acceptance internationally. He stressed that the Republika Srpska was twice as large as Montenegro and spoke of the necessity of moving refugees from the FRY to populate it. The Serbs had managed to take every town along the Sava River and the whole of the Drina corridor, except for Goražde. And despite the crimes committed in the process of ethnic separation in BiH, a Serb territory in Bosnia was indeed legitimised in the Dayton Peace Agreement. The establishment of the RS as a separate entity in BiH is considered the most important military victory and historical achievement of the wars of the 1990s by the elites who instigated them.

Save for Milošević, who died in 2006 before his trial finished, no other individual from the FRY (or from Serbia and Montenegro) has been indicted for the crime of genocide. Two ICTY indictments of three former high-ranking officers in the Yugoslav Army and the Serbian Ministry of Internal Affairs – Prosecutor v. Perišić and Prosecutor v. Stanišić and Simatović – did include charges related to Srebrenica, but for crimes against humanity not for genocide. All three were acquitted of all charges, and their judgments were received in Serbia with celebration. For many, their acquittals were seen as an exoneration of Serbia as a whole.
Evidence for the Kosovo Indictment Period

The SDC allegedly stopped meeting during the period relevant to the Kosovo indictment; but an
ad hoc body known as the Joint Command was formed at that time, designed to hold *de facto*
control over military decision making but obscure *de jure* lines of responsibility. And so,
although Milošević was still the Commander-in-Chief of the VJ during the Kosovo conflict, it
was not his *de jure* position that led to a straightforward criminal case against him. The Joint
Command for Kosovo and Metohija had given orders to forces on the ground in the province,
and the name referred to cooperation between Serbian security and police officials with the VJ,
under the political coordination of SPS politicians. Denials by Milošević and his Defence
witnesses about the purpose of the Joint Command, despite solid evidence showing the nature of
its activities, was seen by the Prosecution as confirmation that Milošević knew very well that VJ
and MUP units subordinated to the Joint Command were committing crimes in Kosovo in 1998
and 1999.

Perhaps the most telling proof of these crimes came from Defence witnesses who had been
members of the Joint Command, including one who confirmed in cross-examination that a
meeting to discuss the removal of bodies from graves – during which he had noted, “no bodies,
no crime” – had taken place in the office of President Milošević. The meeting, held in May 1999,
took place during the NATO bombing. Understanding that capitulation or defeat would mean
losing Kosovo, Serbian leaders calculated that the reburial of Kosovo Albanian victims in
secondary mass graves inside Serbia might remove traces of their crimes. Eventually, though,
these secondary graves were uncovered.

The Transformative value of the Trial Evidence

The Milošević trial was an example of the transformative social value that the exposure of
evidence of this nature can have; and it generated public debate about the part played by Serbia,
its state institutions, and its officials in post-Yugoslav violence. Some of this evidence had
particularly powerful reverberations in Serbian society and politics. When the Kula Camp Video
surfaced in the courtroom, showing Milošević shaking hands with notorious members of
paramilitaries in 1997, it exposed to the public that officials in the Serbian MUP had been
involved in committing mass atrocities. Revelations of the war history of individuals who
maintained important positions within the MUP in the post-war period led to a mutiny of top Serbian police officials in November 2001, seriously destabilising the Serbian government under reformist Prime Minister Zoran Đinđić, who had been instrumental in transferring Milošević to The Hague in June of that year.

In 2003, Đinđić was assassinated by paramilitary members featured in the Kula Camp Video. One of the most revealing statements about the climate that surrounded Đinđić’s assassination came from a Serbian representative responding to complaints by the Prosecution about Serbia’s level of cooperation with the ICTY, who said:

> It should be remembered that it is this government that arrested and surrendered Mr. Milošević in the first place. It should also be remembered that Mr. Djindjic, who was prime minister, took responsibility for this act, was assassinated in March, and at the same time from the investigation into his murder, it has transpired that there has been a further list of targeted officials, prominently including certain ministers responsible for cooperation with the International Tribunal. To suggest in these circumstances that the government is actually withholding evidence is quite cynical, especially if one compares the armchair perspective of the Prosecution with the tangible challenges faced by the government.\(^{1433}\)

The legacy of Milošević’s regime has become the Achilles heel of his reformist successors. A decade of violence did not bring the results that Serbian nationalists hoped for; and, two decades after Milošević embarked on his effort to create a Serb state, the project remains unfinished. It was the legacy of his policies in Kosovo that eventually became his own vulnerability, too. It was in Kosovo, and because of his Kosovo politics, that Milošević had become a leader in 1987; but twelve years later, Kosovo brought him military, political, and personal defeat and humiliation.

Still, while Milošević may have lost his lustre, Kosovo and the Republika Srpska continue to play prominently in Serbian politics, where political and intellectual elites have held tight to ambitions to expand Serbia’s western border to include the RS. In fact, in 2013, Prime Minister

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\(^{1433}\) Trial Transcript (3 June 2003), 21667.
Dačić publicly reiterated the importance for Serbia of insuring preservation of the Bosnian entity, calling it even more important for Serbia than Kosovo. Rhetorically committed to EU integration, which stands as the only viable geopolitical option for Serbia at the moment, Serbian politicians are aware that accession to the EU would exclude changes to state borders. And so, not surprisingly, Belgrade has looked to Vladimir Putin’s Russia as an alternative ally for diplomatic, economic, and geopolitical support – though, so far, without success.

Mass Atrocities Trials and the Right to Know

Serbian politics two decades after the breakup of the SFRY reflect a development of the postconflict period in the former Yugoslavia that is not altogether surprising – that the former warring sides have advanced their own interpretations of the history of the conflict, echoing the very ideological divisions that triggered violence in the first place. But the ability of future generations to create false narratives may be limited by the history told in records of ICTY trials, even of the unfinished trial of Milošević.

While this study focuses on the role of Milošević specifically, there is a need for comparative research that examines the roles of other leaders of former SFRY republics during the 1990s. Analysis of the evidence contained in both national and international trial records will allow for a more complete accounting of what occurred, and on whose orders, in the wars that followed Yugoslavia’s disintegration. To that end, this study can pave the way for similar research.

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Summary

The Unfinished Trial of Slobodan Milošević: Justice Lost, History Told presents a comprehensive analysis of the record of the trial of former Serbian leader Slobodan Milošević at the International Criminal Tribunal for the former Yugoslavia (ICTY). Unlike other studies of the trial, this text relies primarily on the trial record and advances the notion that such a record, even where the trial is unfinished, is a unique historical source that can shape the narrative of a conflict. In The Unfinished Trial of Slobodan Milošević: Justice Lost, History Told, snapshots of behaviour displayed by Milošević in court and quotations of things he said while conducting his defence in combination with passages of carefully selected evidence from an immense archive familiar to few scholars, reveal the trial record as a truly invaluable source of history.

Legal approaches to the Milošević trial and the evidence presented in court revolved around Milošević’s leadership and whether or not he had articulated and implemented a criminal plan. Through examination of the trial record, a theoretical framework is developed in the first chapter of this study. Subsequently, three topics are introduced that are essential to the understanding of the intricacies of competing courtroom narratives. These topics – the Leader, the Ideology and the Plan – are expanded upon in the chapters that follow.

The Leader

Long before his trial that started in 2002 there was an ongoing debate among scholars, journalists, politicians, and diplomats about the extent of Milošević’s historical and political responsibility for the violent disintegration of Yugoslavia. There has been something of a near consensus among these authors that Milošević personally bore the greatest share of the responsibility for it. Still, one might argue that in Serbia’s dominant political culture, which relied on strong leadership, he had been allowed to develop very extensive de jure and de facto powers. Notwithstanding his personal mark on the Serbia’s war path, the trial record also contains a wealth of material about the nature of the ideology adopted by Milošević, best described for the purpose of this text as a variant of pre-existing ‘Serbian State ideology,’ which advocated the formation of a state to include all Serbs, who were scattered across former Yugoslav republics. The concept of a ‘Greater Serbia’ is explored, with particular attention paid to Milošević’s contribution to Serbian state ideology in the 1980s and 1990s – a project
described by its aim and known from the time Milošević came to power as ‘All Serbs in a Single State.’

When Milošević became the leader of Serbia, Serb nationalism was an existing and continuing political programme to which he offered his services. His subsequent taste for power developed rapidly and he quickly became the most powerful political figure in Serbia. Having united Serb nationalists from other republics, he was soon accepted as the de facto leader of all Serbs. The ideology of Serb nationalism had long inspired a Serbian State Project that required meticulous and rational planning. The advocates of this ideology – including Milošević – had to have known and accepted that its implementation would most likely, or even inevitably, lead to the commission of mass atrocities.

The Ideology

The Prosecution argued that all of Milošević’s political plans derived from his attempt to create a state that would incorporate all Serbs; and further, that the history of efforts to achieve this enlargement has been marked with mass atrocities against non-Serb populations. To establish Milošević’s criminal state of mind, the Prosecution presented evidence on his adoption of the ideology of ‘All Serbs in a Single State.’ Milošević had promoted Greater Serbia ideology without using the term, but his rhetoric in the late 1980s and the platform of his party in 1990 identified the protection of Serbs living outside of Serbia as a priority and espoused ‘the right of the Serb people to self-determination.’ Arguing that self-determination for Serbs would indeed expand the territory of a Serb state, the Prosecution introduced the term ‘de facto Greater Serbia’ to describe the ideology espoused by Milošević.

The Plan

This study distinguishes five goals that reflect key elements of Milošević’s plan to create a state that would encompass all Serbs.

Goal 1, 1987 to 1990: Centralisation of the Republic of Serbia by revoking the autonomy of Kosovo and Vojvodina
The first goal was the centralisation of Serbia, which he successfully achieved by revoking the autonomy of its two formerly autonomous provinces – Kosovo and Vojvodina. The Serbian Constitution of 1990 reflected those changes, launching Milošević to new political heights among Serbs.

**Goal 2, 1990 to 1991: Centralisation of the Yugoslav Federation with the Republic of Serbia as its dominant force**

The successful centralisation of Serbia was followed by unsuccessful efforts to centralise the Yugoslav Federation and secure Serb domination through control of the Communist Party and federal institutions of the Socialist Federal Republic of Yugoslavia (SFRY). Attempts to achieve this second goal however instead brought the disintegration of the SFRY, after Slovenia and Croatia declared their independence in 1991.

**Goal 3, 1991 to 1995: Creation of a reduced Yugoslavia to include ‘Serb-designated territories’ in Croatia, for which purpose the Republika Srpska Krajina (RSK) is established**

Milošević’s third goal was set in reaction to the failure to preserve a centralised SFRY. The disintegration of the Federation led to efforts to preserve a Rump Yugoslavia that would consist of all former SFRY republics save for Slovenia and parts of Croatia. This Rump Yugoslavia was projected to include ‘Serb-designated territories’ in Croatia and, to that end, attempts were made to secure those territories by force as early as mid-1990. These actions led to a full-fledged war in Croatia in 1991. In this process, Croatian Serbs proclaimed their own quasi-state entity – the Republika Srpska Krajina (RSK) – which was envisaged to extend to the Virovitica-Karlovac-Karlobag (V-K-K) line, a boundary that is the very representation of the Greater Serbia ideology articulated in 1941. The borders of the RSK were more or less achieved by December 1991.

**Goal 4, 1992 to 1995: Formation of the Federal Republic of Yugoslavia (FRY), a federation including Serbia and Montenegro, with contingencies in its Constitution for later absorption of other Serb territories; thus, the Republika Srpska (RS) is created in BiH**

The failure to achieve a Rump Yugoslavia with the inclusion of BiH led to the fourth goal. A referendum on independence held in BiH in February 1992 made it clear that a majority of the population there was in favour of independence. Adjusting to the loss of BiH, the republics of
Serbia and Montenegro constituted the Federal Republic of Yugoslavia (FRY) in April 1992. The FRY Constitution allowed for other territories to join in. At the same time, Bosnian Serbs, following the example of Croatian Serbs, formed their own quasi-state in BiH – the Republika Srpska (RS). Unlike the formation of the RSK, which was achieved after several months of fighting, the formation of the RS took more than three years to realise and led to mass atrocities against non-Serbs. Eventually, the peace agreement for BiH that was signed by all parties in December 1995 allowed the RS to maintain its territorial autonomy despite the fact that the commission of crimes, including genocide, established its borders.

Goal 5, 1998 to 1999: Continuation of efforts to dominate Kosovo (goal 1), in the face of rising opposition from the majority ethnic Albanian population, resulting in full-scale war in 1999

The fifth goal Milošević sought to achieve was related to Kosovo. The Kosovo conflict escalated into an armed conflict in 1998, exposing Milošević’s failure to keep Kosovo under Serbian rule even after revoking its autonomy in the 1990 Serbian Constitution. The eruption of violence between the Kosovo Liberation Army (KLA) and Serb armed forces in 1997 was used by Serbia to justify a violent campaign against the Kosovo Albanian population that attempted to alter the ethnic composition of Kosovo in favour of Serbs. By the end of December 1998, Milošević’s determination to keep Kosovo in Serbia on his terms resulted in war and violence that was eventually brought to a stop by NATO military intervention. NATO’s defeat of Serbian armed forces led to Serbia’s loss of Kosovo as of 10 June 1999 and eventually to Milošević’s downfall in October 2000.

Fall of the Leader

The 10 years of Milošević’s reign resulted in more than 100,000 dead and many more displaced. And while Bosnian Serb leaders Radovan Karadžić and Ratko Mladić were indicted by the ICTY in July 1995, Milošević was given a second chance by the international community. Indeed, some saw Dayton as marking his metamorphosis from the “Butcher of the Balkans” into a peacemaker.
The Prosecution contended that, by supporting a policy *ostensibly* cooperative and focused on peace, Milošević managed to avert or end military interventions against Serb forces without actually shifting his own goals. His acceptance of the Dayton Peace Agreement, the Prosecution argued, simply masked his criminal motivation to formalise Serb war gains. And, although Milošević came away from the Dayton negotiations with a victory on the domestic front, he grew obsessively concerned about his status and power and showed increasing intolerance toward fellow party members over time.

Milošević believed he could afford a domestic standoff given his newly acquired patronage by the West. Like many other politicians with extensive and autocratic powers, Milošević fell into the trap of self-isolation, relying on a shrinking circle of associates. As he became more authoritarian and exceedingly alienated from reality, he made a series of fatal mistakes in his dealings with the international community over Kosovo, and his military approach in the province reversed all credit he had earned at Dayton. The evidence presented in court of his apparent belief that he could remake the demography of Kosovo and then govern it from Belgrade, exposed the irrational and unrealistic side of Milošević’s political strategy.

The NATO military intervention followed, and Serbia lost Kosovo. By 2000, Milošević was extremely isolated and out of touch. At the end of his presidency, a series of political murders against his former allies were perpetrated, reflecting his desperate efforts to retain power as his political base crumbled. Once in The Hague, Milošević refused to see the consequences of his political actions, expressing contempt for the court, the Prosecution, and the international community, and framing himself and his family as victims of a “savage” smear campaign. He never demonstrated that he understood the extent of suffering he had inflicted through the violence of war, but played the role of a wronged politician, enthusiastically if not always skilfully defending himself. When, on several occasions, his legal strategy was shown to be obviously flawed Milošević curiously went forth as if nothing had happened.

Despite his grandstanding in the courtroom, by the time Milošević ended his political career, he was seen as a poor political and military strategist. A decade of violence had not brought the results that Serbian state ideologues had hoped for; and by 1995, Serb territories in Croatia had been abandoned by Serb forces and a majority of Croatian Serbs had emigrated to Serbia,
Kosovo, or the Republika Srpska. In 1999, when international agreements stipulated that Serbian forces must leave Kosovo, that territory was lost to Serbia as well. The only war gain that Serb nationalists can still claim is the existence of the Republika Srpska as a separate political entity in Bosnia and Herzegovina.

This ‘gain’ – immensely significant in the minds of Serbs – demands careful consideration; for the Republika Srpska could not have been created without mass atrocities, including genocide, that were committed by Serbs against the Bosnian Muslim population particularly, in carefully targeted areas that had previously featured populations of mixed ethnicity. Bosnian Serb military and political leaders have been tried for these crimes and several have been convicted, but the records of their trials are only a part of the story. Nothing has been recorded in any of these trials about the role of Serbia, the Serbian political leadership, and Serbian armed forces in the genocide in BiH, and little has been exposed about their role in other offences connected to the creation of the Republika Srpska, such as in crimes against humanity.

And so, Milošević remains the only Serbian leader who has been indicted and tried for the crime of genocide (in Srebrenica and elsewhere). The record of the Milošević trial therefore contains evidence of great value for historians and other researchers, showing how the Republika Srpska was in fact forged. And, it was indeed forged into being – by red hot criminal violence in territories that belonged to other ethnic groups, who were targeted for no other reason but their ethnicity. This was the manifestation of genocidal intent by leaders, played out by intermediate commanders and foot soldiers who committed these crimes. The Unfinished Trial of Slobodan Milošević: Justice Lost, History Told underlines the potential transformative social value of the Milošević trial in exposing evidence and generating public debate about the role of Serbia, its state institutions, and its officials in post-Yugoslav violence.
Samenvatting

In *The Unfinished Trial of Slobodan Milošević: Justice Lost, History Told* (De onvoltooide rechtzaak van Slobodan Milošević: gerechtigheid verloren, geschiedenis verteld) wordt het strafproces tegen de voormalige Servische leider Slobodan Milošević, gevoerd door het in Den Haag gevestigde Joegoslavië-tribunaal (ICTY – *International Criminal Tribunal for the Former Yugoslavia*), uitgebreid uit de doeken gedaan. In tegenstelling tot andere studies over dit proces is dit onderzoek in de eerste plaats gebaseerd op het procesarchief, aangezien het uitgangspunt van deze studie is dat een dergelijk procesarchief een unieke historische bron biedt voor de geschiedschrijving over een conflict. *The Unfinished Trial of Slobodan Milošević: Justice Lost, History Told* gaat in op aspecten van Milošević’s gedrag en op diens uitspraken tijdens de rechtszittingen, waarbij hij zijn eigen verdediging voerde, in combinatie met zorgvuldig geselecteerd bewijsmateriaal uit een immens archief dat slechts bij een handjevol wetenschappers bekend is; de in dit boek verzamelde data tonen praktisch aan hoe belangrijk een procesarchief is als een historische bron.

De juridische aanpak van de Milošević-rechtszaak alsook de bewijsvoering concentreerden zich op het leiderschap van Milošević en op de vraag of hij zich al dan niet voor een crimineel plan had uitgesproken en dit ook had uitgevoerd.

In het eerste hoofdstuk wordt een theoretisch raamwerk ontwikkeld dat als basis dient voor de analyse van het procesarchief. Vervolgens worden de drie thema’s geïntroduceerd, die belangrijk worden geacht voor het begrijpen van de complexiteit van concurrerende rechtszaalverhalen. Die drie thema’s – de Leider, de Ideologie en het Plan – worden in de daaropvolgende hoofdstukken verder uitgewerkt.

De Leider

Lang voor zijn proces in 2002, was er al een aanhoudend debat onder wetenschappers, journalisten, politici en diplomaten over de historische en politieke aansprakelijkheid van Milošević voor de bloedige desintegratie van Joegoslavië. Onder hen overheerst het oordeel dat Milošević persoonlijk de grootste verantwoordelijkheid draagt. Aan de andere kant moet niet
worden vergeten dat de politieke cultuur van Servië, die wordt gekenmerkt door een grote nadruk op sterk leiderschap, hem in staat stelde op grote schaal de jure en de facto macht naar zich toe te trekken. Naast bewijsmateriaal dat Milošević zijn persoonlijke stempel op het Servisch oorlogsverloop drukte, bevat het procesarchief ook een schat aan materiaal over Milošević’s ideologie. In het kader van deze studie kan deze ideologie het beste worden omschreven als een variant op de bestaande Servische staatsideologie. In deze variant wordt de oprichting van één staat bepleit waarin alle Serven worden opgenomen die nu nog verspreid wonen in de verschillende voormalige Joegoslavische republieken. Deze ideologie van een ‘Groot Servië’, die sinds het moment dat Milošević aan de macht kwam bekend kwam te staan als ‘Alle Serven in een Eigen Staat’, wordt onderzocht met bijzondere aandacht voor de bijdrage van Milošević aan deze Servische staatsideologie in de jaren tachtig en negentig van de vorige eeuw.

Toen Milošević aan de macht kwam, was het Servisch nationalisme een al langer bestaand politiek stelsel. Hij omarmde het graag. Zijn zucht naar macht ontwikkelde zich in een razend tempo. Al snel werd hij de machtigste politicus in Servië. Nadat Milošević ook de Servische nationalisten in de andere republieken had verenigd, werd hij spoedig geaccepteerd als de de facto leider van alle Serven. De ideologie van het Servisch nationalisme was al lang een inspiratie geweest voor een Servisch Staatsproject dat een nauwgezette en rationale planning vereiste. De aanhangers van die ideologie, onder wie Milošević, moeten hebben geweten én hebben aanvaard dat de uitvoering van die nationalistische ideologie met een grote mate van zekerheid tot massaal geweld zou leiden.

De Ideologie

Volgens de aanklager kunnen alle politieke plannen van Milošević afgeleid worden van zijn poging om één staat voor alle Serven te stichten. In het betoog van de aanklager kwam naar voren dat die expansiepolitiek wel gepaard moest gaan met massale wreedheden tegen het niet-Servische deel van de bevolking. Om de betrokkenheid van Milošević daarbij vast te stellen, overlegde de aanklager bewijsmateriaal van Milošević’s geloof in de ideologie van ‘Alle Serven in een Eigen Staat’. Milošević droeg deze ideologie systematisch uit zonder deze term expliciet te gebruiken. Maar in zijn retoriek in de late jaren tachtig en negentig van de vorige eeuw
bestempelde hij de bescherming van Serven die buiten Servië woonden als een politieke prioriteit en propageerde hij het ‘recht van Serven op zelfbeschikking’. Ervan uitgaande dat het zelfbeschikkingsrecht van Serven onderdaad tot gebiedsuitbreiding zou moeten leiden, introduceerde de aanklager de term ‘de facto Groot Servië’ om Milošević’s ideologie te benoemen.

**Het Plan**

Deze studie onderscheidt vijf verschillende doelen als wezenlijke onderdelen van Milošević’s plan om een staat te stichten die alle Serven zou incorporeren.

**Doel 1, 19887 tot 1990: de centralisatie van de Republiek Servië door de autonomie van Kosovo en Vojvodina ongedaan te maken.**

Het plan van Milošević om een staat te stichten die alle Serven zou omvatten was een proces waarin vijf opeenvolgende doelen moesten worden behaald. Het eerste doel leidde tot de succesvolle centralisatie van Servië, omdat de autonomie van zijn twee vroegere autonome provincies – Kosovo en Vojvodina – werd ingetrokken. In de Servische Grondwet van 1990 werden deze veranderingen opgenomen en daarmee rees Milošević’s populariteit onder de Serven tot ongekende hoogte.

**Doel 2, 1990 tot 1991: de centralisatie van de Joegoslavische Federatie met de Republiek Servië als dominante macht.**

Na de succesvolle centralisatie van Servië volgde een mislukte poging om de Joegoslavische federatie te centraliseren en de Servische overheersing veilig te stellen door de controle op de Communistische Partij en op de federale instituties van de Socialistische Federale Republiek van Joegoslavië (SFRY) over te nemen. De pogingen daartoe leidden tot het uiteenvallen van de SFRY, toen Slovenië en Kroatië in 1991 hun onafhankelijkheid hadden afgekondigd.

**Doel 3, 1991 tot 1995: het stichten van een Klein-Joegoslavië dat ook de beoogde ‘Servische gebieden’ in Kroatië zou omvatten, voor welk doeleinde de Republika Srpska Krajina (RSK) werd opgericht.**

**Doel 4, 1992 tot 1995: de stichting van de Federale Republiek Joegoslavië (FRY), een federatie van Servië met Montenegro, waarbij in de grondwet de mogelijkheid van latere opname van andere Servische gebieden open werd gehouden; zo kwam de Republika Srpska (RS) tot stand in Bosnië en Herzegovina.**

Doel 5, 1998 tot 1999: de voortzetting van pogingen om de overheersing in Kosovo te continueren (zie Doel 1), nu tegen de achtergrond van een groeiende tegenstand van de etnische meerderheid van de Albanese bevolking, hetgeen uiteindelijk in 1999 tot een volledige oorlog leidde.


De ondergang van de leider

Het tienjarige bewind van Milošević resulteerde in meer dan 100.000 doden en nog veel meer ontheemden. Terwijl de Bosnisch-Servische leiders Radovan Karadžić en Ratko Mladić in juli 1995 in staat van beschuldiging werden gesteld door het Joegoslavië Tribunaal, gaf de internationale gemeenschap Milošević een tweede kans. Zijn rol in het ondertekenen van de Vredesverdrag van Dayton was cruciaal voor zijn metamorfose van ‘Slachter van de Balkan’ tot ‘vredestichter’.

De aanklager betoogde dat Milošević *ogenschijnlijk* een beleid gericht op samenwerking en vrede voerde, om zodoende militaire interventies tegen de Servische troepen te voorkomen of te beëindigen zonder daadwerkelijk zijn oorspronkelijke doelen uit het oog te verliezen. Het feit dat hij het Vredesverdrag van Dayton accepteerde, zo beargumenteerde de aanklager, maskeerde bewust zijn motivatie om de in de strijd behaalde terreinwinst te behouden. Hoewel Milošević middels het Dayton-vredesakkoord het thuisfront met een overwinning kon verblijden, raakte hij na verloop van tijd geobsedeerd door zijn streven naar status- en machtsbehoud en nam hij in toenemende mate een houding van onverdraagzaamheid aan ten opzichte van partijgenoten.
Na Dayton gelooide Milošević dat hij zich een de confrontatie met zijn binnenlandse oppositie kon veroorloven, omdat hij nu gesteund werd door het Westen. Dat bleek een verkeerde inschatting te zijn. Zoals zoveel andere politici met uitgebreide en autocratische macht en bevoegdheden trapte hij in de val van het zelfgekozen isolement, slechts vertrouwend op een steeds verder slinkende cirkel van vertrouwelingen. Terwijl zijn gedrag steeds meer autoritair werd en hij zich steeds verder vervreemdde van de realiteit, maakte hij een reeks fatale fouten in zijn betrekkingen met de internationale gemeenschap inzake Kosovo. Door zijn militaire aanpak van de Kosovo-crisis verloor hij al het vertrouwen dat hij in Dayton had opgebouwd. Hoezeer zijn politieke strategie onrealistisch en irrationeel was geworden, blijkt uit het aan de rechtbank voorgelegde bewijsmateriaal: Milošević meende dat hij de bevolkingscomposiet in Kosovo kon omvormen in het voordeel van de Serven en dat hij de provincie vanuit Belgrado kon besturen.

De militaire interventie door de NAVO volgde en Servië verloor Kosovo. Tegen het jaar 2000 was Milošević helemaal geïsoleerd en het spoor bijster. Aan het einde van het presidentschap van Milošević vond een reeks politieke aanslagen plaats, gericht tegen zijn vroegere politieke bondgenoten. Deze moorden weerspiegelden zijn wanhopige pogingen om de macht te behouden, terwijl zijn politieke basis aan het slinken was. Toen hij uiteindelijk in Den Haag belandde tekende zijn isolement zich ook duidelijk af in de rechtszaal, waar Milošević weigerde om de consequenties van zijn politieke acties onder ogen te zien.

Hij uitte zijn minachting voor de rechtbank, voor de aanklager en voor de internationale gemeenschap. Hij zette zichzelf en zijn familie neer als slachtoffers van een ‘barbaarse’ lastercampagne. Op geen enkel moment toonde hij begrip te hebben van de omvang van de ellende die hij had veroorzaakt; hij verkoos de rol van een verongelijkt politicus, die zichzelf fel verdedigde – alhoewel niet altijd vakkundig. Toen op verscheidene momenten bleek dat zijn juridische strategie mank ging, wilde hij dat niet erkennen.

Alhoewel hij zich in de rechtszaal als een groot staatsman voordeed, heeft Milošević zijn politieke loopbaan beëindigd als een onverdiend, gemankeerde politieke en militaire strateeg. Tien jaar van geweld leverde niet het resultaat te waar de Servische ideologen op hadden gehoopt. In 1995 was Servisch grondgebied in Kroatië verlaten door de Servische
troepen en een meerderheid van de Kroatische Serven was geëmigreerd naar Servië, Kosovo of de Republika Srpska. In 1999, toen internationale akkoorden het vertrek van Servische troepen uit Kosovo eisten, was ook dat grondgebied voor Servië verloren. De enige oorlogswinst die de Servische nationalisten nu nog kunnen claimen is het voortbestaan van de Republika Srpska als een afzonderlijke staat in Bosnië en Herzegovina.

Deze ‘winst’ – waaraan grote waarde wordt gehecht door de Serven – vereist een zorgvuldige beschouwing. De stichting van Republika Srpska ging gepaard met massageweld en met genocide tegen de Bosnische Moslims in de vooraf als beoogd aangemerkte gebieden; gebieden, waar beide bevolkingsgroepen vóór die tijd samenleefden. Bosnisch-Servische militaire en politieke leiders zijn gerechtelijk vervolgd voor deze misdaden en verscheidenen zijn veroordeeld. Maar de verslagen van hun rechtszittingen vormen slechts een deel van het verhaal. Immers, in die rechtszittingen zijn de rol van Servië zelf, het Servische politieke leiderschap en het optreden van de Servische strijdkrachten bij de genocide niet aan de orde geweest. Er is in het procesarchief maar heel weinig terug te vinden over de Servische aandeel in andere wandaden die te maken hebben met de stichting van de Republika Srpska, zoals misdaden tegen de menselijkheid.

Milošević blijft de enige Servische leider die is aangeklaagd en die voor het gerecht heeft gestaan voor de misdaad van genocide (in Srebrenica en elders). Het verslag van het proces tegen Milošević bevat bewijsmateriaal voor het feitelijk smeden van de Republika Srpska. En deze ontstaansgeschiedenis is nauw verbonden met het crimineel geweld op het grondgebied dat oorspronkelijk eigendom was van andere etnische groepen die echter tot doelwit werden vanwege hun etniciteit. De Bosnische moslims werden van hun grond verdreven op een manier die het vermoeden in zich draagt van een vooropgezette genocide.

The Unfinished Trial of Slobodan Milošević belicht de potentiële transformatieve sociale waarde van de Milošević-rechtszaak door het bewijsmateriaal tentoon te spreiden en door het genereren van een publiek debat over rol van Servië, Servische overheidsinstellingen en staatsfunctionarissen in het geweld in post-Joegoslavië.
Annex I: Witnesses, listed alphabetically by last name
Cited dates of testimony follow each witness name as well as a brief summary of their role(s)

**Abrahams, Frederick**: 3 June 2002
Human rights advocate and Human Rights Watch Special Advisor who has documented abuses and laws-of-war violations in numerous conflicts, including in Kosovo

**Agotić, General Imra**: 27 June 2003, 30 June 2003
Croatian who defected from the JNA in July 1991 to command Croatian forces; chief ceasefire negotiator in 1992

**Aliu, Shukri**: 5 July 2002
Kosovo Albanian JNA Captain; Commander of the Kosovo Territorial Defence, 1980-1987; sentenced to three months in 1987 for allegedly providing firearms to Kosovo Albanians (a charge he denied) and discharged; worked in the Kosovo Defence Secretariat in the Federal Ministry of Defence for the SR Serbia, 1987-1999

**Anastazijević, Dejan**: 10 October 2002
Journalist who covered the conflicts in Vukovar (1991) and Eastern Bosnia (1992); first Serbian journalist to testify against Milošević at the ICTY, 2002; survived a 2007 grenade attack by still unknown perpetrators

**Andrić, Dr. Vukašin**: 23 February 2005
Medical doctor and professor from Kosovo

**Arria, Diego**: 10 February 2004
Venezuelan politician and diplomat; Venezuelan Permanent Representative to the UN, 1991-1993; President of the UN Security Council, 1992; known for warning as early as April 1993 that a “slow motion genocide” was occurring in Srebrenica

**Atlagić, Marko**: 15 February 2006, 22 February 2006
Croatian Serb politician who served in the RSK government and left Croatia for Kosovo in 1995

**Avramov, Smilja**: 8 September 2004
Serbian scholar of international law; legal advisor to Milošević during his presidency

President of the Republika Srpska Krajina, 1991-1992

**Bakalli, Mahmut**: 19 February 2002
Kosovo Albanian politician; President of the LC of Kosovo, Jun 1971-May 1981

**Balević, Mitar**: 25 January 2005
Kosovo Serb politician
Barani, Halit: 27 February 2002, 28 February 2002
Kosovo Albanian human rights activist

Bisset, James: 24 February 2006
Canadian diplomat; Canadian Ambassador to Yugoslavia, Bulgaria, and Albania, 1990-1992

Budding, Audrey: 24 July 2003
American academic and Expert Witness for the Prosecution on Yugoslav history; diplomatic official in the US Embassy in Yugoslavia, 1987-1990

Buja, Shukri: 5 June 2002
KLA Commander in Račak

Bulatović, Kosta: 14 April 2005, 19 April 2005
Kosovo Serb activist and founding member of SPOK

Bulatović, Momir: called but never appeared
President of Montenegro, Dec 1990-Jan 1998; Prime Minister of the FRY, May 1998-Nov 2000

Ciaglinski, Colonel Richard: 16 April 2002, 17 April 2002
British Army officer and aide to Major General Drewienkiewicz during the mandate of the KVM

Clark, General Wesley: 15 December 2003
US Army General and NATO’s Supreme Allied Commander in Europe from 1997-2000

Coo, Philip: 10 September 2002
Head of the ICTY Military Analysis Team that published two Expert Reports on the structure of armed forces in the FRY and Serbia

Commander of the VJ’s 549th Motorised Brigade during the conflict in Kosovo; elected to the Serbian Parliament in 2008, where he served as Deputy Speaker

Deronjić, Miroslav: 23 November 2003
Bosnian Serb who served as Mayor of Bratunac, 1990-1992

Zwaan, Ton: 20 January 2004
Dutch scholar who authored an Expert Report on genocide for the Prosecution

Donia, Robert: 12 September 2003, 11 November 2003
American scholar and historian who analysed sessions of the RS Assembly and testified as an Expert Witness for the Prosecution
Drewienkiewicz, Major General Karol John: 11 April 2002, 12 April 2002
British Army officer; military assistant to the High Representative for Bosnia and Herzegovina, 1998; military advisor to William Walker and second in command of the KVM, 1999

Dulović, Jovan: 17 October 2002
Journalist for Serbian weekly Vreme during the conflicts in Croatia and Bosnia

Došan, General Miloš: 19 October 2005, 31 October 2005
Yugoslav Air Force officer and Commander of Anti-Aircraft Units during the conflict in Kosovo

Erdemović, Dražen: 25 August 2003
Bosnian Croat who fought for the Army of Republika Srpska (VRS) during the conflict in Bosnia; participant in the Srebrenica massacre

Farkaš, General Geza: 9 November 2005, 10 November 2005
Assistant Deputy Minister in the Yugoslav Ministry of Defence; Chief of Military Security, by Presidential decree, on 25 March 1999 (upon the start of the conflict in Kosovo)

Gajić-Glišić, Dobrila: 21 October 2003
Employee of the Serbian Ministry of Defence; Chef de Cabinet to Minister of Defence Tomislav Simović, Sep-Dec 1991

Gojović, General Radomir: 22 March 2005
Military Prosecutor and President of the JNA/VJ Military Court

Harland, David: 18 September 2003
New Zealand diplomat who has served on numerous peacekeeping missions, including in Bosnia, 1993-1998; authored the UN’s report on the fall of Srebrenica, 1999; Director of the Europe and Latin America Division of the UN Department of Peacekeeping Operations, 2006-2011

Jarčević, Slobodan: 28 February 2006
Foreign Minister of the RSK

Jokanović, Vukašin: 1 December 2004, 2 December 2004


Mentor to and close associate of Milošević; Serbian representative in the PSFRY, May 1989-Jun 1992; President of the PSFRY, May 1990-May 1991; negotiator of the Brioni Accord
Kadriu, Sabit: 6 March 2002
Kosovo Albanian teacher

Kljuć, Stjepan: 15 July 2003
Bosnian Croat politician

Kriste, Petar: 27 January 2003
Croatian government official; first Croatian Minister of Defence, 1990-1991

President of the Presidency of SR Montenegro, Mar 1989-Dec 1990; Acting President of the PSFRY, Dec 1991-Jun 1992

Kučan, Milan: 21 May 2003
President of the Slovenian League of Communists, 1986-1990; President of Slovenia, Oct 1991-Dec 2002

Latifi, Rahim: 22 April 2002
Kosovo Albanian from the village of Pirana, which was surrounded by Serbs on 25 March 1999, forcing the population to evacuate

Lilić, Zoran: 17 June 2003, 18 June 2003
President of the National Assembly of Serbia, Jan-Jun 1993; President of the FRY, 1993-1997

Mahon, Alice: 1 March 2006
British politician and member of the Parliament, Jun 1987-May 2005; member of the NATO Parliamentary Assembly, 1992-2005

Marinović, General Nojko: 3 April 2003
Deputy Marine Commander in the JNA who defected to command the defence of Dubrovnik

President of the Presidency of SR Croatia, May 1986-May 1988; Prime Minister of the SFRY, Mar 1989-Dec 1991; supporter of reforms that led many Serbian politicians to accuse him of being a Western agent

Marković, Mihailo: 17 November 2004
Serbian philosopher known for his support of the Praxis School within Marxism; a co-author of the SANU Memorandum

Serbian legal scholar who drafted the 1990 Serbian Constitution

Chief of Staff to Ibrahim Rugova and his closest political associate
Croatian Prime Minister, May-Aug 1990; President of the PSFRY, Jun-Dec 1991; President of Croatia, Feb 2000-Feb 2010

Mihailović, Kosta: 17 December 2004
Serbian academic and economist; co-author of the SANU Memorandum

Milanović, Milan: 8 October 2003, 14 October 2003, 15 October 2003
aka Mrgud; official in the governments of the RSK and SAO of SWBS, in Croatia; purported founder of the Scorpions paramilitary unit

Miljanić, Marko: 14 July 2003
JNA Marine who left to work with the Croatian police, organising a civilian defence in Škabrnje

Morillon, General Philippe: 12 February 2004
French Army officer who served as Commander of UN forces in Bosnia, 1992-1993; member of the European Parliament, 1999-2009

Naumann, General Klaus: 13 June 2002
German officer who served as Chief of Staff of the Bundeswehr, 1991-1996; Chairman of the NATO Military Committee, 1996-1999

Okun, Herbert: 28 February 2003, 3 March 2003
American career diplomat, recalled from retirement by Cyrus Vance to serve as his advisor during peace talks for Bosnia

Poljanić, Pero: 11 December 2002
Wartime mayor of Dubrovnik

Serbian academic and Expert Witness for the Defence on the topic of Greater Serbia

Rugova, Ibrahim: 3 May 2002, 6 May 2002
Kosovo Albanian politician and scholar; President of Kosovo, 1992-2006

Samardžić, Nikola: 8 October 2002, 10 October 2002
Montenegrin Minister of Foreign Affairs, 1991-1993
Smith, General Rupert: 9 October 2003
British Army officer who served as Commander of UNPROFOR in Bosnia; created UN Rapid Reaction Force, credited with ending the siege of Sarajevo; NATO’s Deputy Supreme Allied Commander for Europe, 1998-2001

Commander of Special Police Units in the Public Security Sector of the Serbian Ministry of Internal Affairs during the conflict in Kosovo

Surroi, Veton: 18 April 2002
Kosovo Albanian publisher and politician; former editor-in-chief of daily Koha Ditore

Chef de Cabinet to Croatian President Franjo Tuđman, 1990-1992; Prime Minister of Croatia, Aug 1992-Apr 1993

Šel, Major Janoš: 30 November 2005
Commander of a Company in the VJ’s 2nd Motorised Battalion of the 549th Motorised Brigade during the conflict in Kosovo

Serbian lawyer and politician known for his nationalist ideology; founder and President of the Serbian Radical Party; Deputy Prime Minister of Serbia, Mar 1998-Oct 2000

Serbian secret police agent and negotiator who became an “insider” Prosecution witness

Terzić, Slavenko: 6 December 2004, 7 December 2004, 9 December 2004
Serbian academic and Expert Witness for the Defence on the topic of Balkan history; member of the SANU


Vasiljković, Dragan: 19 February 2003, 21 February 2003
aka Kapetan Dragan; lived in Australia from 1967-1990 under the name Daniel Snedden, where he served for four years in the Australian Army Reserves; returned to Belgrade in May 1990 and helped organise the Serb defence of Krajina in fall 1990; founder and leader of Serbian paramilitary unit, the Knindže

Vollebaek, Knut: 8 July 2002
Norwegian diplomat and politician; Deputy Co-Chairman of the International Conference on the Former Yugoslavia, 1993; Norwegian Foreign Minister, 1997-2000
Vuković, Colonel Vlatko: 27 October 2005, 1 November 2005, 9 November 2005
Commander of the VJ’s 2nd Motorised Battalion of the 549th Motorised Brigade during the conflict in Kosovo

Walker, William: 11 June 2002
American diplomat; Special Representative of the Secretary General of the UN, 1997; head of the Kosovo Verification Mission, Oct 1998-Jun 1999

British diplomat who served as UNPROFOR spokesperson during the conflict in Bosnia
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Netherlands Institute for War Documentation. *Srebrenica: A ‘Safe’ Area - Reconstruction, Background, Consequences and Analyses of the Fall of a Safe Area*. Amsterdam: Boom Uitgeverij, 2002.


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**Decisions and Indictments of the ICTY, by name of accused and date**


### Decisions and Indictments of Other Courts

Belgrade District Court War Crimes Chamber. Indictment (Amended). *Medić et al.* No. KTRZ 3/05. 9 October 2006.


### Documents published by the United Nations


Exhibits tendered by the Defence in the Milošević case, by number


“General Obrad Stevanović’s personal diary.” Exhibit D299.440a.

“War Diary of the 2nd Motorised Battalion.” Excerpt. Exhibit D322.3e.

Kostić, Branko. *Not To Be Forgotten*. Excerpt. Exhibit D333.72e.


**Exhibits tendered by the Prosecution in the Milošević case, by number**

(for Intercepted Telephone Conversations, see below)


“Joint Recommendations on the Kosovo Conflict, Halki meeting 1997, Bertelsmann Science Foundation.” Exhibit P102.


Pnishi, Martin. Redacted Rule 92 bis Witness Statement. 4 April 2000. Exhibit P299A.


“Map showing the line intended to be under Serb control.” Exhibit P326.3.

“Draft Minutes marked Strictly Confidential of the 145th sitting of the PSFRY,” 4 October 1991, Exhibit P328.11a

“Draft Minutes from the 143th sitting of the PSFRY,” 1 October 1991, Exhibit P328.28a


“Letter originating from the SFRY Presidency...addressed to Javier Pérez de Cuéller.” Exhibit P329.12a.


“Map of Serbian Autonomous Districts (SAOs).” Exhibit P343.1a.


“Video showing an Award Ceremony with members of the Red Berets, political leaders and military leaders...” (The Kula Camp Video). Exhibit P390.1.

“Corrected Transcript of Video (V000-3533).” Exhibit P390.3a.


“Statement by Milošević in relation to financial matters.” Exhibit P427.3a.


“Minutes of the 16th session of the Assembly of the Serbian People in BiH,” 12 May 1992, Exhibit P463.49a


“Notes from a meeting held in Dobanovci (Serbia) between Slobodan Milošević and the Bosnian Serb leadership.” 29 August 1995. Exhibit P469.20a.

“Meeting notes from the 7th session of the Supreme Defence Council,” 24 November 1998, Exhibit P469.29a

“Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 21 January 1993, Exhibit P469.39 (B/C/S)

“Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 9 January 1993, Exhibit P469.40. (B/C/S)

“Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 11 August 1992, Exhibit P469.41 (B/C/S)

“Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 18 August 1992, Exhibit P469.42 (B/C/S)

“Stenographic notes from the Council for the Co-ordination of positions of State Policy,” 3 September 1992, Exhibit P469.43 (B/C/S)


“Transcript of Video clip of Mladić and Krstić walking through Srebrenica (V000-0642 & V000-1605).” Exhibit P514.7.


“Transcript of minutes... [of] the 30th Session of the Republika Srpska National Assembly,” 5 and 6 May 1993, Exhibit P538.9.1a

“Transcript of minutes of the RS Assembly Meeting 34th session,” 27 August-1 October 1993, Exhibit P538.13.1a

“Transcript of minutes of RS Assembly Meeting, 39th session,” 24 and 25 March 1994, Exhibit P538.18.1 (B/C/S)

“Transcript of minutes of RS Assembly Meeting 40th session,” 10 and 11 May 1994, Exhibit P538.19.1 (B/C/S)

“Transcript of minutes of RS Assembly Meeting, 42nd session,” 18 and 19 July 1994, Exhibit P538.21.1a

“Transcript of the 50th session of the RS Assembly,” 15 and 16 April 1995, Exhibit P538.22.1a

“Transcript of ... 39th session,” 24 and 25 March 1994, Exhibit P538.18.1a

“Transcript of the 50th session of the RS Assembly,” 28 August 1995, Exhibit P538.24.1a


———. *Last Days of the SFRY*. Exhibit P596.2a.

———. *Book on Milošević*. Exhibit P596.3a.


“Transcript of the meeting between Franjo Tudman and others and members of the Presidency of BiH.” 8 January 1992. Exhibit P641.3a.


“Conference on Yugoslavia Arbitration Commission (Badinter Commission): Opinions on Questions Arising from the Dissolution of Yugoslavia (Nos. 1,3,5,8,11).” Exhibit P641.32.2-5a.


“Stenographic transcript of the 3rd session of the Supreme Defence Council (SDC),” 23 July 1992, Exhibit P667.3.1a

“Minutes from the 3rd session of the Supreme Defence Council,” 23 July 1992, Exhibit P667.3.2a

“Stenographic transcript of the 8th session of the Supreme Defence Council,” 12 March 1993, Exhibit P667.8.1a

“Stenographic transcript of the 13th session of the Supreme Defence Council,” 7 September 1993, Exhibit P667.13.1a

“Stenographic transcript of the 47th session of the Supreme Defence Council, 6 December 1995, Exhibit P667.47.1a

“Stenographic transcript of the 5th session of the SDC (chaired by Slobodan Milošević),” 9 June 1998, Exhibit P667.70.1a

“Stenographic transcript of the 6th session of the SDC (chaired by Slobodan Milošević),” 4 October 1998, Exhibit P667.71.1a

“Stenographic transcript of the 8th session of the SDC (chaired by Slobodan Milošević),” 25 December 1998, Exhibit P667.73.1a


“Map of Serb controlled areas...as of 30 December 1992.” Exhibit P809.


“Ruling by the Constitutional Court of Kosovo, No. 64/90.” Exhibit P822.2a.


“JNA/VJ Personnel File of General Zdravko Tolimir.” Exhibit P923.4a.

“Map reflecting entries in Vuković’s diary.” Exhibit P930.1.


Exhibits tendered by the Prosecution in the Perišić case, by number


** Intercepted Telephone Conversations tendered as exhibits in the Milošević case, by number**

Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 29 May 1991, Exhibit P613.1a

Intercept of Conversation between Radovan Karadžić, Slobodan Milošević, and Nikola Koljević, 4 June 1991, Exhibit P613.5a

Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 11 June 1991, Exhibit P613.7a

Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 12 June 1991, Exhibit P613.8a

Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 4 June 1991, Exhibit P613.9a

Intercept of Conversation between Radovan Karadžić and Mihalj Kertes, 24 June 1991, Exhibit P613.10a

Intercept of Conversation between Radovan Karadžić and Mihalj Kertes, 24 June 1991, Exhibit P613.11a

Intercept of Conversation between Radovan Karadžić and Andelko Grahovac, 24 June 1991, Exhibit P613.12a

Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 24 June 1991, Exhibit P613.13a

Intercept of Conversation between Radovan Karadžić, Radoslav Brđanin, and Miloslav Mičević, 2 July 1991, Exhibit P613.16a

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Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 8 July 1991, Exhibit P613.21a

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Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 31 July 1991, Exhibit P613.25a

Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 6 August 1991, Exhibit P613.26a

Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 7 August 1991, Exhibit P613.27a

Intercept of Conversation between Radovan Karadžić and Jovica Stanišić, 8 August 1991, Exhibit P613.28a

Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 9 August 1991, Exhibit P613.30a

Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 4 September 1991, Exhibit P613.34

Intercept of Conversation between Radovan Karadžić and Radovan Karadžić, 20 December 1991, Exhibit P613.37a

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Intercept of Conversation between Radovan Karadžić and Milan Babić, 8 September 1991, Exhibit P613.46a

Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 9 September 1991, Exhibit P613.48a

Intercept of Conversation between Slobodan Milošević and Momčilo Mandić, 9 September 1991, Exhibit P613.54a

Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 20 December 1991, Exhibit P613.60a

Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 13 September 1991, Exhibit P613.63a

Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 19 September 1991, Exhibit P613.67a
Intercept of Conversation between Slobodan Milošević, Radovan Karadžić, 20 September 1991, Exhibit P613.70a

Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 7 October 1991, Exhibit P613.83a

Intercept of Conversation between Radovan Karadžić and Gojko Đogo, 12 October 1991, Exhibit P613.88a

Intercept of Conversations between Radovan Karadžić and Slobodan Milošević, 26 October 1991, Exhibit P613.101a

Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 29 October 1991, Exhibit P613.103a

Intercept of Conversation between Radovan Karadžić and Dobrica Ćosić, 11 November 1991, Exhibit P613.113a

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