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### The unfinished trial of Slobodan Milošević: Justice lost, history told

Vrkić, N.

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*...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 19<sup>th</sup> 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.<sup>315</sup>

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<sup>315</sup> 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.<sup>316</sup> The document was kept secret until it was finally published in 1906.<sup>317</sup> 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.<sup>318</sup> 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.<sup>319</sup>

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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on genocide. The Defence called several expert witnesses as well: Slavenko Terzić, on the history of the Kosovo conflict; Kosta Mihailović, on Serbia's economic disadvantages in Yugoslavia from 1918-1991; and Čedomir Popov, on Greater Serbia. The Defence also called other expert witnesses, such as historian Vasilije Krestić, who was set to testify on the history of genocide against Serbs in Croatia; and Kosta Čavoški, who wrote a report called "Budding vs. Budding" in direct response to the expert testimony of Prosecution witness Audrey Budding. They did not testify in the end, due to the premature conclusion of the trial.

<sup>316</sup> Budding, *Serbian Nationalism in the Twentieth Century*, 3.

<sup>317</sup> For example, see: Dušan T. Bataković "Ilija Garašanin's *Načertanije*: A Reassessment," *Balkanica* XXV, no. 1 (1994): 157-183. The article was tendered into evidence as Exhibit P805.

<sup>318</sup> 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.

<sup>319</sup> 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...<sup>320</sup>

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.<sup>321</sup> 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.”<sup>322</sup>

Čedomir Popov also claimed that *Načertanije* had not advocated aggression and therefore should not be seen as having instigated violence.<sup>323</sup> 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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<sup>320</sup> Testimony of Čedomir Popov (9 December 2004), 34457. Popov also wrote an Expert Report that was later published as a book in 2007, in B/C/S. See: Čedomir Popov, *Velika Srbija: Stvarnost i Mit* (Novi Sad: Sremski Karlovci, 2007). For the text in English, see: Čedomir Popov, *Greater Serbia – Reality and Myth*, Expert Report, Exhibit D263a.

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

<sup>322</sup> 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.

<sup>323</sup> Testimony of Čedomir Popov (16 December 2004), 34590-34591. Also see: Bataković, “Ilija Garašanin’s *Nacertanije*: 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.<sup>324</sup>

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, *Načertanije* advocated the national interest of Serbs, but he said that similar nationalist and irredentist<sup>325</sup> conceptions "prevailed throughout Europe in the 19th century" and that "Serbs also had the right to espouse such an idea."<sup>326</sup> 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.<sup>327</sup> 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.<sup>328</sup>

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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<sup>324</sup> Budding, *Serbian Nationalism in the Twentieth Century*, 12-13.

<sup>325</sup> In Yugoslav political rhetoric, the term *irredentism* was distinguished from *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.

<sup>326</sup> Testimony of Čedomir Popov (15 December 2004), 34586.

<sup>327</sup> Testimony of Čedomir Popov (16 December 2004), 34565-34566.

<sup>328</sup> Budding, *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.<sup>329</sup> 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."<sup>330</sup>

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.<sup>331</sup> 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.<sup>332</sup>

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.<sup>333</sup>

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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<sup>329</sup> Mihailović, *Economic Aspects of the 'Greater Serbian Policy'*, 13-14.

<sup>330</sup> *Ibid.*, 13.

<sup>331</sup> Budding, *Serbian Nationalism in the Twentieth Century*, 5.

<sup>332</sup> George F. Kennan, *The Other Balkan Wars: A 1913 Carnegie Endowment Inquiry in Retrospect* (Washington, DC: Carnegie Endowment, 1993), 151, quoted in Budding, *Serbian Nationalism in the Twentieth Century*, footnote 21.

<sup>333</sup> 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.<sup>334</sup> 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.<sup>335</sup>

*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.<sup>336</sup>

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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<sup>334</sup> Testimony of Slavenko Terzić (9 December 2004), 34374-34376. Also see: Slavenko Terzić, *Kosovo and Metohija in the 20th Century*, Expert Report, Exhibit D259a.

<sup>335</sup> Budding, *Serbian Nationalism in the Twentieth Century*, 5.

<sup>336</sup> 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.<sup>337</sup> 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.<sup>338</sup> 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

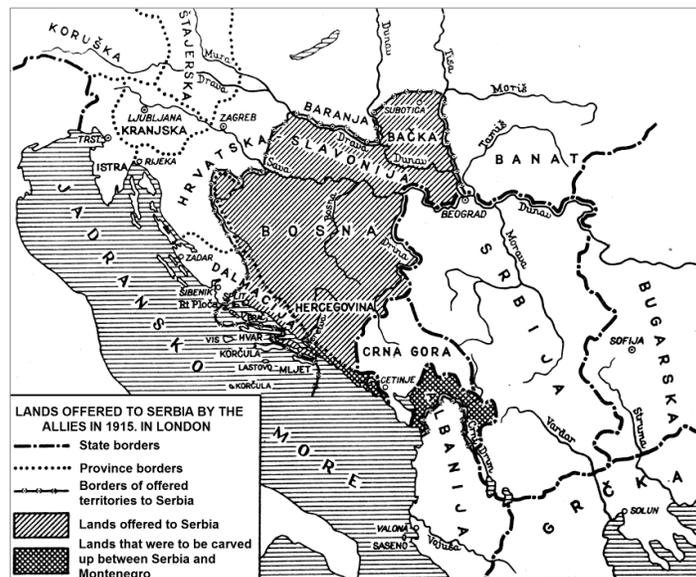
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<sup>337</sup> Ibid., 34593-34594.

<sup>338</sup> Ibid.

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.<sup>339</sup>

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.<sup>340</sup> 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.<sup>341</sup> 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.<sup>342</sup>



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

<sup>339</sup> Trial Transcript, Defence Opening Statement (31 August 2004), 32193.

<sup>340</sup> Testimony of Čedomir Popov (15 December 2004), 34507-34508.

<sup>341</sup> Ibid., 34511-34512.

<sup>342</sup> 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.<sup>343</sup> 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.<sup>344</sup>

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 Karađorđević.<sup>345</sup> 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.<sup>346</sup> 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*

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<sup>343</sup> Ibid., 34514.

<sup>344</sup> Testimony of Audrey Budding (24 July 2003), 24930.

<sup>345</sup> For discussion on the creation of the First Yugoslavia – initially known as The Kingdom of Serbs, Croats and Slovenes and re-named The Kingdom of Yugoslavia in 1929 – see: Dragnich, *The First Yugoslavia*; and Dimitrije Đorđević, ed., *The Creation of Yugoslavia, 1914-1918* (Santa Barbara, CA: Clio Books, 1980).

<sup>346</sup> Budding, *Serbian Nationalism in the Twentieth Century*, 9.

*Arnauta*).<sup>347</sup> 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 Čubrilović, then a junior historian who was known for his Young Bosnia membership at the time of the assassination of Franz Ferdinand. Čubrilović 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 (*Nezavisina 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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<sup>347</sup> Vasa Čubrilović, “The Resettlement of Arnauts,” Exhibit P799a.



Map 3: Moljević's Map of Greater Serbia. From *Izvori Velikosrpske Agresije*, page 146, Exhibit P807.

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.<sup>348</sup>

<sup>348</sup> 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,<sup>349</sup> 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.<sup>350</sup> The product of this work – the SANU Memorandum – took Stambolić by surprise, and he qualified it as an “obituary for Yugoslavia.”<sup>351</sup> 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.<sup>352</sup> And while

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<sup>349</sup> Testimony of Čedomir Popov (16 December 2004), 34609-34610.

<sup>350</sup> Stambolić, “The Memorandum, In Memoriam to Yugoslavia,” in *Put u bespuće*, Exhibit P800a, 2. Also see: Budding, *Serbian Nationalism in the Twentieth Century*, 53.

<sup>351</sup> Stambolić, *Put u bespuće*, 1.

<sup>352</sup> 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.<sup>353</sup>

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.<sup>354</sup> 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.<sup>355</sup> 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."<sup>356</sup> 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.<sup>357</sup> 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.<sup>358</sup>

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

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<sup>353</sup> Ibid., 37. See footnote 75.

<sup>354</sup> Trial Transcript, Prosecution Opening Statement (12 February 2002), 17.

<sup>355</sup> Budding, *Serbian Nationalism in the Twentieth Century*, 54.

<sup>356</sup> Mihailović and Krestić, *Memorandum of the Serbian Academy of Sciences and Arts*, 119.

<sup>357</sup> Ibid, 128.

<sup>358</sup> 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.<sup>359</sup> 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.<sup>360</sup>

#### *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.<sup>361</sup> 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.<sup>362</sup> 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:

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<sup>359</sup> Ibid., 57.

<sup>360</sup> Ibid., 58.

<sup>361</sup> Defence Opening Statement (14 February 2002), 247-248.

<sup>362</sup> 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 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.<sup>363</sup>

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.<sup>364</sup>

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?

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<sup>363</sup> Mihailović and Krestić, *Memorandum of the Serbian Academy of Sciences and Arts*, 80-81.

<sup>364</sup> *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.<sup>365</sup> 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.<sup>366</sup> 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.<sup>367</sup> 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.<sup>368</sup> 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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<sup>365</sup> Testimony of Kosta Mihailović (17 December 2004), 34749-34751.

<sup>366</sup> Ibid., 34748-34749 and 34751.

<sup>367</sup> Ibid., 34751-34753.

<sup>368</sup> Ibid., 34751-34752.

of those documents.<sup>369</sup> He insisted that the Memorandum was meant to be a non-public document, written to animate the political establishment.<sup>370</sup>

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.<sup>371</sup> 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.<sup>372</sup> 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.<sup>373</sup>

#### *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

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<sup>369</sup> Ibid., 34758-34759.

<sup>370</sup> Ibid., 34753.

<sup>371</sup> Renaud de la Brosse, *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.

<sup>372</sup> Jović, *Knjiga o Miloševiću*, 9-10.

<sup>373</sup> Ibid., 20.

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.<sup>374</sup>

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.<sup>375</sup> 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.<sup>376</sup> 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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<sup>374</sup> Ibid.

<sup>375</sup> Ibid., 21-22.

<sup>376</sup> 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.<sup>377</sup>

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.<sup>378</sup> 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.”<sup>379</sup> Yugoslav authorities responded with repression and did not resolve the issue, which Budding called a missed opportunity.<sup>380</sup>

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 (*Plava knjiga*) because of its blue cover page.<sup>381</sup> 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.<sup>382</sup> 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.<sup>383</sup>

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<sup>377</sup> Ibid., 35-36.

<sup>378</sup> Ibid.

<sup>379</sup> Ibid.

<sup>380</sup> Ibid., 39.

<sup>381</sup> Ibid., 44.

<sup>382</sup> Ibid.

<sup>383</sup> 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.<sup>384</sup> 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.<sup>385</sup> 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.<sup>386</sup>

One such petition, made public in January 1986 and signed by 212 Belgrade intellectuals, promoted the idea that Serbs were being victimised.<sup>387</sup> 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.<sup>388</sup> 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

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<sup>384</sup> Ibid., 45-46.

<sup>385</sup> Ibid.

<sup>386</sup> 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.

<sup>387</sup> Budding, *Serbian Nationalism in the Twentieth Century*, 51.

<sup>388</sup> 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.<sup>389</sup> Nevertheless, 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.<sup>390</sup>

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.<sup>391</sup> 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.<sup>392</sup> Even Vasa Čubrilović, 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.<sup>393</sup>

### **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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<sup>389</sup> Ibid. 51-52.

<sup>390</sup> Ibid., 50

<sup>391</sup> See: Testimony of Slavenko Terzić (6,7, and 9 December 2004).

<sup>392</sup> Budding, *Serbian Nationalism in the Twentieth Century*, 55.

<sup>393</sup> Stambolić, “The Memorandum, In Memoriam to Yugoslavia,” in *Put u bespuće*, 8. Vasa Čubrilović died in 1990.

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.<sup>394</sup> 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 Anđelko 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.<sup>395</sup> 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.<sup>396</sup>

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.<sup>397</sup> 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

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<sup>394</sup> For example, see: Testimony of Major General Aleksandar Vasiljević (17 February 2003), 16224.

<sup>395</sup> Intercept of Conversation between Radovan Karadžić and Anđelko Grahovac, 24 June 1991, Exhibit P613.12a, 4.

<sup>396</sup> Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 20 September 1991, Exhibit P613.70a, 1.

<sup>397</sup> 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.”<sup>398</sup>

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.<sup>399</sup>

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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<sup>398</sup> Intercept of Conversation between Radovan Karadžić and Budimir Košutić, 7 February 1992, Exhibit P613.171a.

<sup>399</sup> 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.<sup>400</sup>

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### **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.<sup>401</sup>

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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<sup>400</sup> Prosecution Response to Amici Curiae Motion for Judgment of Acquittal Pursuant to Rule 98 *bis*, 04 May 2002, §262.

<sup>401</sup> 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.<sup>402</sup> 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.<sup>403</sup> 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.<sup>404</sup>

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.<sup>405</sup> 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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<sup>402</sup> For the article as written in B/C/S, see: Ratko Marković, "Državnopravni Položaj Srbije i Njeno Opredelenje za Zajedničku Državu sa Crnom Gorom," *Pravni život*, 42, no. 3-4 (1992). For the English translation, see: Ratko Marković, "Constitutional Status of Serbia and Her Choice for Joint State with Montenegro," Exhibit P824a.

<sup>403</sup> Ratko Marković, "Constitutional Status of Serbia..." Exhibit P824a, 3-4.

<sup>404</sup> *Ibid.*, 4.

<sup>405</sup> *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.”<sup>406</sup> 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.<sup>407</sup>

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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<sup>406</sup> Testimony of Ratko Marković (24 January 2005), 35526-35527.

<sup>407</sup> Intercept of Conversation between Radovan Karadžić and Dobrica Ćosić, 11 November 1991, Exhibit P613.113a.