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

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*Everyone knows that we in Serbia, both in all our documents and in our entire political life, have committed ourselves to the stand that Serbs must live in one state...*

*Slobodan Milošević, Speech in the Serbian Assembly, 30 May 1991*

## **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.<sup>464</sup> 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

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<sup>464</sup> 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.<sup>465</sup>

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.<sup>466</sup> 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.<sup>467</sup>

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.<sup>468</sup> 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

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<sup>465</sup> Ibid., 20973.

<sup>466</sup> 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.

<sup>467</sup> Ibid., 20875.

<sup>468</sup> Testimony of General Imra Agotić (30 June 2003), 23417-23418.

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.<sup>469</sup> 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.<sup>470</sup> 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.<sup>471</sup>

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

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<sup>469</sup> Testimony of Mihailo Marković (17 November 2004), 33493-33495. Also see: Testimony of Marko Atlagić (22 February 2006), 48665-48666.

<sup>470</sup> Testimony of Mihailo Marković (17 November 2004), 33494-33495.

<sup>471</sup> 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.<sup>472</sup>

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.<sup>473</sup>

### **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.<sup>474</sup>

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."<sup>475</sup> 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.<sup>476</sup> Borisav Jović, who had firsthand knowledge of the events, insisted in the courtroom that Serbia had rejected the reforms for economic, not political, reasons.<sup>477</sup> Still, Ante Marković saw Serbia's response to his programme as strongly motivated by politics; for while it

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<sup>472</sup> Testimony of Borisav Jović (19 November 2003), 29199. Also see: Borisav Jović, Witness Statement, para. 159.

<sup>473</sup> *Ibid.*, 29199-29200.

<sup>474</sup> *Ibid.*, 28003-28010. Also see: Testimony of Ante Marković (15 January 2004), 30920-30921.

<sup>475</sup> Testimony of Ante Marković (23 October 2003), 28023.

<sup>476</sup> *Ibid.*, 28003-28008.

<sup>477</sup> Testimony of Borisav Jović (20 November 2003), 29359-29365.

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.<sup>478</sup>

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.”<sup>479</sup> 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.<sup>480</sup>

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.<sup>481</sup> 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

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<sup>478</sup> Testimony of Ante Marković (23 October 2003), 28007-28008.

<sup>479</sup> *Ibid.*, 28011-28012.

<sup>480</sup> *Ibid.*, 28013-28014.

<sup>481</sup> *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.<sup>482</sup>

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.<sup>483</sup> 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.”<sup>484</sup> In other words, the Serbs envisioned that new borders be drawn based on ethnic distribution, not on already existing 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.<sup>485</sup> No representative of any federal institution was included, reflecting that the Federation was losing power as the republics were gaining it.<sup>486</sup> 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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<sup>482</sup> Testimony of Milan Babić (19 November 2002), 13011-13012.

<sup>483</sup> Testimony of Milan Kučan (21 May 2003), 20890-20891.

<sup>484</sup> Testimony of Borisav Jović (20 November 2003), 29443.

<sup>485</sup> 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.

<sup>486</sup> 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.<sup>487</sup> 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.<sup>488</sup> 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.<sup>489</sup>

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."<sup>490</sup> 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."<sup>491</sup>

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<sup>487</sup> 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.

<sup>488</sup> Testimony of Stjepan Kljuić (15 July 2003), 24480-24481.

<sup>489</sup> Intercept of Conversation between Radovan Karadžić, Slobodan Milošević, and Nikola Koljević, 4 June 1991, Exhibit P613.5a.

<sup>490</sup> Testimony of Milan Babić (3 December 2002), 13805.

<sup>491</sup> 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.”<sup>492</sup> 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.<sup>493</sup>

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

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<sup>492</sup> BBC Summary of World Broadcasts (17 January 1991) “Other Reports on SFRY Presidency Session,” Exhibit P469.5

<sup>493</sup> 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.<sup>494</sup>

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.<sup>495</sup>

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.<sup>496</sup> 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.<sup>497</sup> 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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<sup>494</sup> "Transcript of Speech by Slobodan Milošević in the Serbian Parliament regarding the new Constitution of Serbia," 25 June 1990, Exhibit P447.6a.

<sup>495</sup> Testimony of Milan Kučan (21 May 2003), 20887-20889.

<sup>496</sup> *Ibid.*, 20893.

<sup>497</sup> *Ibid.*, 20894.

was another story. He could not let it go without redrawing its borders, because too many Serbs lived there.<sup>498</sup>

### *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 SFRY.

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.<sup>499</sup> 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.<sup>500</sup>

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

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<sup>498</sup> Ibid., 20894.

<sup>499</sup> For example, see: Stipe Mesić, *Kako smo srušili Jugoslaviju* ("How we destroyed Yugoslavia") (Zagreb: Globus International, 1992), 236; Doder and Branson, *Milošević: Portrait of a Tyrant*, 95-96; Paul Williams and Norman L. Cigar, *A Prima Facie Case for the Indictment of Slobodan Milošević* (Washington, DC: Alliance to Defend Bosnia-Herzegovina, 1996), 20-21. Parts of the conversations were also published in the Serbian daily *Vreme* on 30 September 1991, and two years later in *Politika Ekspres* and *Srpska reč* on 24 May 1993.

<sup>500</sup> An important step was taken in this direction by Josip Glaurdić in: "Inside the Serbian War Machine: The Telephone Intercepts, 1991-1992," *East European Politics and Societies* 23, no. 1 (February 2009): 84-104.

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.<sup>501</sup> 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 Sylvania, 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.<sup>502</sup> 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?!"<sup>503</sup>

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

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<sup>501</sup> For example, see: Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 17 June 1991, Exhibit P613.9a.

<sup>502</sup> Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 24 June 1991, Exhibit P613.13a.

<sup>503</sup> Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 9 August 1991, Exhibit P613.30a.

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.<sup>504</sup>

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.<sup>505</sup> Milošević also highlighted the role of Germany, asserting that its "premature" recognition of Slovenian and Croatian independence had led to violence.<sup>506</sup> What Milošević failed to acknowledge, though,

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<sup>504</sup> Testimony of Stjepan Mesić (2 October 2002), 10669-10671.

<sup>505</sup> Trial Transcript, Defence Opening Statement (18 February 2002), 456-458.

<sup>506</sup> *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.<sup>507</sup> 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.<sup>508</sup> 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.<sup>509</sup>

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<sup>507</sup> Testimony of Ante Marković (15 January 2004), 30830-30831.

<sup>508</sup> *Ibid.*, 30832.

<sup>509</sup> *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.<sup>510</sup>

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.<sup>511</sup> 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.<sup>512</sup> 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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<sup>510</sup> Intercept of Conversation between Radovan Karadžić and Slobodan Milošević, 17 June 1991, Exhibit P613.9a.

<sup>511</sup> See: "The Socialist Federal Republic of Yugoslavia Constitution (1974)," Exhibit P131a.

<sup>512</sup> 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.<sup>513</sup> 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.<sup>514</sup> 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.<sup>515</sup>

## **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.<sup>516</sup> 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.<sup>517</sup> 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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<sup>513</sup> Ibid., 20912-20913.

<sup>514</sup> Trial Transcript (21 May 2003), 20910-20911.

<sup>515</sup> Testimony of Milan Kučan (21 May 2003), 20913-20925. Also see: Testimony of Ante Marković (15 January 2004), 30899-30900.

<sup>516</sup> "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).

<sup>517</sup> 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.<sup>518</sup> 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.”<sup>519</sup> In fact, the Declaration was explicit that the “implementation of the declarations of independence” would be suspended “for the period of three months.”<sup>520</sup> 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.<sup>521</sup>

### *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

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<sup>518</sup> 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 Marković (18 January 2005), 35171-35172.

<sup>519</sup> Testimony of Branko Kostić (13 February 2006), 48312-48317.

<sup>520</sup> “Documents of the European Communities, including the ‘Memorandum of Understanding on the Monitor Mission to Yugoslavia’,” (13 July 1991), Exhibit P946a, 3.

<sup>521</sup> 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.

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.”<sup>522</sup> 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.<sup>523</sup>

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.<sup>524</sup> 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.<sup>525</sup> 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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<sup>522</sup> Testimony of Vladislav Jovanović (14 February 2005), 36048-36051.

<sup>523</sup> Testimony of Herbert Okun (28 February 2003), 17084-17085.

<sup>524</sup> Testimony of Kosta Mihailović (17 December 2005), 34767-34768. Also see: “Official report on Conference on Yugoslavia,” No. hagd1224/cpeu137, 18 October 1991, Exhibit P778.

<sup>525</sup> 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 ćutanja* (“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.<sup>526</sup> 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.<sup>527</sup> 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.<sup>528</sup> Milošević reckoned that once the DPS majority was aware of

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<sup>526</sup> Momir Bulatović, *Pravila ćutanja* (Belgrade: Narodna knjiga, 2004), 66-69. An English translation of an excerpt of the book was tendered into evidence. See: “Momir Bulatović’s book Rules of Silence,” Excerpt of pages 65-77 and 93, Exhibit P942a. Also see: Testimony of Branko Kostić (8 February 2006), 48204-48207; and (13 February 2006), 48382-48383.

<sup>527</sup> Testimony of Nikola Samardžić (10 October 2002), 11434.

<sup>528</sup> *Ibid.*, 70-71.

his position they would vote against the Plan, but the Montenegrin Assembly voted in favour of it.<sup>529</sup> 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.<sup>530</sup>

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*.<sup>531</sup> 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.<sup>532</sup>

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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<sup>529</sup> Ibid.

<sup>530</sup> Testimony of Nikola Samardžić (8 October 2002), 11225.

<sup>531</sup> Bulatović, *Pravila ćutanja*, 85.

<sup>532</sup> 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.<sup>533</sup>

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.<sup>534</sup> 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 *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.<sup>535</sup>

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.<sup>536</sup> 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.<sup>537</sup> 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.<sup>538</sup>

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<sup>533</sup> Testimony of Branko Kostić (2 February 2006), 15861-15863.

<sup>534</sup> Testimony of Milan Babić (21 November 2002), 13197.

<sup>535</sup> *Ibid.*, 13199-13201.

<sup>536</sup> Testimony of Nikola Samardžić (8 October 2002), 11227-11229.

<sup>537</sup> Testimony of Smilja Avramov (8 September 2004), 32543.

<sup>538</sup> Testimony of Branko Kostić (2 February 2006), 15863-15864.

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.<sup>539</sup> 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."<sup>540</sup>

### **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

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<sup>539</sup> 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."

<sup>540</sup> Ibid., 43619.

sovereignty on 14 October 1991 – though its validity was contested by the Bosnian Serb community.<sup>541</sup> 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.<sup>542</sup>

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.”<sup>543</sup>

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.<sup>544</sup>

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.”<sup>545</sup> 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:

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<sup>541</sup> “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.

<sup>542</sup> Ibid.

<sup>543</sup> Ibid. Opinion No. 3 was published 11 January 1992.

<sup>544</sup> Ibid. Opinion No. 11 was published 16 July 1993.

<sup>545</sup> Trial Transcript, Defence Opening Statement (31 August 2004), 32159.

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.<sup>546</sup>

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 Mitterrand 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 Mitterrand informed the Serbian delegation then of the appointment of Robert Badinter as head of the Arbitration Commission. Mitterrand 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.<sup>547</sup> 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.<sup>548</sup>

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.<sup>549</sup> But as a backdrop to talks, armed conflict in Croatia continued, practically unabated. A cease-fire

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<sup>546</sup> Ibid.

<sup>547</sup> Testimony of Vladislav Jovanović (14 February 2005), 36048.

<sup>548</sup> Ibid., 36050-36051.

<sup>549</sup> Ibid., 36051.



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.<sup>550</sup> 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.

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<sup>550</sup> The Security Council passed Resolution 713 on 25 September 1991, noting its alarm about “violations of the cease-fire and the continuation of fighting.”