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## **The end of Slobodan Milošević Transcript**

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2 October 2012

## **The End of Slobodan Milošević**

Professor Sir Geoffrey Nice

### INTRODUCTION

'In deciding on guilt against Slobodan Milošević on the specific charges in this indictment the court is invited to be assisted by answering this question: did a time when by any modern standard this accused politician crossed the line that divides the lawful from the criminal in circumstances where he knew full-well that he had crossed that line?

An answer to the question is significant because the subjective mental state that has to be proved for any crime is inevitably confirmed, or reinforced, by an Accused's private recognition of having crossed the lawful / unlawful divide. More significant may be this: politicians pulled into wrongdoing over time - as Milošević *may* have been - can have numberless different states of mind as days pass: today a real intent to make negotiations work; tomorrow an intent to become a statesman; the day after that an intent to kill enemies by fair means or foul. In truth, for such people the forensically precise analysis of a mental state associated with a particular - sometimes single or momentary - action may be hard to prove. But not when s/he has already crossed over to mental territory s/he knows to be outside the law and from which s/he may be unable to return given loyalty to a driving cause that s/he may be unable to recant.

Milošević trained as a lawyer and became a banker. The Prosecution found nothing criminal or violent in his past. By the end of the 1980s he was a man who had tasted power and found the taste to his liking but who faced difficult problems for which he fashioned answers that were or became, criminal.

Judgment about any politician who responds in a criminal way to the tempting taste of power may have a general value. Were Milošević simply to have been a deranged monster - as contemporaneous epithets for him might have suggested - then it would be easy to regard his trial as irrelevant to the world we like to think we inhabit of rational democratic politicians. However it is sometimes those very politicians - whose embarkations into Iraq or elsewhere may *yet* catch the popular imagination as criminal - for whom the tragic history unleashed by this man's deeds may be a lesson - as it must for him be both a lesson and the route to sanction of this court.'

That is how I might have started a closing argument in the Milošević case

### GENERAL

I will take all three conflicts and in half an hour identify the best and most interesting bits of evidence on the principle that if you cannot express your case against someone in 10 minutes (per war, in this case) then maybe you don't have a case!

First a few general points about this and other similar trials:

Evidence in such cases cannot be frozen or sealed before the case starts. Investigation will continue; the topic is too important to stop investigating and more evidence will always be available, some of it is freed by the very process of a public trial: people produce documents they might not otherwise have produced but for seeing the trial; some witnesses find courage to give evidence once they see the trial progressing.

Milošević represented himself and took swiftly to cross examination, a feature of the adversarial system of trial that was adopted arbitrarily, or by cultural imperialism, for these trials and that is outside the experience of most European and Balkan countries that have the inquisitorial system. He was soon able to beat up witnesses. But he was, I thought, a terrible advocate because he chose the bad points not the good and revealed too much of himself by his demeanour in court, something that could have been obscured by a smooth lawyer. Such a lawyer could have painted him in a very different light. It would have been a very good case to defend.

Eyewitnesses or victims of the terrible things done in conflicts are unlikely to be other than honest. Cross-examining them is unlikely to serve the cross-examiner well. I will rarely refer to such evidence today.

Milošević unwisely cross-examined every witness. This stretched further a trial timetable already extended by his recurring ill health. In this 'extra time' thus made available the Prosecution was able to find and present much more, and much better, evidence than it could have done had Milošević been represented by the smooth lawyer who on the first day of the trial could have told the court that all the evidence of crimes could simply be read into the court record without troubling the affected victims and he, the lawyer, would look forward to dealing with the evidence connecting those crimes to Milošević. The Prosecution would have been very embarrassed by such an approach.

After Milošević's death the judges, I understand, destroyed any notes they might have made. No judgement will be forthcoming from them on a man who, under the principle of the burden of proof, died free of the stain of any conviction. However at the end of the Prosecution case arguments were advanced about the sufficiency of evidence for some counts. The court reviewed the prosecution's case as presented and gave a judgement about which counts were sufficiently well evidenced to require Milošević to put on case if he chose. That judgement,

readily available on the ICTY website, is a valuable document of judicial analysis on some of the evidence presented by the Prosecution.[\[1\]](#)

### BALKAN CONFLICTS OF THE 1990s

Yugoslavia – as a country of South Slavs – created after WWI existed in two slightly different forms until WWII when, in 1941, it disintegrated with an enlarged Croatia becoming a Nazi state, Serbia falling under direct Nazi rule and Serbian Četniks and Yugoslav Partisans dividing ideological loyalties. Killings on the territory were as much between factions as they were by Nazis. Marshal Tito, an ethnic Croat-Slovene Partisan who had won the support of the Allies, forged 'The Peoples - later 'The Socialist - Federal Republic of Yugoslavia' (SFRY), embedded in the soft –communist state and its citizens the principle of 'brotherhood and unity'. Tito kept the Republic together until his death in 1980. Dismantling of the Soviet communist bloc proper loomed, national interests surfaced in the former Yugoslavia and disintegration of that state into individual republics became a reality.

There were at least two serious underlying problems:

Tito needed to deny Serbia perpetual hegemony over the other much smaller republics. This was achieved by Kosovo and Vojvodina getting autonomy equivalent to that of full republics. Nationalist Serbs never accepted this reduction in the effective size of Serbia.

Many Serbs lived in Croatia and Bosnia; separation or secession of these republics from Serbia or from the rest of the former Yugoslavia would leave Serbs living under Croat, or other, control. The war in Croatia and the following war in Bosnia were largely about carving out autonomous Serbian areas in those republics that could then be connected together by Serb controlled 'corridors', eventually to be joined with Serbia to form a Serbian State in which 'all Serbs could live'. Serbia was never itself at war in these conflicts but rendered support to Serbs in the republics. Milošević was President at material times for these two conflicts only of Serbia.

There is a concept of 'Greater Serbia' that permeates different aspects of the trial just as of Balkan history itself. According to the classic Serb version, the Serb defeat by the Ottomans in 1389 on Kosovo's Field of Blackbirds reflected Tsar Lazar's conscious preference for a 'heavenly' rather than an 'earthly' empire he was told would come with defeat not victory. His choice made the Serbs by extension into a 'heavenly' people chosen by God who wished to reclaim their lost lands as 'Greater Serbia'.[\[2\]](#)

After the Dayton accords settled the conflicts in Croatia and Bosnia problems in Kosovo continued. Should Kosovo remain in or separate from Serbia? This led to the third conflict. As Kosovo was still part of Serbia itself and Milošević was head of that state his criminality was thought, by some, easier to prove than for the earlier conflicts when his responsibility might be said more to have matched that of – say – the USA in support of the Contras of Nicaragua in the 1980's or (were it ever to have happened) UK support for North Ireland extremists.

The Kosovo conflict ended with NATO bombing Serbia into a defeat that led later to Milošević's surrender by a successor government to The Hague for trials for war crimes in all three conflicts.

Evidence in the case came from many varied sources that then contributed to themes of the Prosecution case. The different conflicts – although very clearly of the same general theme – tended to be supported by different categories of evidence. I will deal with different types of evidence for each of the three conflicts

### CROATIAN WAR

The 110 paragraph indictment charged Milošević with some 30 allegations that he had worked with other Serbian and Serb Croatian politicians, police and military to exterminate, imprison, torture, destroy homes and property of, deport and forcibly transfer non-Serbs. It alleged specific attacks including on Vukovar and Dubrovnik – all crimes said to be committed through the agency of others.

Estimates: 14,433 Croats, killed(soldiers and civilians); 1,658 Croats, missing (soldiers and civilians); 4,000 Serbs killed (mainly Para-military troops)

This part of the case was well evidenced by senior figures from Serbia and Croatia, some of them 'insiders' who gave evidence with pseudonyms in court and their faces obscured. Others - sometimes close to the accused - may give evidence openly, because they were bold or because they have already written books about what happened and it would be absurd to give evidence in private.

No arguments about the sufficiency of evidence in the Croatian part of the case were raised by the court's *amici curiae* at the end of the Prosecution case; there is no judgment of any kind from by the court about the evidence concerning Croatia.

The overall case was that that Serbs in Croatia – in various locations but starting at Knin in 1990 – wanted to create Serb units that could detach from Croatia and join Serbia.

Things took off under a man called Milan Babić in Knin with a 'Log Revolution' where Serbs in Croatia blocked vital transport routes by felled branches of trees. Milošević advised Babić on this and it could be said to be his first truly criminal act, involving himself in the military in the affairs of another republic. But hardly the stuff to excite emotion or justify the \$billion dollars and more the Yugoslav tribunal has cost or the \$millions the Milošević case itself cost.

High level witnesses called by the Prosecution included Borisav Jović, President of Socialist Party of Serbia (SPS) before the conflict and a colleague of Milošević. We needed him to confirm from his book that Milošević held absolute authority with the people and within the SPS party. No single important decision in Serbia was taken without his consent and he wanted to know everything.

In June of 1990 the accused told Jovic his view that the secession of Croatia, was to be exercised in such a way that various regions of Croatia remain with Serbia – this evidence was the Prosecution’s overall case in a sentence.

President Stipe Mesić of Croatia (as he was when a witness) who had been the last President of the Presidency of the SFRY was no friend of Milošević. He spoke of the “log revolution” around Knin that blocked vital Croatian transport routes and of how the Yugoslav army (JNA) lent its support to the rebels by preventing the Croatian police forces from getting rid of the logs.

In the summer and autumn of 1991, Mesić said, paramilitary groups were gathering, arming, and obtaining logistical support from Serbia. They arrived bearing arms, and Serbia did nothing to stop those who were on their way to Croatia to kill people and to destroy Croatian towns. Paramilitary groups, he explained, operated under the command of the JNA.

In October 1991 the Serbian Bloc effected a state coup forming a body known as the Rump Presidency. The Serbian Bloc attempted to legalise their take-over of the Presidency of SFRY institutions without the agreement of the other Republics and in order to exclude Croat President Mesić from the work of the PSFRY. Decisions made by the Rump Presidency in early-October 1991 were clearly designed to advance Milošević’s goals.

Mesić met the Accused many times. Very often, the Accused would tell the witness that he could not leave more than two and a half million Serbs outside Serbia were Yugoslavia to collapse. That would allow Slovenia and part only of Croatia to secede from Yugoslavia. Milošević would insist on the parts inhabited by Serbs remaining in Yugoslavia.

Vukovar: The Guards Division, commanded by the Supreme Command attacked and destroyed much of Vukovar, as part of a regionally widespread campaign, apparently aimed at creating some form of a ‘Greater Serbia’. These were units the Ministry of the Interior of Serbia and the Territorial Defence of Serbia, all under the command, ultimately, of Milošević.

Those who carried out liquidations in Vukovar were given decorations by Serbia and promoted to the rank of general and other such ranks.

Before the war, Vukovar had a mixed population of approximately 45,000 people. During the JNA attack, 22,360 people were expelled. Vukovar was completely surrounded for three months with tanks around the centre of the town belonging to the Yugoslav’s People’s Army. JNA planes flew almost daily over the hospital shelling it and other surrounding buildings. From 25 August 1991 until 20 November 1991 2,250 wounded persons were admitted to the hospital which was not a military target in any way. It was undefended. There were wounded soldiers whose weapons were removed on arrival, but no fighting men. There were no Croat soldiers or defenders inside or around the hospital.

Dr Vesna Bosanac, Director of the Vukovar General Hospital, alerted the international community the shelling of the hospital and protested to the general staff in Belgrade via Sarajevo. On 4 October 1991, two bombs hit the hospital. One exploded at the second floor and shook the building. The other did not explode but crashed through the ceiling and landed between the legs of a patient who was lying on a bed. The bombs each weighed between 400-450 kilos. In addition, every day, 70 or 80 shells fell on the hospital itself. Cluster bombs were used and gases. JNA planes on several occasions dropped phosphorous bombs causing fires.

In the space of two days 174 wounded persons were transported under compulsion were transported. 260 people were unaccounted for and were missing. Some 200 were killed in Ovchara, largest single massacre since WWII and until Srebrenica.

Dubrovnik was under siege from all sides by Serbs in October 1991. President Mesić had to go to Dubrovnik by sea as part of a convoy to deliver humanitarian aid. The attack was sustained. The town was never taken. It was attacked not least to satisfy part of Serbia’s desire to have access to the sea.

General Nojko Marinović took over the defence of Dubrovnik arriving there on 20 September 1991. The total forces under the witness’ command comprised of 670 soldiers. The town posed no offensive threat to the JNA or to Hercegovina (part of Bosnia) or to Montenegro. On 1 October 1991, the JNA launched a massive attack against the wider Dubrovnik municipality from both Hercegovina and Montenegro. The total strength of the JNA forces engaged in Dubrovnik was 5,000 to 7,000 men. The combined units involved had at least 36 howitzers, 60 heavy mortars, 240 bazookas, 60 anti-aircraft guns, and 44 tanks. They had total air superiority with squadrons from Mostar, Tivat, and Podgorica and they had deployed three missile boats and two patrol boats along with 3 batteries of P-15 surface to surface missiles with an 80 km range.

The only heavy weapons that were used inside the city of Dubrovnik (not in the Old town) were the two truck-

mounted 20mm anti-aircraft cannons. No weapons were placed in the proximity of the Old Town or the hospital. All military activity was forbidden and the Old Town walls were marked with UNESCO flags and the hospital with a large red cross. As it was a UNESCO protected site much of the civilian population had taken shelter there. Individual soldiers were forbidden from patrolling in the Old Town, the only weapons allowed were side arms carried by the police. The witness was so confident that the actions of his troops would stand up to outside scrutiny that he encouraged the ECMM monitors to move into the Hotel Jadran in the Old Town to observe the area.

The three worst attacks on the Old Town occurred on 23-24 October, 8-13 November, and 6 December 1991. On all three occasions, nothing had occurred on the Croatian side which justified targeting of the Old Town.

The JNA military campaign failed because the JNA was not expecting any fight and when they started experiencing casualties their troops quickly lost their motivation. There was an international outcry that resulted from them launching unprovoked attacks against a UNESCO-protected city of no military significance. Serb propaganda boomeranged on them. They had told their troops that there were thousands of Ustaše (militant Croat) paramilitaries and foreign mercenaries in the basements of Dubrovnik. That made the troops cautious not brave as their dissembling commanders had hoped.

The Territorial Defence and reserve forces that were mobilized to fight in Dubrovnik were enticed into the battle by promises of plunder. A warehouse was even set up across the border in Montenegro where troops returning home were searched and certain things were confiscated for use by the government while they were allowed to keep much of what they had stolen, thus institutionalising criminal conduct.

As the most intense shelling of the Old Town occurred within a wider JNA battle it would be without the prior knowledge, planning, participation, and supervision of the chain of command all the way to the top of the JNA.<sup>[3]</sup>

Pero Poljanić mayor of Dubrovnik spoke of the shelling that began on 1st October 1991. The shelling lasted until 31 December 1991 with the worst shelling occurring on 6 December 1991.

The shelling of the actual old city began on 23 October 1991 and lasted until 6 December 1991. In total, some 1,056 shells fell on the old city. Specific buildings were not targeted; the entire town was the target.

There were no military installations or artillery positions in the old town from 6 October to 6 December 1991.

Montenegrin forces had been involved in the attack and, contrary to Serb denials of responsibility, in 2002 Montenegrin President Đukanović apologized to the Croatian people for acts of the Montenegrin citizens in South Croatia; 200,000 people gathered in the Montenegrin town of Cetinje singing songs asking the people of Dubrovnik to forgive them.

Petar Krste, a Croatian government minister, explained that Dubrovnik was attacked in order to annex it to the Greater Serbia. All the Serbs would be living in a single state up to the Karlobag-Karlovac-Virovitica line. The JNA in fact acted according to what General Kadijević, Serbian Minister of Defence described in his book as an aggressive strategic operation which aimed at cutting Croatia along the Karlobag-Karlovac-Virovitica line.<sup>[4]</sup>

The JNA blocked Dubrovnik off and almost reached the Neretva river, where Bosnia had a narrow access to the sea at Neum.

Hrvoje Šarinić Chef de Cabinet of President Tuđman met Milošević many times including at the infamous meeting on 26 March 1991, with Tuđman at Karađorđjevo facility, where Tuđman confronted Milošević with his support of the "log revolution" and the "Greater Serbia" concept. Then, Milošević said that "surely can find the common language to solve those problems!" and it became clear to the witness from what was said by both Tuđman and Milošević afterwards that this statement was about dividing up Bosnia.

On 15 April 1991, the second meeting of this series with Milošević took place, this time at Tikveš. Tuđman told the witness that his objective was to get Milošević to influence Serbs in Croatia to come to their senses, to withdraw, "so we could again establish our sovereignty in the entire Croatian territory, and then we can talk about Bosnia." They probably reached an agreement, the witness thought, but it was never fulfilled, and that is why the war occurred.

After the second meeting in Tikveš that took place on 15 April 1991, Tuđman showed the witness a paper that he received from Milošević which spoke about the great danger posed by the expansion of the Muslims in BiH. Roughly, it said that the Muslims were a major evil and that they should be careful of the so-called green transversal, zelena transverzala, going from Turkey, Bulgaria, Western Macedonia, Kosovo and Sandzak.

Sarinić had a further meeting with Milošević in Belgrade on 20 September 1995, after the fall of Srebrenica. They spoke about the organisation of the Bosnian state. He said: "We, Hrvoje, are going to solve our problem and without the international community. We are each going to annexe our part of BiH. The United States are cradling this bastard but they don't understand a thing. We are going to put forward the formula, and the symmetry of two entities, and you should support us in that. We must not allow a unitary BiH.

On 10 March 1998, they met and discussed Kosovo. Sarinić asked him: "How far are you prepared to go?"

Milošević replied: "All the way to wide ranging self rule, but any autonomy is out of the question." Sarinić said: "But this is less than the Albanians had in the 1974 constitution." Milošević replied: "Probably so, but that's history, and that was a big mistake which we have corrected, and we are never going to repeat it, regardless of how high the price might be." Milošević's attitude towards Kosovo was that it was Serbia's internal problem and that no one should interfere with it.

C48 a true at-risk insider Serbian insider worked as a waiter and in other capacities in a casino but for - understandable - reasons was trusted to be present at meetings of high level SPS party officials. In the first weeks of March 1993, the Accused himself attended a meeting at the Casino Royal, where Milošević asked Jovica Stanišić about the situation in Eastern Slavonia and Baranja. Stanišić replied that everything was going according to the plan, that the terrain had been cleansed of Croats, and that the situation on the ground was stable. Milošević then said: "Very well. So we have completed the main part of the job. Carry on like that but in a subtle way." Milošević with some pleasure then said he was really looking forward to how the Croats would ask for the Krajina from him in negotiations as now the majority of the population were Serbs, especially in Eastern Slavonia and Baranja, evidencing his satisfaction with successful ethnic cleansing.

C48 was too good - not that there was any reason to doubt him but his evidence was not itself corroborated and had the trial chamber placed too much evidence on what he said they might have thought it a risk should anything later emerge to allow him to be doubted. He would have served to corroborated other evidence.

C36, another insider with good access to the leadership explained how on 16 March 1991, Babić received a call from Milošević who only told him: "Support Yugoslavia". Following that order from the accused, the Executive Council of the Krajina declared secession from Croatia. Martić - head of the Police in that autonomous region, the Krajina, and Milan Babić's colleague - acknowledged publicly his loyalty to Milošević saying that he would only be the provisional president of the Krajina and that he would be happy to hand over power to Milošević when the time comes. Martić always supported the policies of Milošević.

C36 explained that when Milošević referred to the JNA holding territory, that meant that this territory would *de facto* remain in Yugoslavia and that it would be part of the new Yugoslavia. The *de facto* situation on the ground was important because, at that time (autumn 1991) negotiations on the future of Yugoslavia were ongoing in the context of the Carrington conference. When Milošević and Karadžić spoke about the *de facto* situation in relation to the JNA on the ground, they spoke of the territory of SAO Krajina, Western Slavonia, Eastern Slavonia, and the area around Dubrovnik.

C36's Babić's evidence was excellent but so detailed that journalists in the region rapidly guessed it was Milan Babić himself. He had to abandon his pseudonym and anonymity. He was then savaged in the Serbian press for treachery Babić explained that during the war, there were two lines of command or chains of command. One line went through the Presidency of Yugoslavia, the JNA, and on to the Territorial Defence units directly under the command of the JNA. The other line went through the MUP, and through a parallel structure, the milicija or police of the Krajina and special volunteer units and the regular police and the groups belonging to the state security service. At the top of both lines was Milošević.

Milošević wanted to let him and Karadžić know that he controlled the Army. At the end of this conversation, he looked up at Karadzic and asked him again where he wanted the Army deployed. Karadzic said: "On the borders with Croatia". Then, he looked up at Milan Babić and said: In Krajina to protect Krajina."

In this way, the JNA gained control of territory, fighting together with other armed formations that were within its ranks. The other formations under the JNA umbrella constituting the Serb forces were the Serb TO forces, SAO Krajina police (aka Martić's police) and other volunteers (aka paramilitaries) Those other formations were under the control of the parallel structure from the Serbian DB led by Stanisić and Frenki Simatović, and ultimately under the control of the Accused.

*De factoly*, Milošević appointed the leading officers of the RSK, the VRS and the VJ (formerly known as the JNA). Then, the General Staff and the Presidency implemented his decisions legally.

From August 1991, the JNA stopped only "protecting" the Serbs in Croatia and, together with all the formations under its command, participated in the destruction and cleansing of non-Serb population, setting up "new borders" that were larger than what was envisaged in the referendum for the Krajina.

Post script about Babić. He was charged with offences and pleaded guilty getting a sentence of 13 years, not especially lenient, that he would serve abroad. The Prosecution called him back to give evidence in another trial, being cross examined again in public and said to be a traitor. He was booked for a third trial to help the prosecution, but he never got that far. The same week that Milošević died Babić hanged himself in jail. Among other things on his mind was that the international community could not guarantee that on release his family would be allowed residence in the country in which he would have to stay for reasons of his own safety.

Is this troubling? Modern transitional justice mechanism for conflicts include trials, truth commissions and other means where perpetrators, victims and societies come to terms with the consequences of conflict. Babić did everything that could be asked of him: he confessed, he was genuinely contrite, he pleaded guilty, he gave evidence for the Prosecution to leave an accurate record. And the court went on using him regardless of what

might happen but failed to keep him alive.

Go to the ICTY website and listen to the confessions of those few accused who like Babić confessed; not in truth to the judges and lawyers who have never experienced war but to some inner standard they realised – few actually do – that they should have followed.

Kula Camp video the best piece of evidence we had and its link to both other indictments.

This video showed an event initially misunderstood until the Tribunal's top researcher realised what had been missed by others in the office. The video, made in 1997, had Milošević making an error. Although he was never known to be with his troops on front lines or to visit those affected by the wars or even to don a military uniform – only ever the suit, white shirt and tie for him – he did for some reason feel obliged to attend in 1997 the annual ceremony of a brigade called the Red Berets. This group – a paramilitary style group funded by Serbia and properly known as the JSO had operated extensively in criminal activities in other republics.

At the ceremony the group's notorious and famously un-photographed leader welcomed Milošević and in a speech explaining how the unit was formed in May 1991 – only part way through the Croatian conflict. He went on with other senior Serb officials to explain, by reference to maps and place names, the various battles in which the unit had fought in both Croatia and Bosnia. There was no need to discriminate between the two because, as the Prosecution argued, the plan in both republics was the same – to ethnically cleanse areas the Serbs wanted to carve out and join up with Serbia. Jovica Stanišić, who controlled the Serbian DB, is said the following to the Accused "Mr. President, everything we have done so far we did with your knowledge and with your consent". At the same ceremony, the Accused said to a member of the Red Berets, Radojica Bozovic, that he "read the reports" from Bozovic.

Milošević establishing a paramilitary style group – there were several others usually linked to political parties – to fight with the Yugoslav army and the Serbian police but to do so on the territories of others was quite clearly an unlawful act – it was, we would have argued, that irrevocable criminal step that Milošević knew full well took him across the line. There was no other evidence showing beyond inference that he established this particular group, notorious as it was to become, but this piece of evidence was as he knew conclusive – it denied him the chance to plead a non-criminal state of mind for other events. This was the dictator as criminal – and he knew it.

In cross examination of one witness who dealt with the video he asked this absurd question that the unit was not established until 1995 or 1996.

The content of the video was quite explicit and absolutely clear. Milošević's dependence on this particular group made him err. He trusted when he shouldn't have done. just as with the waiter in the casino. Criminals in ordinary life often do such things

## BOSNIA

An indictment of 79 paragraphs charged Milošević together with other Serb and Bosnian Serbs with genocide, complicity in genocide, persecution, extermination, murder, wilful killing, unlawful confinement, deportation and other inhumane acts, wanton destruction, plunder, in 29 charges. Of course, all acts were committed if at all through the agency of others.

Deaths between 90,000 and 104,000; Srebrenica deaths alone 8,000.

As with Croatia witnesses included senior government, military and police officials all of whom were able to speak of Milošević's power and of the crimes committed. But there was no Babić to speak directly of Milošević's instruction to commit crimes.

Documentary evidence was prominent for this indictment.

Although the Milošević trial looked at events from the perspective of things done in Belgrade and Serbia two crucial documents were created in the territory of the Bosnian Serbs.

First a document came into existence at the end of 1990 setting up Variant A and Variant B of what was to happen in municipalities according to whether Serbs were or were not in a majority. There may have been little difference between the two and taking control of a town where Serbs were not in a majority was bound to lead to violence and ethnic cleansing.

On May 12, 1992, at a session of the Bosnian Serb Assembly when Radovan Karadžić announced the six "strategic objectives" of the Serbian people in Bosnia and Herzegovina reflecting policies the conception, consideration and implementation of which were common to the Bosnia Serbs and the Serb leadership:  
as

1. Establish State borders separating the Serbian people from the other two ethnic communities;
2. Set up a corridor between Semberija and Krajina;
3. Establish a corridor in the Drina river valley, that is, eliminate the Drina as a border separating Serbian states.
4. Establish a border on the Una and Neretva rivers;
5. Divide the city of Sarajevo into Serbian and Muslim parts and establish effective State authorities in both parts.
6. Ensure access to the sea for Republika Srpska.[\[5\]](#)

Objective 1 and 5 show how committed both Serb leaderships had to be to ethnic cleansing; objective 6 reflects in part what had already happened in Dubrovnik even if the objective could not be pursued.

Intercepts May 1991 to Feb 1992[6] between Milošević, Karadžić and others show common planning and that Karadžić did nothing without Milošević's consent and that the plan how to keep all Serbs in one state was an evolutionary process that would require ethnic separation in Bosnia and the Serb territories would have to be conquered by force.

Intercepts of interest:

Milošević never publicly used the words "all Serbs in a single state" to describe the Serb state's plans for the post-Yugoslav era, words widely associated with the ideology of a "Greater Serbia". However, Milošević sometimes used different wording to express the same, or a similar, concept. In one of his conversations with Karadžić he said:

"(...) the Serbs will not be divided into several states. That should be premise of your thinking." [7]

Milošević's opening speech at The Hague Peace Conference on 07 September 1991 did mention the Belgrade Initiative as his preferred model opposed, as it was, in preference to the Hague concept which aimed to keep the whole Yugoslav federation together, with all republics forming a loose federation. Three days later, discussing Izetbegović's position with Karadžić, Milošević lost his temper shouting:

"Please let's move. We don't give in to anybody anymore. And if they want to fight, we'll fight . . . And they should go to hell, whoever wants to fight us, we'll fight and we're stronger . . . Who wants to join Alija to beat us, he may. He will lose." [8]

Records of the Supreme Defence Council [9] – a council of three presidents of which Milošević was clearly in charge – were obtained as a result of brilliant work by the same researcher that discovered the value of the Kula Camp video. They were stenographically- and audio- recorded records of 9 years of meetings, roughly every month. Although not available to the public until comparatively recently, they were available from the time we got them to lawyers and to Milošević. They revealed:

How Serbia supported the Serbs in Croatia and Bosnia effectively in secret; That Milošević and his colleagues were aware of the functioning of para-military groups, *and* of the need to deny knowledge of them; That there was a very clear plan to take territory from the other republics and to join it to Serbia proper; That Milošević, unlike his Bosnian Serb colleagues, recognised that taking half of Bosnia was as much as could reasonably be achieved – not for him the full Greater Serbia plan.

As with all crime the careful observer or lawyer checks for what is missing. For the period in 1995 when Srebrenica fell and 8,000 men and boys were massacred, an event that came to light internationally very soon and could not possibly have been unknown to the people sitting round the SDC table or the table of an enlarged but similar group that met at Dobanovci in August 1995 *no* reference to the massacre was made. None. Further, the records produced can be seen – on careful analysis – not to be remotely complete. Nevertheless they are of great value. Milošević went from these meetings to be an international negotiator, never once condemning Mladic privately or in public and willing to become a statesman, as he nearly did, despite having done absolutely nothing by way of reprimanding / questioning of Mladic. What does that tell us?

But within the history of these fascinating records the following may give a flavour:

On 24<sup>th</sup> August 1994, satisfied with the territory conquered, Milošević also anticipated from negotiations with Contact Group including Russian Foreign Minister Kosiryev that that territory would be united with FRY:

"Therefore, a sound national policy must take all this into account. We have actually been offered to expand the territory by one-fourth, because Yugoslavia's territory is 102,000 square kilometres, and to increase the population by one-tenth! And to legalise it as well! And even to have a confederation right away! Koziryev told me that quite clearly. The leadership of Republika Srpska knows that in that way we shall be given the right to legally defend those borders. In this manner, we shall be legally entitled to defend the borders. At the same time, there is an offer to create a military alliance with Russia, which would ensure supply of military and other equipment and set up a safe and solid defence system, a single strongest army in the Balkans, etc." [10]

I showed in my first lecture, for different reasons, the meeting record that showed Milošević having spoken by phone with Mladic at the time of Srebrenica in July 1995; At the meeting on 25<sup>th</sup> August 1995 General Ratko Mladic arrived late and was greeted respectfully. No remarks were made about the crimes in Srebrenica and Žepa, but at his belated arrival they all were effectively sworn to secrecy. In the discussion that followed there was no criticism expressed about what Mladic's might have done. On the contrary, Milošević congratulated the generals who had done their work with honour. [11] Milošević described Goražde as a trap for the Serbs, implying that they shouldn't take it but that it could be exchanged for other territories. He also expressed the view that the enclaves would not need to be exchanged as they would blend into the Serbian surroundings without a fight, continuing:

*"if the Muslims refuse the peace solution they will be told that they are to be left alone with the sword of Damocles hanging over them in the form of General Mladic."* [12]



Dr Ton Zwaan Professor at the Centre for Holocaust and Genocide Studies, University of Amsterdam, testified about the importance of ideology and use of propaganda in setting the context for genocide. Dr. Zwaan explained how ideology plays a major role in processes leading to the commission of genocide, involving various types of radical nationalism, which dehumanise the targeted group, also using collective historical memory (where applicable) in an attempt to create a "them" and "us" culture. These nationalist ideologies are later used to legitimise, rationalise, and justify the genocidal process. Although individual motives for participating in the acts may be varied, ideologies give an overall sense of direction to what should be done and impart a sense of purpose and intent to individual perpetrators. Dr. Zwaan testified that scholars generally agree that genocide is a crime of state, i.e., the overall perception, attitude, behaviour, and decision of the central political leadership are decisive factors in the emergence of genocidal crimes. According to Dr. Zwaan, genocidal crimes never develop from the "bottom up"; they are "top down" affairs. Such crimes occur with the "knowledge, approval, and involvement of the state authorities."

Demography and maps were a remarkable tool for forensic deduction. Use of census and voter material allowed preparation of maps showing composition by ethnic majority of relevant parts of Bosnia and of how that composition changed in line with the Serbs' plan and in particular how the sites selected for charges in the indictment changed most dramatically, all suggesting effective and purposeful ethnic cleansing

#### KOSOSO

5 Counts charging Murder crimes against humanity violations of customs of war and persecution between January and June 1999, all with others from Serbia. Deaths probably in range 8000 to 12000.

Conflicts had started with Kosovo in the 1980s when the Kosovo Serbs sought a champion to represent their alleged suffering unfairly because of the Kosovo Albanians, some of whom wanted independence from Serbia. Milošević was the Serbs second choice, in a way, after his best friend, mentor, Kum or 'best man' and political senior - Ivan Stambolic - let them down. He rose as a result to become leader of all Serbs. He had as his first and greatest political coup in Serbia been able to annul the autonomy of Kosovo. With this credit he became the leader of all Serbs in the Croatian and Bosnian conflicts even if technically only leader of Serbia.

After the Dayton agreement - that extraordinarily has allowed the Bosnian Serbs to get by genocide, if it was, exactly what they and he wanted - he could have become an international statesman. He might never have been unearthed for what he was and never tried. But the Serbs remained demanding and the Kosovo Albanians suffered a crack down because not to do so would have allowed for discussion about his victory in the annulment of autonomy and his supporters would not tolerate that. Did not want to internationalise it.

There was an immense amount of evidence in the case about Kosovo including victims, experts of various kinds, international figures. It revealed killings and ethnic cleansing on an extraordinary scale. Milošević could raise no defence except to blame the KLA for forcing their own people out and killing them.

A great deal of eyewitness evidence showed the attack on the Kosovo Albanians to be a reality. Lord Paddy Ashdown was an interesting and extremely valuable witness.

He had visited neighbouring Albania in the conflict and had approached Kosovo from that border - hardly to be expected. A bit like looking over the garden fence He explained:

'There were some houses below us, which I would estimate at about two kilometres range, perhaps slightly less, that were being individually targeted by a tank. ....there were collections of armoured personnel carriers and tanks gathered, waiting to conduct further attacks...two tanks going away from me, towards Djakovica .....on the roadside and were systematically, and in turn, firing at one house in the village after another, from the roadside....it was perfectly possible to hear small-arms fire as well as tank fire. ....although I cannot, of course, say to the Court that there was no return fire from any of these houses, I can say that I never heard or observed any return fire from these houses.'

Milošević Went to great efforts to prove that Lord Ashdown could not see from Albania what he saw. A large amount of time and money was involved in proving or disproving. In reality he protested too much - the evidence was, as he realised just as with the Kula Camp video showing his formation of a paramilitary group, impossible to deal with and something that revealed criminal conduct when he thought his troops were unobserved.

During another visit to Kosovo in the end of September 1998, when travelling around Kosovo, saw evidence of organised mass destruction of Albanian villages, heard of killings of civilians. Also saw site of what he believed to be a KLA execution of Serbs.

That night (29 September 1998), he went to visit the Accused in Belgrade. He warned him of consequences of his actions in Kosovo. Milošević denied events on the ground, then blamed them on local commanders. Ashdown put Milošević on notice that he bore command responsibility from then on.

Mr MILOŠEVIĆ: Do you know anything about the NATO aggression that was carried out against Yugoslavia on the 24th of March, 1999?

Paddy ASHDOWN: Mr. Milošević... I think it's worth pointing out that the estimates are that in this period, long before the NATO aggression, more than 300.000 Albanians had been driven from their homes by the action of your troops. So these were entirely the responsibility of you, of your troops... They are nothing to do with the NATO aggression... And I warned you that if you took those steps and went on doing this, you would end up in this Court, and here you are.

Jacky Rowland a BBC journalist went to Dubrava prison on 21<sup>st</sup> and 24<sup>th</sup> May 1999. Dubrava prison was huge and it had housed a large number of senior KLA prisoner – political prisoners as they may have been. On the first visit she saw a pile of bodies; on the second the bodies had been moved.

She gave evidence of the uniforms of the soldiers supervising her second visit. Later in the case we came to learn that this was a crime where we just might have been able to trace direct responsibility to Milošević. I am often asked if we should have tried Milošević for everything or found a single crime and dealt with him for that, rather as Saddam Hussein was dealt with for a single crime. The difficulty with most of the crimes against Milošević was that he was involved on the Prosecution case with others and the whole picture had to be revealed and that single crime responsibility was going to be impossible confidently to prove. In fact even if we had been alert to material about Dubrava and had been able to prove it as Milošević's direct responsibility I doubt if our decision would have been different.

Journalists were allowed onto Dubrava to see bodies allegedly killed by NATO bombing – although the visiting journalists saw no wounds consistent with that kind of killing. On return when the bodies had been moved another 150 or so people had been killed and buried in the following circumstances. The regular prison guards had been stood down. Another unit arrived – the JSO, the same unit that had fought for Milošević in Croatia and Serbia and that was the subject of the Kula Camp video and massacre of the prisoners followed – lined up on the football pitch and machine gunned, grenaded in the sewers to which they retreated. Once done the bodies were buried. These JSO soldiers wore different uniforms from those seen by Rowland on her first visit. Paperwork in our possession showed that the prisoner authorities who were replaced in order that the JSO could get on with the killings had queried what happened with Belgrade. The paper trail reached an assistant minister. We got no further. But no assistant minister would have authority – not even a minister – to authorise use of the JSO in such an event.

In April 1999 a refrigerator with dead bodies in it was found in the Danube in Serbia. Suppressed at the time the information eventually led to an investigation that showed the bodies to have come from Kosovo bound for reburial on a site near a military installation in Serbia. Why?

General Obrad Stevanović kept a diary of his meetings. One page was ultimately revealing. It showed a meeting in the President's office with the following sequence of notes:

"President"

"No corpse – No crime"

"Back-breaking work on... On that issue."

"They will use evidence on crimes to justify aggression."

"Clearing up."

"Simultaneous clearing up of territories"

"When the mission arrives..."

"Clearing up the terrain the most important."

Stevanović attempted to put a different interpretation on the contents from the obvious – that the bodies had to be moved to put the incoming internationals off the scent. He did concede that the President referred to was the accused.

## CONCLUSION

How might this enormous case with its many themes and strands of evidence been concluded by the Prosecution? There were – in reality – always two questions: what part did forces under Milošević's control or supported by him take in the atrocities committed? What was his state of mind at the time? A detailed analysis would have dealt with the first question. As to the second I might have argued on these lines:

It is well to consider how clever this man was. From an educated background of which he could be proud he showed cleverness in court regularly and you sometimes thanked him for it: he could read the instantaneous English language transcript of evidence while listening to the one or two languages of the questioning without interpretation and correct the transcript for us – but only when the correction was in his favour. He never corrected errors against him. That, in a minor way, shows the man, the man in the respectable business clothes never in casual clothes never in military uniform. The man who, when young, looked as though he was to become a businessman or banker or possibly a mid-level part or government official but who, offered power by the Kosovo Albanians turned that boon to his perceived advantage and became leader of all the Serbs. A man without clear political philosophy apart from maintaining his own power which was dependent on keeping his power base of Serbs with stronger agendas content.

That same cleverness has to be in mind when the court contemplates his years in office receiving accurate information from Yugoslav / Serb embassies of what was reported as happening, of receiving detailed reports of human rights abuses from NGO's or receiving international figures of stature – often one-to-one and hearing

their accounts of what was being done. A clever politician receiving such information has these days also to be clever enough to know of the cause and effect that operates in a violent world: politician says and does this; citizens he leads or speaks for will do that – and the ‘that’ may very well be extremely criminal. He cannot properly suggest that what Dr Ton Zwaan told us about the aetiology of mass violence is a mystery. It isn’t. It is commonplace and all modern politicians, if they are to do their job, have to know what their actions may bring.

Avoid front lines as he might; fail to meet the Serbs kicked out of Croatia when Croatia won back its territory as he might - he knew what he had done and was continuing to do.

His avowed intent may have been to keep Serbs in one state – not itself criminal – but from the start of the offences alleged in the Croatia indictment and without doubt from the day he established the red Berets paramilitary unit to commit crimes on his and Serbia’s behalf to the last Kosovo Albanian killed or forced from home he knew what he was doing and that it was wrong. Did he start a bad man or was he coarsened and corrupted by the temptations and difficulties he faced? After the conflicts were over when his one time best friend, ‘Kum’ (Serbian ‘best man’), political mentor and promoter decided to stand against him Milošević had him shot dead in cold blood on his behalf by members of the same JSO / Red Berets and laid to rest in a shallow grave - as a Belgrade court found.<sup>[13]</sup> The common criminal – acting through others - was the same man who had – acting through others - knowingly committed 7 years of crimes in war. There is only so much that the white shirt and tie of respectability can hide; not enough the Prosecution would argue to shield him from judgment of this court.

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<sup>[1]</sup>ICTY website; Milošević case; selected documents; decisions; 16 June 2004 Decision on Motion For Acquittal

<sup>[2]</sup>One slightly surprising feature of Serb history has been a recurring pattern of important political ideas being written down and then kept as secret documents – although said to be effective or instrumental – over decades. Note: Načertanije of the mid 19th C, Cubrilovic’s Isejvante Arnauta of 1937; Moljevic’s ‘Homogeneous Serbia’ of 1941 (not itself kept secret) and the Memorandum of SANU of the 1990’s, all of which embraced Greater Serbia in one form or another.

<sup>[3]</sup>The witness knew about the reporting procedures and Strugar, Jokić, Kadjević and Adžić – all top brass - must have received reports of the situation on the ground at least on a daily basis. Operating procedures were held strictly to the rules. Everything he heard in intercepted communications between officers was consistent with established JNA procedures and he never saw any evidence that they experienced any functional breakdowns in their communications capabilities.

<sup>[4]</sup>Trial Ex. 370, tab 1

<sup>[5]</sup>See “Decision on Strategic Objectives of the Serbian People in Bosnia and Herzegovina,” Exhibit 451 tab 12, ERN 0114-6063-0114-6063/ 0190-2431-0190-2431.

<sup>[6]</sup>Intercept and SDC records and research, Phd project N. Tromp University of Amsterdam, working title: ‘legacy of an unfinished trial’

<sup>[7]</sup>Trial exhibit P 613. 25 (31 July 1991), ERN 0212-8559-0212-8568/ ET 0212-8559-0212-8568

<sup>[8]</sup>Exhibit P 613. 60 (10 September 1991), ERN 0206-6177-0206-6180/ET 0206-6177-0206-6180.

<sup>[9]</sup>See footnote 6

<sup>[10]</sup>25th SDC Session held on 30 August 1994, Steno-notes, Exh. 667.25, ERN 0345-7916-0345-7973/ ET 0345-7916-0345-7973: 22

<sup>[11]</sup>“Record from a meeting of highest political and military leadership of the Federal Republic of Yugoslavia and Republic of Serbia”

(“The First Dobanovci Meeting”) held on 25 August 1995, Exhibit 469 tab 20: 8.

<sup>[12]</sup>“Record from a meeting of highest political and military leadership of the Federal Republic of Yugoslavia and Republic of Serbia”

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