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**Srebrenica: Justice and Legacy**

Professor Sir Geoffrey Nice QC

In the last lecture we explained how genocide as a crime developed and how difficult it can be to prove as a breach of the Genocide Convention - state against state – in the International Court of Justice.

To some extent I argued that even if the crime of genocide is hard to define and hard to prove it should be dealt with as a crime because to do so reflects the public will.

We also considered Ben Ferencz’s proposal to extend the definition or application of crimes against humanity that would move towards courts being able to outlaw war – because all wars will start with unlawful use of violence

In this lecture we are looking again at Srebrenica with a focus on how to prove the required mental state against an individual charged with the crime. What on earth were people – leaders and all others – thinking of when they engaged in mass killing of up to 8,000 people?

First a homely analogy for a purpose. A bank robbery – or shall we say the robbery of a Hatton Garden security safe - organized by a ‘Mr Big’ (Noel Coward as Mr Bridger in the original Italian Job for those who recall the film) acting with intermediate planners and organisers with the crime committed on the street and in the vault by a team of men will have all those involved having the same intent – ‘to rob the premises concerned’. At most some might argue that they did not know the robbery would be with firearms if in fact some firearms were used. Other than that the same state of mind would be provable against all of them and fairly straightforward to do if actual knowing involvement in the crime were proved.

Proving genocide and the mental state required is very different, as we shall see, though as a people’s crime it is important to prove it where we can.

GENOCIDE – THE MENTAL TEST

The test – as it has developed – is set out in the statute of the international criminal court as:

Article 6 Genocide

For the purpose of this Statute, ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

CASES AT THE ICTY CONCERNING SREBRENICA

There have been several Srebrenica cases that included allegations of Genocide. All effectively accepted that General Mladic, still on trial, was the centre of criminality. His defence seems to based on assertions that things did not happen and / or he Mladic was not involved in the ways alleged. Should he be acquitted of genocide several other decision of the Tribunal would have to be reconsidered

The first ICTY case where genocide was found to have happened at Srebrenica was Krstić.

The latest is Tolimir that was confirmed on appeal as recently as last month. The annexed brief summary of facts is drawn from the Tolimir trial judgment. It shows deliberate genocidal killing of up to 6,000 men and boys in order to gain territory in Srebrenica and Zepa.

The Summary of overall legal findings, confirmed on appeal in Tolimir, may provide a reasonable consensus of the Tribunal findings in other cases:

* 1. There was a widespread and systematic attack directed against the Bosnian Muslim populations of the Srebrenica and Žepa enclaves.
  2. At least 4,970 men and boys subject of the charges of the Indictment were murdered by Bosnian Serb Forces. During their mistreatment, detention, and up to the moment of their murder, these men were cursed and mocked, and often beaten for their affiliation to the Islamic faith. Some were forced to sing Serb songs or sing pro-Serb slogans immediately before their death. The Chamber has found that the harm inflicted upon these men rises to the level of serious bodily and mental harm and constitute acts of genocide
  3. The murders of the three Bosnian Muslim leaders of Žepa — Mehmed Hajrić, Avdo Palić and Amir Imamović constitute acts of genocide. These three men were members of Žepa’s war presidency and important and prominent leaders within the enclave; they constituted the core of Žepa’s civilian and military leadership.
  4. Their forcible transfer of Žepa’s population prior to the killing of three of Žepa’s most prominent leaders is a factor which supports the finding of genocidal intent. In the case of Žepa, removing its Bosnian Muslim civilian population, destroying their homes and their mosque, and killing three of their most prominent leaders was done with the purpose of ensuring that the Bosnian Muslim population of this enclave would not be able to reconstitute itself. Mehmed Hajrić, Avdo Palić and Amir Imamović were killed with the intention to destroy this population.
  5. The suffering of the women, children and elderly who were forcibly transferred from the Srebrenica and Žepa enclaves rises to the level of serious bodily or mental harm so as also to amount to genocide.
  6. The combined effect of the forcible removal and murder operation had a devastating effect on the physical survival of the Bosnian Muslim population of Eastern Bosnia and Herzegovina and were aimed at destroying this population.
  7. Beyond reasonable doubt the crimes of Genocide, Conspiracy to Commit Genocide, Extermination, Persecutions, Inhumane Acts through Forcible Transfer, and Murder have been established.

This judgment summary gives some clue as to how genocide can be proved in court; always from a wide range of factual circumstances. There are central issues for which no time today of the numbers killed and the importance of those killed to the society of which they are a part. But as to the existence of an intent that meets the genocide test it is not possible to go straight to the revealed mental state of one or another potential defendant and to expand from that to the ‘mental state’ of the plan overall. Nor is it possible from the existence of an overall genocidal plan to infer genocidal intent in all those engage on the criminal side

HOW WAS MENTAL STATE IN AN INDIVIDUAL ESTABLISHED AT THE ICTY?

Krstic was the first Srebrenica genocide case. Facts can be taken from the Appeal Chamber’s findings (On Appeal, Aid and Abet genocide – 35 years):

* 1. Radislav Krstić General-Major in the VRS and Commander of the Drina Corps which was responsible for an area that included Srebrenica was found by the trial chamber guilty of genocide and other crimes. For these convictions he was sentenced to forty-six years.
  2. Findings of the Trial Chamber were largely based upon a combination of circumstantial facts. In convicting Mr Krstić as a participant in a joint criminal enterprise to commit genocide, the Trial Chamber relied upon evidence establishing his knowledge of the intention on the part of General Mladić and other members of the VRS Main Staff to execute the Bosnian Muslims of Srebrenica, his knowledge of the use of personnel and resources of the Drina Corps to carry out that intention given his command position, and upon evidence that he supervised the participation of his subordinates in carrying out those executions.
  3. The Trial Chamber found the contacts between Mr Krstić and General Mladić to be crucial to establishing Radislav Krstić’s genocidal intent and that he and General Mladić were in constant contact throughout the relevant period. The Trial Chamber concluded that “if General Mladić knew about the killings, it would be natural for Mr Krstić to know as well”.
  4. Krstić was at the second and third of three meetings convened by General Mladić at the Hotel Fontana on 11 and 12 July 1995 all attended by UNPROFOR leaders and Bosnian civilians leaders where the fate of the Bosnian Muslims following the fall of Srebrenica was discussed. Trial Chamber concluded that Radislav Krstić “was put on notice that the survival of the Bosnian Muslim population was in question following the take-over of Srebrenica.”
  5. However, the most that Radislav Krstić’s presence at these meetings establishes is his knowledge about General Mladić’s decisions to transfer the population from Potočari to Muslim-held territory on buses, and to screen the male members of this population for war criminals prior to transportation. Although General Mladić also announced that the survival of the population depended upon the complete surrender of the Army of Bosnia and Herzegovina it is unlikely that General Mladić would be disclosing his genocidal intent in the presence of UNPROFOR leaders and foreign media, or that those present at the meeting, including Mr Krstić, would have interpreted his comments in that light. There was no evidence to suggest that at this time Radislav Krstić knew about the intent on the part of General Mladić to execute the Bosnian Muslim civilians who were to be transferred.

The Trial Chamber found that as a result of his presence in Potočari, Mr Krstić “must have known of the appalling conditions facing the Bosnian Muslim refugees and the general mistreatment inflicted upon them by VRS soldiers on that day.” The Trial Chamber further found that, based on Mr Krstić’s presence at the White House compound in Potočari, he was aware that the segregated men were being detained in terrible conditions and were not being treated in accordance with accepted practice for war crime screening. The Trial Chamber concluded that he must have realised, as did all other witnesses present around the compound, that the fate of these men was terribly uncertain but that he made no effort to clarify this with General Mladić or anyone else.

* 1. However, the Trial Chamber also concluded that it was not until 13 July 1995 that Dutch-bat troops witnessed definite signs that Bosnian Serbs were executing some of the Bosnian Muslim men who had been separated. There was no [direct] evidence that Mr Krstić was either aware of the shootings at the White House or the destruction of the personal belongings of the separated men
  2. Krstić must have known that men who managed to board the buses with the women, children and elderly were being removed from them at Tišća. The Trial Chamber concluded that it was clear that Mr Krstić must have known that men were being separated at Tišća and taken to detention sites. The Trial Chamber did not establish at this point that Radislav Krstić knew the prisoners were to be executed
  3. Without having established that Mr Krstić knew of that intention on the part of General Mladić, no reasonable Trial Chamber could have made the further inference that Mr Krstić shared that intention. This erroneous finding of the Trial Chamber casts doubt upon its overall conclusion that Radislav Krstić shared the genocidal intent.
  4. The Appeals Chamber is of the view that all that the evidence can establish is that Mr Krstić was aware of the intent to commit genocide on the part of some members of the Main Staff, and with that knowledge, he did nothing to prevent the use of Drina Corps personnel and resources to facilitate those killings. This knowledge on his part alone cannot support an inference of genocidal intent. Genocide is one of the worst crimes known to humankind, and its gravity is reflected in the stringent requirement of specific intent. Convictions for genocide can be entered only where that intent has been unequivocally established.
  5. There was no evidence that the Drina Corps devised or instigated any of the atrocities, and the evidence strongly suggested that the criminal activity was being directed by some members of the VRS Main Staff under the direction of General Mladić.
  6. It was reasonable for the Trial Chamber to conclude that at least as from 15 July 1995, Radislav Krstić had knowledge of the genocidal intent of some of the members of the VRS Main Staff. Radislav Krstić was aware that the Main Staff had insufficient resources of its own to carry out the executions and that, without the use of Drina Corps resources, the Main Staff would not have been able to implement its genocidal plan. Mr Krstić knew that by allowing Drina Corps resources to be used he was making a substantial contribution to the execution of the Bosnian Muslim prisoners. Although the evidence suggests that Radislav Krstić was not a supporter of that plan, as Commander of the Drina Corps he permitted the Main Staff to call upon Drina Corps resources and to employ those resources. The criminal liability of Mr Krstić is therefore more properly expressed as that of an aider and abettor to a joint criminal enterprise to commit genocide, and not as that of a perpetrator.

The Appeals Chamber’s overturning of the Trial Chambers findings shows important things:

* 1. Judges at these courts can differ widely in interpretation of events, almost as if they have a discretion as to how to find someone’s state of mind to be (they don’t have discretion – they are to make judgments, entirely different)
  2. It is very difficult to peer into someone’s brain and decide what s/he thought at some given time.

In understanding the mental state of mass atrocities I was advised to seek to call an expert on genocide. I was pleasantly surprised in the Milosevic trial when the judges allowed me to do so. The expert – Ton Zwaan – was selected because of his moderate and therefore reliable approach in a developing field of study. He said nothing directly about the Yugoslav conflicts but from other genocides – Armenia, Soviet Russia, WWII, Rwanda – showed how, although sometimes invisible, the puppet masters controlling strings would exist for crimes of these kinds between political / military leaders and those doing the killings who would respond in an unstoppable way to the intentions of the leaders. Should there, in consequence, be a common mental state or intent in individual defendants - whether president, military commander in chief or foot soldier with the gun – even if it will rarely if ever be possible to identify it in the way possible with the Hatton Garden burglars? Perhaps. More of Zwaan at the end.

Some Defendants pleaded guilty to charges concerning Srebrenica. Pleading guilty to crime is commonplace in the UK and some other jurisdictions, but not all. The ICTY needed some persuasion to accept that a guilty plea could bring a conclusion as, in other jurisdiction, the judges have in the end to satisfy themselves of the guilt of an accused and of the factual basis on which a person pleading guilty should be sentenced. Overall the tribunal was cautious about accepting ‘plea agreements’ where the prosecution and a defendant agreed a factual basis of a plea of guilty, sometimes coming with the defendant getting the benefit of the prosecution asking asking for a lesser sentence especially if he was willing to give evidence against others.

No one pleaded guilty to a charge of genocide but in pleading guilty to killings a Srebrenica they had to say something – something acceptable to the court for sentencing purposes - about their mental states.

Drazen Erdemovic (murder a s violation of customs of war – 5 years):

Facts, drawn from the trial chambers summary although the case had a complicated life in Trial and Appeal Chambers

* 1. On or about 16 July 1995, DRAZEN ERDEMOVIC and other members of the 10th Sabotage Detachment of the Bosnian Serb army were ordered to a collective farm near Pilica in the Zvornik Municipality and informed that bus loads of Bosnian Muslim civilian men from Srebrenica, who had surrendered to Bosnian Serb military or police personnel, would be arriving throughout the day at this collective farm.
  2. buses containing Bosnian Muslim men arrived at the collective farm full of Bosnian Muslim men, ranging from approximately 17-60 years of age who removed in groups of about 10, escorted by members of the 10th Sabotage Detachment to a field adjacent to farm buildings and lined up in a row with their backs facing Erdemovic and members of his unit.
  3. Erdemovic shot and killed -with other members of his unit and soldiers from another brigade - hundreds of Bosnian Muslim male civilians.”
  4. The accused committed the offence in question under threat of death explaining

“I had to do this. If I had refused, I would have been killed together with the victims. When I refused, they told me: “If you are sorry for them, stand up, line up with them and we will kill you too”. I am not sorry for myself but for my family my wife and son who then had nine months, and I could not refuse because they would have killed me.”

In his plea of guilty to the court he said:

*I have lost many very good friends of all nationalities only because of that war, and I am convinced that all of them, all of my friends, were not in favour of a war. I am convinced of that. But simply they had no other choice. This war came and there was no way out. The same happened to me.*

*I admitted to what I did to this journalist and I told her at that time that I wanted to go to the International Tribunal, that I wanted to help the International Tribunal understand what happened to ordinary people like myself in Yugoslavia.*

*Because of everything that happened I feel terribly sorry, but I could not do anything. When I could do something, I did it. Thank you. I have nothing else to say.*

Dragan Obrenovic (Persecutions – 17 years)

Facts from Trial Chamber’s finding

* 1. Dragan Obrenović was deputy commander and chief of staff of the Zvornik Brigade – the brigade responsible for the municipality in which the vast majority of the executions took place. During the two days when many of these executions took place, he was the acting commander of the Zvornik Brigade. Dragan Obrenović, as he has admitted, took actions which furthered the killing operation: he released seven of his men to “assist” with the prisoners – prisoners that he knew were brought to Zvornik to be shot. He approved the release of two military operators from the line, knowing that their task was the burial of executed prisoners. For these actions, Dragan Obrenović bears criminal responsibility.
  2. The Trial Chamber has heard that Dragan Obrenović was a man of exceptional character and a soldier – an officer – whose subordinates “would have followed him down the barrel of a cannon.” Although there are few direct actions that Dragan Obrenović took to further the murder operations, his *inaction* during these critical, devastating days itself had an impact on those working with, and under, him. Dragan Obrenović spent most of these fateful days in the battlefield, but he was *aware* of the larger murder operation taking place. Through his failure to prevent his subordinates from participating in the detention, murder and burial of Bosnian Muslim men, Dragan Obrenović bears criminal responsibility. Through his failure to punish his subordinates after they committed crimes which he knew or had reason to know about, Dragan Obrenović bears criminal responsibility.
  3. Recognising the various forms of criminal liability for which Dragan Obrenović has accepted responsibility, the Trial Chamber finds that Dragan Obrenović’s liability stems primarily, though not exclusively, from his responsibilities as a commander.

In his plead of guilty to the court he said:

*There was no choice. You could be either a soldier or a traitor. At the beginning of the war, it seemed as if the war and all it brought with it was impossible, that this wasn't really happening to us, and that everything would be resolved within a few days, and that finally our generation would have a chance. We didn't even notice how we were drawn into the vortex of inter-ethnic hatred and how neighbours were no longer able to live beside each other, how death moved into the vicinity, and we didn't even notice that we had got used to it. Death became our reality.*

*In Bosnia, having coffee with your neighbour is a ritual, and this is what we trampled on and forgot. We lost ourselves in hatred and brutality. And in this vortex of terrible misfortune and horror, the horror of Srebrenica happened.*

*I am to blame for everything I did at that time. I am trying to erase all this and to be what I was not at that time. I am also to blame for what I did not do, for not trying to protect those prisoners. Regardless of the temporary nature of my then-post. I ask myself again and again, what could I have done that I didn't do? Thousands of innocent victims perished. Graves remain behind, refugees, general destruction and misfortune and misery. I bear part of the responsibility for this.*

*What has won the victory is misfortune and unhappiness, as a consequence of blind hatred. The spirit of this unhappiness still hovers over our Bosnian hills, which have suffered so much, and it will take years to wipe out the traces of this horrible war and to have smoke rise again from people's chimneys, from the hearths, and maybe decades will have to pass before the wounds in people's souls are healed. If my confession, my testimony, and my remorse, if my attempt to face myself contributes to the quicker healing of these wounds, I will have done my duty of a soldier, a fighter, a human being, and a father.*

Momir Nikolic was the first Bosnian Serb to acknowledge guilt for Srebrenica offences (Persecutions – 20 years)

His case had a complex history through trial and appeal chambers

Facts so far as material can be taken from trial chamber summary:

* 1. Charged with persecutions by murder of thousands of Bosnian Muslim civilians, including men, women, children and elderly persons and other crimes
  2. The Trial Chamber observed that the crime of persecution is inherently serious. Its unique character is derived from a requirement of a specific discriminatory intent, on account of which the crime is regarded as a particularly serious offence. In this case, the gravity of the offence is demonstrated by the persecutory acts for which Momir Nikolić has been convicted.
  3. Momir Nikolić following the fall of Srebrenica was right at the centre of criminal activity as the operation spread from Potočari, to Bratunac and on to Zvornik. Momir Nikolić was present at the Hotel Fontana during the three meetings in which the fate of the Muslim population was discussed and decided. He did not raise any objections to what he was told was the plan: to deport Muslim women and children to Muslim held territory, and to separate, detain, and ultimately kill the Muslim men. Rather than resist, Momir Nikolić recommended possible detention and execution sites.
  4. Mr. Nikolić returned to Potočari on 13 July 1995, and by his own account, he established that “all was going well” – the deportations continued as did the separations. He busied himself with security arrangements for General Mladić and when they met, reported that “there were no problems”. On the same day, Momir Nikolić saw columns of prisoners being marched to various sites, to await their death. Later that night, Momir Nikolić was present when three other persons involved in the crimes openly discussed the killing operation. The intricate details of the operation were discussed, in order to facilitate the execution of the plan. Momir Nikolić was an integral part of the implementation of the plan, in order that the aims of the operation were achieved.
  5. Further, in the months subsequent to the executions, Momir Nikolić co-ordinated the exhumation and re-burial of Muslim bodies. This ongoing support proved valuable in that crucial evidence was destroyed – and has prevented many families knowing the whereabouts of their missing family members.

In his plea of guilty he said:

*I sincerely wish before this Chamber and before the public, especially the Bosniak public, to express my deep and sincere remorse and regret because of the crime that occurred and to apologise to the victims, their families, and the Bosniak people for my participation in this crime. I am aware that I cannot bring back the dead, that I cannot mitigate the pain of the families by my confession, but I wish to contribute to the full truth being established about Srebrenica and the victims there and for the government organs of Republika Srpska, and all the individuals who took part in these crimes should follow in my footsteps and admit to their participation and their guilt, that they should give themselves in and be held responsible for what they have done.*

*By my guilty plea, I wanted to help the Tribunal and the Prosecutors to arrive at the complete and full truth and the victims, their brothers, mothers, and sisters should – I wanted to avoid their being subjected to additional suffering and not to remind them of this terrible tragedy.*

*Your Honours, I feel that my confession is an important step toward the rebuilding of confidence and co-existence in Bosnia and Herzegovina, and after my guilty plea and sentencing, after I have served my sentence, it is my wish to go back to my native town of Bratunac and to live there with all other peoples in peace and harmony, such as prevailed before the outbreak of the war*

Popovic, Beara *et al* reached a conclusion in the Appeals Chamber in January 2015. The Trial Chambers decisions on Popovic -Lieutenant Colonel and the Chief of Security of the Drina Corps of the Army of Republika Srpska (VRS) and Beara - Colonel and Chief of Security of the VRS Main Staff both of whom were convicted of genocide were undisturbed.

* 1. Popović was fully engaged in the organisation of the killing operation being carried out in the Zvornik are and was a member of the JCE to Murder the Bosnian Muslim males of Srebrenica, and that he participated in that JCE with persecutory intent. Popović was not a marginal participant in the JCE to Murder. He knew of the plan from the time of its inception, and was privy to each development: from the discussions at Bratunac before the operation began; to the capture of Bosnian Muslim men from the column; to the large scale killings at Zvornik. Popović was entrenched in several aspects of the operation, and he participated with resolve. He was ubiquitous in the Zvornik area, present at all but one of the major killing sites. Popović knew that the intent was not just to kill those who had fallen into the hands of the Bosnian Serb Forces, but to kill as many as possible with the aim of destroying the group. Popović’s ensuing robust participation in all aspects of the plan demonstrates that he not only knew of this intent to destroy, he also shared it.
  2. Beara was a member of the JCE to Murder the Bosnian Muslim males from Srebrenica, and he participated in that JCE with persecutory intent. Beara’s vigorous efforts to organise locations and sites, recruit personnel, secure equipment and oversee executions all evidence his grim determination to kill as many as possible as quickly as possible. His encounters with Miroslav Deronjić on the night of 13 July provide a chilling illustration of a mind set on destruction. He announced an intent to “kill all” the detained men, and without pause to consider or comment upon the horrific nature of his “orders”, he launched into a series of heated exchanges about the best location for this reprehensible undertaking. The Trial Chamber is satisfied that at this time, Beara was a man intent on destroying a group by killing all the members of it within his reach. Beyond all reasonable doubt, he harboured genocidal intent.

Tolimir was convicted of genocide and on appeal the conviction was confirmed. Despite difficult history of which a word or so later take facts from trial not appeal chambers finding (genocide – life)

* 1. Mr. Tolimir was the Chief of the Sector for Intelligence and Security Affairs of the Main Staff of the VRSIn June of 1994, he was promoted to General Major, one of the seven Assistant Commanders in the Main Staff and directly responsible to Main Staff commander Mladić, with whom he had a particularly close relationship. Mladić often consulted the Accused before taking a decision, and considered him to be a part of his “inner core”. Witnesses who testified before the Chamber referred to the Accused as Mladić’s “right hand”, his “eyes and ears” and “closer to being “an equal” to Mladić than a subordinate. The Chief of Staff of the VRS Main Staff, Milovanović, testified that the Accused was the best informed officer of the VRS, and that he “always knew more” than his immediate subordinates, the Chief of the Intelligence Administration Petar Salapura and the Chief of the Security Administration Ljubiša Beara.
  2. Mr. Tolimir was responsible for implementing all security and intelligence related orders issued by Mladić, and monitored this implementation through his supervision of all subordinates in the security and intelligence organs at the Corps and Brigade levels. One of his most significant tasks was to prevent the leakage of information and, as described by one witness, to “cover up the intentions of the VRS”. He was responsible for the assignments issued to the Military Police, which fell under the professional command of the security organs, and was duty bound to control the implementation of these assignments. He was kept informed of the work of the Military Police units on the ground. He was also responsible for the treatment and detention of prisoners of war.
  3. Tolimir gave briefings on the security situation in the Republika Srpska, provided intelligence information, and made proposals for counter-actions. He was kept apprised of any orders that Mladić gave directly to security and intelligence officers under his professional command. Mr. Tolimir was, moreover, capable of exercising general military command and could be dispatched to a command position, as occurred in Žepa at the end of July where he assumed control over the operation to forcibly remove the Bosnian Muslim population of the enclave. He was one of the central contact persons for UNPROFOR with regard to convoy matters relating to both enclaves and he was the counterpart of UN generals Nicolai, Janvier, Smith, and Gobilliard.
  4. The Accused was a member of the JCE [joint criminal enterprise] to forcibly remove the Bosnian Muslim population from the enclaves from March 1995 onwards, and became a member of the JCE to murder the able-bodied men from Srebrenica at the latest in the afternoon of 13 July. He had full knowledge of the despicable criminal operations envisioned by these two enterprises and shared the intent to further their goals.
  5. From March 1995 onwards, the Accused, and his subordinates in the security organ, were closely involved in the process of approving or rejecting UNPROFOR re-supply convoys and humanitarian aid convoys into the enclaves of Srebrenica and Žepa which contributed to the steadily increasing unbearable situations in the enclaves.
  6. Accused was informed and had knowledge of the discussions held at the Fontana meetings
  7. Following the completion of the forcible removal operation in Potočari, at a meeting in Bokšanica on the outskirts of Žepa enclave on 13 July, the Accused stated to those present that “Srebrenica has fallen and now its Žepa’s turn”, adding that the only alternative to the “evacuation” of Žepa’s population was the use of military force. Late that same evening, he proposed that Žepa be captured within 21 hours in order to “avoid the condemnation and reaction by the international community”.
  8. On 21 July 1995, theAccused proposed that in order to accelerate the surrender of ABiH forces, groups of fleeing Bosnian Muslim civilians should be “destroyed”.
  9. From 25 to 27 July 1995, he was present in Žepa and commanded the forcible removal operation of the Bosnian Muslims as they were packed into buses and driven to Kladanj, walking around with his pistol pointing up at the sky, intimidating this vulnerable group of mainly women, children and elderly.
  10. Tolimir had extensive knowledge of the situation on the ground from March 1995 and onwards. The Majority reiterates its finding that the Accused significantly contributed to both of the JCEs charged, including through his failure to protect prisoners of war. The crimes that were committed were massive in scale, severe in their intensity, and devastating in their effect. The implementation of the two JCEs occurred over a very short period of time in a small geographical area. The Accused played a coordinating and directing role throughout the entirety of this period. He had knowledge of the genocidal intent of other JCE members, including that of his security and intelligence organs, who were extensively involved in carrying out the JCEs. The Accused encouraged the use of derogatory terms, thereby provoking ethnic hatred among members of the Bosnian Serb Forces, and sending out a message that Bosnian Muslims were human beings of a lesser value. On 21 July 1995, the Accused proposed to destroy “groups of Muslim refugees” with a view to accelerating the surrender of the ABiH in Žepa. The Majority finds that this proposal manifests the Accused’s own determination to destroy the Bosnian Muslim population.
  11. The Accused not only had knowledge of the genocidal intent of others, but also possessed it himself. He is therefore responsible for the crime of genocide. He is also responsible, pursuant to JCE III, for the murders of the three Bosnian Muslim men from Žepa, which constituted genocide.

What is disturbing about the Tolimir decision is that the trial chamber was split 2:1 on a case of such gravity and on appeal the Appeals chamber was split 4:1. Although there are many things that can be said to justify the majority decision in each case and many things critical of the minority judges’ decisions (in both trial and appeal chambers) there will be no further resolution and later generations can argue over this result. Who knows what the victims will feel about such inability to decide, such a luxury of disagreement among lawyers who are supposed to be able to decide important issues of fact. Who knows what damage may be done in future generations by the capacity of later politicians to choose one side or other of this divide and instrumentalise it to create violence.

The cases cited show that proving the required mens rea – mental state - for the crime of genocide has proved a difficult task and courts’ conclusions about mental states for genocide and other mass atrocity crimes are largely built on inferences from surrounding facts. Rarely, if ever, does an accused express an intention that is overheard or make an admission to guilt beyond the way those who admitted when pleading guilty their culpability, shame, regret, etc. There is no obvious unity of purpose reflected in a common mental state of the kind you would find in all those who commit a bank robbery. And this is hardly surprising.

Those killing in mass atrocities may, at the time of killing - as a matter of common sense - have all sorts of different intents: killing because they have come to enjoy it; killing from fear of being killed; killing from hate of the enemy; killing because drunk or drugged; killing because fearful of consequences for family if refusing to do as ordered; killing to fulfill a greater political plan justifying the killings etc.

However although all offenders may not share a common idea with each other they may each share something with another ‘individual’ who is present at most – almost all – mass atrocity crimes. That individual is the representation of an established idea – often in a state project, sometimes in other forms, for example a political idea or a social/ethnic prejudice.

In this case the unifying idea can be described as the Serbian State project and the individual with whom all were in a way in partnership was the Serbian State. The project’s lengthy history gave it power in the 1990s to be a partner and supporter of leaders and individual foot soldiers alike. Nevenka Tromp will explain its history and power.

NEVENKA TROMP

Serbian state ideology

Since the 19th century, an ideology known loosely as Greater Serbia has been manifested in aspirations for a state that would include all Serbs scattered across the Western Balkans to include Croatia, Kosovo, Bosnia Hercegovina (BiH) – where the wars of the 1990s happened. It was and is an ideology that cannot be achieved without the use of violence as Serb leaders have always recognised.

History of Greater Serbia Ideology

NAČERTANIJE/ THE OUTLINE

Ilija Garašanin (1812-1874), wrote a short nationalistic manifesto in 1844 known as *Načertanije* (The Outline), which identified the borders of a future Serbian state.[[1]](#footnote-1) Garašanin’s Serbia was based on historic, ethnic, religious, linguistic, and geostrategic criteria and would be led by a Serb dynasty. It was a proposal to restore the Serbian medieval state of the Serbian ruler Dušan the Mighty (1331-1355). This pre-Ottoman Serbian Empire was used to justify the Serbian right to statehood by the 19th century nationalist ideologues. Establishment of Serbia as a state, its shape and its size, has been a central focus of the emerging Serb political and nationalist elites since the 19th century to this day.

The document was kept secret until it was finally published in 1906, itself a tacit recognition of its dangerous potential.[[2]](#footnote-2) Namely, in order to establish Serbia as envisaged by this document, Serbia would need to seize the territories claimed on historical right, which by then had a non-Serbian majority, such as for example Kosovo and Macedonia. The other territory of interest for Serbia was Bosnia-Herzegovina. Since Garašanin’s time, there has been much debate over his ideology and what the notion of Greater Serbia implies. Was it to be a unified South Slavic state incorporating a large number of non-Serbs, or a Serbian national state meant to unite Serbs and connect all predominantly Serb territories? In other words, did it reflect Yugoslavism (South-Slav-ism) or Serb nationalism?

When in the wars of 1876-1878 the Ottoman territory conquered by Christian powers was redistributed in 1878 by the Congress of Berlin, Kosovo and Macedona remained part of the Ottoman Empire. Croatia remained a part of the Habsburg Empire until 1918.

According to the Congress of Berlin, Bosnia Hercegovina (BiH) became an Austro-Hungarian protectorate, to the great consternation of the adjacent emerging Kingdom of Serbia.[[3]](#footnote-3) Between 1878 and 1914, the relationship between the Kingdom of Serbia and the Austro-Hungarian Empire was dominated by a rivalry over BiH territory, which worsened when Austro-Hungary annexed BiH in 1908. In his trial Milošević cited that rivalry as the reason the Austro-Hungarian Empire had devised the “Greater Serbia” concept and falsely attributed it to Serbia in order to accuse the Kingdom of Serbia of expansionism, an assertion the Prosecution did not accept.[[4]](#footnote-4)

However, it is important to note, that since the Greater Serbia Idology was introduced, there were other alternatives to the Serbian statehood. In the ninetieth century, two well-known Serbian socialists, Dimitrije Tucović (1881-1914) and Svetozar Marković (1846-1876), who contributed to a negative appraisal of the term by applying it to Serbian expansionist policies in the second half of the 19th and beginning of the 20thcenturies.[[5]](#footnote-5)

Greater Serbia and the History of Violence

Some of the first Greater Serbia ideologues had advocated and used violence for the purpose of unifying Serb-claimed territories. A member of “Unification or Death” (*Ujedinjenje ili smrt*) and the “Black Hand” (*Crna ruka*) assassinated Aleksandar Obrenović – the last king of the Obrenović Dynasty – in 1903. Obrenović was known for having cultivated a good relationship with Austro-Hungary, then seen by Serb nationalists as the major obstacle to territorial expansion and a specific challenge to territorial aspirations in BiH.

The same group was also involved in the assassination of Franz Ferdinand in Sarajevo in 1914. The assassination was of course seen as triggering the outbreak of the First World War, during which the Austro-Hungarian Empire disintegrated and after which BiH became part of a newly formed Kingdom of Yugoslavia.

Serbia’s claims on the territory of Kosovo - The Balkan Wars, 1912-1913

Serbian state borders were redrawn with extreme violence twice during the Balkan Wars, waged in 1912 and 1913, in which emerging Balkan states fought the Ottoman Empire. Serbia extended its borders south, to Vardar Macedonia (today’s Republic of Macedonia) – also known as Old Serbia because it was part of the medieval Kingdom of Dušan the Mighty – and into Kosovo and parts of Sandžak. These conquests meant that the Kingdom of Serbia incorporated large numbers of non-Serbs.[[6]](#footnote-6)

The Serbian conquest of territory in Kosovo during the Balkan Wars involved atrocities committed by Serbian and Montenegrin soldiers, which some observers saw as a systematic attempt by the Serbian military to alter the demographic balance of the region in order to justify the incorporation of Kosovo into the Serbian state.[[7]](#footnote-7) The Carnegie Endowment’s 1914 *Report of the International Commission to Inquire into the Causes and Conduct of the Balkan Wars: “*Houses and whole villages reduced to ashes, unarmed and innocent populations massacred en masse, incredible acts of violence, pillage and brutality of every kind – such were the means which were employed and are still being employed by the Serbo-Montenegrin soldiery, with a view to the entire transformation of the ethnic character of regions inhabited exclusively by Albanians.”[[8]](#footnote-8)

By this time the Serbian State project was well and truly associated with violence as the means of achieving its ends.

FIRST WORLD I and THE LONDON TREATY, 1915

Serbia’s nationalist elites, however, denied any Greater Serbia aspirations noting that the Serbs had rejected the London Treaty in 1915 despite promises at the London Conference by the Allies to expand Serbia to include territories in BiH and Croatia. The Serbs, as the argument goes, did not accept what was offered but went for a common state – Yugoslavia, as the common state of Serb, Croats and Slovenes.

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

FIRST YUGOSLAVIA (1918-1941) – A COMMON STATE OR A DE FACTO GREATER SERBIA?

Could the London Treaty have secured what would have been, in effect, a Greater Serbia, something the Kingdom of Serbia rejected by choosing instead to liberate Slovenes, Croats, and Serbs who lived under Austro-Hungarian rule? Croat representatives in the negotiations that preceded the creation of the first Yugoslav state advocated for a confederation; though they eventually compromised with the Serbs and established the Kingdom of Serbs, Croats, and Slovenes under the Serb royal dynasty of Karađorđević.[[9]](#footnote-9) One interpretation sees the First Yugoslavia as an expanded Serbian state, not as a Yugoslav state, which was then a fundamentally new concept. The Milošević trial historian Audrey Budding testified that, at the time, the notions of Greater Serbia and Yugoslavia were synonymous, at least in the minds of political decision makers.[[10]](#footnote-10)

In 1929, the Kingdom of Serbs, Croats, and Slovenes changed its name, becoming the Kingdom of Yugoslavia, or the First Yugoslavia. The state was troubled by inter-ethnic relations and growing Serbia-Croatia conflict. Still, Serbia although did engage in political dialogue with Croats and Slovenes and treated them as equal nations its relationship with other ethnic groups – the Bosnian Muslims, the Macedonians, and the Kosovo Albanians – remained problematic.

Had the Greater Serbia project disappeared? Or was it in hiding waiting for its moment to come?

Kosovo in the First Yugoslavia

An extreme example of how some Serbs felt the non-Serb population should be dealt with was found in yet another document that remained hidden away from the public for years, at the Institute for Military History in Belgrade, titled “The Resettlement of the Arnauts” (*Iseljavanje Arnauta*).[[11]](#footnote-11) The term ‘Arnauts’ was used to denote ethnic Albanians, and the document recommended moving the Albanian population to Turkey and paying the Turkish government as compensation for resettlement costs. The proposal was written by Vasa Ćubrilović, then a junior historian who was known for his Young Bosnia membership at the time of the assassination of Franz Ferdinand. Ćubrilović wrote the document when he was an Assistant Professor at the University of Belgrade and presented it at a session of the Serbian Cultural Club in 1937. The Club was an establishment for the elite, including prominent Serb politicians, high-ranking military personnel, and intellectuals with considerable influence over politics and public opinion.

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

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

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

Map: Moljević’s Map of Greater Serbia. From *Izvori Velikosrpske Agresije*.

The historical importance of the Moljević map for the development of Greater Serbia ideology is in its demarcation of a Western border running from the Northern Croatian town of Virovitica, through Karlovac, to Karlobag in the South of Croatia. The V-K-K line grew to be seen by many as a potent and enduring representation of Greater Serbia ideology and proved relevant to the war in Croatia in 1991.

SERBIA in the SFRY, 1945-1991

REJECTION OF A CONFEDERAL YUGOSLAVIA by SERB ELITES in 1974

Changes to the status of Kosovo and Vojvodina came with three sets of constitutional amendments passed between 1968 and 1971, in which Serbia’s autonomous provinces were given greater independence from Serbia and greater decision-making power at the federal level. They were plainly antithetical to any Greater Serbia project. The most radical of these changes were passed in 1971, when a twenty-three member collective federal presidency was introduced, with three representatives from each republic and two from each province, and Tito as the 23rdmember. The 1974 Constitution reduced that number to nine: one representative from each republic and provinces, and Tito as the ninth member.[[12]](#footnote-12) The composition of the Presidency changed once again in 1980, after Tito’s death, to an eight-member body, since no one replaced Tito as the singular head of state. The province of Kosovo had become effectively equal in status to Serbia itself.

Serbian communist liberals welcomed decentralisation. Still, many Serbian intellectuals and sitting communist politicians resisted the changes. One of the most articulate critics of decentralisation was Dobrica Ćosić, who was still a member of the Party and of the communist establishment at the time. When Ćosić became marginalised for his criticism of decentralisation, he moved his activities to the Serbian Literary Cooperative, the so-called *Zadruga*, of which he was elected president.[[13]](#footnote-13) Many hold Ćosić responsible for what happened next with the Greater Serbia project and the death and destruction that happened in the 1990s wars

The most serious and explicitly political condemnation of the decentralisation amendments came from the Law Faculty of the University of Belgrade. At a Faculty session in March 1971, Serbia’s most authoritative legal experts articulated their criticism in a public discussion, concluding that after the adoption of the amendments, Yugoslavia would no longer exist as a state. Some participants called on Serbs, in Serbia and beyond, to look to their own interests, alluding to a post-Yugoslav era.[[14]](#footnote-14) The project was still in the minds of many and alive

THE BLUE BOOK

In 1977, following the 1974 Constitution that reflected the decentralisation changes, the Serbian Presidency commissioned an analysis of the Constitution and its impact on Serbia, presented in March of that year and dubbed the Blue Book (*Plava knjiga*) because of its blue cover page.[[15]](#footnote-15) It was another document that was kept from the public. The Blue Book was never officially discussed by the Party or made public due to its explicit criticism of the implementation of the 1974 Federal Constitution.[[16]](#footnote-16) It stated that Serbia had been divided into three separate political, legal, and economic entities since each province, like all the republics, had its own constitution, presidency, government, and supreme court. The analysis emphasised the procedural difficulties of passing or implementing laws that applied to the whole republic, and drew attention to the political asymmetry that resulted from the fact that republic-level organs were theoretically empowered to enact measures for the entire republic but were in practice limited to sovereignty over Serbia proper, i.e. excluding Kosovo and Vojvodina. Further, representatives of the two provinces took part in decision-making processes and bodies of the republic, while there were no representatives of the republic in the decision-making organs of the provinces.[[17]](#footnote-17) (For those with an eye to UK politics, shades of the Midlothian question!)

The authors of the Blue Bookavoided nationalist language and offered their most extreme statements in its conclusion, where a lack of cooperation between Serbia’s republican and provincial bodies was said to be adversely affecting the unity of Serbian national culture and identity, and the question was raised as to whether Serbs were being allowed to exercise their historical right to a national state in the Yugoslav framework, as stipulated by the 1974 Constitution.[[18]](#footnote-18)

These developments may sound tame but they served to keep alive and to advance the Greater Serbia Project despite all knowing how the Project had been manifested in violence in the past and could only come to fruition in the future with violence. In a sense the Project was ‘on hold’ – just.

An idea of what was beneath the surface - and how different Serbia may be from how people in countries like ours experience politics can be glimpsed from the fall from power of Nationalist Security chief Alexander Rankovic in 1966 and his funeral in 1983 after 17 years of complete absence from public view when 30,000 Serbs turned up spontaneously at his funeral.

THE SANU MEMORANDUM

In 1985, Serbian political leaders approved a proposal by members of the Serbian Academy of Sciences and Arts (SANU) that they contribute to solving the profound social, economic, and political crises facing Yugoslavia and the Republic of Serbia at the time. Stambolić, Communist Party leader and later the unwitting promoter of his friend and follower Milosevic to positions of power from which he would destroy Stambolić, consented to the endeavour because he firmly believed that science should be part of those efforts. The SANU leadership organised several expert teams, each of which analysed different aspects of the crisis and made proposals for how to resolve them.[[19]](#footnote-19) The product of this work – the SANU Memorandum – took Stambolić by surprise, and he qualified it as an “obituary for Yugoslavia.”[[20]](#footnote-20) He felt that the recommendations advanced in the document were contrary to the interests of Serbs in Yugoslavia, whom he felt were best served by a common state. Stambolić was one of the first communist officials to criticise the Memorandum in public, warning against the dangers of attempts to “unite” Serbs on the ruins of Yugoslavia, and saying presciently that this would lead to conflict with other Yugoslav nations and with the rest of the world. Those writing SANU had another agenda and the Project supported their work because they supported the Project’s aims.

In the months following a ‘leaked’ disclosure of the Memorandum in 1986, it was the topic of discussion at all Party forums. And while he never commented on the contents of the Memorandum itself, Milošević defended the Academy on a number of different occasions, saying that it was only natural that an institution of the highest intellectual and moral standards would deal with solving complex issues like the Yugoslav crisis.[[21]](#footnote-21)

The clandestine publication of the Memorandum led to a buying frenzy, with photocopies sold at every street corner in Belgrade.

The SANU Memorandum reflected criticism that had been expressed by Serbian elites since the adoption of the 1974 SFRY Constitution, which was seen by some as disadvantageous to Serbia because it partitioned the republic into three political-administrative parts by making the provinces of Kosovo and Vojvodina federal units.

Meanwhile with Milosevic climbing to power another snapshot of what was notable and would be inexplicable to us in a reasonably open democracy was the celebration of the defeat of the Serbs at Kosovo Polje in 1989. – according to estimates there were one million Serbs present, bussed into Kosovo from all over Yugoslavia and with Kosovo Albanians wisely staying indoors, heard one sentence from a speech by Milosevic that forecast wars to come, drew immense support from the crowd and that has been interpreted by some as the necessary creation/consolidation of enmity against Albanians required for genocide (although thus far it is only the Bosnians of the former Yugoslavia who have been identified as Genocide victims).

“The Constitutional Status of Serbia and her Choice for a Joint State with Montenegro”[[22]](#footnote-22),

In 1992 Ratko Marković, a lawyer who worked or the Serbian Government, wrote an article in the law journal *Pravni život* (“Legal Life”) on the unresolved issue of Serbian statehood. The article revealed advanced planning by Serbian political and intellectual elites under Milošević’s leadership.[[23]](#footnote-23)

The article, “The Constitutional Status of Serbia and her Choice for a Joint State with Montenegro,” was published in the first quarter of 1992, following separation of Croatia and Bosnia and coinciding with the foundation of the FRY – the federation of Serbia and Montenegro – and gave a comprehensive account of the history of the Serb national question, unveiling the two principal alternatives for statehood pursued between 1987 and 2000 by Serbian leadership under Milošević: a centralised Yugoslav federation or an ethnically-defined state that would unite all Serbs.[[24]](#footnote-24) Marković preferred a federal state because of the ethnically-mixed population of the former Yugoslavia. He explained that although there were territories in which one nation was a majority, there were also enclaves populated by one nation and surrounded on all sides by other nations. He recognised, too, that in some territories, no nation had a majority, and he proposed a joint state of all Yugoslav nations organised as a federal state. It was significant that Marković advocated a federation with non-Serb nations and rejected a confederation as historically outdated.[[25]](#footnote-25)

The alternative he outlined was an enlarged Serbia; an independent and sovereign state that would consist of all the territories with a Serb majority, which would need to be connected territorially. He acknowledged that connecting Serb majority territories with Serbia would necessitate the inclusion of territories with a non-Serb majority, bringing a risk and high probability of war, which he appreciated would expose Serbia to condemnation and sanctions by the international community.[[26]](#footnote-26)

Marković’s article was highly significant because he was not just an academic and constitutional expert, but was also an active politician. As a member of Milosevic’s SPS party was later to served from 1994 to 2000 as Deputy Prime Minister of Serbia. In the introductory footnote that had accompanied his article, Marković was introduced as someone who had worked directly on drafting the Constitution of the joint state of Serbia and Montenegro, and who could inspire consideration of the constitutional status of Serbia and of Serbia’s attempts to achieve a gradual unification of all Serb territories and people.[[27]](#footnote-27) Marković gave evidence for Milosevic and denied that this footnote implied the creation of an enlarged Serbia with which other Serb areas could join. Marković protested, saying that it was the journal’s editorial board, not he, who wrote the note. He went on to say that there were no efforts to create a Greater Serbia and that everything had been done by Serbia to remain within Yugoslavia. Explaining his position further, he stated that Serbs did not wish to be absorbed into a Croatian or Bosnian state, but wanted to “remain in the state they had lived in.”[[28]](#footnote-28) But Serbian elites were in fact indifferent toward Yugoslavia, as Dobrica Ćosić expressed when he explained to Karadžić in 1991 that the attempt to unify the South Slavs had already failed and the unification of Serbs was the next stage, yet to be achieved.[[29]](#footnote-29) For some 150 years the Greater Serbia was at the root of nationalist thinking and was nurtured whenever it could be.

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

As a vocal advocate of the principle of self-determination, Milošević exposed himself to a contradiction that has never really been resolved. In court, the debate over the concept of self-determination developed on two tracks, based on different applications of the term in the post-Yugoslav space. Serbs and Serbia had applied a right of self-determination to *peoples*, or the right of a nation of people to territorial autonomy. Slovenia and Croatia, along with the international community, had instead applied the self-determination principle to the *republics*, meaning in practical terms that the republics would become independent within their existing borders after the disintegration of the SFRY. Serbian insistence on self-determination of peoples over republics inherently envisaged a Serbia made much larger, and it framed attempts to unify all Serbs by forcibly redrawing republican borders on the premise of Serb self-determination as the *de facto* creation of a Greater Serbia.

AVOIDING THE TERM ‘GREATER SERBIA’

There was no evidence that Milošević had ever actually used the term ‘Greater Serbia’ to express his political objectives or war goals; and, recognizing that the term lacks a universally agreed definition, the Prosecution exercised considerable caution in applying it, instead using “*de facto* Greater Serbia” to describe Milošević’s objectives.[[30]](#footnote-30) Intercepted telephone conversations involving Milošević and Karadžić in 1991 showed they were both aware of the negative connotations surrounding the term and preferred instead to use more descriptive language to identify the form of a future Serb state. Discussing a common political future and the “regionalisation” or “cantonisation” of BiH, Karadžić told Milošević about a conversation he had with a French official who had remarked that compromise wasn’t being reached on the issue of Bosnia; Karadžić had replied that anything but a Greater Serbia would be a compromise for Serbs.[[31]](#footnote-31)

ALL SERBS IN A SINGLE STATE

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

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

WAR and CRIMINALITY IN CROATIA – CREATION OF RSK on the V-K-K Border

Milošević’s third goal was set in reaction to the failure to preserve a centralised SFRY. The disintegration of the Federation led to efforts to preserve a Rump Yugoslavia that would consist of all former SFRY republics save for Slovenia and parts of Croatia.[[32]](#footnote-32) This Rump Yugoslavia was projected to include ‘Serb-designated territories’ in Croatia and, to that end, attempts were made to secure those territories by force as early as mid-1990.[[33]](#footnote-33) These actions led to an escalation of violence and a fully-fledged war in Croatia in 1991. In this process, Croatian Serbs proclaimed their own quasi-state entity. The Republika Srpska Krajina (RSK) which wasenvisaged to extend to the Virovitica-Karlovac-Karlobag (V-K-K) line – a boundary that is the very representation of the Greater Serbia ideology articulated in 1941 – and these borders of the RSK were more or less achieved by December 1991.

WAR AND CRIMINALITY in BiH, the creation of the RS

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

WAR AND CRIMINALITY IN KOSOVO

The fifth goal Milošević sought to achieve was related to Kosovo. The Kosovo conflict escalated into an armed conflict in 1998, exposing Milošević’s failure to keep Kosovo under Serbian rule even after revoking its autonomy in the 1990 Serbian Constitution. The eruption of violence between the Kosovo Liberation Army (KLA) and Serbian forces in 1997 was used by Serbia to justify a violent campaign against the Kosovo Albanian population that sought to alter the ethnic composition of Kosovo in favour of Serbs. By the end of December 1998, Milošević’s determination to keep Kosovo in Serbia – and on his terms – resulted in a war, causing a humanitarian catastrophe that was eventually brought to an end by NATO military intervention. NATO’s defeat of Serbian forces led to Serbia’s loss of Kosovo in June 1999 and, eventually, to the downfall of Milošević in October 2000.

GEOFFREY NICE

For well over a hundred years plans were generated by Serb elites, and pursued by leaders when they could, that aimed at a form of Greater Serbia but that were recognised as needing careful handling because they could only be achieved by violence. Sufficient numbers of the Serb people were alert to, and sufficiently in tune, with the plans to become partners in the project once it was pursued openly.

Milosevic was selected – initially by the Serbs in Kosovo – to drive the project forward as he did until he failed. His emotional commitment to the project may not have been as great as his personal commitment to the exercise of dictatorial power, something he was happy to achieve through embrace of the project.

Once the Project and he failed, he was abandoned (and is already substantially forgotten) while the Project lives on, probably recognised as dangerous and possibly a reason the international community is determined to get Serbia into Europe, to allow it to integrate with territory captured by genocide.

What of the state of mind Milošević for the wars he can be seen to have allowed or caused, physically remote though he was as President of Serbia from events in the other former Yugoslav republics? He was, after all, charged with genocide as President of Serbia for what was done by his own forces and bny the Bosnian Serbs led by Karadzić the political leader and Mladić the military leader who carved out the Serb area of Bosnia they named Republika Srpska that will, in the end, be joined to Serbia itself.

As with others accused of offences in Srebrenica there was little direct evidence of what he truly intended and his state of mind would have to be proved by circumstances and even by what he revealingly denied (although he never gave evidence). In his opening speech he said of Srebrenica.

I heard about Srebrenica from Carl Bildt. And Karadzic, whom I rang up on the phone immediately afterwards to asked what had happened, he swore he knew nothing about it. On the contrary, he said he had ordered that the western part be protected, which was under jeopardy, and that he knew nothing about the whole thing this total annihilation.

In a later speech to the judges he explained Srebrenica as an attack concocted by the French and others falsely to lay blame on the Serbs while an unidentified military unit committed the killings. These were not truthful accounts

As with all the others convicted or who pleaded guilty his true state of mind would have to be determined by inference.

The Trial Chamber in his case found a case to go forward based on many pieces of evidence but with significant reliance on the long-standing Greater Serbia project. He did say things indicating his willingness to embrace violence. He expressed his expectation that parts of Bosnia would be annexed by force. He had control over the Serbian armed forces and over the Bosnia Serbs. He was ‘caught out’ is some things he said, for example in July 1991 endorsing Radovan Karadzic who said that he would chase the Muslims into the river valleys in order to link up all Serb territories in Bosnia and Herzegovina. He articulated his desire for a separate Serbian state saying, “I am telling you frankly that with Republika Srpska in Bosnia, which will sooner or later become part of Serbia. We are each going to annex our part of Bosnia Hercegovina”. He manipulated the media and had total control over the state of Serbia.[[34]](#footnote-34). On this evidence the trial chamber said there was enough evidence for his trial on genocide to go ahead

In centuries – even in decades – to come how we deal with mass atrocity crimes will seem primitive and ill thought out. Whether present methods of dealing with present problems will seem like the first step to a better future or the witch-hunt of an unhappy past is impossible to forecast.

For the time being we must learn what we can from how Srebrenica happened. Dr. Zwaan, Associate Professor at the Centre for Holocaust and Genocide Studies, University of Amsterdam, testified about:

* importance of ideology;
* propaganda that plays a major role in processes leading to the commission of genocide,
* propaganda that involving various types of radical nationalism, which dehumanise the targeted group,
* use of collective historical memory (where applicable) in an attempt to create a “them” and “us” culture.
* nationalist ideologies are later used to legitimise, rationalise, and justify the genocidal process.
* 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.
* 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.
* 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 ”. [[35]](#footnote-35)

From this must we learn.

Geoffrey Nice

Nevenka Tromp

Gresham College, 6 May 2015

ANNEX: SUMMARY OF TRIAL CHAMBER MAJORITY FINDINGS OF EVENTS AT SREBRENICA AND ZEPE

Srebrenica and Žepa had been declared safe havens by United Nations Security Council Resolutions in the spring of 1993.

In 1992, there was a policy in place at the highest levels of Republika Srpska which sought to remove the Bosnian Muslim population from eastern. This policy was reaffirmed by Directive 7 issued in March of 1995, a directive signed by the President of the Republika Srpska, Radovan Karadžić.

This Directive, in relevant part, called for the creation of “an unbearable situation of total insecurity with no hope of further survival for the inhabitants of Srebrenica and Žepa” to be achieved through “planned and well-thought out combat operations”. This Directive further called for the reduction and limitation of logistics support to the United Nations Protection Force, abbreviated as UNPROFOR, in the enclaves as well as, “the material resources for the Muslim population, making them dependant on our good will while at the same time avoiding condemnation by the international community and international public opinion”.

Immediately following the issuance of Directive 7, the VRS engaged in a system of restrictions on humanitarian aid to both the Srebrenica and Žepa enclaves. These restrictions had the intended effect of making life for the Bosnian Muslims inside the enclaves unbearable. Concurrent with the steady increase of restrictions as of early spring 1995, by June that year, the VRS had surrounded the Srebrenica enclave.

Military activities were also aimed at civilian targets and were intended to terrorise the Bosnian Muslim population. By early July 1995, a devastating humanitarian situation engulfed both enclaves. Also by this time, the VRS attacks on the Srebrenica enclave became more overt as it launched an operation called Krivaja 95 to “create conditions for the elimination of the enclaves”, a goal that was expanded with the capture of Srebrenica town within a matter of days.

VRS activities were intended to remove both the Bosnian Muslim military, and the civilian population from the enclave and were consistent with the goals set out in Directive 7 to make life unbearable with no hope of survival for the enclaves’ inhabitants. The VRS achieved these goals.

On 11 July, Srebrenica fell to the VRS with no resistance. High ranking VRS officers and members of the 10th Sabotage Detachment of the Main Staff took a triumphant walk through the town. VRS Main Staff Commander Mladić declared that “the time has come to take revenge on the Turks in this region” and “we give this town to the Serb people as a gift”.

A column of thousands of able-bodied Bosnian Muslim men, with some women and children, had already started making its way through the woods towards villages north-west of Srebrenica to attempt a breakthrough to Tuzla, in ABiH held territory. The column was comprised of some 10,000 to 16,000 Bosnian Muslims and was several kilometres long.

Meanwhile, thousands of women, children, and elderly, instead of joining the column, made their way to seek refuge at the UN compound in Potočari hoping for protection there; the road along which they walked was shelled by the VRS in order to terrorise them.

Against the backdrop of these events, two meetings were held on the evening of 11 July 1995 at Hotel Fontana in Bratunac that were a false demonstration of a good-faith effort by the VRS to find a solution for the population. These meetings were held in a threatening and intimidating atmosphere created by the VRS. Mladić, who led the meetings, told a Bosnian Muslim school teacher who had been requested to attend as a representative of the population, that the Bosnian Muslim population could either “survive or disappear”. Mladić conditioned the survival of the population upon the disarming of the members of the ABiH in the enclave.

A third meeting was held at Hotel Fontana on the morning of 12 July. Mladić repeated his threat made the night before, telling the frightened Bosnian Muslim representatives “[a]s I told this gentleman last night, you can either survive or disappear”.

Also at this meeting, the VRS made clear their intention to “screen” the men amongst the crowd in Potočari for their alleged participation in war crimes.

Momir Nikolić told them that they should get lost, that everything had already been agreed on and that the transportation of the Bosnian Muslims from Potočari had already started.

By the end of 12 July, a total of approximately 25,000 to 30,000 Bosnian Muslim civilians, mainly women, children and elderly, had sought refuge at the UN compound in Potočari. On the morning of 12 July, Bosnian Serb Forces took over Potočari, disarming members of DutchBat and mingling amongst the crowd, cursing, mocking, and mistreating Bosnian Muslim civilians.

Some were handing out bread and water while being filmed by a Serb camera crew. The moment the camera crew stopped filming, the forces stopped handing out bread, and even took some of it back.

As the Bosnian Muslim women and children boarded the buses arranged by the VRS, their male family members, including young boys as well as elderly and infirm men, were separated and detained at several locations near the UN compound, most notably, in a house known as “the White House”.

By the end of 12 July, 9,000 Bosnian Muslims had been forcibly transferred by bus from Potočari to Kladanj. Those that remained, awaiting their forcible transfer on the next day, endured a night that was described as hell; moans and screams resonated amongst the crowd. Gunshots pierced the evening and members of the Bosnian Serb Forces continued to take Bosnian Muslim men away, as they had done throughout the day. Some men did not return. Conditions there were so miserable that several Bosnian Muslim civilians committed suicide or attempted to do so. By the morning of 13 July, everyone was desperate to leave Potočari.

Early in the morning of 12 July, just before the start of the third meeting at Hotel Fontana, members of the security organs were party to a plan to murder these men, discussing possible locations for the planned executions,

At least 1,000 men and boys, having been forced to leave behind their belongings and identification documents, were detained at the White House by Bosnian Serb Forces. There, they were kept in horrid conditions, some of them physically mistreated, before being transported by bus to Bratunac and the plan to murder them had already begun to materialise by this time.

In Bratunac, on 12 and 13 July, the men and boys from Potočari were joined by thousands of Bosnian Muslim men from the column that had started moving towards Tuzla, who had been captured by, or surrendered to, the Bosnian Serb Forces. These men were detained in buildings and buses throughout Bratunac where they suffered physical and verbal abuse. Some of the men were murdered in Bratunac town and the Bratunac area.

On the morning of 14 July, following the massive logistical operation to procure vehicles and fuel, thousands of Bosnian Muslim men were transported north to Zvornik municipality where they were detained for a short period of time before meeting their ultimate fate at the hands of Bosnian Serb Forces.

In the late afternoon of 13 July, hundreds of Bosnian Muslim men were transported from a meadow in Sandići by bus, and some directed by foot, to a one storey building known as the Kravica Warehouse, in the Bratunac area. When the warehouse was packed full, Bosnian Serb Forces started firing at the men inside, using machineguns as well as hand and rocket propelled grenades. They fired for hours, with intermittent lulls in the shooting in which the wounded moaned and called out names. These executions continued into the morning of 14 July. Tolimir’s subordinate, Beara, was directly involved in the burial operation of between 600 and 1,000 Bosnian Muslim men who the Chamber found had been murdered at the warehouse between 13 and 14 July 1995.

On the evening of 13, and morning of 14 July, hundreds of Bosnian Muslim men were transported by bus to a school in Grbavci located near Orahovac. There, they were crammed into the gymnasium of the school building. In the afternoon of 14 July, they were transported by bus to two separate killings sites nearby. Upon disembarking, they were shot by Bosnian Serb Forces. Some of the wounded prisoners were cursed, and left to suffer in agony before they were finally killed. One of the groups of prisoners included a boy of approximately five to six years old, who, after being shot at, stood up from the pile of bodies and called out for his father. Up to 2,500 Bosnian Muslim men were murdered at Grbavci school on this day. They, too, were buried in a mass grave.

On the morning of 16 July, hundreds of Bosnian Muslim men who had been detained at a school near the village of Pilica were transported to a plot of land known as the Branjevo Military Farm. Upon arrival at this location, they were led down a path to a meadow, where they were shot at by Bosnian Serb Forces. After each round of shooting, the forces asked whether there were any survivors; those who answered were shot in the head. The executions lasted until the late afternoon of 16 July, killing approximately 1,000–1,500 Bosnian Muslim men. Following this massive execution, another approximately 500 Bosnian Muslim men were executed by Bosnian Serb Forces inside a Cultural Centre in Pilica; there are no known survivors of this execution. These bodies were transported to Branjevo Military Farm, where over the course of the next day, they were buried together with the bodies of people killed at the Farm. At least 1,656 Bosnian Muslim men were murdered at the Branjevo Military Farm and Pilica Cultural Center.

A massive reburial operation was set in place. The victims from Kravica Warehouse, those killed in Orahovac, Petkovci dam, Kozluk, Branjevo Farm and Pilica that had been buried after their murder were disinterred and buried again in secondary gravesites. Several of the Tolimir’s subordinates, including Beara and Popović, played a central role in this operation.

from 13 July to sometime in August 1995, at least 4,970 Bosnian Muslim men were murdered during the implementation of the plan to murder; the total number of Bosnian Muslim men from Srebrenica who were killed is, at a minimum, closer to 6,000.

Concurrent with the start of the implementation of the JCE to Murder by that same time, the VRS made preparations to launch an operation against the nearby enclave of Žepa. This attack followed the same pattern and course as the attack on the Srebrenica enclave just days prior and included some of the same forces. The Bosnian Muslim population from Žepa, in panic with the news of the forcible removal from Potočari having started to spread, sought refuge in the hills above Žepa. On 13 July, a meeting was held between the VRS and representatives of the Bosnian Muslim War Presidency of Žepa, at whch Tolimir informed them that the only alternative to the “evacuation” of the population was the use of military force by the VRS. Attacks by the VRS against surrounding villages in the weeks prior had already resulted in the destruction of at least 30 Bosnian Muslim homes, further instilling fear in the Bosnian Muslim population.

On 14 July, following the refusal of this alleged “evacuation” on the terms imposed by the Accused, the VRS shelled the centre of the enclave and took control of UNPROFOR observation posts. In the days thereafter, the VRS exerted pressure on the civilians hiding in the woods to return to Žepa in order to be transported out of the enclave. Following the failure of a second meeting held on 19 July, on 24 July, the Bosnian Muslim representatives were forced to sign an agreement concerning the disarmament of the ABiH in the enclave, and the “evacuation” of the civilian population. From 25 to 27 July, under the direct authority of Tolimir who was present in the enclave throughout the entire operation, nearly 4,400 Bosnian Muslim women, children, and elderly were forcibly removed from Žepa enclave. As with the Bosnian Muslim population that had taken refuge in Potočari did not have a choice; their fate was decided for them. Mladić appears on video-footage entering many of the buses of tired, hungry, and frightened Bosnian Muslims telling them that he was giving them their life as a gift. Meanwhile, with the news of the fate of the men of Srebrenica having spread, the able-bodied men from the Žepa enclave remained in hiding in the woods, with some of them making their way across the Drina River into Serbian territory in fear for their lives.

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1. Audrey Budding (Harvard historian called by the Prosecution in the Milosevic case), *Serbian Nationalism in the Twentieth Century*, 3. [↑](#footnote-ref-1)
2. For example, see: Dušan T. Bataković “Ilija Garasanin’s Nacertanije: A Reassessment,” *Balkanica* XXV, no. 1 (1994): 157-183. The article was tendered into evidence as Exhibit P805. [↑](#footnote-ref-2)
3. The Principality of Serbia existed from 1812 to 1878, under nominal Ottoman rule. It gained full independence after formal recognition by the Berlin Congress in 1878, and was thereafter known as the Kingdom of Serbia until it joined a pan-Slavic state in 1918 at the end of World War I. [↑](#footnote-ref-3)
4. Milosevic Trial Transcript, Defence Opening Statement (31 August 2004), 32193. [↑](#footnote-ref-4)
5. Kosta Mihailović, *Economic Aspects of the ‘Greater Serbian Policy’*, Expert Report, Exhibit D265a, 12-13. Although Professor Mihailović was officially listed as an expert witness, the Prosecution considered him to be more of a fact witness, for Mihailović had participated in events of significant relevance to the planning and strategy of the conflicts. For discussion, also see: Testimony of Mihailo Marković (17 November 2004), 33541. [↑](#footnote-ref-5)
6. Budding, *Serbian Nationalism in the Twentieth Century*, 3-5. [↑](#footnote-ref-6)
7. Budding, *Serbian Nationalism in the Twentieth Century*, 5. [↑](#footnote-ref-7)
8. George F. Kennan, *The Other Balkan Wars: A 1913 Carnegie Endowment Inquiry in Retrospect* (Washington, DC: Carnegie Endowment, 1993), 151, quoted in Budding, *Serbian Nationalism in the Twentieth Century*, footnote 21. [↑](#footnote-ref-8)
9. For discussion on the creation of the First Yugoslavia – initially known as The Kingdom of Serbs, Croats and Slovenes and re-named The Kingdom of Yugoslavia in 1929 – see: Dragnich, *The First Yugoslavia*; and Dimitrije Đorđević, ed., *The Creation of Yugoslavia, 1914-1918* (Santa Barbara, CA: Clio Books, 1980). [↑](#footnote-ref-9)
10. Testimony of Audrey Budding (24 July 2003), 24930. [↑](#footnote-ref-10)
11. Vasa Ćubrilović, “The Resettlement of Arnauts,” Exhibit P799a. [↑](#footnote-ref-11)
12. Ibid., 21-22. [↑](#footnote-ref-12)
13. Ibid., 35-36. [↑](#footnote-ref-13)
14. Ibid. [↑](#footnote-ref-14)
15. Ibid., 44. [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. Ibid., 44-45. [↑](#footnote-ref-17)
18. Ibid., 45-46. [↑](#footnote-ref-18)
19. Stambolić, “The Memorandum, In Memoriam to Yugoslavia,” in *Put u bespuće*, Exhibit P800a, 2. Also see: Budding, *Serbian Nationalism in the Twentieth Century*, 53. [↑](#footnote-ref-19)
20. Stambolić*, Put u bespuće*, 1. [↑](#footnote-ref-20)
21. Ibid., 37. See footnote 75. [↑](#footnote-ref-21)
22. “Državnopravni Položaj Srbije i Njeno Opredelenje za Zajedničku Državu sa Crnom Gorom.” *Pravni život* 42, no. 3-4 (1992). [↑](#footnote-ref-22)
23. Marković was a Professor of Constitutional Law who had offered his legal knowledge and skills to Milošević for use in drafting amendments to the Serbian Constitution in 1990, the RSK Statute in 1991, and the FRY Constitution in 1992. He was an active SPS politician and became Deputy Prime Minister of Serbia in 1998 – a critical time for resolution of the Kosovo crisis – and was one of the principle negotiators present at the failed Rambouillet talks in February 1999. Marković’s academic work and his involvement in the drafting of important constitutional texts, together with journal articles he wrote in the 1990s, proved to be of significant probative value for establishing the real goals of the Serbian political and military leadership at that time, notwithstanding his attempts in court to minimise the importance of the role he played. [↑](#footnote-ref-23)
24. For the article as written in B/C/S, see: Ratko Marković, “Državnopravni Položaj Srbije i Njeno Opredelenje za Zajedničku Državu sa Crnom Gorom,” *Pravni život*, 42, no. 3-4 (1992). For the English translation, see: Ratko Marković, “Constitutional Status of Serbia and Her Choice for Joint State with Montenegro,” Exhibit P824a. [↑](#footnote-ref-24)
25. Ratko Marković, “Constitutional Status of Serbia...” Exhibit P824a, 3-4. [↑](#footnote-ref-25)
26. Ibid., 4. [↑](#footnote-ref-26)
27. Ibid., 1. [↑](#footnote-ref-27)
28. Testimony of Ratko Marković (24 January 2005), 35526-35527. [↑](#footnote-ref-28)
29. Intercept of Conversation between Radovan Karadžić and Dobrica Ćosić, 11 November 1991, Exhibit P613.113a. [↑](#footnote-ref-29)
30. For example, see: Testimony of Major General Aleksandar Vasiljević (17 February 2003), 16224. [↑](#footnote-ref-30)
31. Intercept of Conversation between Slobodan Milošević and Radovan Karadžić, 19 September 1991, Exhibit P613.67a, 5. [↑](#footnote-ref-31)
32. The term ‘rump’ can be applied as an adjective to describe the remainder of any state after the separation of a region or regions. In the local languages of Croatia and BiH, the term *krnja Jugoslavija* was used to refer specifically to the former Yugoslavia less Slovenia and parts of Croatia. The word *krnja* means “truncated” or “made incomplete” but, colloquially, is associated with a “messy break” or a “rough edge.” Here, Rump Yugoslavia is used in English as a proper noun to reflect the specificity of how the term *krnja Jugoslavija* was used in the early 1990s in the former SFRY. [↑](#footnote-ref-32)
33. ‘Serb-designated territories’ was the term used by the ICTY Prosecutor to denote the areas in Croatia and BiH that Serb leaders had claimed on ethnic, historical, or geostrategic bases. [↑](#footnote-ref-33)
34. <http://www.icty.org/x/cases/slobodan_milosevic/tdec/en/040616.htm>, paras 250 et seq [↑](#footnote-ref-34)
35. Ibid, para 238 [↑](#footnote-ref-35)