***Intentionalist Approach to the Disintegration of Yugoslavia: Slobodan Milošević’s trial record as a historical source***

by

Nevenka Tromp[[1]](#footnote-1)

INTRODUCTION

The historical debate about Milošević’s role in the violent disintegration of the former Yugoslavia divides historians into four camps—the intentionalists, the relativists, the apologists, and the deniers—and the narratives that developed in the courtroom can also be viewed through these lenses. The Nuremberg Tribunal produced a very specific historical interpretation of the Nazi plan, ascribing responsibility for the war chiefly to one person and the ruling elite; but, historians realised over time how the evidentiary focus of criminal proceedings in Nuremberg had unwittingly influenced their analysis in favour of what came to be known as the “intentionalist” interpretation of the period, which maintains that the Holocaust resulted from an explicit master plan created by Adolf Hitler himself and implemented from the top down.[[2]](#footnote-2) [[3]](#footnote-3)Only later was attention directed to the role of minor bureaucrats and functionaries at all levels of German society—an approach known as the “functionalist” interpretation and concerned with the complicity of ordinary Germans in the Holocaust, to such an extent in the case of some scholars that they ascribe the adoption of the Final Solution primarily to social and political pressures from the bottom up.

The Prosecution narrative addresses the intentions of individuals who held power and thereby strongly reflected an intentionalist historical interpretation of the conflict. Intentionalists see the Yugoslav crisis as having been part of a planned strategy by Milošević that depended on violence to meet clear pre-mediated goals. While the Prosecution recognised that Milošević came to power on the wings of an already potent nationalist movement, the trial evidence presented by the Prosecution focussed on the material that would prove that he was not simply a puppet of that project. Indeed, once he rose to power, he became its most powerful executor. His agenda to unite “All Serbs in a Single State” was his path to criminality; and yet, at any stage of the aggression and violence, he could have stopped or severely impeded the Serb war effort by cutting military aid to Croatian and Bosnian Serb armies. Instead, he increasingly embraced criminal behaviour in order to address not only cross-border territorial aspirations but domestic political challenges. It was after the assassination of Prime Minister Zoran Đinđić in March of 2003 that the full extent of political violence and intimidation tactics used by Milošević loyalists was uncovered. The investigation into Đinđić’s murder led to several notorious JSO members, who revealed information during questioning that helped resolve several other political assassinations that had occurred in the course of Milošević’s reign—including that of Ivan Stambolić. In the Stambolić Judgement, delivered in 2005, the judges at a Serbian court concluded that Milošević had indeed ordered the killing of his political rival and one—time mentor.

Another set of authors see Milošević as an intelligent and ruthless politician but not a good tactician or strategist, whose politics were mostly reactive. These “relativists” see Milošević’s policies as responses to developments that were driven by leaders of Slovenia, Croatia, BiH, and Kosovo, and by the international community. From this standpoint, Milošević genuinely wanted to preserve Yugoslavia but did not succeed. Relativists perceive Milošević as an immensely ambitious politician who endeavoured to achieve more than he was capable of; and his rule has been cast by authors in this camp as a sequence of mistakes and failures—at the national and international levels. The violence that accompanied the disintegration of Yugoslavia is thus explained as resulting from a complicated interplay of many factors, leading to an escalation of the crisis that was beyond the control of Milošević alone.

Relativists research was based on the material available before the trial started in 2002, and did not into account a significant characteristic of Milošević’s political conduct, namely his overt and covert agendas often clashed. Did Milošević genuinely try to save Yugoslavia? Did he, together with others, inadvertently cause its disintegration through a series of well-intended blunders? Or, did he actively work to re-draw its borders?

The Defence narrative largely mirrors an apologist interpretation of the conflict, and at times the relativist view; both of which assert that Milošević genuinely sought to preserve Yugoslavia and that his policies were reactive—prompted by developments that were dictated by leaders in other republics and by the international community. Apologists go further in their defence of Milošević, endorsing his politics and the decisions he made, even in the face of evidence that those decisions brought dire consequences.

Apologists also dismiss arguments about the influence of Greater Serbia ideology on Milošević or on Serbia’s involvement in the ethnic cleansing in Croatia, BiH, or Kosovo. They stress that it was NATO that committed grave crimes in Serbia and Kosovo, for which nobody has been held accountable. And, as to Milošević’s domestic criminality, some apologists say that there has been no definitive proof of his personal involvement in assassinations that took place during his rule; and some go further in their absolution of him, arguing that even if he did play a role in these murders, there were “not many such examples.” Apologists see Milošević as having been a true statesman who resisted foreign pressure.

Apologists also tend to cast Milošević as charming and approachable. While some may acknowledge negative characteristics such as vanity, sensitivity, and brittleness, the overall appraisal of Milošević by apologists is positive, and some have even described him as a heroic symbol of resistance. Predictably, many Milošević apologists count themselves among Serbia’s nationalist intellectual elite. Their influence on trends within Serbian society cannot be discounted; and thus, it is difficult to say which courtroom narrative—and which historical interpretations of the Yugoslav crisis and of Milošević—will prevail in the end.

Deniers reject any responsibility to Milošević, but see the violent break-up of Yugoslavia as an orchestrated effort by the Western imperialism, that uses globalism as a way to exploit the whole world for its own economic and political advantages. According to deniers, the breaking up a powerful state as the former Yugoslavia was of a geostrategic importance for the west to establish its economic, political and strategic domination of Europe. The deniers were active in defending Slobodan Milošević since his first days in power to his death and beyond. He was first embraced by the left-oriented politicians and intellectuals, who saw him as a defender of post-communist type of socialism. His supporters also included a growing anti-globalist community that oppose the NATO military intervention in Kosovo in 1999.

By mapping out the political rise and fall of Milošević through the record of his trial, Tromp deftly tells several complicated and interrelated stories. She does this by drawing on evidence and arguments presented by both sides in court to produce fair and reliable accounts of the evolution of Milošević as a leader, the history of Serbian nationalism and expansionism, and the role of the international community in the politics and conflicts that marked the violent breakup of Yugoslavia. Tromp concludes that the history of Yugoslavia would have been different - for better or worse - if someone other than Milošević had taken leadership of Serbia in the 1990s. He brought to the office an ambition for power, his complex personality and a wife who seemed to matter more than any of his political or ideological convictions.

When Milošević became the leader of Serbia, Serb nationalism was an existing and continuing political programme to which he offered his services. His subsequent taste for power developed rapidly. He quickly became the most powerful political figure in Serbia and, having united Serb nationalists from other republics, was soon seen and accepted as the *de facto*leader of allSerbs. The ideology of Serb nationalism had long inspired a Serbian State Project that required meticulous and rational planning. Those who articulated the ideology – including Milošević – must have known and must have accepted that its implementation through the state project would most likely, or even inevitably, lead to the commission of mass atrocities. Once Milošević embraced the Serbian State Project, he had to know – and this book shows he would have been right to know - that his was the crucial, the central role in unleashing the terrible violence of the Balkan wars of the 1990s. Trial record contains the historical material highlighting Milošević’s rejection of a Yugoslav confederation as a compromise solution that was accepted in October 1991 by all other republics but Serbia.

Milošević’s personality and education – accented by his fluency in English and his capacity to engage – made him an obvious negotiating partner for international diplomats. He was able to extend the war in Bosnia by dragging out peace talks, eventually securing ethnic separation for Serbs in BiH in an internationally brokered peace accord. He succeeded in dividing Bosnia with the approval of the international community not just by insisting that territorial gains on the ground be reflected in a peace settlement, but through the skillful use of anti- Muslim rhetoric that warned of a “Green Transversal.” He never spoke publicly in derogatory terms about any ethnic group – save for calling Kosovo Albanians “scoundrels without history” – but referred instead to global threats of fascist or Islamist domination, reflecting the language of some Western politicians who opposed the establishment of any Muslim majority state in the heart of Europe. It is fair to say that Milošević played a decisive role in weakening Bosnia internally and facilitating its division, and that the history of the Balkan region may well have taken significantly different turns if he had been less persistent or less adept as an international negotiator.

When Milošević died his trial ended. Tromp was motivated to explore the materials that had been compiled, and to consider the research undertaken, over years of investigation but that would no longer serve their intended *legal* purpose. Tromp extracts details from the collection of documentary and transcript evidence that makes up the trial record – and that will be almost impossible to mine without an ‘insider’s guiding hand - to allow readers to trace the threads of several historical narratives. The value of this methodology is particularly evident in the Milošević case since, acting as his own Defence counsel, he responded to, and interacted with, almost all the witnesses and evidence presented against him.

**Criticisms of the ICTY**

Criticisms and analysis of the ICTY and its trials have opened a discussion on how best to try political leaders for crimes allegedly committed over protracted periods of time. The long running debate on ‘victors’ justice’ and more recent concerns about political trials - the term referring to trials that use legal systems to eliminate or discredit political - illuminate existing controversies and provoke the reader to consider what any form of postconflict trial might be considered a political trial. Some scholars distinguish between political trials, which take place within the rule of law, and ‘partisan trials’ or ‘show trials’, which substitute political expediency for law. However, political trials should not automatically be equated with partisan or show trials, which are characterised as criminal legal proceedings instituted by governments for political ends, meaning that inevitable outcomes of guilt are simply couched in the trappings of legality. Show trials are often associated with totalitarian ideologies and regimes – such as that of [Joseph Stalin](http://legal-dictionary.thefreedictionary.com/Joseph+Stalin) in the Soviet Union – and with the power of a singular leader to influence a trial’s outcome. In Stalinist-style show trials, all the prosecutors, judges, and defence attorneys are employed by the government and legal systems are used as instruments of politics to secure total power through total control of the population. But the same preordained results can be achieved through what are known as “structural show trials,” in which it is “the structure of the proceedings that assures conviction, rather than direct control over the judges.”

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

**The Plan**

Legal approaches to the Milošević trial and the evidence presented in court revolved around Milošević’s leadership and whether or not he had articulated and implemented a criminal plan. Through examination of the trial record, this chapter introduces three topics that are essential to understanding the intricacies of competing courtroom narratives, and which are expanded upon in the chapters that follow – the Leader, the Ideology, and the Plan. Further, any criminal investigation and the criminal trial that may follow deals with three elementary questions: “*Who?*” (Milošević, the Leader);“*What?*” (The Ideology and the Plan); and “*How?*”(In what way did the Ideology and the Plan lead to mass atrocities and at what point was violence sanctioned?).

Five goals that reflect key elements of Milošević’s Plan at different intervals are also presented in Chapter I:

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

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

***Goal 3*, 1991 to 1995**: Creation of a reduced Yugoslavia to include ‘Serb-designated territories’ in Croatia, for which purpose the *Republika Srpska Krajina* (RSK) is established;

***Goal 4*, 1992 to 1995**: Formation of the Federal Republic of Yugoslavia (FRY), a federation including Serbia and Montenegro, with contingencies in its Constitution for later absorption of other Serb territories; thus, the *Republika Srpska* (RS) is created in BiH;

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

The Leader

In court, the Prosecution distinguished Milošević’s *de facto* and *de jure* powers and assessed the dynamics of his influence in order to prove his individual and command responsibility for crimes alleged in Croatia, BiH, and Kosovo. The Prosecution contended that Milošević had accumulated extensive *de jure* and *de facto* powers that made it possible for him to control Serb political and military institutions across the former Yugoslavia and to be seen inside and outside of Serbia as the leader of all Serbs. The Defence also underlined Milošević’s leadership and extensive powers, but stressed that they were legitimate and argued that he was a protector of Serbs, whom Milošević and his witnesses claimed had faced existential threats in former Yugoslav republics.

Milošević’s leadership is explored, first by drawing on the notion of transformational leadership and examining the extent to which his personal leadership style and charisma constituted a ‘game changer’ in Yugoslav politics. Milošević’s place in the political culture and system of the former Yugoslavia is also analysed, along with the ideological, political, and personal motivations that drove him to retain power at all costs. Through the trial record, his personal and political development is examined via accounts of his contemporaries – in two books written by his former associates, Ivan Stambolić and Borisav Jović, as well as witness testimonies – and Milošević’s own words in court.

The role of the international community in legitimising Milošević is also analysed. When Serbian politicians, many of whom had underestimated Milošević’s lust for power, failed to stand the way of the political manoeuvring that gave him extensive *de facto* and *de jure* powers, foreign politicians and diplomats further emboldened Milošević by engaging with him as if he were indeed the most powerful politician in the region. Milošević had in fact stumbled upon his charismatic appeal somewhat accidentally and historians have sometimes evoked the test of “Cleopatra’s nose” – the question posed by Pascal about whether world history would have taken a different course if Cleopatra’s nose had not attracted Mark Antony – asking whether the recent history of the SFRY may have looked very different if Milošević had not risen to power on the wave of popularity that followed his April 1987 visit to Kosovo. Although there is merit to this counterfactual exercise, it is also true that the Serbian nationalist movement would have found a leader to promote its agenda if Milošević had not. But, the partnership proved pragmatic for Milošević.

**The Ideology**

Although *actus reus* – the criminal act itself, such as killing or rape – is an essential starting point for every criminal investigation, proving the criminality of a political leader focuses more on *mens rea*, the criminal mind, which must be shown to have led to or accompanied the *actus reus*. Throughout the Milošević trial, witnesses who were once close to or engaged in political negotiations with him testified that there was often a discrepancy between Milošević’s words and deeds. This chapter presents an analysis of Milošević’s views as he expressed them in his own words – presented as evidence in the trial – and the Ideology that he adopted as a platform for his political actions. The Prosecution argued that all of Milošević’s political plans derived from his attempt to create a state that would incorporate all Serbs, and this chapter also explores the contribution of Milošević to the development of Greater Serbia Ideology.

Greater Serbia Ideology is associated with territorial expansionism of the Serb state to the south and west. The Prosecution argued that the history of efforts to achieve this enlargement has been marked with mass atrocities against non-Serb populations; and to establish Milošević’s criminal state of mind, the Prosecution presented evidence on his adoption of the Ideology, his interpretation of which is examined in this chapter. Milošević promoted Greater Serbia Ideology without using the term, but his rhetoric in the late 1980s and the platform of his party in 1990 identified the protection of Serbs living outside of Serbia as a priority and espoused “the right of the Serb people to self-determination.” Arguing that self-determination for Serbs would indeed expand the territory of a Serb state, the Prosecution introduced the term ‘*de facto* Greater Serbia’ to describe the Ideology espoused by Milošević.

The value of the trial record as a historical source that enriches our understanding of the underpinnings of Milošević’s politics is especially true as it relates to how documents and witness testimonies establish clear connections between the ideological propositions he expressed in his own words and those put forth in the SANU Memorandum and the Party Programme of Milošević’s SPS. Trial transcripts of the comments and arguments made by Milošević regarding Greater Serbia Ideology are uniquely valuable, not only because he studiously avoided using the term when he was in power but also because these exchanges revealed the risks of his choice of self-representation. Engaging with the Prosecution in court and airing his position on the Ideology meant that Milošević practically testified on this critical issue, something a professional defence lawyer would have advised against because of the danger of self-incrimination.

**Centralisation of Serbia, 1987-1990**

This chapter explores the goal to centralise Serbia, describing the methods Milošević employed to revoke the autonomy of Serbia’s two autonomous provinces and analysing the extent to which the grievances of Kosovo Serbs were instrumentalised as a part of that process. The impact of the adoption of a new Serbian Constitution in September 1990 is also analysed as well as how views expressed in the SANU Memorandum, Milošević’s 1989 Gazimestan Speech, and the 1990 SPS Party Programme overlap.

Milošević consolidated his power in Serbia by first marginalising Ivan Stambolić and then succeeding him. His primary political goal was to revoke the autonomy of Kosovo and Vojvodina and so, beginning in 1988, Milošević mobilised Serbs from Kosovo to lead demonstrations aimed at toppling the leadership in both provinces, as well as in Montenegro, through seemingly impromptu ‘happenings of the people.’ The trial record reveals that allegations put forward by Kosovo Serbs about the adversity they faced were not made by Serbs in Vojvodina and yet Belgrade was intent on revoking the autonomy of both. However disguised, it became clear that petitions, speeches, and demonstrations highlighting the purported suffering of Serbs in Kosovo were actually intended to bring down sitting leaders who were unwilling to conform to Milošević’s political agenda. With the provinces and Montenegro eventually under his effective command, Milošević controlled four of eight members of the Presidency of the SFRY and enjoyed *de facto* power that exceeded his *de jure* power.

The influence of the SANU Memorandum on Milošević’s political agenda was evident in court, and is also examined in this chapter. The Memorandum, written by prominent members of the Serbian Academy of Sciences and Arts (SANU), is often considered to be the basis for Milošević’s political programme, and yet Milošević hardly ever spoke of it. However, his decision to call many of its authors as Defence witnesses revealed more about his connections to them than was perhaps useful for his case and offered the Prosecution the opportunity to question them directly on the policies they had proposed in the Memorandum in 1986.

**A Failure to Centralise the SFRY, 1990-1991**

Milošević followed his successful efforts to centralise Serbia with an attempt to centralise the SFRY, which failed. This chapter examines the political question that SFRY republics grappled with after the fall of communism, of whether the Federation should become centralised as Serbia and Montenegro preferred or become a confederation as Slovenia and Croatia proposed. This text also examines whether Milošević really tried to preserve the SFRY, as he publicly claimed, or in fact obstructed the reforms that would have made that possible. Further, the consequences and causes of Slovenia’s and Croatia’s proclamations of independence are addressed in this chapter, and the competing courtroom narratives that emerged regarding Yugoslavia’s violent disintegration are introduced. Indeed, the trial record reverberates with the debate over who is culpable for the violence that began in the former SFRY in June 1991 and some courtroom exchanges on the topic that took place between Milošević and other former Yugoslav leaders – including former Slovenian President Milan Kučan and former SFRY Prime Minister Ante Marković – are indispensible sources of history for anyone researching the period.

This chapter also presents the legal treatment of this topic in court. Arguing that Milošević had rendered inter-republic dialog moot with his uncompromising rejection of a confederation and that he had been unprepared to allow the creation of an independent Croatia that included ‘Serb-designated territories,’ the Prosecution made the case that his territorial aspirations had motivated the ensuing violence and that he was therefore responsible for the atrocities that followed. But the Defence attributed the violence to the declarations of independence by Slovenia and Croatia, which it characterised as unilateral and as a threat to Serbs, who were allegedly forced to take up arms to defend themselves. Qualifying the international community’s recognition of the independence of these republics as “premature” was another important part of the Defence narrative.

Milošević always maintained that he had supported a solution to preserve Yugoslavia, but the testimony of his former political associates cast his intentions in another light. Evidence presented in court showed that Milošević had systematically accommodated the interests of Serbia and of Serbs throughout Yugoslavia, while disregarding those of other peoples and republics. He also managed to win the loyalty of some of the most powerful institutions in the Federation, most notably the JNA. In court, evidence revealed that pressure from the JNA had led Milošević to change his initial position and reject the draft Carrington Plan in 1991 – an early international attempt to broker peace and prevent conflict from spreading to other republics – which, by some accounts, ensured the breakup of the SFRY.

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

This chapter presents the twin-track approach to unrest in Croatia employed by Serbian leadership beginning in the summer of 1990 – publicly supporting the preservation of the SFRY while providing JNA support to Serbs in Croatia who engaged in a violent rebellion and formed self-proclaimed Serb Autonomous Regions, which were later united into the *Republika Srpska Krajina.* After Slovenia and Croatia declared independence in 1991, Serbia developed the Belgrade Initiative, calling on all those who wished to stay in Yugoslavia to lobby for that option jointly. In Croatia, the Initiative meant that Serbs who wanted to remain in the Federation sought to claim territories in which they were a majority and then break away from the rest of the country.

The Prosecution asserted that the Yugoslavia envisaged by the Belgrade Initiative could not be constituted without violence. Any claims made to Croatian territory by Serbs presupposed ethnic separation between Croats and Serbs and eventual partition, processes bound to cause inter-ethnic violence in areas with mixed populations. This chapter describes efforts by the Prosecution to prove how and when Milošević’s political behaviour became criminal, focusing on the moments and processes by which his criminality emerged and developed. This was difficult since, as a sitting political leader, Milošević had been careful not to leave an obvious trail of evidence. Still, the Prosecution showed that Milošević had considerable *de facto* power over the JNA and that the JNA had not only started preparing for the possible disintegration of the SFRY as early as 1988 but had assisted in organising the uprising of Croatian Serbs in 1990. The records of the Presidency of the SFRY played a significant role in showing the extent of Milošević’s political and criminal responsibility for crimes charged in the Croatia indictment. This chapter presents evidence from the records of PSFRY sessions that combined with witness testimony to draw a clear picture of Milošević’s *de facto* leadership of the PSFRY during the war in Croatia.

The dynamics of the violence in Croatia are also examined in this chapter. The Prosecution argued that the most severe crimes happened in areas claimed by Serbs for geostrategic reasons but where they did not have a majority, because this is where crimes were committed in order to seize these ‘Serb-designated territories’ from non-Serbs. The Defence narrative rejected the notion that Serbs in Croatia had done anything but defend themselves from threats that it claimed became commonplace in Croatia when the republic opted for independence. Milošević insisted that he had supported international arbitration efforts for Croatia; however, the evidence suggested that Milošević’s expressed support for peace negotiations was driven partly by his determination to transform *de facto* military conquests into *de jure* territorial gains. He knew that if territories seized by Serbs in Croatia were recognised internationally in a peace settlement, ethnic separation could be achieved with international approval.

**The Formation of the Republika Srpska and the Policy of Ethnic Separation in Bosnia and Herzegovina**

Analysis of the Milošević trial record allows for deconstruction of the political and military context of the war in BiH, which is essential to understanding the extent to which leaders in the FRY and the Republics of Serbia and Montenegro were involved. In court, the Prosecution’s effort to prove the crimes charged in the Bosnia indictment made it clear that only the thinnest line can be drawn between a state’s responsibility and the responsibility of its political leaders. Although Serbia was not technically at war, evidence presented at the trial outlined the role of its political and military institutions in the conflict in BiH, and this chapter introduces records of the Supreme Defence Council that especially revealed this involvement.

Milošević’s part in events in BiH started before violence was unleashed there, and this chapter analyses the considerable strategic importance of Bosnia in even his early political and military planning. The evidence revealed that when his initial hopes to retain all or part of BiH by political means did not materialise, Milošević supported the efforts of Serbs in Bosnia to take Bosnian territory by force. The topics dealt with in this chapter have been the subject of controversy and this text adds to the existing body of material on these issues. But the fact that the trial record includes Milošević’s own account of these controversial events makes it an unparalleled source for analysis.

Two of the crucial documents introduced in court and examined in this chapter revealed an official Serb strategy of ethnic separation and ethnic homogenisation in BiH – a policy that Milošević distanced himself from but sought to formalise in peace negotiations. Indeed, ethnic separation in BiH was not only an important political and military objective for Serbs, but was part of their negotiating strategy. Peace negotiations were used by Milošević to legitimise military conquests, with special attention paid to ensuring the adjacency of ‘Serb-designated territories’ so that they would be connected to Serbia through negotiated corridors for later unification. This chapter addresses the fact that Milošević managed to incorporate Serb territorial gains into the Dayton Peace Accord with broad international support for ethnic separation in Bosnia. From February 1992 to December 1995, international negotiators proposed five peace plans, all of which were based to varying degrees on the principle of ethnic separation. When the first four of these plans did not afford Serbs the territorial corridors they felt they needed, they fought for more, finally conceding to serious peace talks after their devastating July 1995 conquests of Srebrenica and Žepa – major strategic victories that meant the Drina Valley no longer divided Bosnian Serbs from Serbia, and territorial gains that were honoured when the final peace was negotiated.

The Bosnia indictment was the only indictment that charged Milošević with genocide, a charge that was upheld by the Trial Chamber in a 2004 Half-Time Judgement that identified Brčko, Prijedor, Sanski Most, Srebrenica, Bijeljina, Ključ, and Bosanski Novi as the sites of genocidal atrocities. This chapter examines evidence on the relationship between Milošević and Bosnian Serb leader Radovan Karadžić that was introduced in court to establish the extent of Milošević’s power and responsibility for events in BiH. The evidence showed that the war efforts of Serb forces in Bosnia would have been impossible without constant financial, military, political, and diplomatic support from Belgrade. And, the *de facto* power Milošević had over Bosnian Serb leadership was clear in telephone intercepts and records of meetings of the State Council for Harmonisation, which revealed a common strategy among Serb leaders from the earliest days of the war in BiH. In this chapter, explicit statements regarding joint political and military objectives that reflected the knowledge Milošević and other Serbian leaders had of the crimes being committed in Bosnia are addressed. These statements were incredibly valuable to the Prosecution in trying to prove Milošević’s state of mind and criminal intent.

Some of the evidence presented at the trial was crucial in demonstrating the institutionalised ties between the armed forces of the FRY and Serb forces in Croatia and Bosnia. And, the choice by Belgrade to demand that portions of Supreme Defence Council records be protected added to their weight. The SDC records, obtained by the ICTY in 2003, were thus redacted until the 2011 trial of General Momčilo Perišić. Some formerly protected parts of the SDC records appear in this chapter and reveal, among other things, that the SDC created command centres within the hierarchy of the Yugoslav Army that were dedicated to managing Yugoslav officers who served in Serb armies abroad. This meant that officers who were directly involved in ordering the takeover of Srebrenica and the commission of genocide there were on the payroll of the Yugoslav Army, including a number of the most high-ranking officers tried and convicted at the ICTY for their role in the Srebrenica genocide. In light of revelations contained in SDC materials that were once redacted, this chapter considers the importance of transparency in mass atrocities trials and suggests that the protection of evidence from the public should be possible only on the most solid legal grounds.

The Plan for Kosovo – Keeping Kosovo in Serbia by Changing the Ethnic Composition in Favour of Serbs

This chapter analyses the trial record to trace the troubled relations between Serbia and Kosovo that marked the reign of Milošević, who – despite a majority ethnic Albanian population in Kosovo – was determined to keep the province within Serbia. After formally revoking the autonomy of Kosovo and Vojvodina in 1990, Serbian leaders sought to maintain the new status quo by introducing discriminatory laws and decrees meant to encourage rising numbers of Serbs to settle in Kosovo. But, by 1992, an apartheid system that excluded the Kosovo Albanian population from many spheres of public life forced them to create a parallel system, complete with a government run by Prime Minister Ibrahim Rugova.

Efforts by Milošević to keep Kosovo off the international agenda through most of the 1990s did not mean that he evaded pressure by the international community to engage in talks with Kosovo Albanian leaders. But negotiations in 1996 were stymied by the refusal of Belgrade to accept any settlement that offered greater autonomy to Kosovo and, by 1997, the peaceful resistance espoused by Rugova had lost support and a younger generation of Kosovo Albanians took up armed resistance, forming the Kosovo Liberation Army (KLA). As Kosovo’s conflict grew, the KLA gained notoriety and strength and Serbian forces attempting to crush the KLA indiscriminately targeted Kosovo Albanian civilians as well. This chapter analyses the assertion of the Prosecution that the FRY and Republic of Serbia used the escalating conflict not just to fight rebellious armed groups but to displace and expel from Kosovo as many ethnic Albanians as possible.

The eventual internationalisation of the Kosovo conflict is also examined in this chapter. In mid-1998, US envoy Richard Holbrooke started negotiations with Milošević, eventually establishing a mission of international monitors. But despite their presence, Serb forces massacred some 40 civilians in the village of Račak just months later. The international community called for a peace conference in early 1999. The dynamics of these negotiations are analysed in this chapter; for, early indications of a potential agreement and the high hopes of international negotiators were dashed when Milošević changed his mind in the midst of talks and it became obvious that Serbia would not accept the Rambouillet Peace Proposal. Calling Kosovo Albanians “scoundrels,ˮ Milošević refused a last call for cooperation and NATO bombing began the next day, lasting ten weeks.

The Prosecution alleged that the NATO intervention was used by Serbia to cover for mass forced expulsions and killings of Kosovo Albanians and contended that the organised nature by which civilians were moved to the Albanian and Macedonian borders by police-escorted buses and trains indicated a plan involving many layers of cooperation and coordination. This chapter presents evidence of the systematic nature of this population movement as well as what is perhaps the most compelling evidence of Serbia’s involvement in the commission of crimes in Kosovo – the fact that a number of mass graves were exhumed and bodies reburied in Serbia after it became clear in May 1999 that Serb forces would lose the war. Investigation into Milošević’s *de jure* and *de facto* powers during the Kosovo conflict unearthed the existence of an ad hoc Joint Command for Kosovo that had given orders to forces on the ground but served to obscure command hierarchy. Despite solid evidence showing the nature of its activities, Milošević and his Defence witnesses denied the importance of the Joint Command, and this was seen by the Prosecution to confirm that they knew crimes had been committed in Kosovo.

**The Fall of the Leader**

This chapter analyses Milošević’s ruthless determination to achieve his strategic goals and retain power through analysis of evidence that reveals his increasing criminality and then traces his eventual downfall. The trial record shows the effects of 10 years of his ‘reign’, which left over 100,000 dead and many more displaced and the chapter examines the consequences of these effects. It also sets out evidence of Milošević’s preoccupying lust for power, which – in the absence of strong ideological convictions of his own – fanned the flames of Serb nationalism. Yet, while Bosnian Serb leaders Radovan Karadžić and Ratko Mladić were indicted by the ICTY in July 1995, Milošević was given a second chance by the international community; and indeed, some saw Dayton as marking his metamorphosis into a peacemaker.

The Prosecution contended that, by supporting a policy *ostensibly* cooperative and focused on peace, Milošević managed to avert or end military interventions against Serb forces without actually shifting his own his goals. His acceptance of the Dayton Peace Agreement, the Prosecution argued, simply masked his criminal motivation to formalise Serb war gains. Thus it was that, although Milošević came away from the Dayton negotiations with a victory on the domestic front, over time he became obsessively concerned about his status and power and showed increasing intolerance toward fellow party members, perceiving their public success as rivalry.

Milošević believed he could afford a domestic standoff given his newly acquired patronage by the West; but in the end, it turned out he couldn’t. Like many other politicians with extensive and autocratic powers, Milošević fell into the trap of self-isolation, relying on a shrinking circle of associates. As he became more authoritarian and exceedingly alienated from reality, he made a series of fatal mistakes in his dealings with the international community over his handling of Kosovo. Milošević’s military approach in the province reversed all credit he had earned at Dayton; and evidence presented in court of his apparent belief that he could remake the demography of Kosovo and then govern it from Belgrade exposed the irrational and unrealistic side of his political strategy.

The trial record clearly illustrates how a political triumph for Milošević in 1990 – when the new Serbian Constitution was adopted and the autonomy of Kosovo revoked – led nine years later to his political downfall. This chapter discusses the politically motivated murders carried out in Serbia at the end of Milošević’s Presidency, often directed against his former political allies, which reflected his desperate efforts to retain power as his political base crumbled. By 2000, Milošević was extremely isolated and out of touch. Once in The Hague, this disconnection from reality was evident in the courtroom, where Milošević refused to see the consequences of his political actions. He expressed contempt for the court, the Prosecution, and the international community, and framed himself and his family as victims of a “savage” smear campaign. He never demonstrated that he understood the extent of suffering he had inflicted through the violence of war, playing the role of a wronged politician and enthusiastically defending himself, though not always skilfully. When, on several occasions, his legal strategy was shown to be obviously flawed Milošević curiously went forth as if nothing had happened. This chapter examines how these courtroom episodes were reflective of Milošević’s character and political conduct.

Behind his grandstanding in courtroom, Milošević ended his political tenure being seen as a poor political and military strategist. A decade of violence did not bring the results that Serbian State ideologues had hoped for. By 1995, Serb territories in Croatia had been abandoned by Serb forces and a majority of Croatian Serbs had emigrated to Serbia, Kosovo, or *Republika Srpska.* In 1999, when international agreements stipulated that Serbian forces must leave Kosovo, that territory was lost to Serbia as well. The only war gain that Serb nationalists can still claim is the existence of *Republika Srpska* as a separate political entity in Bosnia-Herzegovina.

This ‘gain’ – immensely significant in Serb minds - needs very careful consideration. *Republika Srpska* was created by crimes of mass atrocities, including genocide, committed by Serbs against the non-Serb Bosnian Muslims of carefully targeted areas that formerly had populations of mixed ethnicity. *Bosnian* Serb military and political leaders have been tried for these crimes, including genocide, and several have been convicted. But the records of their trials are only a part of the story. Nothing has been recorded in any of these trials about the role of Serbia itself and its political leadership and armed forces in the genocide and little about their role in other offences connected to the creation of *Republika Sprska,* such as crimes against humanity. No politician or military official from Serbia itself has been convicted of the crime of genocide in Bosnia-Herzegovina despite considerable material available within the ICTY that raised strong *prima facie* cases and despite findings at the International Court of Justice (ICJ) that got very close to a finding of full complicity of Serbia a*s a state* in the genocide. ICTY decisions favourable to those Serbian Serbs who were charged with crimes against humanity for what happened in the creation of *Republika Srpska* are themselves highly controversial and have been thought by some to be obliquely motivated, even by the ICTY judges, as a consequence of improper pressure. Milošević remains the only Serbian leader who was indicted and tried for the crime of genocide (at Srebrenica and elsewhere). His unfinished trial’s record contains evidence of great value for historians and other researchers showing how *Republika Srpska* was in fact forged. It was indeed ‘forged’ by red hot criminal violence into being Serbian territory out of lands that belonged to several other ethnic groups who had been targeted for their ethnicity in a way that can manifest genocidal intent by those - leaders, intermediate commanders and ‘foot soldiers’ - committing the crimes.

Consideration of Serbia’s ‘gain’ and its defeats together with recognition that even court conclusions may not be taken as in any sense conclusive point further to the real value of an analysis of the record of a trial’s evidence - and nothing more. The analysis must be done dispassionately especially where, as in the present post-conflict period, the warring sides in general, and Serbia in particular, have been advancing their own interpretations of the history of the conflict, reflecting and enhancing the same ideological divisions that triggered violence in the first place. The danger inherent in this is obvious.

It will be a huge challenge for all those bearing responsibility for the region’s future to have records of ICTY trials properly reflected in history school textbooks and in scholarly literature. An evidence-based public debate about the relevance, content and impact of each ICTY trial could stimulate research and public debate that will shrink the space for denial and for the development of false narratives about the historical heroism of the conflict that have already being broadcast by post-conflict elites.

Put very shortly, when history is cynically rewritten false narratives of national or ethnic conflicts can survive for hundreds of years and can lead to recurring inter-ethnic violence. Properly researched, as demonstrated in this book, the records of ICTY trials, may limit the ability of future generations to create false narratives or repeat such lethal behaviour.

1. This text relies primarily on the Slobodan Milošević’s trial, held at the ICTY (International Criminal Tribunal for Former Yugoslavia from 2002 to 2006. The article advances the notion that a trial record, even where the trial is unfinished, is a *unique* historical source that can shape the narrative of the conflict in which the mass atrocities were committed. Nevenka Tromp, an ICTY researcher, who worked at the Office of the Prosecutor (OTP) from 2000 to 2012, as the principle researcher summarises several of her publications on the related topics: (1) “Echoes of Justice: The Afterlife of Slobodna Milošević Trial.” A book chapter to be published in the edited volume *Rethinking the Past for a Future of Conviviality*, (eds.) Marina Grzinić and Šefik Tatlić, (Cambridge: Cambridge Academic Papers, 2019). (forthcoming); (2) “In Search for Truth at Mass Atrocities Trials: Will Judges and Lawyers have the Last Word?” *The Journal of Comparative Law* 12, no. 1 (2018): 61–82; (3) *Prosecuting Slobodan Milošević: The Unfinished Trial* (London: Routledge, 2016); (4) “The Unfinished Trial of Slobodan Milošević: Justice Lost, History Told.” PhD dissertation defended at the Faculty of Humanities, University of Amsterdam, 2015. [↑](#footnote-ref-1)
2. The terms “intentionalists” and “functionalists” was coined by Timothy Mason (1981). Mason criticised authors who focused too much on Hitler in explaining the Holocaust, calling them intentionalist. He called the opposing school functionalists because they saw the Holocaust as consequence of the way the Nazi state functioned. Mason himself proposed, as an alternative, an investigation into a broader perspective of the period with a distinct focus on the economy. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)