



Weighing the Evidence **Lessons from the Slobodan Milosevic Trial**

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Executive Summary

The arrest and surrender of Slobodan Milosevic to the International Criminal Tribunal for the former Yugoslavia (ICTY) was a watershed moment for international justice. It was an event many never thought would happen and created both high hopes and a great deal of controversy in the Balkans and beyond. Milosevic's death on March 11, 2006, was an unfortunate end to the "trial of the century." It deprived victims of horrific crimes in the former Yugoslavia of a verdict after the most comprehensive proceedings on the conflicts there. Furthermore, while the four-year duration of the trial and Milosevic's frequent courtroom grandstanding had already raised concerns and questions about the trial, his death ignited a round of criticism about the efficiency and viability of these trials. The criticism was seen by many as a setback for justice through an international criminal tribunal.

Although Milosevic's death—and the absence of a verdict—denied the victims a final judgment, this should not diminish the trial's other accomplishments. As the first former president brought before an international criminal tribunal, the trial of Milosevic marked the end of the era when being a head of state meant immunity from prosecution. Since then other former heads of state, including Saddam Hussein and Charles Taylor, have been brought to justice. Also, even though the lengthy trial process did not lead to a verdict, the information introduced at trial was itself important.

Human Rights Watch has examined a portion of the evidence presented to the court during the Milosevic trial. We believe this evidence should have an effect on how future generations understand the region's history and how the conflicts came to pass: because no truth commission has been established to look into the events in the region, the Milosevic trial may be one of the few venues in which a great deal of evidence was consolidated about the conflicts. The fact that Milosevic had the opportunity to test the prosecutor's evidence in cross-examination enhances its value as a historical record. The evidence will also be useful in other trials at the ICTY.

Court proceedings that required disclosure by the Serbian government of previously withheld material revealed previously unknown information. In response to viewing

the public proceedings, insider witnesses came forward voluntarily and other new material, including a video that showed members of the notorious “Scorpion” unit executing men and boys from Srebrenica, became public for the first time. The airing of the video engendered a great deal of national discussion in Serbia, forcing people to confront the fact of atrocities they had previously denied.

On a broader scale, the Milosevic trial was the first ICTY case in which evidence was introduced relating to all three conflicts: Croatia, Bosnia and Herzegovina,¹ and Kosovo. It is also likely to be the only ICTY trial that comprehensively examines Belgrade’s role in Bosnia and Croatia. Although it was widely assumed that Serbia supported the Serb combatants in the conflicts in Croatia and Bosnia, the full extent of the support and the mechanisms by which it was accomplished were not public until the Milosevic trial. Much of Belgrade’s involvement in the conflicts was deliberately kept secret.

The Milosevic trial opened the door on these state secrets. Evidence introduced at trial showed how those in Belgrade and the Federal Republic of Yugoslavia financed the war; how they provided weapons and material support to Croatian and Bosnian Serbs; and the administrative and personnel structures set up to support the Croatian Serb and Bosnian Serb armies. In short, the trial showed how Belgrade enabled the war to happen. As a former United Nations (UN) official testified, “The [Serbs] relied almost entirely on the support they got from Serbia, from the officer corps, from the intelligence, from the pay, from the heavy weapons, from the anti-aircraft arrangements. Had Belgrade chosen even to significantly limit that support, I think that the siege of Sarajevo probably would have ended and a peace would have been arrived at somewhat earlier rather than having to force them militarily into that weaker position.”²

In addition to helping shape how future generations assess the Balkan wars of the 1990s and Serbia and the FRY’s role in the events, the Milosevic trial offers important procedural lessons for cases of this scope. As the first trial of a head of state and

¹ For the purposes of this report, the terms “Bosnia and Herzegovina” and “Bosnia” are used interchangeably.

² Testimony of David Harland, Trial Transcript, November 5, 2003, p. 28706.

with charges encompassing three conflicts over the course of nearly a decade, this case presented unprecedented challenges for the ICTY. Proving the guilt of a senior official nowhere near the multiple crime scenes and establishing a chain of command in circumstances where no lawful authority existed is very difficult and time-consuming. The magnitude of the case added to the breadth of material that needed to be presented.

Critics of how the case was managed have focused on two areas in particular: the duration of the trial (and specifically the scope of the indictments); and permitting Milosevic to represent himself. The second part of this report examines these and other procedural issues that affected trial proceedings. It is important that national and international courts and prosecutors draw trial management lessons from the Milosevic case. On the basis of our research, Human Rights Watch believes the following lessons are among those worth consideration:

- The charges in the indictment or warrant should be representative of the most serious crimes alleged against the accused.
- Where there is sufficient linkage between the crimes, Human Rights Watch believes that, in addition to reasons of judicial economy, holding a single trial for a series of crimes allegedly committed by a high-ranking defendant has the advantage of ensuring that a complete picture of the individual's overall alleged role in the perpetration of the crimes is presented.
- Expeditious prosecution of complex and serious cases requires an adequate pretrial period to allow for complete disclosure to the defense and translation of prosecution evidence and also to allow both the prosecution and the defense to fully prepare their cases. In a high-profile case where there is public pressure to begin a trial before it is fully trial-ready, courts should resist such pressure and take steps to explain to the public the ultimate benefits and necessity of not prematurely commencing a case.

- The right of self-representation should be subject to the requirement that the defendant be able to fulfill the role as counsel and attend court sessions regularly.
- When an accused represents him or herself, assigning counsel to act as *amici curiae* is an appropriate way of ensuring the accused's rights are protected. In legally and factually complex cases, it is important to have attorneys capable of looking after technical issues that a defendant representing himself may not be capable of handling, to ensure a fair trial.
- Prosecution strategy must ensure that in the trial of a high-level defendant, proof of the criminal command structure is given the appropriate focus and resources in a trial, while balancing the need to present crime scene evidence. This will require hard decisions and a tightly tailored case.
- Trials of high-level suspects will be important for the documentation of events and the creation of an historical record. The efficient prosecution of a case will be a significant factor in the quality of that record.
- Increased use of written testimony was an important change introduced in the Milosevic trial. When a written statement is used in lieu of a direct examination, however, copies should be available to the public in a timely manner so they are able to follow the witness's testimony.
- Use of strict time limits can be an incentive to present an efficient case and is fair to the defense while moving the trial forward.
- All organs of the court should keep in mind the importance of making the proceedings meaningful to the communities most affected by the crimes.

Introduction

The surrender of Slobodan Milosevic to the International Criminal Tribunal for the former Yugoslavia (ICTY) was a watershed moment for justice. It was an event many never dreamed could happen. The possibility of Milosevic, a former head of state, being tried for war crimes and crimes against humanity engendered enormous expectations. His imminent trial also created much controversy in his native Serbia and beyond.

Slobodan Milosevic's death on March 11, 2006, shortly before the conclusion of the defense case, ended the "trial of the century," depriving the many victims of a final judgment in the most comprehensive proceedings regarding the events in the region. The four-year duration of the trial and Milosevic's frequent courtroom grandstanding had already raised concerns and questions about the trial; his death, following the high expectations created by his arrest, ignited a round of criticism about the efficiency and viability of these trials.³ The criticism was seen by many as a setback for justice through an international criminal tribunal.

Often overlooked in the controversy about the trial's management is the vast amount of evidence introduced that, at a minimum, shed important new light on how the armed conflicts were conducted. Human Rights Watch believes the evidence introduced should help shape how current and future generations view the wars and in particular Serbia's role in them.

Slobodan Milosevic's trial was also groundbreaking in that the tribunal faced legal and practical issues never before confronted by an international court. Milosevic was the first former head of state tried for war crimes and violations of international humanitarian law, which is of itself an important precedent. Since then, Saddam Hussein and Charles Taylor, the former president of Liberia, have also been arrested and face charges for atrocities committed on their watch. Belgium has also issued an arrest warrant for Hissene Habre, the former president of Chad. With the establishment of the International Criminal Court, no government official, on the

³ See, for example, "Credibility and Legitimacy of International Criminal Tribunals in the Wake of Milosevic's Death," *Harvard International Review*, undated, <http://hir.harvard.edu/articles/1402/> (accessed November 27, 2006).

basis of his or her position, is beyond the law. The time when being a head of state meant immunity from prosecution is past.

More trials of this magnitude will follow and the officials involved with these proceedings can learn from the experiences—positive and negative—of the Milosevic trial. The Trial Chamber in this case grappled with a number of novel issues, not least of which was managing Milosevic, a strong personality who insisted upon representing himself. How the court handled these issues, and how the prosecution prepared a case covering three conflicts spanning nearly a decade, provide useful lessons in preparing indictments and managing these sorts of trials in the future.

This paper seeks to examine both evidentiary and procedural aspects of the Milosevic trial. Part One of this report examines some of the important evidence introduced in the proceedings, without drawing any conclusions about Milosevic's guilt or innocence. Human Rights Watch has not undertaken an exhaustive review of the evidence, nor were we able to examine any of the material introduced under seal. However, we have sought to highlight some evidence from the trial relating to how the Federal Republic of Yugoslavia and Serbia gave material, financial, and administrative support to the Serbs in Bosnia and Croatia.

Part Two of this report looks at some of the procedural issues, including the length of the trial and the management of the proceedings, for lessons that may be of use in other cases.

In order to prepare this report, Human Rights Watch interviewed dozens of individuals involved with the trial, including prosecutors, defense attorneys, Registry staff, and members of the ICTY's Outreach Programme. In addition, we interviewed a number of journalists who followed the trial closely over the years. Based on these interviews, we began to review transcripts and decisions available on the ICTY website. Reviewing the transcripts allowed us to create a lengthy list of exhibits and witness statements we wished to examine further. At our request, the Prosecutor's Office provided us with the exhibits we sought, all of which are publicly available. Our conclusions, both with respect to the evidence and the trial proceedings, are drawn from our interviews and our review of the evidence.

Background

Slobodan Milosevic was president of the Republic of Serbia (then the Socialist Republic of Serbia) from May 8, 1989, until July 1997, when he was elected president of the Federal Republic of Yugoslavia (FRY). Milosevic served as president of the FRY until October 6, 2000, when he relinquished his position following an electoral defeat and mass protests in Belgrade. As president, Milosevic was the most powerful person in Serbia during the break-up of Yugoslavia and the conflicts that ensued.

Violence in the region began in 1990. Serbs in Croatia founded the nationalistic Serbian Democratic Party, which advocated for the autonomy—and later secession—of predominantly-Serb areas of Croatia, including the so-called Krajina. Late in 1990 Croatian Serbs in Knin, the largest town in Krajina, announced their independence from Croatia. Conflicts between Serbs and Croatian police began in spring 1991 as Croatian Serbs attempted to consolidate their power over more areas with significant Serb populations.

On June 25, 1991, Croatia and Slovenia declared their independence from Yugoslavia. Although the Federal Presidency of Yugoslavia subsequently agreed to withdraw the Yugoslav army (JNA) from Slovenia (which had almost no Serb population) and accede to its secession, the same was not true of Croatia, which had a significant Serb population. Throughout 1991 the JNA and Serbia's Ministry of the Interior assisted Serbs in different parts of Croatia, notably Krajina and Eastern and Western Slavonia. On September 25, 2001, the Security Council issued Resolution 713 which implemented a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia.⁴ Substantial areas of Croatia came under Serb control as a result of actions by Serb military, volunteer, and police forces conducted with JNA support. In the Serb-occupied areas, non-Serbs were systematically forced out, killed, or subjected to acts of violence and persecution. After the three-month siege of Vukovar, the city fell to Serb forces. A ceasefire agreement was arranged in Geneva and eventually Serb-occupied areas were turned into United Nations

⁴ United Nations Security Council, Resolution 713 (1991), S/RES/713(1991), <http://www.nato.int/ifor/un/u910925a.htm>(accessed December 4, 2006), para. 6.

Protected Areas.⁵ Serb-occupied areas in Krajina and Western Slavonia were recaptured by Croatian forces in 1995 during two military offensives that resulted in widespread abuses against Serb civilians (including killing and cruel treatment) occurring as part of an ethnic cleansing operation.⁶ Eastern Slavonia was transferred from Serb control to UN authority in January 1996. In January 1998 Croatia regained full sovereignty of the region.

In the meantime, Serbs in Bosnia and Herzegovina began to organize as the likelihood of that republic's secession from Yugoslavia became more apparent. From September through December 1991 Bosnian Serbs in areas with Serb majorities began to form Serb Autonomous Regions (SAOs). This culminated in a November 1991 plebiscite of Bosnian Serbs during which the overwhelming majority of Bosnian Serbs voted to remain in Yugoslavia or become an independent Serb state. On January 9, 1992, the Assembly of the Serbian People of Bosnia and Herzegovina adopted a declaration on the Proclamation of the Serbian Republic of Bosnia and Herzegovina, which was declared to include "the territories of the Serbian Autonomous Regions and Districts and of other Serbian ethnic identities in Bosnia and Herzegovina, including the regions in which the Serbian people remained in the minority due to the genocide conducted against it in World War Two."

In late February and early March 1992 Bosnia and Herzegovina held a referendum on the question of independence, which resulted in a majority favoring independence and secession from Yugoslavia. Bosnian Serbs boycotted the referendum. From April onwards, Serb forces seized control of large areas in Bosnia and Herzegovina, forcibly removing non-Serbs and subjecting them to systematic violence and persecution.⁷ Non-Serbs also committed violations of international humanitarian law against Serbs in Bosnia and are the subject of ICTY proceedings.⁸

⁵ See *Prosecutor v. Slobodan Milosevic*, Case No. IT-02-54-T, Second Amended Indictment (Croatia), July 28, 2004, paras. 84-110.

⁶ See *Prosecutor v. Ante Gotovina, Ivan Cermak and Mladen Markac*, Case No. IT-06-90, Joinder Indictment, July 21, 2006, paras. 22-37.

⁷ See *Prosecutor v. Slobodan Milosevic*, Case No. IT-02-54, Amended Indictment (Bosnia), November 22, 2002, paras. 52-79.

⁸ See *Prosecutor v. Oric*, Case No. IT-03-68, Third Amended Indictment, June 30, 2005; *Prosecutor v. Naletilic and Martinovic*, Case No. IT-98-34, Second Amended Indictment, October 16, 2001. (The defendants were found guilty of crimes against humanity and sentenced to 20 and 18 years' imprisonment respectively by the Trial Chamber on March 31, 2003; their appeals were exhausted by the Appeals Chamber's final judgment of May 3, 2006.)

The conflict was eventually brought to a halt in 1995 following NATO air strikes on Bosnian Serb forces and a United States-brokered peace agreement (commonly referred to as the “Dayton agreement” after the US city where it was negotiated) which established a unified Bosnian state with two entities—a predominantly Muslim and Croat Federation and Republika Srpska.

While Yugoslavia was disintegrating, tensions were rising in Kosovo. After its autonomy was effectively revoked in 1989, the Kosovo Albanian leadership engaged in non-violent civil resistance and established parallel institutions in the healthcare and education sectors. This was done in response to the dismissal of thousands of Albanian professionals from their jobs and increased police violence against Kosovo Albanians. In the mid-1990s Kosovo Albanians organized a group known as the Kosovo Liberation Army (KLA) advocating a campaign of armed insurgency and violent resistance to the Serbian authorities. The KLA began launching attacks primarily against Serbian police forces in mid-1996 and Serbian forces responded with strong operations against suspected KLA bases and supporters in Kosovo.

The conflict intensified in 1998. Although concerned international actors intervened diplomatically and with the deployment of a monitoring mission,⁹ the violence against Kosovo Albanians continued. As part of the attacks, federal and Serb forces engaged in a campaign to destroy predominantly Albanian villages viewed as supportive of the KLA, with the object of forcing their inhabitants out of Kosovo. The campaign also included killings of Kosovo Albanians.¹⁰

On March 24, 1999, NATO began launching air strikes against targets in the Federal Republic of Yugoslavia. After the bombing began, federal and Serbian forces intensified their attacks and by June 1999 approximately 800,000 Kosovo Albanians had been expelled from Kosovo. The NATO bombing campaign ended on June 9, 1999, and on June 20 Serbian and FRY forces withdrew from Kosovo.¹¹ Since 1999,

⁹ The Kosovo Verification Mission, deployed by the Organization for Security and Co-operation in Europe (OSCE).

¹⁰ For more background see Human Rights Watch, *Under Orders: War Crimes in Kosovo* (New York: Human Rights Watch, 2001), <http://www.hrw.org/reports/2001/kosovo/>.

¹¹ See *Prosecutor v. Milosevic*, Case No. IT-99-37-PT, Second Amended Indictment (Kosovo), October 16, 2001, paras. 71-108.

the United Nations has administered Kosovo with support from a NATO-led peacekeeping force, although it formally remains part of Serbia.

Court Proceedings

The first indictment against Slobodan Milosevic was confirmed on May 24, 1999.¹² It alleged that between January 1, 1999, and the date of the indictment, Milosevic and four other high-ranking Serb government and military officials (Milan Milutinovic, Nikola Sainovic, Dragoljub Ojdanic, and Vljako Stojiljkovic) participated in a joint criminal enterprise, the object of which was to remove a substantial portion of the Albanian population from Kosovo to ensure Serb control over the province.¹³ The indictment alleged the enterprise was carried out through a “deliberate and widespread or systematic campaign of terror and violence directed at Kosovo Albanian civilians” that included the murder of hundreds of civilians, destruction and looting of property, and the forcible transfer and deportation of 800,000 Kosovo Albanians. For his role in Kosovo, Milosevic was ultimately charged with five “counts”: four for deportation, forcible transfer, murder, and persecutions, each being a distinct crime against humanity, and also separately for murder amounting to a violation of the laws or customs of war.¹⁴ Milosevic was charged both under article 7(1) of the ICTY’s statute for individual responsibility as well as under a theory of command responsibility under article 7(3) for his role as a superior.

Local authorities arrested Slobodan Milosevic in Belgrade on April 1, 2001, six months after his fall from power. He was transferred to ICTY custody on June 29, 2001. An amended indictment for Kosovo containing the same charges but adding more crime scenes was confirmed by the court that same day. At his initial appearance before the Trial Chamber, Milosevic informed the court that he wished to represent himself. In the interests of ensuring a fair trial, the Trial Chamber, on August 30, 2001,

¹² Assigned as Case No. IT-99-37.

¹³ A joint criminal enterprise is a doctrine of liability whereby the accused is individually responsible if he acts in concert with others pursuant to a common criminal purpose with the same criminal intent.

¹⁴ As charged in the Second Amended Indictment, October 29, 2001, Case No. IT-99-37. Initially Milosevic and his co-defendants were charged with four counts (murder, deportation, and persecutions as crimes against humanity, and murder as a violation of the laws of war). The count of forcible transfer was added in the second amended indictment.

assigned counsel to act as *amicus curiae* in order to assist the Trial Chamber by, inter alia, making any submissions properly open to the accused.¹⁵

On October 8, 2001, the Trial Chamber confirmed a second indictment against Milosevic for events that occurred in Croatia between August 1, 1991, and June 1992, after Croatia declared independence.¹⁶ Milosevic and others were alleged to have participated in a joint criminal enterprise, the object of which was to remove the “majority of the Croat and other non-Serb population from the approximately one-third of the territory of the Republic of Croatia that he [Milosevic] planned to become part of a new Serb-dominated state...”¹⁷ In order to carry out the enterprise, the indictment alleges Serb forces took control of towns and villages and established a regime of persecutions designed to drive the non-Serb population out. As part of the campaign against non-Serbs they murdered hundreds, imprisoned and tortured thousands in detention centers, committed sexual assault, used forced labor, deported people, and destroyed homes and cultural monuments. The indictment contains 32 counts of crimes against humanity, violations of the laws or customs of war, and grave breaches of the Geneva Conventions including persecutions, extermination, murder, unlawful confinement, torture, deportation, forcible transfer, wanton destruction of property, and plunder. Slobodan Milosevic was charged with both individual and command responsibility.

On November 22, 2001, the Trial Chamber confirmed a third indictment against Milosevic for crimes committed in Bosnia and Herzegovina between 1992 and 1995.¹⁸ The Bosnia indictment similarly alleges that Milosevic participated in a joint criminal enterprise, the aim of which was the forcible removal of Bosnian Muslims and Bosnian Croats from large areas of Bosnia and Herzegovina. The indictment charges that the enterprise was put into effect through widespread killings, detentions, forcible deportation, plunder, and wanton destruction of property. The indictment contains 29 charges including genocide, crimes against humanity, grave breaches of

¹⁵ Order Inviting Designation of *Amicus Curiae*, August 30, 2001.

¹⁶ Assigned as Case No. IT-01-50. Initial Indictment (Croatia), October 8, 2001. The indictment was amended twice and the case number changed to Case No. IT-02-54.

¹⁷ Second Amended Indictment (Croatia), Case No. IT-02-54, July 28, 2004, para. 6.

¹⁸ Initial Indictment (Bosnia), Case No. IT-01-51, November 22, 2001.

the Geneva Conventions, and violations of the laws or customs of war in the form of persecutions, murder, torture, deportation, unlawful confinement, wanton destruction, and plunder. Again, Milosevic was charged with both individual and command responsibility for his role in the events.¹⁹

The prosecutor moved to try all three cases together on grounds that they were part of the same transaction, arguing that “the purpose of the joint criminal enterprise described in these indictments and the methods applied to achieve the goal are effectively identical.”²⁰ In support of its motion, the prosecution submitted that a single trial would be more expeditious and cost-effective and would ensure consistency of verdict and sentence. The Trial Chamber decided that only the Croatia and Bosnia indictments were to be joined because they formed part of a common plan for removal of non-Serbs from Serb areas, occurred in neighboring states and in close proximity in time. The Trial Chamber held that the Kosovo events, which occurred three years later and within Serbia, were sufficiently distinct in time and place that they should be tried separately.²¹

Although the prosecutor submitted that the Kosovo case should not be tried first for various reasons, including that the Kosovo crimes occurred last chronologically and could be seen as a less substantial or grave case, the Trial Chamber decided the Kosovo case was to be tried first, beginning on February 12, 2002.²² The prosecutor appealed this decision and on February 1, 2002, the Appeals Chamber reversed the Trial Chamber’s order and decided all three cases should be joined in a single trial, but still starting with Kosovo as originally ordered by the Trial Chamber.²³ The trial began on February 12, with the Kosovo case. The prosecutor concluded the Kosovo case on September 11, 2002 and began the Bosnia and Croatia part of her case on September 26. The prosecution rested its case on February 25, 2004, after over a dozen delays due to Milosevic’s ill-health.

¹⁹ The indictment was amended on April 21, 2004, under the new reference Case No. IT-02-54-T.

²⁰ Decision on Prosecution’s Motion for Joinder, Case Nos. IT-99-37, IT-01-50, IT-01-51, December 13, 2001, para. 16.

²¹ *Ibid.*, paras. 42-46.

²² *Ibid.*, paras. 22-23, 52.

²³ Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, Case Nos. IT-99-37, IT-01-50, IT-01-51, February 1, 2002. See also Order for Commencement of Trial, February 4, 2002. Following the decision on joinder, the cases were consolidated and re-assigned as Case No. IT-02-54.

After the close of its case, the *amici curiae* filed a motion on behalf of Milosevic pursuant to rule 98***bis*** of the ICTY Rules of Procedure and Evidence, which allows an accused to file a motion for the entry of judgment of acquittal after the close of the prosecution's case if the evidence is insufficient to sustain a conviction based on those charges. On June 16, 2004, the Trial Chamber issued a lengthy opinion in which it determined that it had found sufficient evidence to support each count challenged in the indictments, but that there was no evidence or insufficient evidence to support certain allegations relevant to some of the charges.²⁴ In other words, the Trial Chamber concluded that the prosecutor had presented enough probative evidence that, if accepted, and in the absence of a defense case, a reasonable trier of fact could find sufficient to sustain a conviction beyond a reasonable doubt on all counts that were charged. However, the Chamber deemed that the prosecution had not put forward sufficient evidence to establish beyond a reasonable doubt all of the factual allegations relating to all the crime scenes included in the indictments.²⁵

The defense case began on August 31, 2004, after several delays due to Milosevic's poor health. The proceedings were officially terminated on March 14, 2006, after Slobodan Milosevic died. At the time of his death, Milosevic had approximately three weeks of time remaining for the presentation of his case.

²⁴ Decision on Motion for Judgement of Acquittal, June 16, 2004, para. 316.

²⁵ *Ibid.*, para. 9.

Evidence

Even though the lengthy trial process did not lead to a verdict, the information introduced at trial was itself important. Future generations will use the evidence to understand the region's history and how the conflicts came to pass. Because no truth commission has been established to look into the events in the region, the Milosevic trial may be one of the only venues in which a great deal of evidence was consolidated about the conflicts. The fact that Milosevic had the opportunity to test the prosecutor's evidence in cross-examination enhances its value as a historical record. The evidence will also be useful in other trials at ICTY.

Court proceedings that required disclosure by the Serbian government of previously withheld documents revealed previously unknown information; in response to viewing the public proceedings some insider witnesses came forward voluntarily and other new material was revealed for the first time. One of the important items to come out in this way was the "Scorpion video" that showed members of the notorious "Scorpion" unit, believed to have been acting under the aegis of the Serbian police, executing men and boys from Srebrenica at Trnovo. Although the video was never admitted as evidence, it was shown at the trial²⁶ and would not have become public but for the trial.²⁷ It had an enormous impact on Serbia: having been shown at the trial it was aired as news on a number of Serbian national television stations and reached a broad audience, sending shockwaves through society. The airing of the video engendered a great deal of national discussion, forcing people to confront the fact of atrocities they had previously denied. Also the video prompted the national government to arrest the perpetrators seen in the film.²⁸

On a broader scale, the Milosevic trial was the first ICTY case in which evidence was introduced relating to all three conflicts: Bosnia, Croatia and Kosovo. It is also likely to be the only ICTY trial that comprehensively examines Belgrade's role in Bosnia and Croatia. Although it was widely assumed that Serbia supported the Serb

²⁶ The videotape was shown as part of the prosecutor's cross-examination of Obrad Stevanovic, former assistant interior minister.

²⁷ Human Rights Watch interview with member of the prosecution, May 16, 2006 .

²⁸ See "Serbia holds video 'executioners,'" *BBC News*, June 2, 2005, <http://news.bbc.co.uk/2/hi/europe/4602949.stm>.

combatants in the conflicts in Bosnia and Croatia, the full extent of the support and the mechanisms by which it was accomplished were not public until the Milosevic trial.²⁹ Much of Belgrade's involvement in the war was kept secret. Milosevic himself discussed the secrecy involved in a statement to a Belgrade investigating judge who was looking into allegations of misappropriation of customs funds in 2001. In his statement, admitted as an exhibit at trial, Milosevic admitted the money was used to help rebel Serbs in Bosnia and Croatia:

As regards the resources spent for weapons, ammunition and other needs of the Army of Republika Srpska [in Bosnia and Herzegovina] and the Republic of Serbian Krajina [in Croatia], these expenditures constituted a state secret and because of state interests could not be indicated in the Law on the Budget, which is a public document. The same applies to the expenditures incurred by providing equipment, from a needle to an anchor, for the security forces and special anti-terrorist forces in particular, from light weapons and equipment to helicopters and other weapons which still remain where they are today, and this was not made public because it was a state secret, as was everything else that was provided for the Army of Republika Srpska. In my opinion, these matters should still constitute a state secret. . .³⁰

The Milosevic trial opened the door on these state secrets. Evidence introduced at trial showed exactly how those in Belgrade and the Federal Republic of Yugoslavia financed the war; how they provided weapons and material support to Bosnian and Croatian Serbs; and the administrative and personnel structures set up to support the Bosnian Serb and Croatian Serb armies. In short, the trial showed how Belgrade enabled the war to happen. As a former UN official testified "The [Serbs] relied almost entirely on the support they got from Serbia, from the officer corps, from the intelligence, from the pay, from the heavy weapons, from the anti-aircraft

²⁹ See, for example, Exhibit P471.5, "The Ethnic Cleansing of Bosnia-Herzegovina, A Staff Report to the Committee on Foreign Relations, United States Senate August 1992," p. 27 ("Former JNA commanders are pursuing the war against Bosnian Muslims and Croatians using former JNA troops, artillery and aircraft."); see also Testimony of Milan Babic, Trial Transcript, November 20, 2002, p. 13116 (describing how Milosevic told him to describe the Krajina as coming out in favor of FRY, not Serbia "so that his direct links and links with Serbia would not be seen, links to what was happening in Krajina.").

³⁰ Statement of April 2, 2001, admitted into evidence as Exhibit P427.3(a).

arrangements. Had Belgrade chosen even to significantly limit that support, I think that the siege of Sarajevo probably would have ended and a peace would have been arrived at somewhat earlier rather than having to force them militarily into that weaker position.”³¹

Human Rights Watch did not attempt an exhaustive review of the evidence introduced at trial. Human Rights Watch did consider Milosevic’s cross-examination and defense and we did not include evidence where we felt Milosevic had raised valid questions in rebuttal as to the value of the evidence. Milosevic’s defense focused on Kosovo, and because the evidence discussed in this paper relates primarily to allegations of Serbia’s involvement in the conflicts in Bosnia and Croatia, much of it was not directly challenged by the defense. This paper also does not attempt to undertake a review of the chain of command evidence that, if proven, would establish Milosevic’s criminal liability. The material we reviewed, however, shed light on the following three important areas.

Financial Assistance

*Without Serbia, nothing would have happened, we don’t have the resources and we would not have been able to make war.*³²

—Radovan Karadzic, former president of Republika Srpska, to the Assembly of the Republika Srpska, May 10-11, 1994

Money is a *sine qua non* for warfare. As Gen. Ratko Mladic (commander of Bosnian Serb forces) told the National Assembly of the wartime self-declared Republika Srpska, “You can not wage a war without financial support.”³³ A military expert confirmed at trial “finance is a key element of warfare.”³⁴ Serbia, through the Federal Republic of Yugoslavia (FRY), supported the Serb parties to the wars in Croatia and Bosnia both financially and militarily.³⁵ Although Slobodan Milosevic had

³¹ Testimony of David Harland, Trial Transcript, November 5, 2003, p. 28706.

³² Exhibit 537.2(a), p. 60.

³³ The Recording of The Republika Srpska National Assembly’s 16th Session held on 12 May 1992, Exhibit P352.174(a), p. 21.

³⁴ Statement of General Vegh, Exhibit P644, para. 209.

³⁵ After the dissolution of the (S)FRY, Serbia funded 95 percent of the FRY budget. Lilic testified that Serbia “bore the full burden of financing the Army of Yugoslavia.” Testimony of Zoran Lilic, Trial Transcript, June 18, 2003, p. 22760. Indeed,

acknowledged this assistance and the steep price paid by the Serbian people to assist Serbs elsewhere in the former Yugoslavia, the extent of the financial contribution was not public until the trial.³⁶

Neither wartime Republika Srpska (RS) nor the self-declared Republic of the Serbian Krajina (RSK) had the resources to finance a war.³⁷ In his testimony, the former Krajina president, Milan Babic, explained that the RSK municipalities were in an underdeveloped part of Croatia. When Croatia stopped providing financial support to them, they had to turn to Serbia for assistance.³⁸ Babic testified that “under no circumstances could [the RSK] exist” without support from Serbia or Yugoslavia.³⁹ Former U.S. Ambassador to Croatia Peter Galbraith described Krajina as “a completely impoverished region that could not exist even at the very low level that it existed without financial support from Serbia.”⁴⁰ Milan Martić, at the time the RSK minister of the interior, acknowledged to Milosevic in a letter admitted as an exhibit at the Milosevic trial, “the [RSK] has no real sources from which to fill its budget, as you certainly know.”⁴¹ Belgrade, through the federal government, financed more than 90 percent of the RSK 1993 budget.⁴²

Montenegro at some point defaulted on its small share of the budget so Serbia shouldered the entire burden. *Ibid.* The relationship between FRY and Serbia was so close that the minister of finance for Serbia, Jovan Zebic, also held the same position for the FRY. Testimony of Zoran Lilic, Trial Transcript, June 17, 2003, p. 22621.

³⁶ Text of report of statement by Slobodan Milosevic to Tanjug news agency datelined May 11, 1993, Exhibit P427.56(a) (“In the past two years, the Republic of Serbia – by assisting Serbs outside Serbia – has forced its economy to make massive efforts and its citizens to make substantial sacrifices.... Serbs find it difficult to sustain the burden of the great assistance which goes to Bosnia, and of the sanctions which have been imposed on Serbia because of its solidarity with Serbs outside Serbia.”).

³⁷ See, for example, Statement of Ante Markovic, former Prime Minister of the Federal Republic of Yugoslavia, Exhibit P569(a), para. 25 (“These Serb controlled districts had no other major source of finance than Serbia.”).

³⁸ Testimony of Milan Babic, Trial Transcript, November 18, 2002, pp. 12947-48, 12955; see also Testimony of Michael Williams, Trial Transcript, June 24, 2003, pp. 22912-13 (“[T]he situation in the Krajina, the heart of the Serb Republic in Croatia was even – even more dire. There was some elements of subsistence economy, but people essentially got by from UN humanitarian deliveries and from support that was given by Belgrade. This was a very small area with really no prospect whatsoever of surviving as a cohesive, coherent, self-support supporting unity.... that’s why I believe the leadership there .. was more beholden to Belgrade, because it had no other options.”).

³⁹ Testimony of Milan Babic, Trial Transcript, November 19, 2002, pp. 12970-71, (“SAO Krajina and RSK were completely economically and financially dependent on Serbia.”).

⁴⁰ Testimony of Peter Galbraith, Trial Transcript, June 25, 2003, p. 23087.

⁴¹ Letter from Milan Martić, Minister of the Interior of the RSK, to Slobodan Milosevic, Nikola Sainovic and Zoran Sokolovic, April 28, 1993, Exhibit P352.20(a).

⁴² Testimony of Morten Torkildsen, Trial Transcript, April 10, 2003, pp. 19027-28; see also Testimony of Milan Milanovic, (former acting RSK Minister of Defense), Trial Transcript, October 14, 2003, p. 27501 (“I do know that money came from the Federal Republic of Yugoslavia and that it filled the coffers of our budget.... Mostly it was spent on the army and police.”); Exhibit P325.5(a) (Report from the Serbian Minister of Defense on providing assistance to Serbian districts in Croatia,

Similarly, evidence showed that wartime Republika Srpska was dependent on the Federal Republic of Yugoslavia to support its war effort. Testimony of a former UN official indicated that “The Republika Srpska is not a very well-endowed region. There was virtually no functioning economy during this period [after the imposition of sanctions in 1992] other than smuggling.”⁴³ He described the wartime Republika Srpska as “an entity which had no real means of economic subsistence.”⁴⁴ Indeed, for 1993, expert testimony indicated 99.6 percent of the RS budget came from “credits” from the Federal Republic of Yugoslavia; 95.6 percent of that budget was used to fund the military and police. As retired JNA Gen. Aleksandar Vasiljevic testified, “There are ... the Krajina and the Republika Srpska who have their own governments, who have their own armies, but the funding comes from the Federal Republic of Yugoslavia.”⁴⁵

Milosevic presented the economics of Bosnia and Herzegovina in a different light, noting that it was considered an insufficiently developed region in the Socialist Federal Republic of Yugoslavia (SFRY) and that Serbia had been providing the region with money for years as part of “the fund of the federation for support to the insufficiently developed regions of the SFRY.”⁴⁶ He further contended that the financial assistance to wartime Republika Srpska and Krajina also went to humanitarian aid, education and health care, though he admitted that the largest part of their budgets was for the army.⁴⁷

The need to hide from the public the massive assistance to the wartime RS and the RSK was acknowledged in Supreme Defense Council (SDC) minutes (made public for

indicating that for November and December 1991 financial assistance that should be provided amounts to 1,205,200,000.00 dinars); Exhibit P352.13(a) (Official note from the talks between representatives of the RSK government and Milosevic in which it was decided that funding for the defense of the Serbian Krajina would be planned through the Serbian Ministry of Defense); Exhibit P352.15(a) (Letter from the Republic of the Serbian Krajina Minister of Finance to the Yugoslav National Bank requesting payment of 12,900,000,000 dinars to the budget); Exhibit P352.18(a) (July 24, 1995 request for a cash grant of 10,000,000.00 dinars from the governor’s office of the Serbian Krajina to the Yugoslav National Bank in order to cover its expenses); Exhibit P427.42(a) (Request for funds to the Serbian Ministry of Defense from the RSK Ministry of Defense asking for “the planned funds of approximately 200 million per month.”).

⁴³ Testimony of Michael Williams, Trial Transcript, June 24, 2003, p. 22912.

⁴⁴ *Ibid.*, p. 22942.

⁴⁵ Testimony of Aleksandar Vasiljevic, Trial Transcript, February 6, 2003, p. 15839.

⁴⁶ Cross-examination of Morten Torkildsen, Trial Transcript, April 11, 2003, pp. 19051-52.

⁴⁷ *Ibid.*, pp. 19114-16

the first time as part of the Milosevic trial). The Supreme Defense Council was comprised of the presidents of Serbia, Montenegro, and the Federal Republic of Yugoslavia. It met from 1992 to 2000 to make decisions about FRY's defense and security. The meetings' minutes and shorthand notes were introduced at trial as a result of the prosecutor's pursuit of court orders requiring Serbia and Montenegro to comply with outstanding requests for documents under rule 54*bis*, which allows the parties to obtain documents from states.⁴⁸ The notes indicate, inter alia, the Supreme Defense Council recognition of the need to hide aid to Republika Srpska and Krajina from the public and from some deputies in parliament.⁴⁹ Although not all of the financing was done in secret,⁵⁰ the Milosevic trial was important in that evidence introduced at trial shed new light on both the financial structures set up to facilitate support for the new entities and the sources of the money used to fund the conflicts.

As a structural matter, in order to enable the FRY to provide the new entities with financial support, a system had to be established to enable funds to be transferred efficiently. Evidence showed that a single integrated monetary and banking system was created in order to facilitate this transfer of funds. National banks were established in Republika Srpska and the Republic of the Serbian Krajina in 1992 under the auspices of the National Bank of Yugoslavia (NBY).⁵¹ The new banks were

⁴⁸ The proceedings to obtain documents from Serbia and Montenegro were primarily confidential. See, for example, Preliminary Order on Prosecution Application for an Order Pursuant to Rule 54*bis* Directing Serbia and Montenegro to Comply with Outstanding Requests for Assistance and Prosecution Second Motion for Further Action in Relation to Previous Rule 54*bis* Applications, December 16, 2005; Decision on Prosecution Application for Further Action in Relation to Previous Rule 54*bis* Applications, October 31, 2005.

⁴⁹ SDC minutes, Exhibit 667, March 12, 1993; see also Letter from Branislav Kuzmanovic, Deputy Minister of Defense, to the Secretary of the Republic of the Serbian Government, November 1, 1991, Exhibit P352.4(a), in which it is proposed that a meeting relating to a report on assisting Serb areas in Croatia be discussed at a "session closed to the public" given its "level of confidentiality."

⁵⁰ In his cross-examination of Morten Torkildsen, Milosevic noted the April 25, 1993 Official Gazette of the Republika Srpska Krajina, number 3, which on page 205 publicly states that additional funds from the FRY are used as a source of finances. Trial Transcript, April 11, 2003, pp. 19117-19.

⁵¹ As a practical matter, the National Bank of Yugoslavia was under Serb control. As described in a book by Mladan Dinkic, currently a governor of the NBY, "In autumn of 1991, the Serbian Leadership took complete control over Yugoslavia's monetary policy. The NBJ [NBY] remained the central monetary institution only on paper. Naturally no one made this public because the main aim was to enable republican authorities to conduct monetary policy in complete secrecy..." See Second Expert Report of Morten Torkildsen, Exhibit P426, para. 23.

subordinate to the NBY and ultimately restructured so that the three banks formed a single entity under NBY control.⁵²

Evidence showed that the restructuring of the banks ensured close financial links between the NBY and the satellite banks, which was necessary because of the RS and RSK's acute funding needs. As Milan Babic testified, the National Bank of the RSK "practically operated as a branch office of the National Bank of Yugoslavia."⁵³ By March 1994 the FRY and the two Serb satellite republics used a single currency. Integration of the banking system improved the functioning of the civil and military institutions in the satellite republics. Expert testimony indicated that the banks' integration enabled the FRY to circumvent United Nations Security Council sanctions imposed on the Federal Republic of Yugoslavia pursuant to Security Council resolution 757 on May 30, 1992, because the transfer of funds was done between the parent bank, NBY, and the two subsidiary banks and money was not directly given to the entities. (Other aspects of the impact of Resolution 757 on the financing of the war will be discussed below.)

Prosecution evidence also showed that another crucial mechanism for ensuring that federal money was available to wartime Republika Srpska and Krajina was the Public Accountancy Service, a financial transfer system that existed before the disintegration of the former Yugoslavia. The importance of its availability should not be underestimated. Without it, physical movement of cash would have been the only means of transferring money between Serbia and the Serb republics. Evidence showed that the need to control the system was recognized early on. In Serb-controlled areas of Croatia, testimony and documents demonstrated that branches of the Public Accountancy Service were incorporated into Serbia's accountancy system beginning in May 1991.⁵⁴ On November 1, 1991, Radovan Karadzic told an audience at the Plebiscite of the Serb People:

⁵² Exhibit P427.18(a) ("Official note from a meeting of the governors of the national banks of Yugoslavia, Republika Srpska and the Republic of the Serbian Krajina held on 12 May 1994 on the premises of the Yugoslav National Bank in Belgrade," concluding, inter alia, that "[o]nly the Yugoslav National Bank ... shall establish and carry out control over the operations of the National Bank of Republika Srpska, the National Bank of the Republic of Serbian Krajina and commercial banks in Republika Srpska and the Republic of Serbian Krajina.").

⁵³ Testimony of Milan Babic, Trial Transcript, November 19, 2002, p. 12970.

⁵⁴ Testimony of Milan Babic, Trial Transcript, November 18, 2002, pp. 12948-53, and December 3, 2002, p. 13761. See also Exhibit P427.20(a) and Exhibit P427.17(a) (Request for a unified credit and monetary system from the Republic of Serbian

Be prepared soon to take over the SDK [Public Accountancy Service] decisively. I mean, to appoint your own man in the SDK. Prepare/the ground/, first talk to them, ask them whether they're ready to work in a moment that is not legal, in accordance with laws and regulations which you, as the municipal authority, will give them.⁵⁵

The Public Accountancy Service and the integrated banking system allowed for efficient transfer of funds from FRY to the satellite republics.⁵⁶ Testimony indicated that the funds themselves came from three main mechanisms: primary issues, grey issues, and diverted customs funds. Each of these will be discussed in turn.

The RSK and RS budgets were initially supported entirely by “primary issues”—the printing of new money.⁵⁷ As a general matter, it is an undesirable method for raising funds because it can easily lead to severe inflation.⁵⁸ Thus most Western countries rely on commercial lending or increased taxation to finance budget shortfalls. The Federal Republic of Yugoslavia, however, did not have many options. Security Council resolution 757 made it unlawful to transfer any funds to the FRY except as “payments exclusively for strictly medical or humanitarian purposes and foodstuffs.” According to the testimony of Zoran Lilic, the FRY president from 1993 through 1997, the sole source of money for the FRY after the sanctions were imposed was primary issue.⁵⁹ Although Milosevic argued that the sanctions themselves were the cause of hyperinflation, the prosecution’s financial expert Morten Torkildsen explained that

Krajina to the Prime Minister of the Republic of Serbia and the Prime Minister of the Republic of Montenegro and the Governor of the Yugoslav National Bank, May 12, 1992: “*Since the first day of the state of war in the Republic of the Serbian Krajina, bank transactions and the transfers of payments are conducted through commercial banks and branches of the Public Auditing Service from the Republic of Serbia.*” (emphasis in the original)).

⁵⁵ Exhibit P427.19(a), p. 2; Second Expert Report of Morten Torkildsen, Exhibit P426, para. 56.

⁵⁶ Testimony of Ante Markovic, Trial Transcript, October 23, 2003, p. 28044 (“Generally speaking, money transactions, financial transactions went through the public auditing service, the SDK. There was no other way of communication.”).

⁵⁷ See, for example, Testimony of Milan Babic, Trial Transcript, November 19, 2002, p. 12970.

⁵⁸ Ante Markovic resigned as prime minister of the FRY because the 1992 budget for FRY allocated 81 percent to cover the expenses of the JNA, the funds for which were to come from the printing of money. Statement of Ante Markovic, Exhibit P569(a), paras. 21-24.

⁵⁹ Testimony of Zoran Lilic, Trial Transcript, June 17, 2003, p. 22622.

the link was slightly more indirect. The sanctions enhanced the need for primary issue which in turn provoked hyperinflation.⁶⁰

Evidence indicated the new money was distributed to the RS and the RSK through the Public Accountancy Service and was the main means of supporting Serb-controlled districts in Bosnia and Croatia. Torkildsen concluded, based on his examination of documents, that the Belgrade-based NBY was essentially printing money for Bosnian Serb use. Supreme Defense Council minutes from February 10, 1993, indicate that primary issue funded a large percentage of the army's budget and that, because of the economic recession in the Federal Republic of Yugoslavia, the RSK's requests for funds should all come from primary issue.⁶¹ In the meeting, Milosevic concludes that based on the needs of the RSK and the RS, "we should issue 500 billion from the primary emission [issue]."⁶²

The satellite republics' dependence on the National Bank of Yugoslavia for primary issue is evident in the large number of both the RS and RSK governments' direct requests to the National Bank of Yugoslavia for money during the war, many of which were introduced as exhibits.⁶³ The documents show that the money financed RS and RSK budget deficits, comprised almost entirely of military and police expenditures:⁶⁴ Army expenditures were often characterized as "special purpose" expenditures.⁶⁵ A

⁶⁰ Testimony of Morten Torkildsen, Trial Transcript, April 10, 2003, p. 19044.

⁶¹ SDC Minutes, Exhibit P667, February 10, 1993, p. 29.

⁶² *Ibid.*, p. 30.

⁶³ See, for example, Exhibit P352.15(a) (Letter from the Republic of the Serbian Krajina Minister of Finance to the Yugoslav National Bank requesting payment of 12,900,000,000 dinars to the budget); Exhibit P352.18(a) (July 24, 1995 request for a cash grant of 10,000,000.00 dinars from the governor's office of the Serbian Krajina to the National Bank of Yugoslavia in order to cover its expenses); Exhibit P427.42(a) (Request for funds to the Serbian Ministry of Defense from the RSK Ministry of Defense asking for "the planned funds of approximately 200 million per month"); Exhibit P427.53(a) (Request from the Republic of the Serbian Krajina to the FRY Ministry of Defense for financial and military resources in the amount of 100,000,000 dinars dated November 22, 1994).

⁶⁴ Second Expert Report of Morten Torkildsen, Exhibit P426, para. 73 (citing the Official Gazette of the Republika Srpska, March 30, 2004, indicating that financing the VRS constitutes 95.6 percent of the budget for 1993); Exhibit P427.59(a).

⁶⁵ Exhibit P427.24(a) (Decision on using primary issue funds, Official Gazette of the Serbian People of Bosnia and Herzegovina, No. 4/92 "In order to avoid adverse effects of the war on the economy of the Serbian Republic of BH, up to 80 percent of primary issue will be used for special purposes"); Exhibit P388; Second Expert Report of Morten Torkildsen, Exhibit P426, para. 73.

May 1992 RS government decision indicates that “up to 80 percent of primary issue will be used for special purposes.”⁶⁶

In addition to direct financing from the NBY, primary issues were also a source of loans to the RS to be repaid at a 5 percent interest rate over 10 years.⁶⁷ However, as Torkildsen testified, severe inflation meant the loans were paid back at a real value of much less than the amount borrowed and thus amounted to a gift.⁶⁸ Evidence also indicated that primary issue was used to extend credit to manufacturers of supplies for the Republika Srpska army.⁶⁹

In addition to primary issue, testimony indicated “grey issues” also were used to raise money for military expenses. “Grey issue” is money printed by the bank but, unlike primary issue, is unauthorized and not recorded on the books of the central bank. The benefit of using grey issue is that because no records are kept, whoever issues the money can spend it in secret for whatever purposes they determine. Thus grey issue is likely used for purposes of which the issuer wants no record kept. It is particularly dangerous for the economy since the uncontrolled printing of money leads to hyperinflation.

From 1990 to 1994 FRY used grey issue in an effort to obtain hard currency from Serbian citizens.⁷⁰ Experts estimate that Serbian citizens had 8 billion deutschmarks in savings that the government could potentially buy back.⁷¹ The foreign currency reserves that the state managed to obtain were then sent to the branch of a Yugoslav bank in Cyprus.

⁶⁶ Exhibit P366; Second Expert Report of Morten Torkildsen, Exhibit P426, para. 73.

⁶⁷ Exhibit P427.33(a).

⁶⁸ Second Expert Report of Morten Torkildsen, Exhibit P426, para. 76.

⁶⁹ Exhibit P427.35(a) (request for credit from the primary emissions from a manufacturer of uniforms which was approved by the general staff of the army of the Republika Srpska on November 30, 1992).

⁷⁰ Second Expert Report of Morten Torkildsen, Exhibit P426, para. 83.

⁷¹ See Annual Report for Year 1992, The National Bank of Republika Srpska, Exhibit 427.14(a) (“Realisation of foreign currency inflow during the war and under the embargo was impossible so the Bank decided to start creating foreign currency reserves of the state through buying off foreign currency from citizens through commercial banks. In this way first foreign currency reserves were formed.”). The report also notes deterioration of financial discipline and enforcement of irregular money issue, especially primary. See also Second Expert Report of Morten Torkildsen, Exhibit P426, para. 80.

Evidence showed that by 1994 federal authorities realized they needed to address the hyperinflation and could no longer continue to print money to cover budget deficits.⁷² Another source of hard currency had to be found, and it was the FRY Customs Department. In 1994 Mihalj Kertes became director of the Customs Department. Beginning that year some Customs Department funds were not recorded in the accounting records of FRY and at least some of these funds were transferred to the same Cyprus accounts that had previously been receiving the currency obtained through the grey issues.⁷³

The testimony of Radomir Markovic, head of the Serbian State Security Service from November 1998 until 2000, provided a description of how this money was used. Markovic testified that Serbia's budget for security services only covered about 50 percent of its budget needs. Funds to pay for purchase of equipment for state security and the army came from the federal customs administration.⁷⁴ He described how employees of the state security sector in charge of finance went to the Customs Department for cash and carried it back to the Ministry of the Interior's financial department. The Minister then deposited it into Belgrade Bank accounts in Cyprus. That money was then used to pay for helicopter equipment, jeeps and other equipment from abroad.⁷⁵ Markovic also testified that these funds paid for the construction of the Kula training center that was used to train special Serb police units deployed in Bosnia and Croatia.⁷⁶

Material Support

Materials are the essence of armed conflict.⁷⁷ Evidence introduced in the Milosevic trial showed that the Croatian and Bosnian Serb armies relied on the Federal Republic of Yugoslavia and Serbia for more than just financial support: they also

⁷² See Second Expert Report of Morten Torkildsen, Exhibit P426, paras. 81-83. Also, at the beginning of 1994 the Yugoslav dinar was pegged to the deutschmark at a ratio of 1:1 in order to prevent hyperinflation.

⁷³ Second Expert Report of Morten Torkildsen, Exhibit P426, para. 83; Exhibit 427.61(a).

⁷⁴ Testimony of Radomir Markovic, Trial Transcript, July 25, 2002, p. 8685.

⁷⁵ *Ibid.*, pp. 8685-87.

⁷⁶ *Ibid.*, pp. 8688-89.

⁷⁷ Statement of General Vegh, Exhibit 644, para. 201.

depended almost entirely on the Yugoslav army for equipment and supplies.⁷⁸ The extent of the reliance was demonstrated by documents and testimony introduced at the Milosevic trial. Evidence showed that the JNA, the Serbian Ministry of Interior and other entities (including Serb civilian groups and police) armed Serb civilians and local territorial defense groups in Krajina and Bosnia prior to the start of conflict and the official formation of armed forces. Later, the Bosnian Serb Army (VRS) and the Army of the Serbian Krajina (SVK) were formed on the basis of materiel and personnel the JNA left behind when it withdrew from Croatia and Bosnia.⁷⁹ Because the RSK and RS had almost no production capacity, they were only able to meet their ongoing materiel needs through Serbia and the FRY's continuing transfer of weapons and ammunition.

As with financial support, much of the material support provided to the armies was done in secret. Federal and Serbian support to the RSK and the RS was officially characterized as "humanitarian aid" though it was meant for the armed forces.⁸⁰ Evidence introduced in the Milosevic trial highlighted several mechanisms by which the secret weapons transfers and material support occurred.

Arming of Bosnian and Croatian Serbs

Evidence introduced at trial showed that various state mechanisms armed local Serb territorial defense units and civilians in Bosnia, Croatia and Kosovo prior to the start of conflict.

JNA support

A great deal of armaments was passed to local Serb territorial defense units in Bosnia and Croatia by members of the Yugoslav army, with senior authorities'

⁷⁸ On April 27, 1992, Serbia and Montenegro proclaimed that the Socialist Federal Republic of Yugoslavia was to become the Federal Republic of Yugoslavia. The name of the army was also changed from the Yugoslav People's Army (JNA) to the Army of Yugoslavia (JA). For purposes of this report, "Yugoslav army" is used to refer to both the JNA and the JA.

⁷⁹ See, for example, Testimony of Wesley Clark, Trial Transcript, December 15, 2003, p. 30375 ("We knew that the Serb military had been – had been carved out of the Yugoslav military").

⁸⁰ See, for example, Exhibit P464.23, Letter from an RS Colonel to Talic in the FRY dated May 28, 1993, requesting "1000 tons of D-2 [fuel] and certain quantities of MB-86 or 98 [fuel]," noting that the request should be from some organ of civilian authority for humanitarian aid and that "it shouldn't be mentioned that this is for the needs of the army." In addition, Milan Babic testified that the code for weapons in the intercepted communications was "blankets and medicines" as well as "planks, wooden boards ... flour, sugar and batteries." Trial Transcript, November 22, 2002, pp. 13292-93. See also Exhibit P352.29.

approval. Former JNA General Vasiljevic's testimony indicated that for weapons previously held on federal territory to be released to Serbs, the highest level of authority—in this case approval from the presidency—would be required.⁸¹ An expert military witness explained that “[w]eapons can only be issued from a well-guarded military armoury in accordance with well-regulated issue procedures, on the orders of a person with authority to issue.”⁸² That person is usually someone quite senior and not a local commander.⁸³

In some instances weapons distribution took the form of local civilians making lists of their requirements, which were then supplied from JNA warehouses. Milan Babic testified that in the summer of 1991 a JNA colonel offered Babic his services to procure weapons for Serbs in Croatia. The colonel took weapons orders from the Krajina Serbs and then distributed weapons from a JNA warehouse in Bihac, Bosnia (near the Croatian border).⁸⁴ Similarly, in Bosnia witness B-24, a police officer and member of the Crisis Staff in Zvornik, described how in April 1992 a person working in Zvornik under the pseudonym “Marko Pavlovic” made a phone call to JNA officers and within 24 to 48 hours, weapons and ammunition shipments would arrive for the “defense” of Zvornik.⁸⁵ He estimated that at least two-thirds of the total weapons brought into Zvornik were from JNA depots and warehouses.⁸⁶

General Vasiljevic testified about other cases of JNA soldiers handing over small arms to Serbs in Croatia and Bosnia. In late 1991 a security officer in the counter-intelligence department of the JNA was caught by the head of security attempting to transfer weapons from a warehouse in Croatia to Serbs in Slavonia. General Vasiljevic testified that a colonel who tried to transfer weapons to Serbs in Croatia told him that he had done so on verbal orders from Gen. Zivota Panic, the commander of the JNA's First Army District during Vukovar operations.⁸⁷ General

⁸¹ Testimony of Aleksandar Vasiljevic, Trial Transcript, February 18, 2003, p. 16402.

⁸² Statement of General Vegh, Exhibit P644, para. 127.

⁸³ *Ibid.*

⁸⁴ Testimony of Milan Babic, Trial Transcript, November 22, 2002, pp. 13274-76.

⁸⁵ Testimony of Witness B-24, May 23, 2003, pp. 21171-73.

⁸⁶ *Ibid.*, p. 21184.

⁸⁷ Testimony of Aleksandar Vasiljevic, Trial Transcript, February 6, 2003, p. 15777.

Vasiljevic also testified that weapons were moved from warehouses when the JNA pulled out of Croatia and taken to JNA warehouses in Bosnia and Herzegovina and deeper into Croatia where they were intended for Serb territorial defense units in Krajina.⁸⁸

By the end of 1991, evidence showed that due to the large number of direct requests by the new territorial defense units for military equipment from JNA reserves, the JNA administration recognized the need to be more systematic in supplying arms to territorial defense units. Expert analysis and documents indicate that on December 30, 1991, the JNA made explicit plans for equipping local Serb territorial defense units in an orderly fashion.⁸⁹ This confidential order establishing a system for weapons requests was later referenced in a letter from Bosnian Serb Territorial Defense Headquarters asking for 2,000 weapons.⁹⁰ Whether formally or informally, a great deal of arms was clearly flowing between the JNA and local Serb civilian defense units prior to the conflicts. By March 1992, two months before official formation of the Republika Srpska army, military documents introduced at trial concluded that the “JNA has distributed 51,900 weapons [to Bosnian Serbs].”⁹¹

In Kosovo, expert analysis demonstrated that the Yugoslav army also supplied weapons to Serb civilians in 1998, prior to the outbreak of armed conflict. The analysis cites a June 8, 1998 minister of the interior report that states that “given the more frequent armed attacks of Albanian terrorist gangs, which are aiming to ethnically cleanse the area, we believe that it is necessary to distribute weapons to

⁸⁸ Ibid., pp. 15778-79.

⁸⁹ “Military Analysis Team Expert Report Case IT-02-54-T: The SFRY Armed Forces and the Conflict in Croatia – JNA Activity in BiH and JNA (VJ) Support to Bosnian-Serb Forces,” Part III: JNA Activity in BiH and JNA(VJ) Support to Bosnian-Serb forces, Exhibit P643.1, para. 16; Exhibit P427.48(a).

⁹⁰ Exhibit P464.15(a), March 3, 1992; “Military Analysis Team Expert Report,” Part III, Exhibit P643.1, para. 16. Direct requests from former JNA soldiers in the Krajina to the JNA continued after the formation of the SVK. The problem was so prevalent that in December 1993 an official attempt was made to control direct requests for weapons coming from officers in the Krajina. Testimony of Aleksandar Vasiljevic, Trial Transcript, February 6, 2003, pp. 15855-56. One of the exhibits introduced at trial is an order about the procedure for securing materials from the FRY made in response to the problem that individuals were using connections at the federal army directly to get supplies, bypassing the Main Staff who coordinated assistance. Exhibit P352.157(a).

⁹¹ Exhibit P352.90 (“Conclusions based on assessment of the situation in the territory of BH/Bosnia and Herzegovina/ in the area of responsibility of the 2.VO/2nd Military District”, March 1992), p. 5. See also Exhibit P427.32, p. 14 (“The infantry units formed are equipped with weapons received from the former JNA, which were distributed by officers, members of the Serbian Democratic Party, or other representatives of the Serbian people.”).

the threatened population.”⁹² The effort to arm locals was in response to a recognition that civilians were already arming themselves without official control. The program was meant to arm citizens and not members of the military or Ministry of the Interior (MUP), who were armed directly by the state. At the same time that this secret arming of Serb civilians was being conducted in Kosovo, a program was underway to disarm ethnic Albanians.⁹³

Serbian Ministry of Defense

Evidence showed that the Serbian Ministry of Defense played a major role in supplying weapons to Bosnian Serbs as well. This was done in a number of ways.

Exhibits show that the RSK leadership made direct requests for large quantities of ammunition, weapons, and supplies from the Serbian minister of defense in 1991.⁹⁴ A November 1, 1991 confidential “Report on providing assistance to the Serbian districts in Croatia,” by the Republic of Serbia Defense Ministry indicates “assistance has already been provided to the Serbs in Croatia, but there is still an urgent need.”⁹⁵ In the report, the Serbian defense minister recommended that in addition to a great deal of financial assistance, the Serbian government send a large amount of communications and civilian protection equipment and weapons to Krajina by the end of 1991. In support of his request, the minister of defense stated, “We believe that very good results would be achieved towards joint aims if the Republic of Serbia ensured the assistance to meet the said needs, with the help of all social institutions and this Ministry, which could allocate assistance from the supplies it still has in its depots.”⁹⁶

Another important means by which material and equipment were supplied to Bosnia and Croatia was through the sending of arms with Serbian volunteers and personnel

⁹² Exhibit P318, “Report on the Organisation and Command & Control Measures for Armed Organisations of the Federal Republic of Yugoslavia and Republic of Serbia,” Part IIA-11/13.

⁹³ Exhibit P318, “Report on the Organisation and Command & Control Measures for Armed Organisations of the Federal Republic of Yugoslavia and Republic of Serbia,” Part IIA-12-13/13.

⁹⁴ See Exhibits P427.36(a) and P427.40(a), which contain lengthy requests for weapons and ammunition.

⁹⁵ Exhibit P352.5(a).

⁹⁶ Ibid.

who traveled from Serbia. Dobrila Gajic-Glasic, a former Serbian Defense Ministry employee, testified that Serbia's Ministry of Defense armed volunteers for the wars in Bosnia and Croatia beginning in October 1991. According to her testimony, the Ministry of Defense bought a great deal of supplies for volunteers that was registered as "hunting equipment," including 800 bulletproof vests, 10 laser sights and between 10 and 20 infrared sights.⁹⁷ In addition, thousands of rifles and pistols and other equipment for volunteers were obtained overseas, in some instances paid for with cash carried abroad by suitcase.⁹⁸ The means by which weapons were purchased underscores the secrecy of the operations.

Serbian Ministry of the Interior

The Ministry of the Interior in Serbia also played an important role in arming Serbian defense units in Bosnia and Croatia. Milan Babic testified that in early 1991, after a meeting with Milosevic and the Serbian Interior Minister discussing weapons for the defense of the RSK, the Ministry of the Interior distributed arms to Krajina from the warehouses of the territorial defense units in Serbia.⁹⁹ General Vasiljevic testified that three men were arrested by the Croatian Ministry of the Interior for transporting weapons supplied by the Serbian MUP to Serbs in Croatia in early 1991; the Serbian minister of the interior intervened to secure their release.¹⁰⁰ Milan Milanovic, a former acting RSK minister of defense, described how Radovan Stojicic, commander of a special unit of the Ministry of the Interior, arrived in Krajina on October 5, 1991, with personnel and equipment from the Serbian MUP and continued to receive equipment from Serbia as well as his salary.¹⁰¹

Testimony also indicated that Serbian police stations (which were part of the Ministry of the Interior) directly provided some support to Serb territorial defense units in Bosnia. As witness B-24, a Bosnian Serb police officer, testified, "We didn't have the technical equipment, I mean, the uniforms, the clothing that in those days

⁹⁷ Statement of Dobrila Gajic-Glasic, Exhibit P567, para. 18.

⁹⁸ *Ibid.*, para. 21; Testimony of Dobrila Gajic-Glasic, Trial Transcript, October 21, 2003, p. 27846.

⁹⁹ Testimony of Milan Babic, Trial Transcript, November 20, 2002, pp. 13103-04. See also Testimony of Aleksandar Vasiljevic, Trial Transcript, February 13, 2003, p. 16038.

¹⁰⁰ Testimony of Aleksandar Vasiljevic, Trial Transcript, February 5, 2003, p. 15772.

¹⁰¹ Testimony of Milan Milanovic, Trial Transcript, October 8, 2003, pp. 27253-54.

were the same as in Yugoslavia as in Serbia. So we received aid in the form of uniforms, some communications equipment from police stations in Mali Zvornik and Loznica [both in Serbia].”¹⁰²

Association of Serbs and Emigrants of Serbia

Perhaps one of the most significant ways in which the Ministry of the Interior worked to arm Serb defense units—unknown before the Milosevic trial—was in conjunction with the Association of Serbs and Emigrants of Serbia.

The association, also known as “Matica,” was founded to provide humanitarian aid to Serbs in Bosnia and Croatia. Although ostensibly a humanitarian organization, it provided supplies for the battlefield.¹⁰³ The role it played in arms distribution was brought out in trial testimony. Dobrila Gajic-Glasic testified that during discussions about raising money to arm the Serbian war volunteers, Brana Crncevic, the Matica president, promised to finance the purchase of 8,000 rifles with money raised abroad.¹⁰⁴ Two insider witnesses provided details as to how weapons were distributed by the association in Bosnia and Croatia.

According to B-179, a witness formerly employed by the Association of Serbs and Emigrants of Serbia, Serb villages in Bosnia and Croatia would regularly send requests for supplies including automatic rifles, silencers, etc. to the association.¹⁰⁵ Every day a small group of state security leaders including Jovica Stanisic and Mihalj Kertes¹⁰⁶ met to discuss the kind and amount of supplies and ammunition that were needed in various parts of Bosnia and Croatia. The meetings initially took place at a large JNA warehouse outside of Belgrade where weapons and ammunition were stored (Bobanj Potok), but were later moved to the Belgrade fairgrounds.¹⁰⁷

¹⁰² Testimony of Witness B-24, Trial Transcript, May 26, 2003, p. 21311.

¹⁰³ Testimony of Witness B-179, Trial Transcript, September 15, 2003, pp. 26589-90.

¹⁰⁴ Statement of Dobrila Gajic-Glasic, Exhibit P 567, para. 22.

¹⁰⁵ See Exhibit 539.8(a).

¹⁰⁶ Jovica Stanisic was chief of Serbia’s state security service (secret police) until late 1998; Mihalj Kertes was a deputy interior minister in Serbia before becoming director of theFRY Customs Department in 1994.

¹⁰⁷ Testimony of Witness B-179, Trial Transcript, September 15, 2003, pp. 26605-07.

After the meetings, the Serbian Ministry of the Interior issued orders concerning where the trucks went and the loading of weapons. B-179 testified that in 1992, 1,200 trucks, most with more than 20 tons of carrying capacity, transported weapons and ammunition from Bubanj Potok to front lines throughout Bosnia and Croatia. Weapons also came from Ministry of the Interior warehouses.¹⁰⁸ He testified that convoys of 10-15 large trucks went to Bosnia and Croatia on practically a daily basis.¹⁰⁹ Most convoys included a Serbian Ministry of Interior truck and were never checked at checkpoints.¹¹⁰ Although Milosevic argued the Association of Serbs and Emigrants of Serbia provided humanitarian assistance,¹¹¹ B-179 estimated that only one out of 10 or 15 trucks in a convoy would carry humanitarian aid; the rest contained military assistance. B-179 confirmed that no one paid for the supplies. They were just received.¹¹²

The trucks used for weapons transport also included private transporters from the RSK and the RS that would come to Serbia for this purpose.¹¹³ The equipment was initially taken to RS and RSK front lines. B-24, the Serbian police officer and member of the crisis staff in Zvornik, Bosnia, described his participation in the weapons transport from the association to Serb villages in Bosnia. He testified that he was instructed to drive to a Belgrade fairgrounds parking lot and leave a truck full of fuel with keys in the vehicle. A few hours later he would return and find the same truck loaded with weapons. The trucks would also have some wheat and flour and would contain a fictitious invoice, though they were not checked at the borders. When the trucks arrived back in Zvornik, the weapons would be distributed among Serb villages on the basis of an assessment of their degree of danger.¹¹⁴ B-24 personally participated in the transport of weapons twice and each time the truck contained 200 to 300 pieces.¹¹⁵

¹⁰⁸ *Ibid.*, pp. 26596-98.

¹⁰⁹ *Ibid.*, pp. 26612-14.

¹¹⁰ *Ibid.*, pp. 26611-14.

¹¹¹ Cross-examination of Witness B-179, Trial Transcript, September 15, 2003, pp. 26639-41.

¹¹² Testimony of Witness B-179, Trial Transcript, September 15, 2003, p. 26614.

¹¹³ *Ibid.* p. 26596.

¹¹⁴ Testimony of Witness B-24, Trial Transcript, May 23, 2003, p. 21182.

¹¹⁵ *Ibid.*, pp. 21182-83.

After sanctions were imposed on Serbia and Montenegro in May 1992,¹¹⁶ testimony indicated the distribution of weapons continued unabated. The only difference was that trucks could not stay at Bubanj Potok for long.¹¹⁷ B-179 testified that after the embargo, one or two trucks came to the warehouse at a time and left after being loaded. This was done in an effort to prevent information leaks about the loading of weapons. Also, trucks were kept at the Belgrade fairgrounds since they were not supposed to be at MUP locations. The fairgrounds and other “innocent locations” were found for the trucks in order to keep the public from becoming aware of the weapons distribution.¹¹⁸

1992 formation of the SVK and VRS

The January 1992 Constitution for the Republic of the Serbian Krajina declared that the “Territorial Defense of the Republic of the Serbian Krajina shall constitute the armed forces of the Republic of the Serbian Krajina [known by its initials SVK].”¹¹⁹ The Republika Srpska’s National Assembly officially established the Army of Republika Srpska BH [known as VRS] on May 12, 1992.¹²⁰ Both armies had an enormous head start as a result of assistance from the JNA.

The JNA officially withdrew from Bosnia and Croatia in May 1992, but it left staff and supplies behind. Evidence showed that this was one of the primary ways by which the JNA supported the VRS and SVK. The materiel left behind formed the basis for the creation of the new armies. Although it was well known at the time that the JNA left its weapons and personnel in Bosnia and Croatia for use by local Serbs when it withdrew, the extent of the reliance on the transfer of supplies and the mechanisms by which the transfer occurred were brought out in depth during the Milosevic trial.¹²¹

¹¹⁶ United Nations Security Council, Resolution 757 (1992), S/RES/757 (1992) <http://www.nato.int/ifor/un/u920530a.htm> (accessed December 4, 2006).

¹¹⁷ Testimony of Witness B-179, Trial Transcript, September 15, 2003, p. 26618.

¹¹⁸ *Ibid.*, pp. 26618, 26642.

¹¹⁹ Constitution of the Republic of the Serbian Krajina, January 1992, article 102.

¹²⁰ Exhibit 352.174.1(a), Tape Recording of The Republika Srpska National Assembly’s 16th Session held on May 12, 1992, p. 30.

¹²¹ Milosevic seemed to make the argument that Muslim and Croatian forces also benefited from material and equipment left behind by the JNA. See, for example, cross-examination of Morten Torkildsen, Trial Transcript, April 11, 2003, p. 19128. However, retired JNA and Croatian Army Gen. Imra Agotic testified that except for part of the weapons belonging to the Croatian Territorial Defense Units, the JNA “took all weaponry and equipment. The part they were not able to take away they left in such a state that it wasn’t operational. It couldn’t be used.” Trial Transcript, June 27, 2003, pp. 23270-71.

Testimony showed that when the JNA pulled out of Bosnia-Herzegovina in the second half of 1992, it left the Serbs there with a nearly complete army supplied with the remains of the JNA's 2nd military district.¹²² Former US Ambassador to Croatia Peter Galbraith testified that in May 1992, in withdrawing from Bosnia, the JNA “left behind, under the control of the Bosnian Serbs, 85 percent of its men and most of its equipment.”¹²³ A 1992 report to the US Senate Committee on Foreign Relations that was introduced as evidence noted that “JNA stockpiles provide the virtually unlimited ammunition that the Bosnian Serbs now use against civilians.”¹²⁴

That JNA weapons formed the basis for the VRS was acknowledged by the Bosnian Serbs. On the day the wartime Republika Srpska’s National Assembly met and officially established the Army of the Republika Srpska, May 12, 1992, General Mladic noted “we are not starting from scratch, which is important.”¹²⁵ Maj. Gen. Milan Gvero later said to the RS National Assembly in September 1993, “We kept all that could be kept of the weapons, combat equipment, air force/equipment/, materiel and the like of the former JNA.”¹²⁶ Mladic reported in September 1992 to the VRS main staff, “Our army is one of the rare ones in history to have started a liberation war with a very solid material base especially as concerns combat hardware, ammunition, and food reserves.”¹²⁷ Mladic’s overview of the source of arms to the VRS from the beginning of the war through 1994, provided in April 1995

¹²² Testimony of Morten Torkildsen, Trial Transcript, April 10, 2003, p. 19014; Exhibit P427.32(a); Exhibit P437.11; Statement of General Vegh, Exhibit P644, para. 292 (“The JNA 2nd Military District formed the skeleton of the VRS... The JNA left many personnel, and much equipment and material behind, and provided necessary support required to form the new armed force.”).

¹²³ Testimony of Peter Galbraith, Trial Transcript, June 25, 2003, p. 23080. See also “Analysis of the combat readiness and activities of the Army of the Republika Srpska in 1992,” April 1993, Exhibit P427.32, p. 93 (“The material reserves of basic and expendable material and supplies found in the territory of former BH, and left behind by the former JNA in the warehouses and units and rear bases, were mainly put under the control of, and made available to, the VRS.”); Testimony of David Harland, Trial Transcript, September 18, 2003, pp. 26973-74 (“[O]bviously Serb domination of the battlefield was largely a function of support from – from Belgrade. In fact, the – the Bosnian Serbs were outnumbered by their enemies. They were substantially outnumbered by the Bosnian Muslims alone, but they had provided the Bosnian Serbs with very substantial armaments. Or strictly speaking, they had left them in place when – when they withdrew from Bosnia-Herzegovina in 1992, but effectively it was simply a – a transfer to their proxies.”); Exhibit P471.5, p. 27.

¹²⁴ “The Ethnic Cleansing of Bosnia-Herzegovina, A Staff Report to the Committee on Foreign Relations, United States Senate August 1992,” Exhibit P471.5, pp. 27-28.

¹²⁵ Tape Recording of the Republika Srpska National Assembly’s 16th Session, May 12, 1992, Exhibit 352.174(a), p. 22.

¹²⁶ Address of Major General Milan Gvero at the 34th Session of the NS/People’s Assembly /of RS/Republika Srpska/, Banja Luka, September 29, 1993, Exhibit P427.13(a), p. 2.

¹²⁷ September 1992 report from General Mladic to the VRS main staff, Exhibit P427.2(a), p. 5.

to the 50th Republika Srpska National Assembly Session, illustrates the extent to which the RS relied on arms from JNA reserves to support combat operations:

From the beginning of the [Bosnian] war to 31 December 1994, a total of 9,185 tons of infantry ammunition has been expended. 1.49% self-produced; 42.2% came from supplies inherited by the VRS and withdrawn from enclaves and kasernes [military barracks] of the former JNA, 47.2% was provided by the Yugoslav Army; and 9.11% was imported or purchased. At the present we have 9.11% of the total needs for 1995.... We have expended 18,151 tons of artillery munitions, 26.2% of it from production, 39% from supplies, 34.4% provided by the Yugoslav Army and 0.26% imported. At the present we have 18.36% of the needs for this year. As for anti-aircraft ammunition, we expended 1,336 tons. We secured none from production, which means we didn't produce one shell, one bullet ... 42.7% came from supplies, 52.4% were provided by the Yugoslav Army, and 4.9% came from imports.¹²⁸

Additional explanation of what was left behind may be found in another exhibit entered at trial, the Republika Srpska's 1992 Combat Readiness Analysis. The confidential internal analysis acknowledges the enormous debt the VRS owed the Yugoslav People's Army in virtually all areas of operations.¹²⁹

¹²⁸ Exhibit P427.54(a), p. 18; "The Assembly of Republika Srpska, 1992-95: Highlights and Excerpts" (Statement of Expert Witness Robert J. Donia submitted July 29, 2003), Exhibit P537.2(a), pp. 69-70; Testimony of Robert Donia, Trial Transcript, September 12, 2003, pp. 26504-06

¹²⁹ See, for example, "Analysis of the Combat Readiness and Activities of the Army of Republika Srpska in 1992," Exhibit P427.32(a), p. 33: "The Army of Yugoslavia has extended great assistance to us in putting into place this type of communications link, as it has made available to us a number of its connecting pathways and the available capacities of its communications channels..."; p. 14: "The infantry units formed are equipped with weapons received from the former JNA"; p. 23: "All these resources [armored-mechanised units] have been received from the former JNA or the Army of Yugoslavia"; p. 43: "The AROS system inherited from the former JNA ... was made capable of interfering with enemy communications"; p. 77: "Combat equipment... were inherited.... from the FRY Army after its withdrawal from the territory of the Republika Srpska"; p. 85: "Of late, cooperation has also been intensified with the intelligence and security organs of the Army of Yugoslavia"; p. 93: "The material reserves of basic and expendable material and supplies found in the territory of the former BH, and left behind by the former JNA ... were mainly put under the control of, and made available to, the VRS"; p. 99: "VRS Units were supplied with technical equipment from the ... reserves of the Army of Yugoslavia"; p. 101: "[T]he basic sources of quartermaster supplies were JNA reserves evacuated to Serbian territory, aid from the Army of Yugoslavia..."; p. 104: "Thanks to the timely arrival and engagement of experienced personnel from the Army of Yugoslavia ... the Transportation Service very quickly took adequate measures to properly organize transportation support efforts."; p. 109: "The Military Service ... cooperated with the Medical Corps of the Army of the FRY and the health care institutions of the Army of the FRY. . ."; p. 113: "In the initial period, the material base of the Service was comprised of establishment of veterinary kits left behind by the former JNA"; p. 114: "The

Weapons the JNA left in Croatia were also an essential source of weapons for the Croatian Serb army in Krajina. Former acting RSK Minister of Defense Milan Milanovic testified that “[w]hen the JNA withdrew in May 1992, a part of the JNA hardware remained in the territory of the SBZS [Krajina]: around 50 tanks, around 70 anti-aircraft guns, a large number of mortars and other smaller artillery pieces, as well as personal weapons for around 30,000 soldiers.”¹³⁰ In his testimony Milan Babic explained that the Krajina territories were not demilitarized in accordance with the 1992 Vance Plan:

Weapons and military equipment and material was [sic] not taken away from the area completely, and most of the equipment was hidden, and through the Krajina police force, which was in possession of those weapons still, the military units and formations remained armed in the area. And also, later on, from the beginning of 1993, in fact, the heavy weapons were taken from the [JNA] warehouses which were held by the [UN] peace forces, and from the beginning of 1993 onwards, the armed formation existed under the name of the Serb army of the RSK, although it existed from May 1992 in actual fact, this Serbian army with part of the [JNA] weaponry.¹³¹

Continuing supply of ammunition and other military materials

Without a re-supply of ammunition and other materials, combat could not have continued.¹³² Neither the RS nor the RSK had the capacity to produce its own weapons or ammunition, or the funds to buy them. As Mladic stated to the RS National Assembly in May 1992, “We do not make ammunition and we can only use

FRY Army has agreed to give us 20 working dogs for special purposes, and to train our personnel to work with the same.”; p. 115: “[F]ire-fighting support ... is functioning ... on the remnants of the former JNA’s system.”; p. 129: “[S]alaries of officers, non-commissioned officers, soldiers under contract and workers in the RS army, who until May 19, 1992 had been members of the JNA, continued to be the responsibility of the FR Yugoslavia”; p. 131: “Care was extended to injured soldiers as well as to the population, thanks in the first place to ... the assistance of the Army of the FRY, both in terms of the provision of care itself and of the supply of medicaments and other medical supplies and expendables.”

¹³⁰ Statement of Milan Milanovic, Exhibit P550, para. 87.

¹³¹ Testimony of Milan Babic, Trial Transcript, November 21, 2002, pp. 13231-32, and see also p. 13234. The Vance Plan was the UN-mediated ceasefire agreement establishing four United Nations Protected Areas in the Croatian territory claimed by the RSK.

¹³² Statement of General Vegh, Exhibit P644, para. 224.

as much as we can get hold of.”¹³³ The 1992 VRS Combat Readiness report also notes that in spring 1993 “[m]aterial needs for the successful conduct of combat operations are being met from the existing reserves and by relying on the FRY Army.... [W]ar production to meet the needs of the VRS has not been instituted.”¹³⁴ On September 29, 1993, VRS Major General Gvero informed the RS National Assembly that “We had no budget or material supplies for the war to rely on. We have not purchased a single plane, helicopter, tank, artillery piece, etc.”¹³⁵ Yet despite sanctions and a lack of production capacity and resources, observers testified that Bosnian Serb forces showed “no sign of being short of either [fuel or ammunition],” noting the VRS’s ability to redeploy forces in various parts of Bosnia.¹³⁶ Evidence introduced at trial indicated how supplies were distributed to the territories after JNA withdrawal, despite sanctions.

In Bosnia, an expert report by military analysts introduced at trial described a plan of supply codenamed “*Izvor*” (source) to facilitate the provision of large quantities of fuel and weapons from the FRY to the VRS and circumvent the September 1991 UN arms embargo. Documents cited in the report indicate that the VRS was able to procure ammunition and fuel in the FRY and that between August 5 and September 14, 1992, large quantities of material including small arms, artillery, and tank and rocket ammunition were in fact received by the VRS. An expert testified that under the *Izvor* plan, 445 tons of ammunition were supplied to the VRS.¹³⁷ Other documents also point to the receipt of tons of ammunition and technical equipment via *Izvor*.¹³⁸ The analysts’ report describes ongoing FRY and Serbian support for the VRS as demonstrated by documents referencing military equipment repairs being carried out in the FRY. One exhibit mentions the return of three thousand 82mm mortar shells

¹³³ Tape Recording of the Republika Srpska National Assembly’s 16th Session held on 12 May 1992, Exhibit 352.174(a), p. 22.

¹³⁴ Exhibit 427.32(a), p. 96.

¹³⁵ Exhibit 427.13.

¹³⁶ Testimony of Michael Williams, Trial Transcript, June 24, 2003, p. 22953. See also United Nations Security Council Resolution 819 (1993), demanding that “the Federal Republic of Yugoslavia (Serbia and Montenegro) immediately cease the supply of military arms, equipment and services to the Bosnian Serb paramilitary units in the Republic of Bosnia and Herzegovina.”

¹³⁷ Testimony of Reynaud Theunens, Trial Transcript, January 27, 2004, p. 31513.

¹³⁸ “Military Analysis Team Expert Report,” Part III, Exhibit P643.1, para. 99.

that had come back from repairs in the FRY.¹³⁹ The heavy reliance on FRY for continuing support is also demonstrated by the 1992 VRS Combat Readiness report, which even suggests that the VRS establish a logistics base in the FRY for “coordinating procurement and the execution of logistics support tasks on the territory of the FRY for the needs of the VRS.”¹⁴⁰

Testimony from a former UN official indicated that it was impossible for the UN to monitor comprehensively Serbia’s borders. However, from the monitoring that could be done, confidential UN cables that were introduced as evidence at trial suggest that Serbia was violating the arms embargo. Documents and testimony indicate that observers noted several helicopter flights originating from or going towards Serbia beginning in September 1994.¹⁴¹ In some instances 10 to 15 helicopters were observed flying at night, a feat that testimony indicated would be virtually impossible for the Bosnian Serb army.¹⁴² Testimony indicated that a “very, very considerable number” of aircraft was observed violating the no-fly zone between Serbia and Bosnia.¹⁴³ UN observers also described increased air defense measures undertaken by Bosnian Serbs in the autumn of 1994 that led them to conclude that the FRY was supplying new or additional air defense equipment to the VRS.¹⁴⁴ Confidential UN cables admitted into evidence at trial also raised concerns about the observed transfer of infantry and tanks across the border from Serbia to Bosnia.¹⁴⁵

A Serbian journalist observed border crossings by JNA vehicles and testified that the “[a]ssistance to the army of the Republika Srpska ... was practically a non-stop

¹³⁹ Ibid., para. 100.

¹⁴⁰ “Analysis of Activities Concerning Elements of Combat Readiness in 1992,” February 1993, Exhibit P427.50(a), p. 28.

¹⁴¹ Testimony of Michael Williams, Trial Transcript, June 24, 2003, pp. 22961-63; Exhibits P470.39.1-7.

¹⁴² Testimony of Michael Williams, Trial Transcript, June 24, 2003, pp. 22961-62; “Military Analysis Team Expert Report,” Part III, Exhibit P643.1, para. 45.

¹⁴³ Testimony of Michael Williams, Trial Transcript, June 24, 2003, p. 22963.

¹⁴⁴ Ibid., pp. 22947-48.

¹⁴⁵ Cable to Akashi from Annan, April 6, 1995, Exhibit P470.40 (“The U.S. considers this [transfer of weapons through FRY] a gross violation of Security Council resolutions and wishes to have a full explanation from the Secretariat... In particular, the question of the complicity of the Russian battalion in this affair is raising the gravest concern.”); Cable to Akashi from Annan, January 31, 1994 re: Alleged Yugoslav Army Activities in BH, Exhibit P470.30; Letter dated 5 April 1993 from the Permanent Representative of Bosnia and Herzegovina to the United Nations addressed to the President of the Security Council, Exhibit P645.8, stating: “During the night of 4 April 1993, a convoy of armoured vehicles entered Zeleni Jadar, Republic of Bosnia and Herzegovina, from the territory of the Republic of Serbia.”

process.”¹⁴⁶ He said this was obvious in any border town, though he noted a brief period where, due to the presence of international monitors, convoys were sent in a more discreet fashion.¹⁴⁷ He observed Yugoslav army vehicles crossing the border several times between 1992 and August 1994.¹⁴⁸ Others also testified about observing military convoys crossing the river from Serbia to the RS.¹⁴⁹

The SVK also depended on the FRY for continuing support. An exhibit introduced at trial shows that in a November 1992 meeting about the mode of financial assistance for RSK forces, the RSK president and Milosevic decided that financing for the RSK’s defense would come from the Serbian Ministry of Defense. Other support, including equipment maintenance and financing for the active officers who stayed behind, would be via the Yugoslav army.¹⁵⁰

Documents and testimony introduced at trial show that military support was indeed provided to the SVK by the Yugoslav army.¹⁵¹ A December 17, 1993 “Memorandum for the coordination of tasks meeting at the Yugoslav Army General Staff,” for example, lists “[s]cheduled equipment (KUB/SA-6 surface-to-air missiles) has been taken possession of and stored at SVK depots” as an implemented task from the previous coordination meeting. The document then notes further SVK requests for ammunition and spare parts as well as a request for the coordination of Yugoslav Army teams to be sent to repair complicated systems and equipment.¹⁵² Another exhibit is an April 8, 1993, request from the RSK to the JNA chief of general staff for 200 rockets.¹⁵³ Milan Babic in his testimony confirmed that the rockets were

¹⁴⁶ Testimony of Dejan Anastasijevic, Trial Transcript, October 10, 2002, p. 11484.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid., p. 11485.

¹⁴⁹ Testimony of Edhem Pasic, Trial Transcript, July 10, 2003, pp. 24035-36; Witness B-161, May 22, 2003, pp. 21044-47; Witness B-1453, October 16, 2003, pp. 27728-30; Witness B-1448, October 29, 2003, pp. 28284-86.

¹⁵⁰ “Official Note from the Talks between representatives of the RSK government and President Slobodan Milosevic,” Exhibit P352.13(a).

¹⁵¹ This was not always done as expeditiously as the RSK would have liked, however. See Letter from President of the Serbian Krajina Goran Hadzic to Slobodan Milosevic, June 24, 1993, Exhibit P352.156(a), in which he requests his help in expediting SVK requests from the Yugoslav Army.

¹⁵² “Memorandum for the coordination of tasks meeting at the Yugoslav Army General Staff on 17 December 1993,” Exhibit 427.52(a), pp. 4-6.

¹⁵³ Exhibit P352.153(a).

received.¹⁵⁴ Milanovic's witness statement also describes an incident in which an oral request for a tank battalion was granted:

In 1993, there was a situation whose details I cannot remember, but I know that I believed we were under threat so, together with Bogdan Sladojevic, I went to meet with General Momcilo Perisic, the VJ NGS [Yugoslav Army Chief of General Staff]. We asked Momsilo Perisic to give us a tank battalion (50 tanks). Momcilo Perisic approved this a few days later and handed the tanks over to Colonel Sladojevic.¹⁵⁵

The tanks were delivered in secret.¹⁵⁶

Personnel

It is well known that when the JNA withdrew from Bosnia and Croatia, it left behind not only its materiel, but also many of its military personnel. An August 1992 US Senate staff report introduced at trial, for example, stated that “in May 1992, Serbia withdrew the Yugoslav People’s Army (JNA) from Bosnia,... but left behind 85 percent of its men.”¹⁵⁷ However, the extent to which the JNA remained involved in staffing the new armed forces was not known until the Milosevic trial. Evidence from the trial demonstrated that the FRY set up administrative structures and continued to pay—and to promote—officers and non-commissioned officers who were members of the VRS and SVK, even those who were known for committing war crimes, until as late as February 28, 2002. Although Milosevic contended that “practically all the armies created in the territory of the former Socialist Federal Republic of Yugoslavia – the Croatian army, the Muslim army, and the Slovenian army, and the Macedonian army, and of course the army of Yugoslavia – were created basically from the former JNA, at

¹⁵⁴ Testimony of Milan Babic, November 22, 2002, p. 13377.

¹⁵⁵ Statement of Milan Milanovic, Exhibit P550, para. 90.

¹⁵⁶ Testimony of Milan Milanovic, Trial Transcript, October 8, 2003, p. 27284.

¹⁵⁷ “The Ethnic Cleansing of Bosnia-Herzegovina, A Staff Report to the Committee on Foreign Relations, United States Senate August 1992,” Exhibit P471.5, p. 2. In his testimony about the report, former US Ambassador to Croatia Peter Galbraith clarified, “[W]e noted that the Bosnian Serb army was created in May of 1992 when the Yugoslav Army was dissolved, that it was supported and supplied from Serbia, that Serbia paid the salaries, that the Bosnian Serbs themselves were supplied and supported economically from Serbia.” Trial Transcript, June 25, 2003, pp. 23081-82. Dejan Anastasijevic, a Serbian journalist, testified that it was generally known that salaries and pensions went through the Yugoslav army. Trial Transcript, October 10, 2002, pp. 11483-84. See also Testimony of Robert Donia, Trial Transcript, September 12, 2003, p. 26504.

least as far as officer personnel is concerned” evidence showed that the continued link of former JNA officers in the VRS and SVK to the Yugoslav army was unique to those institutions.¹⁵⁸

Transfer of JNA staff

Evidence showed that the transfer of officers from the JNA to Serb forces in Krajina and Bosnia began before the official formation of the RSK and RS armies. Starting in 1991, orders were issued to transfer JNA personnel to the Croatian territorial defense units in Serb-majority areas. Top secret military documents introduced at trial included orders from the Personnel Department of the Federal Department for National Defense from September 1991 transferring high-ranking JNA officers to garrisons in the RSK.¹⁵⁹ Milan Babic testified that officers from the JNA who volunteered to serve in Croatian territorial defense units were on the JNA payroll.¹⁶⁰ Milan Milanovic also testified that “[f]rom May 1992 ... each brigade [in the Territorial Defense Units for the RSK] had two or three active JNA officers, with ranks from major to colonel, who were deployed in the commands of these brigades. The officers were responsible to the commander of the TO [Territorial Defense] zone staff, Bogdan Sladojevic, who was responsible to the commander of the RSK TO, General Dukic, also a JNA officer. These officers received salaries from the JNA...”¹⁶¹ Former JNA General Vasiljevic confirmed in his testimony that in the Knin area of the RSK, commanders of the territorial defense staffs were mostly active duty officers assigned these duties through the personnel department.¹⁶² Staff from Serbia’s Ministry of Interior were also appointed as commanders of the territorial defense staff in Vukovar.¹⁶³

In 1992, when the JNA officially withdrew from Bosnia and Croatia, it took a more aggressive approach to ensuring that the staff remained with the new armed forces.

¹⁵⁸ Milosevic’s Cross-examination of Zoran Lilic, Trial Transcript, June 18, 2003, p. 22755. See also cross-examination of Imra Agotic, Trial Transcript, June 30, 2003, p. 23419.

¹⁵⁹ Exhibit P406.4(a); Exhibits 352.175(a) and P352.176(a).

¹⁶⁰ Testimony of Milan Babic, Trial Transcript, December 9, 2002, p. 14099.

¹⁶¹ Statement of Milan Milanovic, Exhibit P550, para. 89.

¹⁶² Testimony of Aleksandar Vasiljevic, Trial Transcript, February 6, 2003, pp. 15798-99.

¹⁶³ *Ibid.*, p. 15802.

On April 26, 1992, an agreement was reached between acting FRY President Branko Kostic, JNA Chief of Staff Blagoje Adzic, and President Alija Izetbegovic of Bosnia and Herzegovina that all members of the JNA who were born in Bosnia and Herzegovina should remain/return there.¹⁶⁴ The soldiers who remained in Bosnia did not lose their status with the JNA. A military order marked “strictly confidential” dated May 7, 1992, introduced at trial, states “it has been ensured that members of the JNA who remain on the territory of the Republic of BH or are sent to this territory shall retain all the rights enjoyed by other members of the JNA. In keeping with this, and in order to implement this decision in a systematic and organised manner, all members of the JNA who have BH citizenship shall be retained in their current duties in units and institutions in Bosnia and Herzegovina. Members of the JNA who do not have BH citizenship may remain in their current duties in the Republic of BH or may request a transfer to the territory of the Federal Republic of Yugoslavia.”¹⁶⁵ As this order demonstrates, Serb JNA soldiers born in Bosnia were officially transferred by the JNA to the Serb territorial defense units when the JNA officially withdrew from the country. They did not have a choice about the transfer. General Vasiljevic also testified that in Croatia, Serb JNA officers who left the RSK and returned to the Yugoslav army without permission received a summons to return to the RSK and that these summons were enforced in practice.¹⁶⁶

Serb career JNA officers born in Bosnia or Croatia felt compelled to join the new armies in order to continue their professional careers. A Serbian journalist with statements from a number of officers testified that almost all the officers in the VRS had been JNA soldiers or officers. He explained that when the Yugoslav Army “withdrew” from Bosnia, Serb personnel who were born in Bosnia or Croatia were given a choice: “either to be transferred to the army of the Republika Srpska or the

¹⁶⁴ On April 26, 1992, an agreement was reached that all members of the JNA who were citizens of Bosnia and Herzegovina should remain in Bosnia and Herzegovina and that Muslims and other citizens of Bosnia and Herzegovina from the territory of the Federal Republic of Yugoslavia had to return to Bosnia and Herzegovina within a fixed period of time and that all senior officers and soldiers who were not citizens of Bosnia and Herzegovina would leave Bosnia and Herzegovina within a certain time period. *Ibid.*, p. 15833; Exhibit P387.15(a); Testimony of Borisav Jovic, Trial Transcript, November 18, 2003, pp. 29154, 29173.

¹⁶⁵ Exhibit P464.17(a).

¹⁶⁶ Testimony of Aleksandar Vasiljevic, Trial Transcript, February 6, 2003, pp. 15836-37.

army of the Republic of Srpska Krajina or to be dismissed from the army altogether. So most career officers, of course, opted for the first possibility...”¹⁶⁷

The benefits of the shared personnel were enormous. It would have been impossible to train specialized personnel and create an armed service in such a short amount of time otherwise. As a former UN official testified,

[B]oth the forces of the so-called Krajina republic and the forces of the Bosnian Serb republic had their origins in the old Yugoslav army, namely the JNA.... What one saw was a fairly regular rotation of officers between the JA [Army of Yugoslavia] and Bosnian Serb forces and Croatian Serb forces and the ability of both the Croatian Serbs and the Bosnian Serbs to undertake some operations for which they did not on the surface of it have sufficient logistical and technical capability. I mean, one aspect of this, for example, would be helicopter flights. Another aspect of this would be the strengthening of the air defense system in Bosnia in the course of 1994. I mean, you cannot simply build an air defense system out of nothing. You can’t do that overnight.¹⁶⁸

Continuing Yugoslav army links to Serb forces in Bosnia: The 30th and 40th Personnel Centers

In his remarks to the 50th Session of the RS National Assembly on April 15-16, 1995, which were introduced at trial, General Mladic states, “From the beginning of the war, RS did not participate in [the] financing of professional army members.”¹⁶⁹ The 1992 VRS Combat Readiness Report prepared in April 1993 also notes, “It is important to mention that the salaries of officers, non-commissioned officers, soldiers under contract and workers in the RS Army, who until 19 May 1992 had been members of the JNA, continued to be the responsibility of the FR Yugoslavia, so that these

¹⁶⁷ Testimony of Dejan Anastasijevic, Trial Transcript, October 10, 2002, pp. 11483-84. He noted it was generally known that salaries and pensions went through the Yugoslav army.

¹⁶⁸ Testimony of Michael Williams, Trial Transcript, June 24, 2003, p. 22955.

¹⁶⁹ “Tape Recording of the 50th National Assembly Session held on 15 and 16 April, 1995 in Sanski Most”, Exhibit P427.54(a), p. 16.

expenditures were not debited from the budget of the Army of the Republika Srpska.”¹⁷⁰ However, the report also raised “an unclarified situation concerning the payment of salaries of officers, non-commissioned officers, soldiers under contracts and workers of the former JNA who remained in or joined the Army of the RS.”¹⁷¹ To address this issue, and to regularize what by then was an accepted practice, the chief of general staff of the Yugoslav army on November 15, 1993, ordered the establishment of the 30th and 40th Personnel Centers for Yugoslav army staff serving in Bosnia and Croatia respectively.¹⁷²

Then-FRY President Lilic signed the orders creating the new 30th and 40th Personnel Centers. According to his testimony, the personnel centers were established because “there were people who remained within the JNA but outside this territory [Serbia and Montenegro] who were not citizens of the Federal Republic of Yugoslavia ... and therefore they could not be members of the Army of Yugoslavia, and that was the basic reason why the 30th personnel center was established, primarily to resolve the existential status of these people who formerly belonged to the JNA and who were outside of the territory of the FRY and who were citizens of the Republic of Bosnia-Herzegovina.”¹⁷³ He testified that the annual allocations for the members of the 30th Personnel Center amounted to about €8 million from 1993 until 1997, though for one year the federal government suspended some payments.¹⁷⁴

Lilic’s testimony supported Milosevic’s initial contention that the personnel centers were established only to keep records of assistance given to former JNA soldiers in relation to salary and social insurance rights acquired before the JNA became the Army of Yugoslavia. Lilic contended that the personnel centers primarily existed to support the families of former JNA soldiers who were “refugees” in the FRY and

¹⁷⁰ “Analysis of the Combat Readiness and Activities of the Army of the Republika Srpska in 1992,” April 1993, Exhibit P427-32(a), pp. 127, 129.

¹⁷¹ *Ibid.*

¹⁷² See, for example, Testimony of Milan Milanovic, Trial Transcript, October 8, 2003, pp. 27245-46 (“[Military post number 4001—the 40th Personnel Center] is a military post that concerned itself with these officers and civilians in the army of Yugoslavia who were located in the territory of the former Republic of Serbian Krajina, and it was located in Belgrade.”). See also “Military Analysis Team Expert Report,” Part II: The SFRY Armed Forces and the Conflict in Croatia, Exhibit P643, p. 89.

¹⁷³ Testimony of Zoran Lilic, Trial Transcript, June 17, 2003, p. 22592.

¹⁷⁴ *Ibid.*, pp. 22592-93.

agreed with Milosevic that the Yugoslav army did not have command responsibility over the Bosnian and Croatian Serb armies.¹⁷⁵

Aside from eliminating the uncertainty over the status of Yugoslav Army members remaining in Bosnia and Croatia, evidence showed there was another benefit to establishing separate administrative structures for staff serving outside the FRY. A military expert testified that there was “an urgent need to ... regularize it [personnel practice], so that towards the outside world it was not visible that people were actually serving in an armed force abroad...”¹⁷⁶ This need for secrecy was described by witness B-127, who was assigned to the 30th Personnel Center. He testified that his Yugoslav army identity card, which was endorsed by the colonel in charge of the 30th Personnel Center, was his only military identification until 1996 when IFOR [the NATO-led force charged with implementing the 1995 Dayton Peace Agreement] entered the area and VRS identity cards were issued.¹⁷⁷ The VRS identity cards were issued as a second identity card to show IFOR and later SFOR [the NATO-led stabilization force that later replaced IFOR] members who asked for identification, to avoid the possibility of arrest as a member of the Yugoslav army in Bosnia.¹⁷⁸

Witness testimony indicated that the 30th and 40th Personnel Centers paid a wide range of people. Milanovic’s testimony showed that in addition to RSK army officers, members of the RSK Ministry of Defense were considered Yugoslav army employees.¹⁷⁹ B-127 also described the different groups of people paid salaries by the 30th Personnel Center:

¹⁷⁵ Testimony of Zoran Lilic, Trial Transcript, June 18, 2003, pp. 22755-56.

¹⁷⁶ Testimony of Reynaud Theunens, Trial Transcript, January 27, 2004, pp. 31514-15.

¹⁷⁷ Testimony of Witness B-127, Trial Transcript, July 16, 2003, p. 24618.

¹⁷⁸ *Ibid.*, pp. 24619-21.

¹⁷⁹ Testimony of Milan Milanovic, Trial Transcript, October 8, 2003, p. 27245 (“It is well known that officers of the army of the Republic of Serbian Krajina were active-duty officers of the army of Yugoslavia and that they were deployed and assigned to work in the Republic of Serbian Krajina, or they went there voluntarily, and they received their salaries from the army of Yugoslavia. Since the Ministry of Defence is a specific body that is closely linked to the army, the decision was taken that all the people in the Defence Ministry of the Republic of Serbian Krajina should be employees of the army of Yugoslavia.”); Statement of Milan Milanovic, Exhibit P550, para. 48 (“While I worked at the RSK Ministry of Defence, the twenty or so of us with the Ministry, both civilians and officers, received salaries from the FRY Ministry of Defence.”); Testimony of Milan Milanovic, pp. 27272-73 (Colonel Bozo Kosutic and Colonel Rajko Kovacevic were JNA officers and they continued to receive a salary from the VJ and were paid by them).

As far as the categories of military employees are concerned belonging to the 30th Personnel Center, let me take this in order. There were the officer, high-ranking officers and generals. Then there was the non-commissioned officers category, the NCOs; and the civilians employed in the JNA, which later became known as workers in the army. They, too, belonged there throughout that time – that is to say, belonged to the 30th Personnel Center – and a certain number of soldiers who were there on a contract basis and who until the beginning of the war in Bosnia-Herzegovina had a signed contract with the then JNA.¹⁸⁰

B-127 further testified that in his branch, which was technical, over 90 percent of the officer cadres and all of the civilian staff that had previously been with the JNA were paid by the 30th Personnel Center.¹⁸¹

Salaries and Benefits

The Yugoslav Army paid not only the salaries of its Bosnia and Croatia staff, but provided additional benefits as well. B-127, a Yugoslav Army officer stationed in Banja Luka, Bosnia, testified that he did not receive a single dinar from the Republika Srpska government during the time he was assigned to the Republika Srpska Army. Rather, payment was given in cash in Yugoslav dinars collected from Belgrade by financial services.¹⁸² Testimony showed that the personnel centers “kept records of where the people were serving in order to prepare documents related to their compensation, not only financial compensation for the time served in hardship but also for extra pensionable time.”¹⁸³ Testimony indicated that service in Bosnia was counted as double credit towards Yugoslav Army pension.¹⁸⁴ Officers assigned to the 40th Personnel Center also received extra compensation for services in combat

¹⁸⁰ Testimony of Witness B-127, Trial Transcript, July 22, 2003, p. 24627.

¹⁸¹ *Ibid.*, pp. 24627-28.

¹⁸² Testimony of Witness B-127, Trial Transcript, July 16, 2003, p. 24615.

¹⁸³ Testimony of Reynaud Theunens, Trial Transcript, January 27, 2004, pp. 31514-15.

¹⁸⁴ Testimony of Witness B-127, Trial Transcript, July 22, 2003, pp. 24631-32, 24636; Exhibits P505.11.1(a), P505.14.1(a), P505.11.5 (a), P505.17.1(a), and P505.13.1(a).

operations or “service under aggravating (special) circumstances.”¹⁸⁵ Furthermore, members of the 30th Personnel Center serving in Bosnia had regulated housing or were entitled to remuneration and an added sum of money towards their housing costs.¹⁸⁶

The significance of the heavy reliance on the Federal Republic of Yugoslavia for salaries and benefits was noted by a senior British army officer. When asked whether FRY’s payment of officers meant that they were under the command of the Federal Republic of Yugoslavia in any way, Gen. Rupert Smith, former commander of the UN protection force in Bosnia-Herzegovina replied, “The man who pays the check is usually the man who is in command eventually.”¹⁸⁷

Testimony indicated that the FRY continued to pay salaries and pensions through the 30th and 40th Personnel Centers until February 28, 2002.¹⁸⁸

Promotions

The FRY’s power over salaries also gave it ultimate control over promotions and appointments. Testimony indicated that the law governing the Army of Yugoslavia governed all promotions for members of the VRS serving in the 30th Personnel Center.¹⁸⁹ Suggested promotions had to be verified by the Army of Yugoslavia since they set salaries.¹⁹⁰ Senior staff promotions were approved at the highest levels. Several Supreme Defense Council minutes show the FRY presidency making decisions about military promotions.¹⁹¹ Testimony indicated that other “volunteers”

¹⁸⁵ “Military Analysis Team Expert Report,” Part II: The SFRY Armed Forces and the Conflict in Croatia, Exhibit P643, p. 81; Exhibits P505.17(a) and P505.17.1(a).

¹⁸⁶ Testimony of Witness B-127, Trial Transcript, July 22, 2003, p. 24632.

¹⁸⁷ Testimony of General Rupert Smith, Trial Transcript, October 9, 2003, p. 27368. See also Testimony of Robert Donia, September 12, 2003, p. 26504 (testifying that a delegate in the RS National Assembly stated during a discussion about the military, “We have to see about these people who Milosevic pays, whether they fight on our side or not. A good number of officers receive their pay there.”).

¹⁸⁸ See also *Defense & Security* (Belgrade), Issue No. 059, September 5, 2002, Exhibit 427.57(a), p. 4 (“VRS officers and non-commission officers received pay as members of the 30th Personnel Center of the Yugoslav Army, until 28 February 2002.”).

¹⁸⁹ Testimony of Witness B-127, Trial Transcript, July 22, 2003, p. 24631; Exhibit P505.15(a); Exhibit 469.17.

¹⁹⁰ Testimony of Witness B-127, Trial Transcript, July 22, 2003, p. 24629.

¹⁹¹ Exhibit P667: SDC minutes, September 7, 1993; SDC minutes, October 11, 1993; SDC minutes, September 27, 1994; SDC minutes, June 13, 1995.

from the Ministry of the Interior were also promoted in recognition of their service in the conflicts.¹⁹²

In addition to promotions, the FRY presidency made decisions about appointments. Milan Babic testified that “[m]ost of the commanding cadre, commanding staff [in the Croatian Serb army], were active officers of the JNA who were on the JNA payroll. They were paid by the General Staff of the Yugoslav army and appointed to those positions by the personnel department of the General Staff of the Yugoslav People’s Army. The commanders of the army were appointed by the president of Serbia and later the president of Yugoslavia—president of Serbia up until 1995, Slobodan Milosevic—and it was financed, logistics support was given from Yugoslavia.”¹⁹³

In remarks to the Republika Srpska National Assembly in April 1995, Karadzic provided some insight into the appointment process: “Gentlemen, we got the officers we asked for. I asked for Mladic.”¹⁹⁴ Draft minutes of the 148th Session of the Members of the Presidency of the Socialist Federative Republic of Yugoslavia held October 7, 1991, also note the presidency has “consented to grant extraordinary decorations for JNA members for their dedication and carrying out combat tasks.”¹⁹⁵ Evidence cited in an expert report showed that the federal army promoted or retired under favorable conditions Yugoslav army officers serving in the VRS and RSK despite their being publicly associated with criminal acts. For example, Dorde Dukic was still an active Yugoslav army officer when the ICTY indicted him for crimes he committed in Sarajevo while serving in the VRS.¹⁹⁶ Dukic and General Mladic were part of the 30th Personnel Center as was Maj. Gen. Radislav Krstic, also accused of

¹⁹² Milan Milanovic testified, “Radovan Stojicic, Badza, as I said, the reason for his coming was to liberate Vukovar. I mentioned the number of men. And this is rather a large number for a special unit. And he came with weapons and equipment and not for a moment was it my understanding that they were there on a voluntary basis, especially in view of several examples, as you requested. For example, the equipment and weapons and uniforms, the system of communications, their salaries, they received them in Serbia, and upon the completion of the assignment all of them, or at least the commanding staff, were promoted. For example, Badza came as a commander of a special unit of the MUP of Serbia, and while he was still with me, just prior to his return, he was appointed assistant minister of internal affairs [in Serbia]. So it’s not logical for somebody to volunteer to a combat area and then to be promoted.” Trial Transcript, October 14, 2003, pp. 27471-72.

¹⁹³ Testimony of Milan Babic, Trial Transcript, November 21, 2002, p. 13234.

¹⁹⁴ Statement of Expert Witness Robert J. Donia, Exhibit P537.2(a), p. 69.

¹⁹⁵ Exhibit P596.19, p. 5. (In the margin a handwritten note says “But the JNA is not at war!”, illustrating the contradiction between the JNA’s official position and its actual one.)

¹⁹⁶ “Military Analysis Team Expert Report,” Part III, Exhibit P643, para. 86.

perpetrating crimes in Srebrenica in the summer of 1995 but handed a new command in July 1995 and promoted in April 1998 nonetheless.¹⁹⁷ Krstic was serving as commander of the VRS 5th Corps but was in possession of a federal army identity permit when he was arrested in 1998.¹⁹⁸ Lt. Col. Dragan Obrenovic was promoted in December 1995, April 1996, and again in August 1998 and retired under favorable conditions despite allegations of involvement in the 1995 Srebrenica attacks.¹⁹⁹ Mile Mrksic, who was implicated as a JNA leader in the 1991 shelling of Vukovar after which the JNA allegedly shot hundreds of captured non-Serb men at Okcara farm, was promoted by the Supreme Defense Council more than once before his retirement in 1995.²⁰⁰

Reservists

In addition to transferring Croatian and Bosnian Serb JNA members from Croatia and Bosnia to the VRS and SVK, testimony indicated that JNA reservists also came from Serbia to Bosnia to participate directly in operations. Witness B-127 testified that in the autumn of 1992 he saw approximately 180 reservists who were bused to the front lines in Bosnia from Serbia and that one of them told him that he “would have lost his job” had he refused to respond to the call-up for mobilization.²⁰¹ Another witness told a similar story.²⁰² Babic testified that recruits from the FRY did their service in the RSK throughout the period of the RSK’s existence.²⁰³ Former acting RSK Minister of Defense Milanovic also testified that the Serbian MUP participated in joint military actions with RSK territorial defense units.²⁰⁴

¹⁹⁷ *Ibid.*, para. 88.

¹⁹⁸ *Ibid.*, para. 86.

¹⁹⁹ Exhibits P505.11(a), P505.11.1(a), P505.11.2(a), and P505.11.5(a).

²⁰⁰ See Exhibit P667: SDC minutes, October 11, 1993, pp. 1-2; SDC minutes, July 11, 1994, pp. 1-2.

²⁰¹ Testimony of Witness B-127, Trial Transcript, July 16, 2003, p. 24598.

²⁰² Testimony of Witness C-020, Trial Transcript, October 22, 2002, pp. 12192-12201.

²⁰³ Testimony of Milan Babic, Trial Transcript, November 22, 2002, pp. 13374-75; Exhibit P352.113(a).

²⁰⁴ Testimony of Milan Milanovic, Trial Transcript, October 8, 2003, p. 27252. Others confirmed the MUP was present and fought alongside the RSK Territorial Defense Units. See Testimony of Witness B-050, April 14, 2003, p. 19243; Testimony of Jovan Drulovic (Witness C-004), October 16, 2002, pp. 11672-11674; Testimony of Witness C-020, October 22, 2002, pp. 12149-12154.

Furthermore, FRY officials helped mobilize conscripts in response to mobilization calls from the RSK. For example, when in 1993 the RSK issued a general mobilization call, the FRY Ministry of Defense issued an order for conscripts found in the FRY to be enrolled and accommodated at barracks there, including being issued with weapons, a combat kit of ammunition, a daily ration, and a uniform.²⁰⁵ Evidence introduced at trial also indicated that the Yugoslav Army continued to train SVK and VRS recruits until at least March 1995.²⁰⁶

²⁰⁵ Exhibit P352.152(a), “Strictly confidential” Order dated January 27, 1993, from the Headquarters of the Federal Department for the National Defense to Commands of the 1st, 2nd and 3rd Armies *inter alia*.

²⁰⁶ See, for example, Order by Mile Novakovic dated February 22, 1994, Exhibit P348.5(a) (“Immediately start the organised and planned preparation of young recruits for departure to do training in the Yugoslav Army in March 1994”); Letter from Minister Pavkovic to the Ministry of the Interior of Serbia, March 22, 1995, P352.41(a), requesting continuation of a course in higher sabotage for members of his service; “Analysis of the combat readiness and activities of the Army of the Republika Srpska in 1992,” April 1993, Exhibit P427.32, p. 142 (“In addition to training recruits, training was also organized for soldiers seconded from FRY.”).

Trial Procedure

In addition to helping shape how future generations assess the Balkan wars of the 1990s, and Serbia and the FRY's role in the events, the Milosevic trial offers important procedural lessons for cases of a comparable scope. As the first trial of a former head of state, this case presented unprecedented challenges for the ICTY. Proving the guilt of a senior official nowhere near the multiple crime scenes and establishing a chain of command in circumstances where no lawful authority existed is very difficult and time-consuming. Furthermore, this case encompassed three conflicts over the course of nearly a decade, which added to the breadth of material that needed to be produced.

The unfortunate end of the case before its completion after four years of trial, however, gave rise to a great deal of criticism of the proceedings. Critics have focused on two areas in particular: the duration of the trial (and specifically the scope of the indictments); and permitting Milosevic to represent himself. Other courts trying these types of cases may confront both issues. As more of these cases are prosecuted, it is important that national and international courts and prosecutors draw trial management lessons from the Milosevic trial.

Scope of the Indictments

Duration and scope of the case

One persistent criticism of the trial is that it lasted too long.²⁰⁷ Several reasons for this are often cited: the prosecution attempted to cover too much territory and the three cases should have been tried separately; there were too many counts in the indictments; the trial was inefficiently managed and moved at a slow pace; and the judges allowed Milosevic too much room for speechmaking and filibustering.²⁰⁸

²⁰⁷ See, for example, Marlise Simons, "As Trial Drags on, Milosevic Sticks to His Story," *International Herald Tribune*, June 14, 2005; "Milosevic Dies Before Trial Verdict," Reuters, March 12, 2006; Ana Uzelac, "Milosevic Trial May be Split," Institute for War and Peace Reporting, *Tribunal Update*, No. 368, July 23, 2004, http://www.iwpr.net/?p=tri&s=f&o=164653&apc_state=henitri2004 (accessed November 27, 2006).

²⁰⁸ See, for example, Gwynn Mac Carrick, "Lessons from the Milosevic Trial," *Online Opinion* (Australia), April 26, 2006, <http://www.onlineopinion.com.au/view.asp?article=4394> (accessed November 27, 2006); Helen Warrell and Janet Anderson, "Hague Court's Record Under Scrutiny," Institute for War and Peace Reporting, *Tribunal Update*, No. 444, March 17, 2006, http://www.iwpr.net/?p=tri&s=f&o=260408&apc_state=henitri2006 (accessed November 27, 2006); Marlise Simons, "UN

However, trial participants (including prosecution staff and *amici curiae*) and those who followed the trial closely note that innovative practices for streamlining proceedings actually advanced during the Milosevic trial. They did not feel that the judges let Milosevic have too much leeway on the whole. Other factors, in addition to Milosevic's ill-health—such as the large number of crime scenes involved and the rush to trial—may have contributed more to the excessive duration of the trial.

Joinder

One of the most controversial issues relates to whether the prosecutor was correct in seeking to join the three indictments. The Trial Chamber itself suggested on more than one occasion, even as late as November 29, 2005, that the Kosovo case be severed.²⁰⁹ By then, however, the trial was so close to its end that both the prosecution and the defense objected to the severance.²¹⁰

Arguably, the indictments should have been prosecuted separately. However, there were advantages to a single trial encompassing all three sets of charges. Trying Milosevic in one case created a broader context for the events and presents a more representative picture of his role in the war. Because the federal military and political structure had to be shown in order to demonstrate Milosevic's role in events in each conflict, there were efficiencies in trying the three indictments as one case. Witnesses did not have to be called more than once, which is not only more efficient, but also has benefits for witness security and may minimize trauma for a testifying victim. Trying a defendant once also ensures consistency in the verdict and sentencing since it eliminates the risk that different trials will result in different conclusions of fact and allows the defendant to be sentenced once for the crimes.

Apart from these reasons, members of the prosecution teams involved with Milosevic's case gave another reason for wanting to join the three indictments: the

Court Faces Fairness Issue at Milosevic Trial," *New York Times*, November 4, 2005; Molly Moore, "Trial of Milosevic Holds Lessons for Iraqi Prosecutors," *Washington Post*, October 18, 2005.

²⁰⁹ Further Order on Future Conduct of the Trial relating to Severance of One of More Indictments, July 21, 2004 (in order to conclude the trial in a fair and expeditious manner, the Trial Chamber considered severing one or more indictments and invited the parties to file their written submissions on the matter, including which of the indictments should proceed first); Scheduling Order for a Hearing, November 22, 2005 (ordering a hearing on the severance of the Kosovo indictment for November 29, 2005).

²¹⁰ Transcript of Hearing on November 29, 2005, pp. 46640-41, 46653-66 (prosecution), pp. 46677, 46688-96 (Milosevic).

fear that the international backers of the court would not have the political will to financially support a second trial for Bosnia and Croatia if Milosevic was already serving a long sentence for his acts in Kosovo.²¹¹ The concern that Milosevic would not be tried for genocide and the more grievous crimes in Bosnia and Croatia, particularly in light of his ill-health, is not a minor matter: it would have been disappointing had the only evidence presented at trial been in relation to Kosovo. This is particularly true since the proceedings were important for their revelations regarding the role of various FRY and Serbian government entities in the wars in Croatia and Bosnia. As discussed in the evidence section, some of the details of this involvement were not well known before the trial and might never have been examined fully in court if Milosevic had not been tried. Because, unlike in Kosovo, the Serbian government's role in Bosnia and Croatia was indirect, the trial was particularly important in establishing a reference point for those conflicts.

Nevertheless, the decision to join the three indictments into a single trial should have affected the way the trial was conducted, but it did not. By not changing the original trial date which was set for a mere 12 days after the joinder decision, the Trial Chamber did not allow any time for reconsideration of the structure of the case. The prosecutor did not have time to amend and consolidate the indictments in order to accommodate the new trial format. A single, more streamlined indictment covering all three conflicts but with fewer crime scenes and fewer charges would have undoubtedly resulted in more efficient proceedings. However, the time constraints imposed by the trial date made this task impossible to accomplish. Indeed, in Human Rights Watch's view, the crucial problem with the trial was that it was pressed to start too quickly (see below).

Counts /Crime scenes

The trial is frequently criticized for the large number of counts against Milosevic.²¹² However the actual number of counts was not necessarily the cause of the protracted

²¹¹ Human Rights Watch interviews with members of the prosecution, The Hague, June 13 and July 11, 2006. See also Marlise Simons, "Court Looks for Ways to Speed Milosevic Trial," *New York Times*, July 28, 2004.

²¹² Gwynn Mac Carrick, "Lessons from the Milosevic Trial," *Online Opinion* (Australia); Michael Scharf, "Issue #29: Has the Iraqi Tribunal learned the lessons of the Milosevic trial?" (Experts Debate the Issues: The Dujail Trial), *Grotian Moment: The Saddam Hussein Trial Blog*, February 12, 2006, http://www.law.case.edu/saddamtrial/entry.asp?entry_id=82 (accessed November 27, 2006).

length of the trial. In practical terms, the real issue is how many crime scenes were used to establish that all the elements of the offenses charged existed. For example, to prove one count of murder as a crime against humanity the prosecution is required to show that the killings were part of “widespread or systematic attacks.” The prosecution could choose to establish this by presenting evidence of 50 different murders in 50 different municipalities. Alternatively, the prosecution could choose to charge each of the 50 murders as individual counts of a crime against humanity of murder based on the exact same evidence. Thus the same evidence could be used to prove either one count or 50 counts of the crime against humanity of murder. The main issue with the Milosevic indictments therefore relates to how many crime scenes need to be established to support the indictment rather than the actual number of counts. However, there are also lessons that may be drawn about selecting charges representative of the worst crimes rather than using the trial to demonstrate the entire range of crimes committed in the region.

Milosevic’s indictments contained a total of 66 counts. Apart from the genocide counts, all of the counts were charged at least two or three times. For example, there were three counts of persecution (relating to different geographical areas of the conflict) as a crime against humanity, five counts of murder (again in different geographical locations) as a crime against humanity, four counts of wanton destruction of villages as a violation of the laws or customs of war, and three counts of plunder as a violation of the laws or customs of war. Had the indictments been combined to reflect the prosecutor’s theory that they constituted a single transaction, Human Rights Watch believes duplication may have been eliminated and the indictment would likely have contained fewer counts. The primary benefit of the elimination of duplicate counts is that it could have resulted in a decision to reduce the number of crime scenes needed to prove each charge. Because each count would only need to be proved once or twice for the entire conflict, rather than once for each region, it may have taken fewer crimes scenes to show, for example, the “widespread or systematic” element of the crimes. Given that, as president, Milosevic was not alleged to have actually been present at any of the crime scenes and given that the tribunal had already been through a number of trials by the time of the Milosevic trial, it is debatable as to how necessary it was to establish each time what happened in a great number of villages in order to show the “widespread

or systematic” nature of crimes. The critical element to prove in Milosevic’s case was the chain of command. The importance of ensuring that victims also have a voice in the trial by way of witness testimony needs to be incorporated into a narrowly-tailored strategic prosecution plan.

The prosecution started the case with an unwieldy amount of factual allegations to prove. As drafted, the indictments included allegations relating to hundreds if not thousands of acts because Milosevic was charged for each count with two forms of criminal liability (individual responsibility and command responsibility) and each count included multiple allegations of criminal acts and crime scenes.²¹³ One count of persecution in Croatia, for example, alleged more than 15 forms of conduct, such as torture and beating, deportation, destruction of homes and sexual assaults, in 57 crime scenes. That was even after the Croatia indictment was amended and three forms of conduct had been eliminated.²¹⁴ It simply was not practical to introduce evidence in relation to every single crime listed in the indictments. Over the course of the trial, the Trial Chamber asked the prosecution to limit the number of crime scenes on several occasions.²¹⁵ In the first months of trial the Trial Chamber pointed out to the prosecution “it was necessary for it to consider presenting a case which was of a smaller size than that which had been pleaded by selecting incidents which were representative of those charged in the indictment[s].”²¹⁶ The prosecutor agreed with this and did in fact trim dramatically, at various stages, witnesses from its

²¹³ See, for example, Transcript of Hearing on November 29, 2005, pp. 46699-46700 (in which Stephen Kay discusses the complexity and scope of the indictments).

²¹⁴ Second Amended Indictment (Croatia), October 23, 2002.

²¹⁵ Trial Transcript, July 25, 2002 (Pre-Trial Conference for Bosnia and Croatia), p. 8610 (“The first [order we have in mind] is to reduce the number of municipalities in the Bosnia case. We note that you intend to lead municipalities).

²¹⁵ Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limit (Appeals Chamber), May 16, 2002, para. 2.

²¹⁵ See Trial Transcript, July 25, 2002 (Pre-Trial Conference), pp. 8614-15 (Geoffrey Nice noting that the prosecution was able to present its Kosovo case in under 100 hours in part by “reviewing witness lists and ... cutting witnesses whenever possible and cutting the evidence from particular witnesses whenever possible.”).comprehensive evidence on 14 of the 47 and not to call evidence on a further nine. We think that that should be reduced further... ” and going on to suggest a reduction to 17 municipalities).

²¹⁶ Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limit (Appeals Chamber), May 16, 2002, para. 2.

witness list.²¹⁷ The prosecutor also amended the Bosnia indictment to remove 51 crime scenes one year after the original indictment was confirmed.²¹⁸

However, while remedial steps were taken, a more effective approach would have been to start the case with leaner indictments. This was apparent in the Trial Chamber's Decision on the Motion for Judgement of Acquittal after the close of the prosecutor's case. In its decision, the chamber dismissed many factual allegations, often after the prosecutor had conceded that the allegation was unsupported by evidence.²¹⁹ Nevertheless, the Trial Chamber ruled that even without 130 crime scenes it considered not to have been proven beyond a reasonable doubt, the prosecution had presented enough evidence at that stage to secure a conviction on all the counts in the indictment, a sure indication that the indictments were too broad.²²⁰ As disappointing as it may be to victims and investigators, hard decisions need to be made from the outset about how many crime scenes should be introduced at trial. A consideration that could be used to make a determination as to which crime scenes should be used in a trial of this scope is what crime scene evidence has been introduced at other trials. Testimony, or even judgments, from other cases could be used to streamline evidence in relation to crime scenes. This was in fact done at the Milosevic trial, but crime scene evidence still could have been narrowed further.

Another factor that undoubtedly played a role in the large number of crime scenes in Milosevic's indictments was the desire to include crime scenes that represented all the crimes that occurred in each conflict. While wanting to be thorough and provide a comprehensive account of an individual's role in a conflict is one legitimate goal, it must co-exist with other realities of prosecuting such a high-level defendant. Human Rights Watch believes that, as is now reflected in the mandate for the prosecutor of the International Criminal Court, presenting a case representative of the most serious

²¹⁷ See Trial Transcript, July 25, 2002 (Pre-Trial Conference), pp. 8614-15 (Geoffrey Nice noting that the prosecution was able to present its Kosovo case in under 100 hours in part by "reviewing witness lists and ... cutting witnesses whenever possible and cutting the evidence from particular witnesses whenever possible.").

²¹⁸ See *Prosecutor v. Milosevic*, Initial Indictment (Bosnia), November 22, 2001, as compared to *Prosecutor v. Milosevic*, Amended Indictment (Bosnia), November 22, 2002.

²¹⁹ Decision on Motion for Judgement of Acquittal, June 16, 2004, paras. 81-82, 116, 309-315, Schedules A through F.

²²⁰ *Ibid.*, para. 316.

crimes committed should be the primary objective of a prosecutor in cases like these. The prosecutor could narrow the case by focusing on the worst of the charges. For example, it does not seem absolutely necessary to have included multiple counts of plunder and destruction or willful damage to historic monuments and institutions dedicated to education or religion in the charges against Milosevic. Given the important interests in conducting an efficient trial, perhaps destruction of cultural objects and property damage could better be demonstrated in simpler trials of lower-level officials.

The ICTY has itself acknowledged the need to trim crime scenes and counts. In a plenary session convened in May 2006, the judges adopted rule 73*bis*, which explicitly allows Trial Chambers to invite the prosecutor at the pretrial stage to reduce the number of counts charged or direct the prosecutor to select the charges on which the trial should proceed.²²¹ “Fixing the number of crime sites or incidents charged” is also part of the ICTY’s plan to ensure trials are completed by the end of 2009.²²²

Since the Milosevic case, the court has taken a more aggressive approach in eliminating crime scenes. In the Milutinovic case, in which six Serbian officials are charged for crimes in Kosovo, the court issued a decision excluding three areas—Racak, Padaliste, and Dubrava—from the indictment.²²³ The indictment on which the Milutinovic case is based is the same indictment under which Milosevic was originally charged in Kosovo²²⁴ and evidence on these crime scenes was introduced in the Milosevic case. The judges in the Milutinovic case noted that the remaining nine mass murder sites “adequately reflect the scale of the alleged criminal activity” and are “representative of the crimes charged in the indictment.”²²⁵ The judges held the view that the prosecutor did not need to show what happened in those areas in

²²¹ Statement by Tribunal President Judge Fausto Pocar to the Security Council, June 7, 2006, <http://www.un.org/icty/pressreal/2006/p1084e-annex.htm> (accessed November 27, 2006).

²²² *Ibid.*

²²³ “Reasons for Excluding the Crimes in Racak, Dubrava and Padaliste from the Indictment,” *Sense News Agency*, July 13, 2006, <http://www.sense-agency.com/en/press/printarticle.php?pid=8270> (accessed November 27, 2006); ICTY Weekly Press Briefing, July 13, 2006, <http://www.un.org/icty/briefing/2006/PBo60713.htm> (accessed November 27, 2006).

²²⁴ *Prosecutor v. Milosevic*, Case No. IT-99-37, Initial Indictment, May 24, 1999.

²²⁵ “Reasons for Excluding the Crimes in Racak, Dubrava and Padaliste from the Indictment,” *Sense News Agency*.

order to prove her case. This is interesting in that those were particularly complicated crime scenes involving several events and numerous witnesses. Judges have also invited the prosecutor to trim the indictment in other cases and have even amended the rules to allow them greater latitude in their ability to request narrower indictments.²²⁶

Conduct of Proceedings

Start of trial

Slobodan Milosevic's trial began on February 12, 2002. Because of the inclusion of the Bosnia and Croatia indictments, no other case at the ICTY has moved so quickly from indictment to trial. Milosevic had been in custody for only seven months before the start of trial proceedings, almost a record by the usual standards of the ICTY.²²⁷ The average time between the arrest of a defendant and the start of his trial at the ICTY is over two years. The relative speed at which this trial began is particularly striking given that the indictments for Bosnia and Croatia, the most complex indictments the ICTY is likely to see, were confirmed a mere three and four months respectively prior to the start of trial. Although a lengthy delay before starting Milosevic's trial may have raised concerns with respect to his right to a speedy trial, more time was necessary to allow for case preparation and for full translation and disclosure of materials to the defense. The need for more time to prepare was especially acute in this case, both because of its complexity and because, as discussed above, the Appeals Chamber's decision on joinder was made less than two weeks before the trial was scheduled to begin. Moving the Milosevic trial to the front of the queue had several negative consequences for the overall management of the trial.

²²⁶ See, for example, "Judges call for 'smaller' indictment against Perisic," *Sense News Agency*, November 21, 2006, <http://www.sense-agency.com/en/press/printarticle.php?pid=8856> (accessed November 27, 2006); "Judges Want the Scope of Indictment Against Seselj to be Reduced", *Sense News Agency*, June 9, 2006, <http://www.sense-agency.com/en/press/printarticle.php?pid=8443> (accessed November 27, 2006) (noting that the Trial Chamber urged the prosecution to "consider ways in which it could reduce the scope of the indictment by at least a third" by the end of September); "Judges order prosecutors to drop five charges against Serb ultranationalist Seselj," *Associated Press*, November 8, 2006 (noting that the judges ordered prosecutors to drop crimes against humanity charges that duplicate other parallel war crimes charges and not to use evidence from crime sites in Western Slavonia and some Bosnian towns because "the remaining crimes sites certainly reflect the scale of the alleged criminal activity").

²²⁷ One defendant, Anto Furundzija, had his trial begin just slightly before he had been in custody for seven months, but that was on the basis of a single indictment charging crimes on the basis of individual responsibility that had been confirmed two-and-a-half years before.

First, expediting the start of the trial meant that the case had to begin with Kosovo because the other cases were not yet trial-ready and because disclosure for Bosnia and Croatia had not yet been made to the defense.²²⁸ Starting with Kosovo was undesirable for a number of reasons. As the prosecutor pointed out in her motion for joinder, beginning with Kosovo was not necessarily the most coherent way to present a case covering all three conflicts since Kosovo occurred last chronologically. The prosecution theory of the case indicated that evidence of the earlier events was relevant to what happened in Kosovo as it showed what could be expected if Milosevic's policy was carried out. Furthermore, the prosecutor argued that the Bosnia and Croatia indictments could be seen as more substantial and more grave, and that victims from Bosnia and Croatia who suffered in earlier events should obtain resolution of the charges relating to them first.²²⁹

More importantly, from the prosecution's perspective, starting with the Kosovo indictment had the unintended effect of allowing Milosevic to portray the NATO air campaign as a rationalization for the crimes he was accused of in Kosovo. At the start of the trial, the proceedings had the complete attention of the Serbian public. An article written at the time described the atmosphere in Belgrade as reminiscent of the "mood during a Yugoslav basketball world cup match" with people following Slobodan Milosevic's opening statements wherever they could—live in restaurants and cafes or on small portable televisions.²³⁰

One Serb analyst has described how by beginning with Kosovo the tribunal lost its best opportunity to demonstrate to the Serbian public the war crimes committed in the last decade and Serbia's role in supporting them.²³¹ Had the trial begun with Bosnia and Croatia and some of the worst atrocities, it would have reached a broad audience at a time when the public was completely focused on the trial. By the time

²²⁸ Decision on Prosecutor's Interlocutory Appeal from Refusal to Order Joinder, February 1, 2002.

²²⁹ Decision on Prosecution's Motion for Joinder, December 13, 2001, paras. 22, 23.

²³⁰ Bojan Tonic, "Serbia: Milosevic Trial Grips Nation," Institute for War and Peace Reporting, February 15, 2002, http://www.iwpr.net/?p=bcr&s=f&o=250546&apc_state=henibcr2002 (accessed November 28, 2006).

²³¹ Vojin Dimitrijevic, "Justice Must be Done and Be Seen to be Done: The Milosevic Trial," *East European Constitutional Review*, vol. 11, nos. 1/2, Winter/Spring 2002, http://www.law.nyu.edu/eecr/vol11num1_2/special/dimitrijevic.html (accessed November 28, 2006).

the prosecution reached the Bosnia and Croatia segments of its case, the trial had lost much of its audience.²³²

Other negative consequences of the expedited start date include problems with disclosure and preparation for trial. Late disclosure places an undue burden on the defense to have to prepare for trial while simultaneously sorting through voluminous disclosed material from the prosecutor. The prosecutor had trouble completing disclosure of translated witness statements even in relation to Kosovo in time for the February 12 start of the trial despite having had greater time to prepare that portion of the case.²³³ Disclosure for Bosnia and Croatia took place after the start of the trial.

One member of the Office of the Prosecutor told Human Rights Watch that if Milosevic had gone through all the videos that were disclosed he would still be watching them to this day.²³⁴ Milosevic himself complained in a pretrial conference that he had received 90,000 pages and 500 cassettes for Bosnia and Croatia indicating that if he read “500 minutes a day, I need 360 days to read this only once” and that he did not have time to look at it during examinations.²³⁵ Milosevic estimated that for a case of this scope he needed at least two years to prepare his defense.²³⁶ It is hard to see how the defense could have been fully prepared for trial and formulated a theory of defense without having had an opportunity to review the evidence in advance of the start of trial. Milosevic refused to look at the material disclosed by the prosecution and there was no one to object to the trial’s opening date. If Milosevic had agreed to representation by counsel, his lawyer would have likely objected to the expedited trial date due to the lack of time to prepare.

²³² Human Rights Watch interview with journalist, The Hague, June 13, 2006.

²³³ Order on Prosecution Motion for Variation, January 21, 2002 (“The Prosecution now asserts that it is unable to complete disclosure to the accused within the time-frame ordered by the Trial Chamber due to: a) difficulties in obtaining the necessary translations; and (b) the fact that certain expert witnesses have not yet been identified and statements obtained.”).

²³⁴ Human Rights Watch interview with member of the Office of the Prosecutor, The Hague, June 16, 2006. The difficulty in reviewing that large amount of material is particularly great with a small defense team. Over the course of the trial, in keeping with his desire to represent himself, Milosevic was assigned only a small number of legal associates to provide him with legal assistance. See, for example, *Prosecutor v. Milosevic*, Order, November 15, 2001 (permitting Milosevic to meet with lawyers Ramsey Clark and John Livingston), and Order, April 16, 2002 (permitting Milosevic to meet with lawyers Zdenko Tomanovic and Dragoslav Ognjanovic.). In addition, for the presentation of the defense case, the previous *amici*, Stephen Kay and Gillian Higgins, were assigned to him as defense counsel.

²³⁵ Trial Transcript, July 25, 2002 (Pre-Trial Conference), p. 8628. (At p. 8635, Geoffrey Nice confirms that Milosevic’s estimate of how much material was disclosed “probably is correct.”)

²³⁶ Trial Transcript, September 2, 2003 (Pre-Defense Conference), p. 25944.

Furthermore, the prosecution did not have adequate time to prepare its case. For example, the prosecutor had not finished identifying witnesses for Kosovo less than a month before commencement of her case.²³⁷ Because the decision to allow joinder was granted 12 days before the start of trial, with no change in the trial date, there was no opportunity to re-strategize about the presentation of the case incorporating all three conflicts. A longer pretrial phase would have also enabled more rigorous pretrial management during which the issues may have been narrowed to those that were most contentious: crime scenes and witnesses could have been eliminated and a shorter consolidated indictment could have been prepared.

The prosecutor's office would have been able to present the case chronologically and coordinate more fully with additional time. Three separate prosecution teams had been working independently on gathering the evidence and preparing the indictments for the Bosnia, Croatia and Kosovo cases. Until Geoffrey Nice was brought on board as the lead prosecutor to coordinate all three cases shortly before the start of trial (in November 2001), there was little coordination between the teams. A lengthier pretrial process would have created an opportunity for improved coordination between the teams, which in turn may have led to a more focused, coherent case.

Given what must have been evident negative implications for both the prosecution and the defense and for overall trial management, it is striking that neither party nor the Trial Chamber acting *sua sponte* sought to delay the start of the trial.

Duration of the case

Although the trial lasted for more than four years before its abrupt end with Milosevic's death in March 2006, its duration is somewhat misleading. Several factors need to be considered. From September 2003 the court sat for only three days a week on account of Milosevic's ill-health.²³⁸ Each day's sitting lasted for a maximum of four hours. Multiple recesses were necessary to accommodate

²³⁷ Order on Prosecution Motion for Variation, January 21, 2002 ("The Prosecution now asserts that it is unable to complete disclosure to the accused within the time-frame ordered by the Trial Chamber due to: (a) difficulties in obtaining the necessary translations; and (b) the fact that certain expert witnesses have not yet been identified and statements obtained.").

²³⁸ See Scheduling Order for a Hearing, November 22, 2005.

Milosevic's health issues and to allow the defense time to prepare. The Trial Chamber calculated that the entire prosecution case-in-chief was presented in 360 hours, or 90 four-hour sitting days.²³⁹ However, once cross-examination and administrative tasks were factored in, the prosecutor's case actually took 294 sitting days to present.²⁴⁰

Due to Milosevic's ill-health, as the trial progressed the court's schedule became less continuous and the days sitting in court more widely dispersed. In August 2002 a doctor recommended four consecutive rest days be inserted every two weeks of trial.²⁴¹ In 2004 the court only heard evidence on 33 days, four of which were only two- or three-hour sessions. In a September 2004 decision the Trial Chamber noted that by July 2004 the trial had been interrupted during the course of the prosecutor's case over a dozen times on account of Milosevic's ill-health, thereby losing some 66 trial days.²⁴²

So while the trial appeared to go on forever, in fact time in court was short.²⁴³ The total length of actual court time is not unreasonable for a trial of this magnitude involving three conflicts over the course of nine years.

Yet the fact that the trial lasted for so long created the impression that there was not enough attention paid to prosecuting the case in an efficient manner. However, court papers reveal that in the first months of the trial "the prosecution filed a document in relation to the future management of the trial in which it invited the Trial Chamber to consider possible creative solutions to ... various procedural/evidentiary issues."²⁴⁴ This was filed in response to the Trial Chamber's request for assistance in managing the length of the trial.²⁴⁵ Orders from before the trial even began reference the

²³⁹ See Order Rescheduling and Setting the Time Available to Present the Defence Case, February 25, 2004; Order Recording Use of Time Used in the Defence Case, March 1, 2005.

²⁴⁰ Order Concerning the Time Available to Present the Defence Case, February 10, 2005.

²⁴¹ Reasons for Decision on Assignment of Defence Counsel, September 22, 2004, paras. 9, 53.

²⁴² *Ibid.*, para. 11.

²⁴³ Order on Future Conduct of the Trial, July 6, 2004 ("Noting the history of this case, which has been marked by a number of interruptions due to the Accused's ill health, amounting to the loss of 66 trial days by 25 February 2004.").

²⁴⁴ Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limit, May 16, 2002, para. 1.

²⁴⁵ *Ibid.*

importance of judicial economy.²⁴⁶ At several points during the trial the prosecution was ordered to shorten its witness list and did so, while—as noted above—the chamber at more than one point considered severing the trial in the interests of concluding the trial more expeditiously.²⁴⁷ In fact, as a result of concerns about time, the time-saving techniques to move through evidence more efficiently in the Milosevic trial have had an influence on other trials at the ICTY. These include strict use of time controls and increased use of written testimony.

Time controls

One of the important means used to control time during the Milosevic trial was the use of strict time limits. A set amount of time was given to the prosecution to prove its case.²⁴⁸ Although extensions were granted,²⁴⁹ the imposed time limit forced the prosecution to track its case to the minute and use its time efficiently.²⁵⁰ The defendant was also given a set amount of time to present his case, 150 days. This figure was equal to the 90 days the Prosecution spent presenting its case-in-chief plus time for cross-examination and administrative matters.²⁵¹ The judges on several occasions urged Milosevic to make the most of his time by using written testimony.²⁵²

²⁴⁶ Order, January 4, 2002 (“In the interest of justice and of judicial economy...”); Order, January 11, 2002 (“the Trial Chamber instructs the Prosecution to review the proposed list of witnesses whose evidence is to be presented by way of statements pursuant to rule 92*bis* so as to avoid repetition...”).

²⁴⁷ Further Order on Future Conduct of the Trial relating to Severance of One or More Indictments, July 21, 2004; Scheduling Order for a Hearing, November 22, 2005 (ordering a hearing on “submissions of the parties on severing the Kosovo Indictment and concluding that part of the trial”); Trial Transcript, January 9, 2002 (Pre-trial Conference), p. 246 (in which Judge May orders the Kosovo case to be presented with a total of 90 witnesses as opposed to the initial 110 proposed by the prosecutor and urging the prosecutor to reduce crime scene evidence further); Trial Transcript, July 25, 2002 (Pre-Trial Conference), p. 8641 (ordering a total of 177 live witnesses for Bosnia and Croatia from a proposal of 275 put forth by the prosecution).

²⁴⁸ See, for example, Trial Transcript, July 25, 2002 (Pre-Trial Conference), p. 8641 (requiring the conclusion of the Bosnia and Croatia case by May 16, 2003); Reasons for Refusal of Leave to Appeal From Decision to Impose Time Limit, May 16, 2002, para. 3 (citing trial judge’s imposition of 14-month time limit on the prosecution to present its case).

²⁴⁹ Trial Transcript, May 20, 2003 (Oral Ruling on Prosecutor’s Rule 93*bis* application), pp. 20747-51 (noting that the original time to complete the trial by April 10, 2003, was extended to May 16, 2003, and granting the prosecution 100 additional court days to present evidence).

²⁵⁰ Human Rights Watch interviews with ICTY staff, The Netherlands, June 13, 14 and 16, 2006; see also Order Recording Use of Time Used in the Defence Case, March 1, 2005, which includes a breakdown of time of the defense case by the minute; Trial Transcript, July 25, 2002 (Pre-Trial Conference), p. 8614, in which the Prosecution notes it has taken 92 or 93 hours so far in its presentation of the Kosovo case, while the accused had used 140 hours and the *amici* 14 hours.

²⁵¹ Order Rescheduling and Setting the Time Available to Present the Defence Case, February 25, 2004; Order Recording Use of Time Used in the Defence Case, March 1, 2005.

²⁵² Omnibus Order on Matters Dealt with at the Pre-Defence Conference, June 17, 2004.

The Trial Chamber also imposed time limits on Milosevic's cross-examinations, though the time for cross-examination could be extended at the discretion of the judges if it was proving fruitful.²⁵³ This approach had the benefit of minimizing the judges' time sparring with Milosevic over use of his time on cross-examination.

Setting time limits was widely praised by observers Human Rights Watch interviewed as a successful means of improving judicial economy, and has since become more commonplace.²⁵⁴ As part of its "Completion Strategy" to finish trials by the end of 2009, the ICTY President Fausto Pocar announced the tribunal's plan to increase the use of strict limitations on the time available for presentation of evidence.²⁵⁵

Written testimony

By setting strict time limits the judges encouraged the prosecution to develop ways to introduce evidence into the record as efficiently as possible. Thus, one of the primary innovations resulting from the Milosevic trial is the increased use of written testimony.²⁵⁶ In December 2002, in its Report to the Court on the Time Remaining in the Case, the prosecution applied for permission to submit evidence-in-chief from witnesses in writing. Witnesses whose testimony was submitted in this manner would be made available for cross-examination and to affirm the truth of the statement. The prosecutor could provide a brief summary of the witness's statement for the record prior to cross-examination. The application to introduce written testimony in lieu of an examination-in-chief was made pursuant to rule 89(F) which states,

²⁵³ See, for example, Cross-examination of Michael Williams, Trial Transcript, June 24-25, 2003, pp. 23004-05; Cross-examination of Lord David Owen, November 3-4, 2003, pp. 28487, 28490; Cross-examination of Morten Torkildsen, April 11, 2003, pp. 19089-90, 19122; Cross-examination of General Wesley Clark, December 15-16, 2003, pp. 30474, 30477.

²⁵⁴ See, for example, "How to Cut Down Trial Time for Herceg Bosna Leaders," *Sense News Agency*, November 1, 2006, <http://www.sense-agency.com/en/press/printarticle.php?pid=8751> (accessed November 28, 2006) (noting that the Trial Chamber cut down the time allotted to the prosecution to present its case from 400 hours to 300 hours).

²⁵⁵ Statement by Tribunal President Judge Fausto Pocar to the Security Council, June 7, 2006, p. 4.

²⁵⁶ The prosecutor also proposed submitting a report summarizing a great deal of testimony prepared by an investigator in relation to a crime scene as part of the effort to expedite proceedings. This proposal was rejected on the basis that it was not sufficiently reliable or probative. Decision on Admissibility of Prosecution Investigator's Evidence (Appeals Chamber), September 30, 2002, paras. 2, 20-24.

A Chamber may receive the evidence of a witness orally or, where the interests of justice allow, in written form.

Although a partial form of this practice had been used in previous trials,²⁵⁷ the rules had been amended in December 2000 to allow written testimony through rule 92 *bis*. Rule 92 *bis* gives the court the discretion to admit written testimony unrelated to acts and conduct of the accused, but which could help to establish other elements of the crime such as the existence of a widespread or systematic pattern of attacks.²⁵⁸ Here, however, the prosecutor proposed submitting written testimony from witnesses that did sometimes relate to the acts of the accused. In other words, witnesses' written statements were to be introduced in lieu of direct examination in an effort to speed up the trial. The Trial Chamber held that rule 92 *bis* had to be taken into account when deciding whether to admit such written statements and the prosecution's application had to be denied because the testimony related to conduct of the accused. The Trial Chamber was willing, however, to receive into evidence written statements pursuant to rule 92 *bis* unrelated to the conduct of the accused and the prosecution was able to admit a great deal of crime scene evidence in this way.²⁵⁹

²⁵⁷ See, for example, *Prosecutor v. Kordic & Cerkez*, Case No. IT-95-14/2, Decision on Appeal Regarding Statement of a Deceased Witness, July 21, 2000.

²⁵⁸ At the time of the decision rule 92 *bis* provided, inter alia:

(A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.

(i) Factors in favour of admitting evidence in the form of a written statement include but are not limited to circumstances in which the evidence in question:

- (a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;
- (b) relates to relevant historical, political or military background;
- (c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates;
- (d) concerns the impact of crimes upon victims;
- (e) relates to issues of the character of the accused; or
- (f) relates to factors to be taken into account in determining sentence.

(ii) Factors against admitting evidence in the form of a written statement include whether:

- (a) there is an overriding public interest in the evidence in question being presented orally;
- (b) a party objecting can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or
- (c) there are any other factors which make it appropriate for the witness to attend for cross-examination.

....

(D) A Chamber may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused.

²⁵⁹ Decision on Prosecution Motion for the Admission of Evidence-in-Chief of its Witnesses in Writing, April 16, 2003.

The Appeals Chamber reversed this decision, holding that the witness's availability for cross-examination in court addressed concerns about introduction of written testimony relating to conduct of the accused.²⁶⁰ It determined that the restrictions on written evidence contained in rule 92*bis* were based on an assumption that the witness testimony was to be presented in writing because the witness was unavailable and therefore could not be subject to cross-examination nor attest to the truth of his or her statement in person. The Appeals Chamber ruled that rule 92*bis* therefore applied only when the statement is intended to be submitted *in lieu* of any oral testimony. When the witness was available to testify, the concerns underlying rule 92*bis* restrictions did not exist and written evidence, even if it went to the acts and conduct of the accused, could be admitted.

The Appeals Chamber's decision marked a major shift in how evidence was presented at the trial. After it was handed down, 25 statements were admitted pursuant to rule 89(F). Additionally, a total of 197 statements unrelated to conduct of the accused were admitted pursuant to rule 92*bis*.

The use of written testimony has since become standard practice at the ICTY. The Appeals Chamber's decision was memorialized on September 13, 2006, when the rules were amended to clearly allow the Trial Chamber discretion to admit written statements that relate to the acts and conduct of the accused if the witness is present in court. Under new rule 92*ter* a written statement may be admissible provided that: i) the witness is available for cross-examination and any questioning by the judges; and ii) the witness attests that the written statement or transcript accurately reflects the witness's declaration and what the witness would say if examined. In a June 2006 statement to the UN Security Council, ICTY President Pocar also noted that "making greater use of written witness statements in lieu of examination-in-chief" was part of the tribunal's efforts to ensure increased efficiency of trial proceedings.²⁶¹

²⁶⁰ Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of Written Statements (Appeals Chamber), September 30, 2003, para. 16.

²⁶¹ Statement by Tribunal President Judge Fausto Pocar to the Security Council, June 7, 2006, p. 4.

Although the expanded use of written testimony is an important innovation allowing for more expeditious trials, it is not without its drawbacks. The primary drawback of using written direct testimony is that the judges do not have the opportunity to assess the credibility of the witness based on his or her oral evidence-in-chief. They are left to rely on the witness statement and the impression they gather of the witness during cross-examination. As Judge David Hunt pointed out in his dissent on the motion, the statements are prepared by a party to the case, not a neutral inquisitorial judge as in a civil law system where the judge is obligated to present both inculpatory and exculpatory information in the statement. Therefore, there is a risk that “the best gloss on the evidence which suits that party” will be put on the statement and, because the statement is entered as an exhibit as written, there will not be a proper opportunity to get more accurate, unvarnished information directly from the witness.²⁶²

Using written statements as evidence-in-chief also makes it difficult for the public to follow the testimony. Journalists covering the trial as well as members of the ICTY’s Outreach Programme all complained that it was difficult to listen to cross-examination (and cover the trial) without knowing the content of the witness’s direct testimony. The judges and the opposing counsel have the benefit of receiving the witness statement 14 days prior to the testimony, when the party seeking to adduce the written testimony is required by the rules to give notice of his intent to introduce a statement or transcript.²⁶³ Although the statements were tendered as evidence, they were generally unavailable to people in the public gallery until after the witness had testified; the short summary of the statement sometimes provided by the prosecution before cross-examination was deemed insufficient by observers in the gallery.²⁶⁴ This problem could be solved easily either by distribution of summaries of witness statements in advance, a short direct examination, or by having the statement ready for distribution as soon as it is admitted. Given the importance of

²⁶² Dissenting Opinion of Judge David Hunt on Admissibility of Evidence-in-Chief in the Form of Written Statement, October 21, 2003, para. 17.

²⁶³ See Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, IT/32/Rev. 38, June 13, 2006, rule 92 *bis*(E).

²⁶⁴ Human Rights Watch interviews with journalists, The Netherlands, June 13 and 14, 2006; Human Rights Watch telephone interview with members of the ICTY Outreach Programme, September 21, 2006.

these trials to the public-at-large, how they are viewed by the public should not be ignored.

In general, although there are some drawbacks to written testimony, in some circumstances it may be a useful way to expedite proceedings. To minimize these drawbacks, measures should be taken to ensure the audience is able to follow the testimony.

Management of proceedings with a pro se defendant

One of the lasting impressions of the Milosevic trial is the lengthy bombastic speeches that characterized many of Slobodan Milosevic's courtroom interventions.²⁶⁵ Observers often found that Milosevic was primarily seeking to advance his political agenda more than mount an effective legal defense.²⁶⁶ When Human Rights Watch set out to examine how the Trial Chamber managed Milosevic as a pro se accused, we fully expected to find extensive criticism of the leeway he was given, especially on his cross-examinations. However, the people closely involved with the case—including the prosecution, the *amici*, and long-time observers—all agreed that although the judges gave Milosevic extra time for cross-examinations, the extra time was not excessive. Although there may have been some cumulative effect over the course of the trial, no one was able to provide an example of an egregiously long cross-examination. On the whole, most courtroom observers Human Rights Watch spoke with felt that the extra time was given in an effort to ensure the trial was fair, and that this approach was preferable as a safeguard against an appeal.

There was also praise for the judges for limiting the time for cross-examinations but allowing Milosevic to use the time as he liked. As time got short, the judges sometimes provided direction from the bench as to fruitful areas of cross-

²⁶⁵ See, for example, Alison Freebairn, "Milosevic Running Out of Time," Institute for War and Peace Reporting, *Tribunal Update*, No. 402, April 15, 2005, http://www.iwpr.net/?p=tri&s=f&o=240239&apc_state=henitri2005 (accessed November 27, 2006); Gwynn Mac Carrick, "Lessons from the Milosevic Trial," *Online Opinion*; Moore, "Trial of Milosevic Holds Lessons for Iraqi Prosecutors," *Washington Post*; Uzelac, "Milosevic Trial May be Split," Institute for War and Peace Reporting, *Tribunal Update*, No. 368.

²⁶⁶ See, for example, Freebairn, "Milosevic Running Out of Time," Institute for War and Peace Reporting; Camilla Tominey, "Milosevic cheats justice by dying in his jail cell; Yugoslav chief leaves a legacy of hate over war crimes," *Sunday Express* (UK), March 12, 2006.

examination. This approach, as mentioned above, limited time spent arguing with Milosevic about his cross-examination. Providing guidance from the bench as to beneficial areas of examination was also useful in ensuring a fair trial.²⁶⁷

One issue did arise that may be a lesson for future courts. At the outset of the trial, Milosevic refused to address the court properly, referring to the presiding judge as “Mr. May” and not rising from his seat. It has been noted that had the bench not tolerated this sort of behavior from the start, it might have set a different, more respectful tone for the proceedings.²⁶⁸ As an example of a way to deal with this conduct, the court could have situated the microphone in such a way that it required the defendant to stand in order to be heard. Some observers suggested that the typical domestic court judge dealing with misdemeanors would not tolerate disrespectful behavior; nor should judges at the ICTY.²⁶⁹

Self-Representation

One controversial decision associated with the trial took place before the trial even began—the decision to allow Slobodan Milosevic to represent himself.²⁷⁰ Milosevic informed the Trial Chamber at his initial appearance that he did not intend to be represented by counsel.²⁷¹ At the first status conference the Trial Chamber noted that it agreed that it would not be appropriate to impose counsel on Milosevic, stating that, “We have to act in accordance with the Statute and our Rules which, in any event, reflect the position under customary international law, which is that the accused has a right to counsel, but he also has a right not to have counsel.”²⁷² Article 21 of the ICTY Statute, upon which the court is relying, provides,

²⁶⁷ See, for example, Trial Transcript, December 6, 2004, p. 34268 (Judge Kwon suggesting to Milosevic that he point out the most relevant part of the witness report in the testimony the following day).

²⁶⁸ Human Rights Watch interviews, London, July 11, 2006, and The Hague, June 15, 2006.

²⁶⁹ Human Rights Watch interviews, The Hague, June 15 and 16, 2006.

²⁷⁰ Although Milosevic did not intend to have appointed counsel, he was permitted to meet with a number of “legal advisors” to help him with his case. See, for example, Order, November 15, 2001 (permitting Milosevic to meet with lawyers Ramsey Clark and John Livingston), and Order, April 16, 2002 (permitting Milosevic to meet with lawyers Zdenko Tomanovic and Dragoslav Ognjanovic).

²⁷¹ Trial Transcript, July 3, 2001 (Initial Appearance), pp. 1-2; *Prosecutor v. Milosevic*, Case No. IT-99-37, “Written Note by the Accused”, July 3, 2001, Registry pp. 3371-72.

²⁷² Trial Transcript, August 30, 2001 (Pre-Trial Conference), p. 18.

4. In the determination of any charges against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees in full equality:

....

(c) to be tried without undue delay

(d) to be tried in his presence and to defend himself in person or through legal assistance of his own choosing....²⁷³

The Trial Chamber considered assigning defense counsel again in December 2002 and September 2003, each time affirming the defendant's right to represent himself even though he was ill. When necessary, the Trial Chamber modified the court's schedule to allow him to continue to represent himself despite his increasing health problems.²⁷⁴ As the trial went on and Milosevic's health worsened, the Trial Chamber reconsidered its position. On September 2, 2004, after the defense case had been postponed five times due to the ill-health of the accused, the Trial Chamber decided that the right to represent oneself as set out in the ICTY's Statute is a qualified right, and that under the circumstances "it is both competent to assign counsel to the accused and in the interests of justice to do so."²⁷⁵ In making its decision, the Trial Chamber noted that its fundamental duty was to make sure that the trial was both fair and expeditious, and that there was a real danger that the trial would not conclude without assistance of counsel. The Trial Chamber ultimately concluded that the right to represent oneself may be waived if the effect of its exercise is to obstruct the achievement of a fair trial.²⁷⁶ According to the court's order, the assigned counsel would have the duty to represent the accused by preparing and examining witnesses; making submissions on fact and law; seeking appropriate orders from the accused; and endeavoring to obtain instructions from the accused while retaining the right to determine what course to follow and acting in the best interests of the accused. Milosevic could continue to participate in the conduct of his case, but only with

²⁷³ Although the Rules of Procedure and Evidence provided the defendant with the right to self-representation, no mechanisms were in place to allow that to happen in practice. The Registry did an excellent job in creating innovative mechanisms to allow Milosevic to prepare his case and communicate with witnesses while he was in detention.

²⁷⁴ See Reasons for Decision on Assignment of Defence Counsel, September 22, 2004, para. 64.

²⁷⁵ *Ibid.*, para. 1 (referencing oral ruling of September 2, 2004).

²⁷⁶ *Ibid.*, para. 34.

leave of the Trial Chamber, and his examination of witnesses would follow that of assigned counsel.²⁷⁷

In response to this decision, Milosevic's defense witnesses boycotted the trial. On appeal, the Appeals Chamber agreed in principle with the Trial Chamber's decision but changed the modalities to minimize the impact of the assignment of counsel so that essentially no change was made in the defense presentation. As the Appeals Chamber said, "To a lay observer, who will see Milosevic playing the principal courtroom role at the hearings, the difference may well be imperceptible."²⁷⁸ Indeed, the trial continued essentially as it had before.

In several interviews observers stated that the decision allowing Milosevic to represent himself was the single largest problem with the trial. Some noted the irony that had Milosevic been tried in Serbia, for example, he would have been assigned counsel without question. In civil law systems, defendants are routinely assigned counsel where they face serious or complex charges, on the basis that it is in the best interest of the defendant to have a lawyer to deal with the complexities of the case. That is true even when the defendant, as was the case with Milosevic, is himself an attorney.²⁷⁹

However, the ICTY was essentially established on the adversarial model and the Trial Chamber was constrained by this and by the plain wording of the statute. Differences between inquisitorial and adversarial systems make assignment of counsel difficult in an adversarial situation. The defense plays a more prominent role in an adversarial system because the lawyers, and not the judge, are responsible for presenting the case. If the accused refuses to cooperate with the lawyers, it is not possible to present a full defense. Several observers, including defense counsel,

²⁷⁷ *Ibid.*, para. 69.

²⁷⁸ Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defense Counsel, November 1, 2004, para. 20.

²⁷⁹ See, for example, European Court of Human Rights, *Correia de Matos v. Portugal* (App. 48188/99), Decision of 15 November 2001, Section C ("Although is it true that, as a general rule, lawyers can act in person before a court, the relevant courts are nonetheless entitled to consider that the interests of justice require the appointment of a representative to act for a lawyer charged with a criminal offence and who may therefore, for that very reason, not be in a position to assess the interests at stake properly or, accordingly, to conduct his own defence effectively.").

noted that no one knew his case better than Milosevic. The *amici* also indicated they would be unable to present a defense without instructions from the accused.

However, the court need not be held hostage by the defendant's right to self-representation. As the Trial Chamber noted, "the right to defend oneself in person is not absolute."²⁸⁰ For example, self-representation may be terminated where the defendant deliberately engages in serious and obstructionist conduct. The Milosevic trial, however, was unique in that it was the first case in which the defendant's physical health, not his deliberate conduct, was the reason for the need to assign counsel. The extent of his physical deterioration could not be foreseen by the trial judges at the start of the trial.

In future cases judges may wish to impose conditions on a defendant who wishes to represent himself, including that he be able physically to function as counsel by being able to appear in court a certain amount of time per week. Had that condition been made at the outset, it would have been easier for the Trial Chamber to assign counsel at an earlier stage without abridging or appearing to abridge Milosevic's right to defend himself. If self-representation begins to interfere with the overarching obligation to conduct an efficient trial, it is not unreasonable to assign counsel. The court's obligation to conduct "fair and expeditious trials" also includes taking into account the interests of the victims and the public and of the defendant him or herself in having an efficient trial process. This obligation should be one factor in making a determination to assign counsel, though it does not completely avoid the problem of an accused refusing to instruct counsel.

In this case, there were a number of very good reasons to assign counsel. It is difficult for a practitioner, even one with experience in international law, to handle a case as complex as this one, so to imagine that someone who lacked experience in this area could handle it himself is quite difficult. Undoubtedly Milosevic's case would have benefited a great deal from the assistance of experienced counsel had he agreed to be represented.

²⁸⁰See Reasons for Decision on the Prosecution Motion Concerning Assignment of Counsel, April 4, 2003, para. 40.

Use of amici curiae

A valuable lesson from the Milosevic trial was the innovative use of the *amici curiae*. Shortly after Milosevic informed the court that he intended to represent himself, the Trial Chamber decided in a pretrial conference, in the interests of securing a fair trial, to assign counsel to appear before it as *amicus curiae*. The *amici* would assist the Trial Chamber by

- (a) making any submissions properly open to the accused by way of preliminary or other pretrial motion;
- (b) making any submissions or objections to evidence properly open to the accused during the trial proceedings and cross-examining witnesses as appropriate;
- (c) drawing to the attention of the Trial Chamber any exculpatory or mitigating evidence; and
- (d) acting in any other way that designated counsel considers appropriate in order to secure a fair trial.²⁸¹

The *amici* are assigned to assist the court in ensuring that a proper determination of the case is made. The *amici* do not represent the defendant.

Here, the *amici* assigned to the case filed hundreds of technical motions (including the rule 98*bis* Motion for Judgement of Acquittal) that Milosevic ultimately agreed with, even if he did not offer them explicit instructions. Because the case was so complex, having counsel to look after the technical aspects of the case was an invaluable part of ensuring Milosevic had a fair trial.

In interviews with the *amici*, they noted that they preferred the role of amicus to being assigned as defense counsel.²⁸² They pointed out that had they been assigned to represent Milosevic from the start, they would have an ethical obligation not to act without instructions. Given that Milosevic would have refused to instruct assigned counsel, they would not have had the opportunity they had as *amici* to file motions helpful to the defense without conflicting with their obligations to the client. In any

²⁸¹ Order Inviting Designation of *Amicus Curiae*, August 30, 2001.

²⁸² Human Rights Watch interview with Stephen Kaye, London, July 12, 2006; Human Rights Watch telephone interview with Gillian Higgins, July 17, 2006.

event, the assignment of counsel as *amici* was very important in a case this complex requiring a great deal of expertise in ensuring Milosevic's rights were represented. A significant additional benefit of assigning *amici* is that should the defendant be unable to continue to represent himself, counsel who have been participating in the trial from its beginning are available to step in.

Lessons Learned

Although the Milosevic trial did not reach a conclusion, it confronted numerous novel issues and therefore provides important lessons that may be useful in other international courts handling cases of comparable magnitude. On the basis of our research into this limited set of issues, Human Rights Watch believes the following lessons are worth consideration:

- The charges in the indictment or warrant should be representative of the most serious crimes alleged against the accused. Duplication of charges within a single indictment should be avoided and, in the case of a high-ranking official who is not present at the crime scenes, the prosecution should from the outset ensure that adequate focus is given to evidence of the chain of command and not disproportionately to victims' testimony from crime scenes.
- Where there is sufficient linkage between them, Human Rights Watch believes that holding a single trial for a series of crimes allegedly committed by a high-ranking defendant has several advantages. It ensures that a more complete picture of the individual's alleged overall role in the perpetration of the crimes is presented. A single trial also eliminates the risk that the defendant would not be tried for the most serious crimes with which he is associated. It is more efficient since one proceeding may eliminate the need to call witnesses to the stand twice.
- Expedient prosecution of complex and serious cases requires an adequate pretrial period to allow for complete disclosure to the defense and translation of prosecution evidence. Sufficient pretrial time also allows both the prosecution and the defense to fully prepare their cases. An effective period of pretrial management would allow courts to eliminate issues that are not contentious and to further narrow the issues for which direct oral testimony is required. It should also shorten the time between the close of the prosecution case and the opening of the defense case. In a high-profile case where there is public pressure to begin a trial before it is fully trial-ready, the courts

should resist such pressure and take steps to explain to the public the ultimate benefits and necessity of not prematurely commencing a case.

- Because the Milosevic trial began eight years after the ICTY began its operations and was the twelfth trial relating to crimes perpetrated by Croatian and Bosnian Serb forces, there was substantial evidence already on the record about what had occurred in Bosnia and Croatia. Not all high-level trials will take place in similar circumstances. The trial of a senior political figure may be the first time that crime scene evidence is presented. In such cases, the prosecution will need to be even more selective in the number of crime scenes it includes since there will be no previously adjudicated facts and prior testimony that it can draw on as potential evidence.
- By their nature, trials of high-level perpetrators will demonstrate not only what happened at particular crime scenes but also the criminal infrastructure that allowed such serious crimes to be perpetrated. Prosecution strategy must ensure that this is given the appropriate focus and resources at trial, while balancing the need to present crime scene evidence. This will require hard decisions and a tightly tailored case.
- Trials of high-level suspects will be important for the documentation of events and the role and responsibility of various actors, irrespective of any conclusion relating to the defendant's guilt or innocence. The efficient prosecution of a case will be a significant factor in the quality of that record.
- Increased use of written testimony was an important change introduced in the Milosevic trial. When a written statement is used in lieu of a direct examination, however, copies should be made available to the public in a timely manner so they are able to follow the witness's testimony.
- Use of strict time limits can be an incentive to present an efficient case and is fair to the defense while moving the trial forward.

- The right of self-representation should be subject to the requirement that the defendant be able to fulfill the role as counsel and attend court sessions regularly.
- When an accused represents him or herself, assigning counsel to act as *amici curiae* is an appropriate way of ensuring the accused's rights are protected. In legally and factually complex cases, it is important to have attorneys capable of looking after technical issues that a defendant representing himself may not be capable of handling, to ensure a fair trial.
- All organs of the court should keep in mind the importance of making the proceedings meaningful to the communities most affected by the crimes.

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