



Model Courts of Justice 2022

# International Criminal Tribunal for the Former Yugoslavia Study Guide

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## **LETTER OF THE SECRETARY-GENERAL**

Most Esteemed Participants,

On behalf of our academic and organization teams, once again I would like to welcome you to the Model Courts of Justice Family as The Secretary-General of the Model Courts of Justice Conference 2022! My name is Zeynep Güler, and I am a junior at Ankara University, Faculty of Law.

The International Criminal Tribunal for the Former Yugoslavia was an ad hoc criminal tribunal established by the United Nations Security Council in order to punish international crimes committed during the collapse of the former Yugoslavia in the 1990s. The court's most contentious case, Prosecutor v. Slobodan Milosevic, will be heard. Milosevic is charged with serious crimes ranging from genocide to plunder of public and private property. It is up to the members of the court to decide what should be done at this pivotal point in international criminal law history.

I assigned this Court to our post-war history enthusiast, Mr Ahmet Semih Aktaş, who also serves as the current president of our Faculty Club, FLAUMUN. He is a wise man, a quick thinker, and a problem solver. I blindfoldedly trusted him with this court, and as far as the eye can see, the outcome is spectacular. Mr Eren Yalçın was a huge help to us during the entire process. I would like to express my appreciation to those two wonderful men.

Before attending our court sessions, I strongly advise all participants to read the Study Guide, the Handbook, the Rules of Procedure, and any other documents available on our website. If you have any queries about the conference or the committee, please do not hesitate to contact me at [secretarygeneral@modelcj.org](mailto:secretarygeneral@modelcj.org).

Sincerely,

Zeynep GÜLER

Secretary-General of Model Courts of Justice 2022



## **LETTER OF THE UNDER-SECRETARY-GENERAL**

Honourable Participants,

My name is Ahmet Semih Aktaş, as the Under-Secretary-General responsible for the International Criminal Tribunal for the former Yugoslavia, I welcome you all to the 11<sup>th</sup> session of Model Courts of Justice. We tried so hard to bring this tribunal to life, I sincerely hope that you will enjoy recreating this important tribunal as much as I had enjoyed preparing it.

Participants of this *ad hoc* criminal tribunal are tasked with adjudicating on the case of Prosecution v. Milošević, where the former President of the Federal Republic of Yugoslavia is on trial for offences ranging from genocide to plunder of public and private property committed in what is now Croatia, Bosnia-Herzegovina, and Kosovo. Arguably the most important case that came before this tribunal, participants will need to rely on different concepts of international criminal law when issuing their judgment.

Finally, I would like to express my gratitude to all the people who made Model Courts of Justice 2022 possible. It was my utmost pleasure to work alongside our amazing Academic Team, from our distinguished Secretary-General Ms. Zeynep Güler, who helped us get through this journey with her invaluable support, to my great trainee Rovshana İsmayilova who always surpassed my expectations. I would also like to thank our Director-General Ms. Başak Göksu and her great Organisation Team, who have tirelessly worked for months with immense passion to bring Model Courts of Justice 2022 to life.

Sincerely,

Ahmet Semih AKTAŞ

Under-Secretary-General for the International Criminal Tribunal for the former Yugoslavia



## **LETTER OF ASSISTANT TO THE SECRETARY-GENERAL**

Esteemed Participants,

I am Eren Yalçın, a sophomore student studying in the Business Administration Department at TED University. I welcome you all to the Model Courts of Justice 2022. This year I am serving as an Academic Assistant to the Secretary-General.

My journey with the Model Courts of Justice began last year as an Academic Trainee in the World Trade Organization Committee. Although at the beginning it was a challenge for me to read legal documents as a business administration student, with the help of my fellow teammates, I had fruitful three days and I met with many great people in the conference. After witnessing the work required by this conference and how it enhances one's perspective, as well as academic skills, I decided to continue being a part of the Academic Team.

As an Academic Assistant, I was responsible for writing the introduction parts of the study guides of World Trade Organization, International Criminal Tribunal for the Former Yugoslavia. Lastly, we wrote the introduction part of United States District Court for the District of Columbia with dear Academic-Assistant, Ms. Yağmur Çiçek.

As an academic team, we have come a long way, and worked hard to provide you with an amazing three-day experience. I am sure you will enjoy reading the carefully written study guides.

Finally, I would like to express my gratitude. First, I would like to convey my respects and thanks to my sister Eylül Yalçın, who insisted that I attend the Model Courts of Justice Conference and encouraged me to be in an environment where I could improve myself. Secondly, I would like to thank to our Secretary-General Ms. Zeynep Güler for giving me the opportunity to become an Academic-Assistant. I would also like to thank all my friends in the Academic and Organization team who made this journey joyful. Finally, I would like to express my gratitude to all the valuable participants who were here and attended this magnificent conference. I wish you all a wonderful and enjoyable three days that you will never forget.

Kind Regards,

Eren YALÇIN

Academic-Assistant for the Secretary-General



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## I. INTERNATIONAL CRIMINAL LAW

International criminal law is the field of law that is concerned with defining international crimes and obliging states to prosecute those said crimes. It has a *post bellum*<sup>1</sup> characteristic in the sense that it primarily deals with the punishment of violations not the violations themselves.

### 1. Evolution of the International Criminal Law:

International criminal law is a relatively young field in the ancient area of law. The concept of the regulating actions of states in a binding manner is itself a relatively young concept. However, doing it in such a strict way and punishing not only the states themselves, but also individuals in those states for deviations is something that was unheard of before the 20<sup>th</sup> century.<sup>2</sup>

#### a. Before the Second World War:

There have been seldom instances of international criminal tribunals<sup>3</sup> throughout the Medieval Period, however they were used as a way to legitimise punitive measures aimed at the defeated leaders after coalition wars. They were not genuine international criminal tribunals such as the modern tribunals, thus could not be classified as true predecessors, instead they were manifestation of an idea that some crimes were so heinous that they should not go unpunished.

Origins of modern international humanitarian law, which is strictly intertwined with the international criminal law, can be traced back to Hague Conventions of 1899 and 1907 where world leaders (led by the Russian Tsar) came together in order to draft an agreement to prevent abuses during war time.<sup>4</sup> The governments of the world definitively categorized what a war-crime is and prohibited such actions that would be classified under it. However, agreements did not

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<sup>1</sup> “After war”

<sup>2</sup> GREPPI EDOARDO, “The Evolution of Individual Criminal Responsibility under International Law” (1999) 81 International Review of the Red Cross 531-553

<sup>3</sup> Melikan RA and McGoldrick D, “War Crime Trials Before International Tribunals: Legality and Legitimacy,” *Domestic and International Trials: 1700-2000* (Manchester University Press 2003) 109

<sup>4</sup> Doyle J, “The Hague Peace Conference of 1899” (1989) 3 Irish Studies in International Affairs 55-68

include provisions for individual jurisdiction, and most importantly there were no clear remedies for breaches of the provisions.<sup>5</sup>

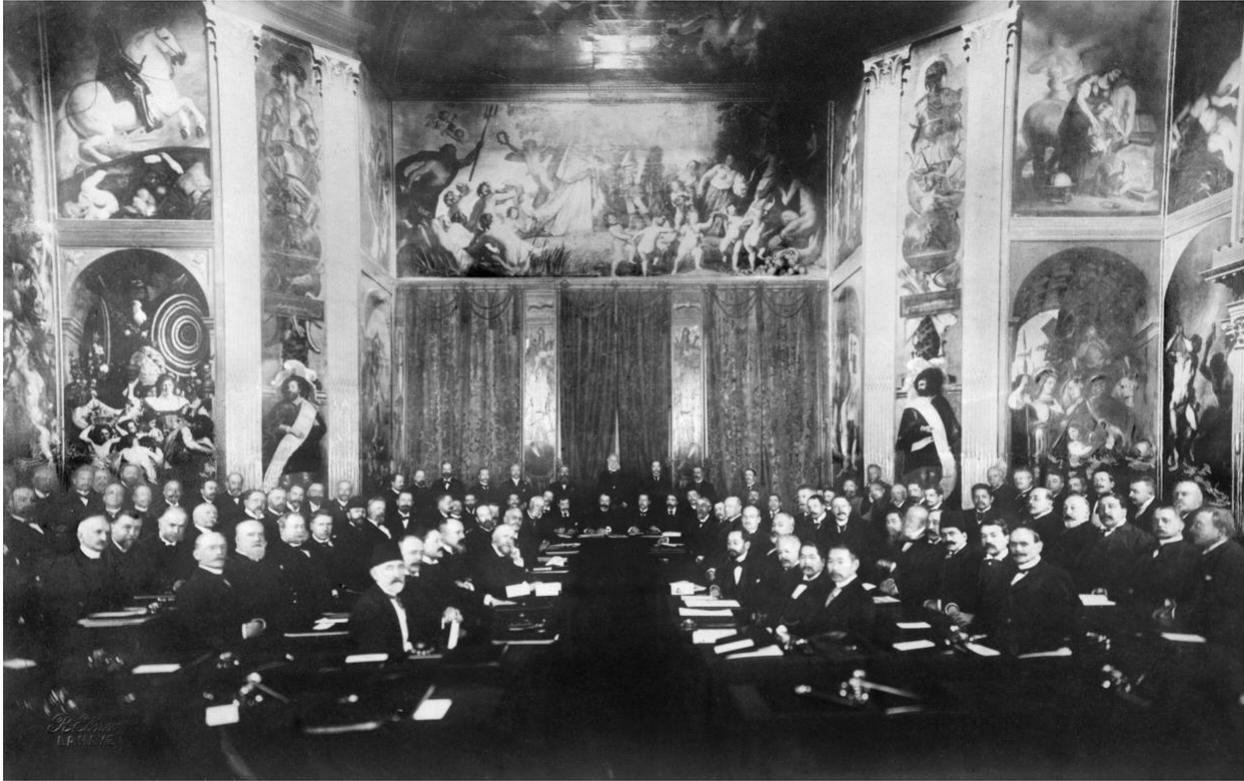


Figure 1 The Hague Conference of 1899<sup>6</sup>

The brutality of the war and the extensive media coverage during the first Balkan War led to civilian (mainly by NGOs) attempts to document war-crimes and calls for punishment of the assailants.<sup>7</sup> However, the real change came with the third Balkan War (which evolved into the Great War) when untold atrocities by the participants led to the Entente forcing the Central Powers to create systems to punish the preparators of the atrocities. Originally, they were envisioned as proper international tribunals. However, they later evolved into domestic trials with an international character or were entirely dropped after the pushback from the members of the Central Powers. Specifically, the Treaty of Sevres (which had a provision for establishment of a tribunal) was rejected by the new Turkish state and the treaty of Lausanne replacing it contained

<sup>5</sup> “U.S. Committee of the Blue Shield” (*U.S. Committee of the Blue Shield - 1899 & 1907 HAGUE CONVENTIONS - Protecting cultural heritage worldwide*) <<https://uscbs.org/1899---1907-hague-conventions.html>> accessed March 9, 2022

<sup>6</sup> Akad MT, “Ateşkes Savaşla Barış Arasında, Nefes Alıp Toparlanma” (#tarihApril 2020) <<https://tarihdergi.com/savasla-baris-arasinda-nefes-alip-toparlanma/>> accessed March 27, 2022

<sup>7</sup> Schabas WA, “Establishment of the Tribunals,” *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (Cambridge University Press 2006) 9



no provisions for establishment of a tribunal. In the case of Germany, the Netherlands giving the Kaiser (whom the Entente wanted to try in front of an international tribunal) asylum led to the collapse of the efforts to try him. For the rest of the German suspects, Leipzig Trials were setup where the suspects were tried by German judges. Although there were several sentences, they were later overturned on appeal, and the trial at large was seen as a failure and only fuelled the idea that Germany was being treated unfairly by the Entente.<sup>8</sup>

**b. *Ad Hoc* Period:**

The true establishment of the international criminal law happened with the *ad hoc* tribunals set-up to punish Axis war criminals after the Second World War. The brutality of the Second World War was unmatched in human history. Crimes of the Axis powers were so heinous that the Allies issued declarations such as the Moscow declaration of 1943 which stated willingness of the Allies to *'pursue them (Hitlerites) to the uttermost ends of the earth and will deliver them to their accusers in order that justice may be done.'* After the end of the war, in 1945, the Allies signed Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis and the annexed Charter of the International Military Tribunal, which is the statute of the International Military Tribunal (“**IMT**”) commonly known as the Nuremberg Tribunals. For Japanese suspects, International Military Tribunals for the Far East, commonly known as Tokyo Trials, were established with a decision by the Allied commander in the Pacific, Douglas MacArthur.

The Axis powers totally capitulated which meant that the Allies were free to run these international legal mechanisms the way they see fit. International Military Tribunal, Tokyo Trials, the Nuremberg Military Tribunals, which were the fruit of these efforts, established basic principles of international criminal law such as individual responsibility; defined fundamental many international crimes and most importantly, it set the example that *ad hoc* tribunals with retroactive jurisdiction can adjudicate on grave violations of rules of international humanitarian law. The tribunals were largely successful and managed to open a new chapter in the field of international law.<sup>9</sup>

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<sup>8</sup> *ibid* 9-10.

<sup>9</sup> *ibid* 3.

Following the footsteps of the post-war tribunals and partially due to those tribunals being seen as “victor’s justice”, the Allies (now the United Nations) wanted to cement their achievements in the field of international criminal law and create a permanent and impartial system to address with future atrocities. To this end, United Nations worked to codify international crimes while pursuing establishment of a permanent international criminal court. However, disagreements over the definition of crime of aggression, distrust between the Eastern and Western blocks which came into being after the Second World War, and lack of synchronization between separate efforts led to failure of this project.<sup>10</sup> Development of international criminal law largely stalled due to tensions between the Western and the Eastern blocks, which prevented formation of new tribunals to address grave breaches that took place during the Cold War.<sup>11</sup> This did not mean that there was no mechanism to prevent future crimes. Instead of a legal system effective across the globe, each superpower acted as the policeman of their own spheres and managed to achieve a basic level of adherence to the international rules and customs during the Cold War.



Figure 2 The defendants in the dock at the International Military Tribunal at Nuremberg<sup>12</sup>

<sup>10</sup> Cassese A, “The Establishment of International Criminal Tribunals,” *Cassese’s International Criminal Law* (Oxford University Press 2003) 333-334

<sup>11</sup> *ibid* 334.

<sup>12</sup> “The Nuremberg Trials” (*United States Holocaust Museum*)

<<https://www.ushmm.org/collections/bibliography/the-nuremberg-trials>> accessed March 10, 2022



It was the end of the Cold War and a search for a mechanism to deal with cross-border crimes that rekindled international criminal law. The collapse of the bi-polar world system meant that the policeman system, where the US and USSR kept their blocs in check, collapsed alongside it. This resulted in fragmentation of the international community which, along with the rising fundamentalism and nationalism, led to new atrocities being committed. However, not everything was bleak. The reduction of distrust, and the willingness of the major powers to cooperate on the international field opened up new possibilities. This meant that the United Nations organs, especially the United Nations Security Council (“UNSC”), could be effectively utilized by the Member States to tackle international matters. Combined with the ascending popularity of the human rights doctrine, this resulted in the international community being more willing to prosecute preparators of atrocities.<sup>13</sup>

Today, the fruit of this effort to create a system to punish violations of international humanitarian law is the International Criminal Court (“ICC”). However, original proposal for ICC was largely centred around crimes such as international drug trafficking, and the international humanitarian law aspect only started to be the main focus after the feasibility work had already begun.<sup>14</sup>

While the work was underway for the ICC, the world was paying great attention to atrocities that were being committed on the former Yugoslav territory. Yugoslav state was disintegrating at a rapid pace in the 1990s and different ethnic groups were using force to achieve a better deal for their potential new states. The UNSC had issued Resolution 757 calling on withdrawal of armed groups and respect for the borders. However, the scale of ethnic cleansing, especially on Bosnian territory, was so disturbing that the international community had to act in a more serious manner to prevent any more atrocities and punish the ones that were already committed. To this end, human rights groups followed by diplomats from a variety of nations struggled to bring justice to the victims and prevent further tragedies. The UNSC decided to establish a Commission of Experts with Resolution 780 in order to investigate atrocities being committed in the region. The Commission returned with a report on 16 January 1993 to the Security Council and called for establishment of an *ad hoc* tribunal. The Commission condemned the ongoing ethnic cleansing in

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<sup>13</sup> *ibid* 335.

<sup>14</sup> *ibid* 341.



the former Yugoslav territory and stated that the preparators were individually responsible for their crimes.<sup>15</sup>

These efforts led to the security council deciding to establish an *ad hoc* court for this issue on 22 February 1993. The court was formally established under the name “the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of international humanitarian law Committed in the Territory of the Former Yugoslavia since 1991” (“**ICTY**”) by Resolution 827 of the United Nations Security Council, which was adopted on 25 May 1993. The statute of ICTY was annexed to Resolution 827.<sup>16</sup>

It was envisioned that the Judges of the Tribunal would be selected by the General Assembly, while the Prosecutors would be by the Security Council to ensure fairness. It took more than a year for the ICTY to start functioning as the election process and establishment of the Rules of Procedure and Evidence dragged on. The Court issued its first indictment in late 1994 for Dragan Nikolić, for grave breaches of the Geneva Conventions, violations of the laws or customs of war and crimes against humanity committed when he was the commander of the Susica camp in north-eastern Bosnia-Herzegovina in the summer of 1992. By the end of the year the Tribunal had few suspects in its custody.

In 1995 the Court issued its most significant ruling on Tadić case. Before his trial begun, the defendant Duško Tadić, had challenged the jurisdiction of the Tribunal on the matters of legality in its creation and extent of applicability of international law in an internal conflict in the territory of the former Yugoslavia. The Appeals Chamber quickly rejected the improper creation claim and went on to rely on relevant legal texts beginning from the 1940s to state that there could be war crimes during civil wars and that crimes against humanity could be committed during peacetime. Previously, the Nuremberg tribunal specifically dealt with crimes against humanity committed during wartime, did not concern itself with crimes against humanity committed during peacetime. This was a huge step in expanding the scope of application of international criminal law.

In the ensuing years the ICTY has expanded in scope, and by 2000 it had a yearly budget of 100 million USD along with numerous trials happening under it. One of the most important

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<sup>15</sup> *ibid* 342.

<sup>16</sup> Schabas, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (n 6) 4



contributions of the ICTY in these years were its coining of the term “joint criminal enterprise”. Not set out in the Statute of the ICTY, it was a creation of the Appellate Chamber of the court and allowed convictions of persons who have participated in atrocities regardless of if they had personally perpetrated those atrocities or if they knew they would be committed. It was enough that there were atrocities committed by the members of the enterprise, and it was reasonably foreseeable. A conviction would lie, if there had been a common purpose to commit an act prohibited by the Statute of the Tribunal.<sup>17</sup>

The ICTY began wrapping up its work in the early 2000s. By 2002, a completion strategy was announced to conclude the Tribunal by the year 2010. In 2005, the Tribunal began referring the suspects back to national courts for prosecution.

ICTY, and the International Criminal Tribunal Rwanda (“ICTR”) were heavily inspired by the Tokyo and Nuremberg tribunals. However, the primary motivation for their establishment was different. Tokyo and Nuremberg tribunals were primarily established for a punitive purpose. Tragedy of the Second World War was so severe that the Allies saw a need to punish perpetrators for those crimes to be never reported. while the ICTY and ICTR were mainly established for utilitarian purposes. The reconciliation aspects of the former trials were highlighted by their founders<sup>18</sup> It could be argued that due to this reason, the latter courts went on for far longer than the previous ones and ended up costing much more than first expected. The experiences in these trials made international community see that there was a need for an international criminal court to deal with potential international crimes in a serious, sustainable, and swift manner while for atrocities that had happened before the establishment of this court, a hybrid regime where United Nations would support establishment of national tribunals with international character would be the forum of choice to bring justice and prevent further injustices.<sup>19</sup>

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<sup>17</sup> *ibid* 24.

<sup>18</sup> *ibid* 8.

<sup>19</sup> *ibid* 9.



### c. International Criminal Court

Arguably the most important step in the standardization of international criminal law, the International Criminal Court is the prime body for prosecuting international crimes in the 21<sup>st</sup> century.

#### i. Establishment

In 1989, the question of International Criminal Court came in front of the UN from an unexpected source to deal with an unexpected problem. Trinidad and Tobago suggested the establishment of an international criminal court to deal with international drug trafficking. As a result, United Nations General Assembly (“UNGA”) instructed the International Law Commission (“ILC”) to draft a report in order to assess the viability of such an endeavour. In 1990 ILC submitted its report to the UNGA, and the report was not limited to the question of drug trafficking. It was favourably received by the UNGA which led to ILC being encouraged to continue to build up on its work and draft a more comprehensive report.<sup>20</sup>

In the 1994 draft, the ILC kept in mind the concerns of the major powers and envisioned a court that was much less ambitious than it is today. First, the court only had “automatic jurisdiction” (jurisdiction arising from the mere ratification of the Statute) in the case of genocide; for other crimes, the Court could only exercise jurisdiction if the custodial State, territorial State or any other State that is seeking jurisdiction over the accused has agreed to it. Second, only signatory States and the UNSC could initiate the proceedings. Third, UNSC had immense authority when it comes to prosecution of cases that falls within the scope of Chapter VII of the UN Charter such as threat to the peace, breach of the peace, or the act of aggression. In these cases, prosecution could only commence with the blessing of the UNSC.<sup>21</sup>

In 1996, UNGA established a Preparatory Committee on the Establishment of an International Criminal Court. This committee held various meetings and submitted an incredibly detailed Draft Statute and Draft Final Act to the Diplomatic Conference at Rome in 1998. During the negotiations in Rome, three major blocs emerged.

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<sup>20</sup> International Law Commission, Report of International Law Commission on the Work of Its Forty-Sixth Session (A/49/10, 1994)

<sup>21</sup> Cassese, *Cassese’s International Criminal Law* (n 9) 341



The first bloc was called “Like-Minded States” and included countries across the globe. They were largely under the leadership of Canada and Australia. This group advocated for automatic jurisdiction, independent prosecutor empowered to initiate proceedings on its own, and a broad definition of war crimes including those committed in internal armed conflicts.

The second bloc was largely made up of the five permanent members of the UNSC -UK and later France joined the Like-Minded States bloc during the negotiation process- and envisioned a much more limited Court. Three remaining permanent members were opposed to automatic jurisdiction, and they did not wish the prosecutor to be able to initiate proceedings on its own. They wanted the UNSC to have wide ranging powers when it comes to referring cases, un-referring cases to the Court.

The third bloc included the members of the non-aligned movement. They wished the inclusion of the crime of aggression to the Statute; some members pressed for anti-drug trafficking to play a bigger role (Barbados, Trinidad and Tobago, Jamaica, Dominica) while others wanted counter terrorism measures (Algeria, India, Sri Lanka, Turkey). The bloc strongly opposed a potential domination of the procedural aspects of the Court by the UNSC and opposed jurisdiction over war crimes committed in internal conflicts.<sup>22</sup>

At the end of the negotiations, the Statute of the International Criminal Court was adopted 120 to 7 with 20 abstentions. United States of America (“US”), China, Israel, Iraq, Libya, Syria and Sudan were the seven objections.<sup>23</sup> The Statute required sixty ratifications or accessions for entry into force. Senegal was first to ratify the Statute, on 2 February 1999. The general speed of ratification was quicker than many expected despite the need for extensive changes in domestic legal rules of signatory States. Sixty ratification was achieved on 11 April 2002, and the Statute entered into force on 1 July 2002.<sup>24</sup> As one of his final acts, President Clinton signed the Statute on 31 December 2000 (during a so-called lame duck period). However, incoming Bush administration “unsigned” the Statute and took a very hostile approach towards the Court.<sup>25</sup>

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<sup>22</sup> *ibid* 342.

<sup>23</sup> *ibid* 343.

<sup>24</sup> Boas G, “Fair and Expeditious International Criminal Trials,” *The Milošević Trial: Lessons for the Conduct of Complex International Criminal Proceedings* (Cambridge University Press 2007) 23-24

<sup>25</sup> *ibid* 28-34.



## ii. Jurisdiction

The entry into force date is important since it is the day where the “temporal jurisdiction” of the Court begins. Article 11(1) of the Rome Statute states that ‘the Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute’. This means that the Court is not able to hear cases regarding events that happened before the date 1 July 2002.<sup>26</sup>

Personal jurisdiction is more complicated. The Court exercises jurisdiction over the nationals of a State Party who are accused of a crime, in accordance with Article 12(2)(b), regardless of where the acts are perpetrated. As an exception, the Court can also exercise jurisdiction on nationals of non-party States that accept the jurisdiction of the Court on an *ad-hoc* basis.<sup>27</sup> In this case, temporal jurisdiction normally starts with the ascension of the non-party State to the Statute. However, the State in question could move the temporal jurisdiction date back to 1 July 2002. Another exception is the UNSC referrals where a national of a non-Party State could be prosecuted with the decision of the UNSC.

As set out in Article 12(2)(a), territorial jurisdiction of the Court extends to any actions that were undertaken in a signatory State, regardless of the nationality of the preparator. Territorial jurisdiction also extends to States that have accepted the jurisdiction on an *ad-hoc* basis. Territory in this sense is not limited to land portion of the state, instead it includes the airspace, territorial waters, and possibly the exclusive economic zone of the State.<sup>28</sup>

The Court deals with the most heinous international crimes namely, crime of genocide, crime of aggression, crimes against humanity and war crimes.<sup>29</sup>

The fact that UNSC has such a large dominance over the Court and who could be prosecuted there due to its ability of “referral” and “deferral” (deferral is the ability of UNSC to prevent prosecution of an individual by the Court by issuing a resolution preventing it from doing so) restricts the court. Although this prevents a better application of justice, it is a necessary compromise to find a

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<sup>26</sup> Ibid 71.

<sup>27</sup> Ibid 76.

<sup>28</sup> Boas G, “The Milošević Prosecution Case: Getting off on the Wrong Foot,” *The Milošević Trial: Lessons for the Conduct of Complex International Criminal Proceedings* (Cambridge University Press 2007) 82

<sup>29</sup> Cassese, *Cassese’s International Criminal Law* (n 9) 229

common ground between the realities on the ground and the aspirations of a just international legal order.

## II. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

International Criminal Tribunal for the Former Yugoslavia was formed as a response to the atrocities that was being committed on the territory of the former Yugoslav Federative State by the members of different ethnic groups that made up the country.

### 1. History of Yugoslavia

Situated in the Western portion of the Balkans, the Yugoslav State was an experiment in the 20<sup>th</sup> century to create a home for numerous ethnicities inhabiting the region. History of this state must be examined in order to comprehend the tragic fate of its former citizens in the 1990s.



Figure 3 Yugoslavia, 1919–92<sup>30</sup>

#### a. Creation

Yugoslavia (Land of Southern Slavs) came into existence after the First World War when the majority Slav areas under the control of the Austro-Hungarian Empire united with the Kingdom of Serbia after the dissolution of the Empire. The first name of the new state was a combination of these Slav nations (Kingdom of Serbs, Croats, and Slovenes.)<sup>31</sup>

<sup>30</sup> “Yugoslavia” (*Encyclopædia Britannica*) <<https://www.britannica.com/place/Yugoslavia-former-federated-nation-1929-2003>> accessed March 27, 2022

<sup>31</sup> Judah T, “History - World Wars: Yugoslavia: 1918 - 2003” (*BBC* February 17, 2011) <[https://www.bbc.co.uk/history/worldwars/wwone/yugoslavia\\_01.shtml](https://www.bbc.co.uk/history/worldwars/wwone/yugoslavia_01.shtml)> accessed March 9, 2022



The primary motivation for the establishment of the state was not the organic desire of the Southern Slavs to create a united Southern Slav state. Instead, the State was created by the victorious Entente to reward the heavily battered Serbia while creating a strong state in the Balkans to keep the power balance in Europe. Furthermore, it was seen as more beneficial for the Southern Slavs to be in a Serb dominated union instead of a potential Germanic or Magyar state since Serbs were also their Slav brethren. Thus, wishes of non-Slavic population such as Albanians in Kosovo who wished to be united with Albania, and Slavic nations, such as Croats, who wished to become independent, were ignored.<sup>32</sup> These divisions would haunt the kingdom for decades and eventually be the primary reason for its dissolution in the 1990s.<sup>33</sup>

The King of Serbia, Peter I (Peter Karadjordjevic), became the King of this new state. He passed away in 1921, leading Alexander I to become the new king. He tried to create a Yugoslav identity by taking a heavy-handed approach to governing. In 1929, he abolished the constitution and political parties then took full control of the country. Furthermore, he changed the name of the country to the Kingdom of Yugoslavia. He severely prosecuted separatist movements (to a point where even the national flags of numerous ethnicities in the union were banned), communists, and other potential threats. Moreover, he centralised the state and re-drew borders within Yugoslavia to cement his progress.

Alexander's policies were deeply unpopular with the Serbs and resulted in his assassination in Paris by a Bulgarian who wished the Macedonian region to be independent. The official heir was his son, Peter II, however due to Peter II being a child, Prince Paul was declared crown-regent.<sup>34</sup>

### **b. Annihilation of Kingdom of Yugoslavia during the Second World War**

Prince Paul decided to appease the growing influence of reactionary states in Europe. Due to the pressures from the Axis, he created a de-facto independent Croatian State within Yugoslavia in 1939. During the Second World War, he went on to sign the Tripartite Pact to prevent an invasion of Yugoslavia since all neighbours of the Yugoslav State were either in the Axis or were annexed

<sup>32</sup> Kreizer N, "Yugoslavia, 1918: Birth of a Dead State: DW: 01.12.2018" (*DW.COM* December 1, 2018) <<https://www.dw.com/en/yugoslavia-1918-birth-of-a-dead-state/a-46538595>> accessed March 1, 2022

<sup>33</sup> "The Conflicts" (*The Conflicts | International Criminal Tribunal for the former Yugoslavia*) <<https://www.icty.org/en/about/what-former-yugoslavia/conflicts>> accessed March 9, 2022

<sup>34</sup> Wilde R, "History of Yugoslavia - Overview" (*ThoughtCo* January 29, 2019) <<https://www.thoughtco.com/yugoslavia-1221863>> accessed February 10, 2022



by them. This move proved to be unpopular inside Yugoslavia and led to a *coup d'état* where pro-Allied elements in the Yugoslav State overthrew him and put Peter II in charge.<sup>35</sup>

The coup was not welcomed by the Axis, and despite the promises of the new government to not to enter into the war on the Allied side, the Axis invaded the State on 6 April 1941. Regular Yugoslav units disintegrated in mere days leading to a swift capitulation. The Axis established puppet regimes in the former territory of Yugoslavia with the Croats gaining the lion share of support. The Croats calling themselves Ustase established a dictatorial regime and committed numerous atrocities, especially against Serbian and Bosnian civilians. However, despite these hardships, Yugoslav partisan units fought on.<sup>36</sup>

Two groups were the spearheads of this partisan movement. First were the nationalist Chetniks, led by Draza Mihalic. Despite being a resistance movement, they also collaborated with the Axis powers from time to time.<sup>37</sup>

The second group was the People's Liberation Front, the strongest component of which was the Communist Partisans led by Josip Broz ("**Tito**"). This group took a harsher stance against the Axis while also combatting the nationalist Chetniks. They were extremely successful and managed to prevent the Axis from effectively controlling the region.<sup>38</sup>

The People's Liberation Front managed to form a political body, the Anti-Fascist Council for the People's Liberation of Yugoslavia ("**AVNOJ**"). This council met in Bilhac on 26 November 1942 and claimed the status of Yugoslavia's deliberative assembly.

The AVNOJ met again in 1943 for its second session. In this session, the AVNOJ established an executive body called the National Committee for the Liberation of Yugoslavia. Tito was appointed as the prime minister.

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<sup>35</sup> *ibid.*

<sup>36</sup> Milekic S, "Croatia's WWII Revisionism 'Terrifying', Says Historian" (*Balkan Insight* May 22, 2018) <<https://balkaninsight.com/2016/09/28/croatia-s-wwii-revisionism-terrifying-says-historian-09-26-2016/>> accessed March 28, 2022

<sup>37</sup> Greble E, "Conflict in Post-War Yugoslavia: The Search for a Narrative: The National WWII Museum: New Orleans" (*The National WWII Museum / New Orleans* September 20, 2021) <<https://www.nationalww2museum.org/war/articles/conflict-post-war-yugoslavia>> accessed March 30, 2022

<sup>38</sup> *ibid.*



**Axis occupation and partition of Yugoslavia in World War II**

- legal borders (as recognized by the Allies)
- illegal borders within occupied Yugoslavia (as recognized by the Axis)
- Independent State of Croatia (German and Italian puppet state)
- Territory of the Military Commander in Serbia (German occupation)
- Banat, region with a special status (local German administration)
- Kingdom of Montenegro (Italian protectorate)
- annexed by Germany
- annexed by Italy
- annexed by Hungary
- annexed by Bulgaria

*Figure 4 Yugoslavia during the Second World War<sup>39</sup>*

Unlike other states in Eastern Europe, Yugoslav Partisans managed to liberate themselves from the Axis which gave them the ability to resist any demands by either the USSR or the West. The charismatic Tito re-established the Yugoslav state under the name Federal Peoples’ Republic of Yugoslavia on 31 January 1946, the new constitution of the Federal People’s Republic of Yugoslavia went into effect.<sup>40</sup>

<sup>39</sup> “Invasion of Yugoslavia (April 6, 1941) Summary - WWII German Attack” (*Totally History* December 27, 2013) <<https://totallyhistory.com/invasion-of-yugoslavia/>> accessed March 27, 2022

<sup>40</sup> Calic M-J, “Socialist Yugoslavia” in Dona Geyer (tr), *A history of Yugoslavia* (Purdue University Press 2019) 164.



### c. Socialist Federal Republic of Yugoslavia

The new and socialist Yugoslavia was born out of the horrors of the Second World War. United behind one leader, Tito, this state became a wild card in the region and a weird tale in Balkans.

#### i. Post-War Yugoslavia

The People's Front (which included the Communist Party that was headed by Tito) won the November 1945 elections. Although it was mainly due to the popularity of Tito himself, the Communists prosecuted their political opponents to ensure an electoral victory. Similar to other members of the newly emerging Eastern Bloc, a process of Sovietization was carried out in Yugoslavia where opposition was systematically eliminated, and the Communist Party of Yugoslavia ("**KPJ**") became the only serious party in the Yugoslav State.<sup>41</sup>

With the introduction of the new Yugoslav Constitution on 31 January 1946, Socialist Federal Republic of Yugoslavia came into existence. This new state followed a similar Stalinist doctrine to that of the USSR and started to industrialize at a rapid scale. The Yugoslav State also joined the Information Bureau of the Communists and Workers' Parties ("**Cominform**") and closely aligned itself with the USSR and states under its sphere of influence.<sup>42</sup>

#### ii. Tito-Stalin Split

Soon after the state was stabilized, Tito started to pursue policies that were contrary to the wishes of the USSR. It heavily supported the Greek communists, which undermined the promises given by Stalin to the Western Allies. This caused a divide between Tito and Stalin and resulted in the expulsion of Yugoslavia from the Cominform (thus from the newly emerging Eastern Bloc.) The Communist States in the Eastern Bloc began to purge Titoists from their ranks. Similarly, KPJ started purging Stalinists from their ranks which resulted in tens of thousands of people being arrested, sent to labour camps, or killed.<sup>43</sup>

The split left Yugoslavia in a weak state, with its main benefactor gone, the Yugoslav State needed support from another source and would need to change its economic policies. To this end,

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<sup>41</sup> ibid 170.

<sup>42</sup> ibid 171.

<sup>43</sup> ibid 176-178.



Yugoslavia sought and successfully received aid from the US beginning in 1948 (The US provided this aid in order to cement the split between the USSR and Yugoslavia. Moreover, it also wanted to end Yugoslav support for Greek communists).<sup>44</sup>

### iii. Tito's Experiment

Yugoslavia began a rapid liberalization and decentralization campaign in the early 1950s when it moved from Orthodox Marxist policies to a market socialist economic model. Unlike other socialist countries, Yugoslavia started focusing on exports in order to fund its massive industrial expansion (Commerce between the USSR and the Eastern Bloc was mostly limited to the trade of raw materials. International trade made up less than a tenth of the Soviet GDP. Trade with the Western World was limited to Soviet Hydrocarbon exports and food imports.)<sup>45</sup>

As part of these reforms, workers were allowed to keep their profits, political repression was relaxed, state bureaucracy was reduced in size and the name of the Communist Party of Yugoslavia was changed to the League of Communists of Yugoslavia (“**SKJ**”). Thanks to these liberal policies and the expansion of Yugoslav industry, economy boomed while the state managed to achieve self-sufficiency.<sup>46</sup>

Despite the successes of the state policies, the multi-ethnic nature of the state continued to cause problems. There were massive protests in Croatia in the late 1960s and early 1970s, which resulted in a state crackdown and reforms to prevent similar protests in the future. Individual federal republics were given the ability to pursue independent economic policies.<sup>47</sup>

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<sup>44</sup> Glass A, “Truman Requests Aid to Yugoslavia, Nov. 14, 1951” (*POLITICO* November 14, 2013) <<https://www.politico.com/story/2013/11/harry-truman-requests-aid-to-yugoslavia-nov-14-1951-099817>> accessed March 30, 2022

<sup>45</sup> Woodruff D, “Commerce and Demolition in Tsarist and Soviet Russia: Lessons for Theories of Trade Politics and the Philosophy of Social Science” (2005) 12 *Review of International Political Economy* 199-225

<sup>46</sup> “Background: Tito's Yugoslavia” (*CES at UNC*) <<https://europe.unc.edu/background-titos-yugoslavia/>> accessed March 27, 2022

<sup>47</sup> “Background: Tito's Yugoslavia” (*CES at UNC*) <<https://europe.unc.edu/background-titos-yugoslavia/>> accessed March 27, 2022



*Figure 5 Tito in the 1960s<sup>48</sup>*

These reforms were cemented with the 1974 Constitution, which gave individual republics more autonomy. The Constitution also created two autonomous provinces within Serbia: Vojvodina, which was majority Serb but had large number of minority groups, and Kosovo, which was a majority Albanian region with a large Serb population.<sup>49</sup>

Reforms were widely popular across Yugoslavia. However, Serbs saw these reforms and the general agnostic attitude of Tito towards them as a threat to their existence and their dominant position in the Yugoslav state.<sup>50</sup>

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<sup>48</sup> Mihailovic D, “Former Tito Archive - Registry - Courage – Connecting Collections” (*COURAGE - connecting collections* January 1, 1980) <<http://cultural-opposition.eu/registry/?uri=http%3A%2F%2Fcourage.btk.mta.hu%2Fcourage%2Findividual%2Fn8433>> accessed March 27, 2022

<sup>49</sup> Calic M-J, *A history of Yugoslavia* (n 40) 244

<sup>50</sup> *ibid* 245.



#### **d. Disintegration of the Socialist Federal Republic of Yugoslavia**

The death of Tito was a shock for the nation. Although it was expected due to his old age, there still was not any leader like Tito that could act as the “father” of Yugoslavia.<sup>51</sup> A collective presidency replaced the late Marshall. This scheme consisted of a new leader becoming president every year.<sup>52</sup>

After the death of Tito, the state was in turmoil. The economic crisis that was already under way thanks to the global recession in that period, only worsened with the political instability. Budget deficits and high public debt left the government without any room to manoeuvre, while soaring inflation destroyed the public’s confidence.<sup>53</sup>

Separate republics tried different approaches to deal with the crisis. The International Monetary Fund stipulated centralization of economic authority for new lifelines. However, the individual republics decided not to give up the powers that they had amassed with the 1974 Constitution, crippling the ability of the central government to take effective measures. These actions by the individual states and the gigantic economic inequality between different republics only deepened the distrust between different ethnic communities in the multicultural state.<sup>54</sup>

Opposition movements have intensified as the government has lost its ability to suppress them. Nationalists, pro-Democracy advocates, Islamists and anti-corruption movements all challenged the government, which responded by putting these people on trials as a form of deterrence to any such action in the future. However, it backfired and led to even more support for these groups.<sup>55</sup>

The most troubling developments happened in Kosovo, where the Albanian minority, who did not receive the rights that the other minorities did with the 1974 Constitution due to not having a separate republic, rose up. The Central Government violently put these revolts down and expelled many of its members from the region. However, they also took measures to increase funding for

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<sup>51</sup> Dobbs M, “President Tito Dies” (*The Washington Post* May 5, 1980)

<<https://www.washingtonpost.com/archive/politics/1980/05/05/president-tito-dies/0df00f64-f525-4783-8a0c-2af1b92b2f9a/>> accessed March 9, 2022

<sup>52</sup> *ibid.*

<sup>53</sup> Calic M-J, “After Tito (1980 to 1991)” in Dona Geyer (tr), *A history of Yugoslavia* (Purdue University Press 2019) 253

<sup>54</sup> Calic M-J, “Crisis of Socialist Modernity (1980 to 1989),” in Dona Geyer (tr), *A history of Yugoslavia* (Purdue University Press 2019) 254

<sup>55</sup> *ibid* 257.



the region to prevent future riots. Instead of extinguishing the movement, it had the unforeseen effect of alienating the ethnic Serbians who felt that they were treated as second class citizens in their own state.<sup>56</sup>

Serbian population had faced animosity in the Kosovo region from Albanians and the demographic trends showed a sizeable decrease in the Serb population. This was seen as a validation of the fears of the Serbs that the Yugoslav state, with its 1974 Constitution, was mistreating its Serbian population. This victimization has affected the Serbian population and intellectuals. It resulted in a general right-wing shift not only among the general population but among the opposition figures as well. Nationalism became a more dominant factor in the opposition and was normalized.<sup>57</sup>

It was not only the opposition that took up this issue. Even devoted party members such as Slobodan Milošević. During a trip to Kosovo, some Serbs from the region complained to him about the beating that they had received from the police. He managed to spin this to his own advantage by stating ‘No one may beat you!’ which became a rallying cry for some Serbs who were angry against the Central Government. He used the momentum he gained to pursue his own political career. He became the party chairman in 1987 then became the President of Serbia in 1989.<sup>58</sup>

### **i. Rise of Demagogues**

Milošević portrayed himself as a viable candidate, combining elements of communism and nationalism to appeal to the largest possible constituency. He advocated for centralizing and liberalizing the Yugoslav State to replace the decentralized autarkic system, and as head of the Serbian Republic, he abolished the autonomous regions of the Serbian State. Furthermore, he waged an anti-bureaucracy campaign as a way to capitalize on the popular demand to shrink the bloated bureaucracy and to end corruption among civil servants.<sup>59</sup>

He appointed his own allies to key positions in Vojvodina region after ousting the local leaders in a quasi-coup. Despite not being a radical at heart, he managed to radicalize large swathes of the Serbian population while using these radicals as his base.<sup>60</sup>

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<sup>56</sup> *ibid* 259.

<sup>57</sup> *ibid* 259, 260.

<sup>58</sup> *ibid* 260-261.

<sup>59</sup> *ibid* 260.

<sup>60</sup> *ibid* 261.



An important piece showing the level of radicalisation among the Serbian intellectuals was the secret memorandum drafted by “Serbian Academy of Sciences and Arts.” The memorandum laid the blame for the social, economic, and cultural crisis on the “thirty years of exploitation and discrimination” faced by the Serbian population. It described a Slovenian-Croat conspiracy for power and attempts to assimilate the Serbian population in Croatia. The memorandum called for restoration of the Serbian national unity, regardless of where they live in Yugoslavia.<sup>61</sup>

The writers of this memorandum released public statements in which they protested what they called a “misrepresentation of their work” which was meant to be a private warning to the Serbian government. It was also stated that there was no mention of ethnic cleansing. However, the text itself was largely a piece of nationalistic propaganda aimed at showing the sufferings of the Serbian people through exaggerated claims.<sup>62</sup>

Sometime after this paper was published, a similar Slovene document was published, this time specifically for the public. In line with the Serbian declaration, the document suggested that Yugoslavia was ruining Slovenia and potentially leading to the extinction of the Slovene nation. It called for the defence of this Slovene nation against Yugoslav attempts to extinguish it.<sup>63</sup>

Although both proposals have been denounced by the leaders of both republics and even many of the nationalists in those groups including by Serbian Milošević, they were still able to influence public opinion across Yugoslavia. By 1990, most Slovenes felt that they were being used as a piggy bank for a project that they gained little from. They contributed 25% of the total federal budget while only making up around 8% of the population.<sup>64</sup>

## ii. Collapse

The collapse of the communist states in Eastern Europe became the final nail in the coffin of Yugoslavia. The dysfunctional system of the Yugoslav state prevented a move towards multi-party democracy and a true market economy. In July 1989, newly elected Serbian President Milošević wanted to amend the constitution to move from a consensus-based approach to a qualified majority

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<sup>61</sup> *ibid* 262.

<sup>62</sup> *ibid* 263.

<sup>63</sup> *ibid* 264.

<sup>64</sup> Calic M-J, “Crisis of Socialist Modernity (1980 to 1989),” in Dona Geyer (tr), *A history of Yugoslavia* (Purdue University Press 2019) 264



approach. He hoped this would give Serbians greater control over the functioning of the Yugoslav State while preventing future gridlock. Slovenes responded to this by calling for an “asymmetrical federation” where each republic had different rights and responsibilities. After this proposal was rejected, Slovenes moved on to amend their own constitution to enshrine the right of self-determination and the right to secede. Yugoslav institutions rejected the Slovene amendments as null and void. However, they were not successful at preventing them from going into effect and only showed that the once mighty institutions of Yugoslavia were no longer relevant.<sup>65</sup>

These developments doomed the fourteenth extraordinary congress of the League of Communists of Yugoslavia that met in January 1990. Slovenes left the conference after failing to secure support for their demands for more autonomy. Later, the Croats refused to continue the debate, and the Congress had to adjourn. This broke apart the already fragile party.<sup>66</sup>

The collapse of the Eastern Bloc not only meant the destruction of the Yugoslav ideology, but it also meant the destruction of what made it a valuable asset. They lost the foreign patience and support that they had enjoyed during the Cold War as the need to satisfy them as a neutral state no longer existed. With this in mind, Yugoslavia went on to try to reform itself in light of Western principles.<sup>67</sup>

The Yugoslav leadership decided to push for multi-party elections to help this process. However, instead of bringing stability, it led to greater division as people voted based on their ethnic group, not their ideological preferences. Hard-line nationalists such as Milošević in Serbia and Tudjman in Croatia became even more powerful and won elections in their respective states. This did not only threaten the existence of the Yugoslav state, but it also meant an open conflict since these nationalists were not satisfied with the existing borders. Serbians, Bosnians and Croats all had overlapping claims in each other’s republics. Bosnians were affected the worst by this since their republic was the most heterogenous one.<sup>68</sup>

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<sup>65</sup> *ibid* 285.

<sup>66</sup> *ibid* 285.

<sup>67</sup> *ibid* 286.

<sup>68</sup> *ibid* 289-290.



### iii. Independence

Slovenians, Croats, and Kosovars began preparing for independence soon after the multi-party elections. Both the Slovenian and Croat parliaments voted to declare their sovereignty on 2 July 1990. Slovene Foreign Minister summarized the situation as ‘Yugoslavia no longer exist.’<sup>69</sup>

Croats and Slovenes called for the reformation of Yugoslavia into a confederation where individual republics are sovereign. Ante Markovic and his Yugoslav government tried one last time to save the federal state. However, his efforts were pointless. Serbians and Montenegrins blocked the presidency of Croat Stripe Mesic due to his hostile stance towards Yugoslavia. This effectively left Yugoslavia without any resemblance of statehood.<sup>70</sup>

In light of these developments, Serbs living in other republics took measures to ensure that they would stay united with a new Serbian state instead of becoming part of the independent republics. With the support from the Belgrade, the Serbs declared their own sovereignty to counter the declaration of sovereignty by the Croats.<sup>71</sup>

The media was used by all sides to advance their respective agendas. Similar to the political system of Yugoslavia, the media was designed as a decentralized system that cooperated to push a common agenda in the republics that the stations were operating in. However, like Yugoslavia, this system has also disintegrated into separate republics pushing their own agendas. These were not mere attempts to gain support, but rather a massive propaganda campaign in which each republic stoked historic grievances and used words like "us" and "them" to divide people. Terms such as “genocide,” “exodus,” “martyr” were used indiscriminately to portray a sense of victimization. Leaders such as Milošević also used these in their own campaigns. Milošević held a grand ceremony in Kosovo to commemorate the anniversary of the Battle of Kosovo, which was broadcast by Serbian media in a positive light while being neutrally portrayed by other stations. This turned a society that did not see civil war as a possibility to soldiers who were willing to fight for a higher cause in order to protect their “brethren” and to prevent the sinister “enemies” from

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<sup>69</sup> Both N, *From Indifference To Entrapment : The Netherlands And The Yugoslav Crisis, 1990-1995* (Amsterdam University Press 2000) 69

<sup>70</sup> Calic M-J, *A history of Yugoslavia* (n 62) 264

<sup>71</sup> *ibid* 292.



harming these people. They did not care that those enemies were their neighbours, friends, co-workers.<sup>72</sup>

#### **iv. War and Downfall**

On 25 June 1991, both Slovenia and Croatia declared their independence from Yugoslavia. Effectively ending the existence of the Yugoslav state. They wished to gain international recognition. However, the international community was divided on whether to recognize these states or declare it as a matter that should be solved within Yugoslavia.

After their declaration of independence, the Slovenes attempted to establish an international border with Croatia. These attempts were thwarted by the Yugoslav People's Army that occupied the border posts. This led to minor clashes where 18 Slovene, 44 Yugoslav soldiers died.

Shocked by these developments, representatives of the European Community managed to convince Slovenia and Croatia to sign a ceasefire agreement and postpone their independence by 3 months. As a result, the Yugoslav People's Army pulled back, which was a tacit recognition of the independence of Slovenia by the Yugoslav government. This was due to Belgrade not seeing a way to keep Slovenia in the Yugoslavia and Slovenia not having a significant Serb population to begin with. Instead of spending much needed manpower and political clout, they focused on keeping the Serbs in a single state.<sup>73</sup>

Other republics were not as lucky as Slovenia, violent clashes between Serbs and Croats had already begun in spring 1991. With the declaration of independence by the Croats, large scale fighting begun. First mass killings of Croatian civilians and soldiers occurred in Kozibrod and were carried out by local Serb units. Atrocities in other villages in the region followed.<sup>74</sup>

As stated by many Serb leaders, such as Serbia's member of the federal presidency Boris Jovic, there were plans underway to create a new state that aims to unite the Serbian nation under one

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<sup>72</sup> *ibid* 292-293.

<sup>73</sup> Calic M-J, "The Demise of Yugoslavia (1991 to the Present)," in Dona Geyer (tr), *A history of Yugoslavia* (Purdue University Press 2019) 297

<sup>74</sup> *ibid* 298.



banner. Their aim could be summarized as ‘create and defend a new Yugoslav state for those who desire it.’<sup>75</sup>

The Croatian government decided to push out all Yugoslav forces by capturing their garrisons. This prompted the Yugoslav General Staff to attack eastern Slavonia which was followed by them expelling non-Serbs from the area. This attack was incredibly successful and led to the whole region coming under the Serbian control in a short time. Serbians drove out practically all the remaining non-Serbs in the area, and on 19 December 1991, Milan Babic, Croatian-Serb politician, proclaimed the formation of “Republic of Serb Krajina” with Kinin.<sup>76</sup>

The international community was paralyzed by these developments, they were torn between recognising the right of self-determination of people in Yugoslavia and not allowing Yugoslavia to disintegrate totally which could lead to similar events happening all over the world. Another caveat was the problem regarding what was to be done for Serbs in those republics. They also had the right of self-determination. Germany and Austria pushed for recognition of Slovenia and Croatia while UK, France and USA tried to keep Yugoslavia together.<sup>77</sup>

Thanks to the pressures of the international community. The UN brokered truce in 1992 led to the Yugoslav army pulling out of Croatia, replaced by Blue Helmets in disputed areas. Despite it being possible for refugees to return, Croat civilians did not return to the areas that they were pushed out of which changed the ethnic makeup of many of the regions in favour of Serbs.<sup>78</sup>

While the situation in Croatia was stabilising, in Bosnia it was getting even more chaotic. The Bosnian coalition government tried to keep Yugoslavia together. However, these efforts proved to be futile as German recognized Slovenia and Croatia.<sup>79</sup>

On 14 October 1991, the Muslim SDA and the Croat HDZ-BiH party groups in Bosnian Parliament drafted an independence resolution which alienated Serbians. As a result, they left the coalition

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<sup>75</sup> *ibid.*

<sup>76</sup> *ibid.*

<sup>77</sup> *ibid* 298-299.

<sup>78</sup> *ibid* 299.

<sup>79</sup> Calic M-J, *A history of Yugoslavia* (n 71) 297

and refused to participate in the institutions of the Bosnian state. This split was not only isolated to political sphere, instead every facet of life in Bosnia was divided over sectarian lines.<sup>80</sup>

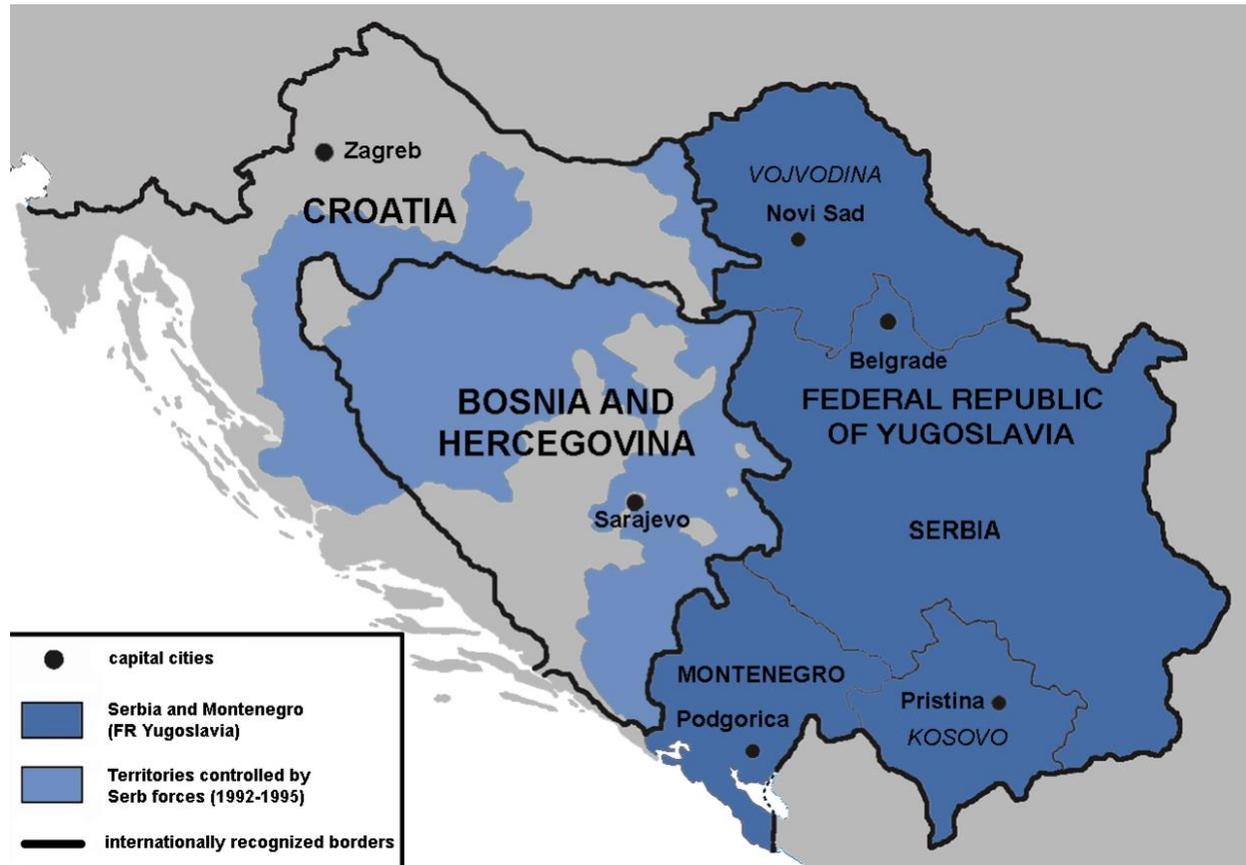


Figure 6 Conflict in the former Yugoslavia<sup>81</sup>

As Muslims and Croats were working to gain their independence from Yugoslavia, Serbs in Bosnia were trying to gain their independence from them. They held a plebiscite on January 4 and proclaimed the Republic of the Serb People of Bosnia-Herzegovina. Bosnian-Serbs declared their independence on 7 April 1992, one day after Bosnia-Herzegovina was recognized by the European Union.<sup>82</sup>

Once independence was declared, the Yugoslav People's Army, aided by Bosnian-Serbs, launched an assault against Bosnia-Herzegovina and overran most of eastern Bosnia. Forces under General

<sup>80</sup> *ibid* 301.

<sup>81</sup> Alex, "Disintegration of Yugoslavia" (*Vivid Maps* January 29, 2021) <<https://vividmaps.com/disintegration-of-yugoslavia/>> accessed March 25, 2022

<sup>82</sup> *ibid* 302.

Ratko Mladić kicked out non-Serbs from the areas that they occupied. Serbian forces managed to encircle the capital city of Sarajevo and starved the city for forty-four months.<sup>83</sup>



*Figure 7 Ratko Mladić (middle) commanding his troops<sup>84</sup>*

Bosnians and Croats mounted a collective defence against the Serbian offensive. However, disputes relating to the future constitution of the state soured relations between these two parties. Croats, supported by Croatia, declared their own state and started fighting against the Bosnians. As the fighting between the two sides intensified, the President of Croatia, Franjo Tudjman, met with Milošević and it is claimed that they struck a deal to cooperate to fight against the Bosnians.<sup>85</sup>

#### **v. Ethnic Cleansing**

Ethnic cleansing was not a by-product of the war, but the fundamental policy of the participants. Majority Serbian regions resembled islands in a Bosnian sea. As a result, Serbian forces saw uniting these separate regions by ethnically cleansing areas in between them as a top priority. In total, four fifth of all non-Serbs were expelled from the self-proclaimed Republika Srpska. These efforts were blessed by Belgrade. A similar scene was also playing out in the Croat and Bosnian

<sup>83</sup> *ibid* 302-303.

<sup>84</sup> “What Is the Case against Ratko Mladic?” (*BBC News* November 22, 2017) <<https://www.bbc.com/news/world-europe-41995492>> accessed March 27, 2022

<sup>85</sup> Calic, *A history of Yugoslavia* (n 70) 303

areas. Bosnian and Croatian forces were also ethnically cleansing the areas that were under their control.<sup>86</sup>



Figure 8 Ethnic makeup of the territory of former Yugoslavia after the Yugoslav Wars<sup>87</sup>

The act of “*homogenisation*” was not only limited to ethnically cleansing the regions, but also included the destruction of property by the warring parties. The overwhelming majority of the mosques and Catholic churches, and a huge number of Orthodox churches were damaged during the fighting.<sup>88</sup>

Srebrenica was arguably the worst massacre of the war. On the morning of 11 July 1995, Bosnian-Serb forces, by order of the Republika Srpska leader Radovan Karadžić, stormed the safe area of Srebrenica. The 150 strong UN garrison was caught off guard and surrendered to the Serbians. After the capture of the town, as many as 8,200 men and boys were systematically killed. This event has been called a genocide by many independent observers<sup>89</sup>

<sup>86</sup> *ibid* 303-307.

<sup>87</sup> Alex, “Disintegration of Yugoslavia” (n 77)

<sup>88</sup> *ibid* 305.

<sup>89</sup> *ibid* 311.



Figure 9 Victims of the massacre<sup>90</sup>

Srebrenica became the straw that broke the camel's back for the west. NATO had already started bombing Serbian positions after the 1994 Markale market attack. However, after Srebrenica, the bombing significantly intensified. Weakened by these bombings, Serbian forces were routed in Croatia by the Croatian Army. This counterattack itself caused a similar scene to that of the Serbian attack years prior, and nearly 200,000 people, this time Serbians, fled the region as their home fell into the enemy hands.

Due to these setbacks, Bosnian-Serbs lost control of large swaths of land in Bosnia and the military situation stabilized with Bosnian-Serbs controlling half of the country while Croats and Muslims controlled the other half. To end this conflict, the sides gathered at Wright-Patterson Air Force Base near Dayton, Ohio on 21 November 1995. The accord that this meeting gave birth to was formally signed on December 14<sup>th</sup> of the same year.<sup>91</sup>

The Dayton Accord managed to keep Bosnia-Herzegovina as a unified state with its pre-war borders by dividing it into two entities. Federation of Bosnia-Herzegovina, Croat and Muslim areas, received 51 percent of the territory and thus gained a symbolic majority. This region was also further divided into cantons to ensure Croats were satisfied. On the other hand, Republika

<sup>90</sup> "Bosnia's Srebrenica Massacre 25 Years on - in Pictures" (*BBC News* July 10, 2020) <<https://www.bbc.com/news/world-europe-53346759>> accessed March 27, 2022

<sup>91</sup> Calic, *A history of Yugoslavia* (n 70) 314



Srpska received 49 percent of the territory. Central government in Sarajevo had very few competencies, which meant that it was practically impossible for them to pursue an agenda that was not supported by all three parties in the country and thus it was paralyzed from its inception.<sup>92</sup>

#### **vi. War in Kosovo**

On the other side of the border, Albanians in Kosovo were furious that their wishes for self-government were ignored by the West and the Serbian authorities who continued to suppress them. Years of abuse led to Albanians getting radicalized and looking for a violent response to abuses by the government in Belgrade. They organized under the Kosovo Liberation Army (“UÇK”) and began assassinating Serbian officials in the region in the early to mid 1990s. As the remnants of the former Yugoslavia continued to shatter, Albanian resistance stiffened with the UÇK committing even more violent actions. Serbian authorities responded by starting a massive crackdown which included mass expulsions and killings by Serbian security forces.<sup>93</sup>

The international community was undecided on what to do. The West placed sanctions on the Belgrade government and issued numerous warnings to prevent any future wrongdoings in Kosovo. However, it proved to be futile as the Serbian officials continued to prosecute the Albanian minority with increasing ferocity.<sup>94</sup>

The last diplomatic effort failed in February 1999 when Milošević rejected the final version of the peace plan despite the threat of a military action. From this point on, it was decided by the West that Serbian actions in Kosovo could only be stopped by force.<sup>95</sup>

On 24 March 1999, first bombs of this new war hit military installations, infrastructure, and industrial areas in Serbia, including Kosovo. This NATO bombing was accompanied by a large media campaign to justify the intervention to the public. Instead of forcing Belgrade to back down, the airstrikes caused the Serbian government to be even more relentless against Albanians. However, Milošević was not able to hold on for longer and had to agree for a diplomatic solution.

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<sup>92</sup> ibid 314

<sup>93</sup> ibid 315

<sup>94</sup> ibid 315

<sup>95</sup> ibid 315

It was agreed that Kosovo would be under UN protection within Yugoslavia. It was assured to the Belgrade that the Kosovo would remain part of the Federal Republic of Yugoslavia.<sup>96</sup>

The UNSC passed Resolution 1244 on 10 June 1999, which established the United Nations Interim Administration Mission in Kosovo. Peacekeeping forces under NATO command arrived shortly after in the region. This has ended the years of conflict in Yugoslavia and opened the way for re-integration of Yugoslavia into the international community.<sup>97</sup>

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*Figure 10 Ethnic makeup of the territory of former Yugoslavia after the Yugoslav Wars<sup>98</sup>*

<sup>96</sup> *ibid* 315

<sup>97</sup> *ibid* 315

<sup>98</sup> Alex, “Disintegration of Yugoslavia” (*Vivid Maps* January 29, 2021) <<https://vividmaps.com/disintegration-of-yugoslavia/>> accessed March 25, 2022



## vii. Justice

On 24 September 2000 snap elections were held at the behest of Milošević. He lost the elections in the first round to his opponent Vojislav Koštunica, who got more than 50% of the vote in the first round of the election. Milošević refused to recognise the results of the election, claiming that no one had won a majority in the first round. This led to massive demonstrations in Belgrade, which became known as the Bulldozer Revolution. He tried to hold onto power but had to backdown after realising that the army was not on his side and would not support him in the event of an uprising to overthrow him. On 6 October 2000, he formally accepted his defeat.<sup>99</sup>

He was later arrested in April 2001. The US pressured Belgrade to extradite him to the ICTY or risk losing financial support from the IMF and the World Bank. Despite the opposition of the president, Prime Minister Zoran Đinđić decided to extradite him. His lawyers objected on the grounds that the extradition was against the Yugoslav constitution and the Yugoslav Constitutional Court requested two weeks to deliberate on the appeal. However, he was handed over to US officials, who later handed him over to the ICTY.<sup>100</sup>

## 2. Formation of the ICTY

The international community was horrified by the slaughter happening in the Balkans. The news of thousands of civilians being killed, raped, and tortured in detention camps brought images of the Second World War to people's minds. The UNSC had to act in light of these developments and issued several resolutions to prevent the escalation of violence while establishing mechanisms to determine potential violations of international humanitarian law.<sup>101</sup>

The aim of the ICTY was to prosecute those responsible for war crimes, crimes against humanity, and genocide in the territory of the former Yugoslavia. The ICTY aimed to deter any future crimes

<sup>99</sup> Barlovac B, "The Bulldozer Revolution" (*Balkan Insight* May 28, 2018) <<https://balkaninsight.com/2010/10/05/timeline-the-bulldozer-revolution/>> accessed March 26, 2022

<sup>100</sup> "Leader: Milosovic Extradited" (*The Guardian* June 29, 2001) <<https://www.theguardian.com/world/2001/jun/29/warcrimes.guardianleaders>> accessed March 30, 2022

<sup>101</sup> Rachel Kerr, 'International Criminal Tribunal For The Former Yugoslavia (ICTY)' (*Oxford Bibliographies*, 2021) <<https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0169.xml>> accessed 24 March 2022



by prosecuting those responsible. Still, the main goal was to bring justice to the thousands of victims and their families, thereby bringing about a lasting peace in the former Yugoslavia.<sup>102</sup>

Persons prosecuted by the ICTY were not just ordinary civilians, but prime ministers, heads of state, chiefs of staff, chiefs of interior, and many other high-level and mid-level military, police, and politicians from various sides of the conflict.<sup>103</sup>

### 3. Structure

The ICTY is made up of three organs, primary organ is the Chambers of the ICTY where trials of indicted persons are carried out. The Chambers are organized into three Trial Chambers where three judges review cases brought by the prosecutor and an Appeals Chamber where five judges review appeals by the defendants who were sentenced at the trial level. The remaining two bodies are the Office of the Prosecutor (“OTP”) and the Registry.<sup>104</sup>

The Chambers are led by the President and Vice-President who are elected among the ICTY judges. The President and Vice-Presidents are elected for a two-year term and are eligible for re-election once. Statute of the ICTY requires the President to submit an annual report to the UNGA as well as a biannual assessment to the UNSC on the activities of the ICTY.<sup>105</sup>

The OTP is tasked with investigating the atrocities that have taken place in the territory of the former Yugoslavia and prosecuting the perpetrators. The Prosecutor is independent and does not receive orders from the other two organs of the ICTY or any other entity. Due to UNSC decisions and resolutions, Member States are obliged to cooperate with the OTP.<sup>106</sup>

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<sup>102</sup> 'About The ICTY | International Criminal Tribunal For The Former Yugoslavia' (*Icty.org*) <<https://www.icty.org/en/about>> accessed 24 March 2022

<sup>103</sup> *ibid.*

<sup>104</sup> 'Chambers | International Criminal Tribunal For The Former Yugoslavia' (*Icty.org*) <<https://www.icty.org/en/about/chambers#:~:text=The%20Appeals%20Chamber%20consists%20of,Appeals%20Chamber%20of%20the%20ICTR.>> accessed 24 March 2022.

<sup>105</sup> *ibid.*

<sup>106</sup> “Office of the Prosecutor” (*Office of the Prosecutor | International Criminal Tribunal for the former Yugoslavia*) <<https://www.icty.org/en/about/office-of-the-prosecutor>> accessed March 25, 2022



The Registry is responsible for running the ICTY and making sure it functions properly. This duty entails administration of the courtrooms, bringing witnesses to the ICTY and protecting those said witnesses, translation services and many others that make the ICTY possible.<sup>107</sup>

#### 4. Mandate and Jurisdiction

The mandate of the Tribunal is to bring those responsible for serious violations of international humanitarian law committed in the former Yugoslavia since 1991 to justice. This mandate has been given to the ICTY by the UNSC.<sup>108</sup>

In accordance with its Statute, the ICTY has jurisdiction over the territory of the former Yugoslavia from 1991 onwards. It has jurisdiction over individuals and not organisations, political parties, army units, administrative entities, or other legal subjects. It has tried persons from all sides of the conflict and does not limit itself to only prosecuting a single side of the war.<sup>109</sup>

The Tribunal has the authority to prosecute and try individuals on four categories of offences: grave breaches of the 1949 Geneva conventions, violations of the laws or customs of war, genocide, and crimes against humanity. The ICTY has no authority to prosecute states for aggression or crimes against peace.<sup>110</sup>

#### 5. Important Cases

The ICTY has issued important decisions in many different cases, which the tribunal can rely on when reaching a decision.

##### a. Duško Tadić

Duško Tadić, the president of the local board of directors in Kozarac, was the first person to be put on trial in the ICTY. He was accused of taking part in the destruction of non-Serbian settlements in the Kozarac region of Bosnia-Herzegovina.<sup>111</sup> His participation in the killing,

<sup>107</sup> “Registry” (*Registry | International Criminal Tribunal for the former Yugoslavia*) <<https://www.icty.org/en/about/registry>> accessed March 27, 2022

<sup>108</sup> “Mandate and Crimes under ICTY Jurisdiction” (*Mandate and Crimes under ICTY Jurisdiction | International Criminal Tribunal for the former Yugoslavia*) <<https://www.icty.org/en/about/tribunal/mandate-and-crimes-under-icty-jurisdiction>> accessed March 25, 2022

<sup>109</sup> *ibid.*

<sup>110</sup> *ibid.*

<sup>111</sup> ‘Tadić’ (*International Justice Resource Center*) <<https://ijrcenter.org/international-criminal-law/icty/case-summaries/tadic/>> accessed 27 March 2022.



torture, sexual assault, physical and psychological abuse of non-Serbians inside and outside detention centres is considered to be the first prosecution of sexual violence as a crime against humanity.<sup>112</sup> During his trial, the ICTY determined that the conflict in Bosnia was an international armed conflict.<sup>113</sup> In 1997, the Trial Chamber sentenced Tadić to 20 years of prison for crimes against humanity for persecution and inhumane acts, and violating the laws of war.<sup>114</sup>

#### **b. Radislav Krstić**

Radislav Krstić was prosecuted for allegedly aiding and abetting the planning, incitement, and ordering of the murders of Bosnian Muslim men captured in Srebrenica which was declared as a safe zone by the UN.<sup>115</sup> Krstić was the first person convicted of genocide in the ICTY. Furthermore, the tribunal found him guilty of being a member of the joint criminal enterprise.<sup>116</sup>

#### **c. Anto Furundžija**

Anto Furundžija, the local commander of a Croatian paramilitary group in the municipality of Vitez, Bosnia was prosecuted for allegedly committing, plotting, ordering, or otherwise abetting sexual violence against Bosnian Muslim women.<sup>117</sup> Furundžija himself did not take in part in the sexual violence but was prosecuted as the commanding officer of the soldiers who carried out the crime.<sup>118</sup> The Trial Chamber convicted Furundžija in 1998 on all charges which were torture, outrages upon personal dignity, including rape.<sup>119</sup>

### **III. PROSECUTION V MILOŠEVIĆ**

There were two separate indictments brought against the defendant. The first indictment was issued due to his role in the conflict in Kosovo, while the second indictment was for his

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<sup>112</sup> *ibid.*

<sup>113</sup> *ibid.*

<sup>114</sup> *ibid.*

<sup>115</sup> 'KRSTIĆ' (*Ijrcenter.org*) <<https://ijrcenter.org/international-criminal-law/icty/case-summaries/krstic/>> accessed 27 March 2022

<sup>116</sup> *Case Information Sheet - RADISLAV KRSTIĆ* (United Nations International Criminal Tribunal for the former Yugoslavia) <[https://www.icty.org/x/cases/krstic/cis/en/cis\\_krstic\\_en.pdf](https://www.icty.org/x/cases/krstic/cis/en/cis_krstic_en.pdf)> accessed 27 March 2022

<sup>117</sup> 'FURUNDŽIJA' (*Ijrcenter.org*) <<https://ijrcenter.org/international-criminal-law/icty/case-summaries/furundzija/>> accessed 27 March 2022

<sup>118</sup> *ibid.*

<sup>119</sup> *Case Information Sheet - ANTO FURUNDŽIJA* (United Nations International Criminal Tribunal for the former Yugoslavia) <[https://www.icty.org/x/cases/furundzija/cis/en/cis\\_furundzija.pdf](https://www.icty.org/x/cases/furundzija/cis/en/cis_furundzija.pdf)> accessed 27 March 2022

involvement in crimes committed by Serbian forces in Croatia and Bosnia-Herzegovina between 1991 and 1995. Two indictments were later combined into one.<sup>120</sup>

### 1. Defendant

Defendant in the case is Slobodan Milošević, former president of the Federal Republic of Yugoslavia from 1997 to 2000, and the former President of Serbia from 1989 to 1997.<sup>121</sup>



*Figure 11 Milošević at the ICTY<sup>122</sup>*

Charges against the defendant include genocide; complicity in genocide; deportation; murder; persecutions on political, racial, or religious grounds; inhumane acts/forcible transfer; extermination; imprisonment; torture; willful killing; unlawful confinement; willfully causing great suffering; unlawful deportation or transfer; extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; cruel treatment; plunder of public or private property; attacks on civilians; destruction or willful damage

<sup>120</sup> “Slobodan Milošević Trial - the Prosecution's Case” (*Slobodan Milošević Trial - the Prosecution's case | International Criminal Tribunal for the former Yugoslavia*) <<https://www.icty.org/en/content/slobodan-milo%C5%A1evi%C4%87-trial-prosecutions-case>> accessed March 27, 2022

<sup>121</sup> *ibid.*

<sup>122</sup> “Slobodan Miloseviç'in Avukatı Öldürüldü” (*BBC News Türkçe* July 29, 2018) <<https://www.bbc.com/turkce/haberler-dunya-44997611>> accessed March 27, 2022



done to historic monuments and institutions dedicated to education or religion; unlawful attacks on civilian objects.<sup>123</sup>

### **a. Background**

Milošević rose through the ranks of his party thanks to his opposition to the Yugoslav Constitution of 1974, which expanded the autonomy given to regions and constituent republics inside Yugoslavia. His willingness to stand against what he and his supporters saw as an erosion of Serbian power within Yugoslavia, especially in Serbia, further fuelled his rise which brought him to the presidency of Serbia within Yugoslavia.<sup>124</sup>

He was directly responsible, along with the other Yugoslav politicians in that era, and for the rising chauvinist rhetoric in the former Yugoslavia. Although he was not directly controlling the separatist Serbians in the now independent former Yugoslav states, many of the forces that were under his control fought in Bosnia and Croatia in support of the Serbian separatists there. Furthermore, the state that he headed supported and closely worked with these separatists.

## **2. Key Concepts**

Participants of the court can rely on the below mentioned concepts when reaching a decision in this momentous tribunal.

### **a. Ethnic Cleansing**

Ethnic cleansing is the systematic and forced expulsion of ethnic, racial, and religious groups. It is usually perpetrated by the majority or plurality to “*homogenise*” a region. The act of forcing a group to migrate to another region or to preventing those who migrated to return by intimidation is also included in this term. There was widespread ethnic cleansing committed during the breakup of the former Yugoslavia. Serbians were not the only party that was committing these acts; however, they were doing it at a much larger scale compared to other sides of the conflict. Thousands of villages were wiped off the map and millions had to flee from their homes due to actions of the Serbian government and breakaway regions that they supported in neighbouring

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<sup>123</sup> Deutsche Welle Staff, “The Charges against Slobodan Milosevic” (*DW.COM* March 11, 2006) <<https://www.dw.com/en/the-charges-against-slobodan-milosevic/a-1931386>> accessed March 25, 2022

<sup>124</sup> Djilas A, “A Profile of Slobodan Milošević” (1993) 72 *Foreign Affairs* 81



countries. Similar acts were committed in Kosovo resulting in tens of thousands of Albanians leaving. As the head of Serbia and later the entire Yugoslavia, role of Milošević is unclear.

### **b. Crimes Against Humanity**

These are systematic and grave breaches of rules of international human rights law (which regulates interactions between State and individuals under their control) and international humanitarian law (which traditionally regulates warfare between states.) These crimes can be committed before and during a war, thus are not limited to wartime like war crimes. Atrocities which can be defined under the crimes against humanity umbrella are, murder, extermination, enslavement, deportation, and any other inhumane acts committed against any civilian population on religious, racial, ethnic, or political grounds.

### **c. Genocide**

Originally coined by Polish jurist Raphael Lemkin, “genocide” is a word that is a combination of the Latin words “*geno*” (tribe) and “*cide*” (kill). Similar to ordinary crimes, genocide has two elements called objective element and subjective element. Objective element of a genocide or *actus reus* include steps that are taken to extinguish a set group of people. Subjective element of a genocide or *mens rea* is not an ordinary mental reservation, it is a *dolus specialis* which means that it is an aggravated form of a mental reservation. It is not just an intention to harm, murder, mutilate etc. a person, but a specific intention to undertake those actions in order to bring about the destruction of a certain group of people. The amount of people that are killed as a result someone of acting on their intentions does not determine if an action is a genocide or not. There is not a victim limit pass which an action is considered a genocide.

These must be kept in mind when one is deciding on potential cases of genocide. Bosnian-Serb forces are accused of committing a genocide in Bosnia, the prime example of which is their actions in Srebrenica. The exact involvement of Milošević is unclear, but it is clear that these actions could not have been undertaken if Serbia, under the control of Milošević, had not given immense support to Bosnian-Serbs.



#### d. Joint Criminal Enterprise

Joint Criminal Enterprise (“JCE”) is a legal concept that is used to charge someone with aiding and abetting in the commission of an international crime without having them physically committing the said crime. It allows for the prosecution of all individual members of a criminal group, even if that individual did not directly take part in the physical act itself. It is much more extensive than command responsibility (*Yamashita standard*) doctrine since it allows for the prosecution of not only the superiors, but all the members. JCE doctrine is similar to the common law doctrine of “*felony murder*” where everyone who takes part in the commission of a felony that results in someone being killed is a murderer. This revolutionary doctrine is extensively used by the ICTY.

As the most powerful man in Serbia during the conflict, Milošević knew about the crimes that were being committed by the forces that are loyal to the Serbian separatist in the neighbouring countries and had immense authority over them. It is stated that he tried to prevent some atrocities but could not. Although it is unclear how much effort he has shown.

### 3. Facts of the Case

The tribunal shall be using the below mentioned facts in order to reach a decision in this momentous trial:

- The Socialist Federal Republic of Yugoslavia (“**former Yugoslavia**”) was a Member States of the United Nations, and party to the Geneva Conventions of 1949.
- From 1987 until late 2000, Slobodan Milošević was the dominant political figure in Belgrade. He acquired control of all facets of the Serbian government and in addition, he gained control over the political leaders of Kosovo, Vojvodina, and Montenegro.
- In July 1990, the Assembly of Serbia passed a decision to suspend the Assembly of Kosovo shortly after 114 of the 123 Kosovo Albanian delegates from that Assembly had passed an unofficial resolution declaring Kosovo an equal and independent entity within the former Yugoslavia. One year later, in September 1991, Kosovo Albanians held an unofficial referendum in which they voted overwhelmingly for independence.



- On 25 June 1991, both Slovenia and Croatia declared their independence from Yugoslavia. These declarations were rejected by the Serbian government in Belgrade, which deployed Yugoslav People's Army in Slovenia and Croatia.
- Milošević called for the union of all Serbs in one state which coincided with those agitating for the creation of a "Greater Serbia." The Serbs in the Knin Krajina, Eastern Slavonia, and Western Slavonia regions of Croatia began receiving increasing support from Belgrade. By August 1991, Serb volunteer and police forces in these regions were being supplied and led by officials of the Republic of Serbia's Ministry of Internal Affairs.
- Serbian separatists declared their independence from Croatia on 21 December 1991 and from Bosnia-Herzegovina on 7 April 1999 with the blessing of Belgrade.
- Croatia and Bosnia-Herzegovina are plunged into a state of conflict. Conflict in Croatia lasted from summer 1991 to summer 1992, while conflict in Bosnia-Herzegovina lasted from spring 1992 to late 1995.
- On 27 April 1992, Serbia and Montenegro proclaimed a new Federal Republic of Yugoslavia ("FRY") and declared it the successor state of the former Yugoslavia.
- Serb forces, comprised of Yugoslav People's Army units, volunteers from Serbia and Montenegro, and local Serbian separatists, attacked, and took control of towns, villages, and settlements in the Knin Krajina, Eastern Slavonia, and Western Slavonia regions of Croatia. After the take-over, the Serb forces in co-operation with the local Serb authorities established a regime of persecution designed to drive the Croat and other non-Serb civilian population from these territories.
- Serb forces systematically drove out non-Serbs from the areas that they occupied in Northern Dalmatia, Lika, Kordun, Banija, Western Slavonia, and Baranja. These areas were incorporated into various "Serbian Autonomous Districts." The Yugoslav People's Army remained deployed in the areas where the Serb insurgents had taken control.
- In August 1991, the Yugoslav People's Army undertook operations against towns in Eastern Slavonia, resulting in their occupation which was followed by expulsion of non-Serbs from



the region. In late August of the same year, the Yugoslav People's Army laid siege to the city of Vukovar. By mid-October, all other predominately Croat towns in Eastern Slavonia had been taken by Serb forces except Vukovar which fell on 18 November 1991. Non-Serbs were expelled from the city after its capture.

- As the war continued in Croatia, Belgrade realised that Bosnia-Herzegovina would also declare its independence from the former Yugoslavia. Failing to prevent the secession of Bosnia-Herzegovina from the former Yugoslavia, Serbs began the creation of a separate Serbian entity within Bosnia-Herzegovina. During the period from September to November 1991, several Serbian Autonomous Regions were formed to organise Serbian separatists in the region into cohesive units.
- On 22 October 1991 Milošević, together with his subordinates, continued to advocate for a united Serb state governed from Belgrade. On the same day, a call for mobilisation of reservists in Serbia and other regions that want to stay in Yugoslavia were issued.
- Bosnia-Herzegovina declared independence on 6 March 1992 after an independence referendum boycotted by the Bosnian-Serbs.
- From March 1992 onwards, Serb regular and irregular forces seized control of territories within Bosnia-Herzegovina, mainly areas in the eastern portion of the country. UN sanctions were imposed on Serbia for backing rebel Serbs in Croatia and Bosnia in May 1992.
- On 12 May 1992, leader of the Serbian separatists in Bosnia-Herzegovina, Radovan Karadžić announced the six strategic objectives of the Serbian people in Bosnia and Herzegovina. These objectives ranged from the eradication of the Drina River as a border between the Serbian states to the division of Sarajevo. At the same event where Karadžić spoke, General Ratko Mladić stated that it would not be possible to separate Serbs from non-Serbs and have the non-Serbs simply leave the territory. He warned that attempting this process would amount to genocide.



- Serbs carried out a massive campaign of ethnic cleansing and terror in Bosnia-Herzegovina. Thousands of religious sites were destroyed, tens of thousands of houses were looted, and many innocent civilians were executed by Serbian units.
- Alliance between the Muslim Bosnians and Croats broke down in January 1993 and former allies started fighting each other. It took more than a year and a US diplomatic effort to bring them back together against the Serbs.
- On 11 July 1995, Bosnian-Serbs killed 8,000 civilians in Srebrenica which sparked a huge reaction among the international community.
- Croatian Army launched a massive offensive called “*Operation Storm*” against Serbian separatists in Croatia in August 1995. The operation managed to shatter the break-away Serbian states and managed to bring those territories under Croatian control. Hundreds of thousands of Serbs were displaced from the areas that they had lived for centuries with this operation.
- NATO began a bombing campaign in Bosnia-Herzegovina against Serbs in August 1995, which forced the Serbs to the negotiating table. Result is the Dayton Agreement which ends the conflict in Bosnia-Herzegovina.
- In the mid-1990s, a faction of the Kosovo Albanians organised under UÇK waged a campaign of armed insurgency and violent resistance to the Serbian authorities. In mid-1996, the UÇK began launching attacks primarily targeting FRY and Serbian police forces. Thereafter, and throughout 1997, FRY and Serbian police forces responded with excessive force against suspected UÇK bases and supporters in Kosovo.
- During the conflict in Kosovo, forces of the FRY engaged in a deliberate and widespread or systematic campaign of destruction of property owned by Kosovo Albanians. This was accomplished by the widespread shelling of towns and villages; the burning and destruction of property, including homes, farms, businesses, cultural monuments, and religious sites; and the destruction of personal property.



- Thousands of Kosovo Albanians had to flee their homes as a result of the conduct of the forces of the FRY. These refugees who were escaping the deliberate climate of terror that pervaded the territory of Kosovo joined convoys of persons that moved toward Kosovo's borders with the Republic of Albania and the former Yugoslav Republic of Macedonia. Along the routes to the border crossings, forces of the FRY manned checkpoints where the displaced Kosovo Albanians were subject to further beatings, extortion, robbery, harassment, assaults, illegal arrests, and killings.
- Forces of the FRY systematically seized and destroyed the personal identity documents and licenses of vehicles belonging to Kosovo Albanians. As Kosovo Albanians were forced from their homes and directed towards Kosovo's borders, they were subjected to demands to surrender identity documents at selected points *en route* to border crossings and at border crossings into neighbouring countries. These actions were undertaken in order to erase any record of the deported Kosovo Albanians' presence in Kosovo and to deny them the right to return to their homes in the future.
- Fearing another genocide, NATO issued a warning in September 1998 to Milošević and told Belgrade to stop its violent actions in Kosovo.
- NATO began a bombing campaign in Kosovo and Serbia to stop atrocities from happening in Kosovo. Bombing forces Belgrade to withdraw its forces and allow Kosovo Peace Implementation Force under UN supervision to be deployed to the region.
- Milošević, no longer the president after losing the 2000 election, is handed to the Americans in April 2001 by his political rivals, Americans then hand him over to the ICTY.



#### 4. Established Agenda of the Court

The Tribunal shall decide:

- 1- Whether the Court has the competence to hear the present case of Prosecution v Milošević,
- 2- Whether the defendant is responsible for **“grave breaches of the Geneva Convention of 1949”** pursuant to Article 2 of the ICTY statute,
- 3- Whether the defendant is responsible for **“violations of laws and customs of law”** pursuant to Article 3 of the ICTY statute,
- 4- Whether the defendant is responsible for **“genocide”** pursuant to Article 4 of the ICTY statute,
- 5- Whether the defendant is responsible for **“crimes against humanity”** pursuant to Article 5 of the ICTY statute,
- 6- Whether the defendant is part of a **“joint criminal enterprise”** set-up to establish a Greater Serbia,

Additionally, participants can adjudicate on:

- 7- Can the concept of **“sovereign immunity”** be used by the defendant.



## 5. Conclusion

Collapse of the multi-ethnic state of Yugoslavia has ended the period of long peace in Europe and led to horrific bloodshed in Balkans. Countless atrocities were committed by all sides under the guise of nationalism against people who were their neighbours, collages, and friends. However, overwhelming majority of the atrocities were committed by separatist Serbians who were armed, financed and supported by Slobodan Milošević and his government in Belgrade.

The ICTY was born of a desire to address these atrocities and bring the preparators to justice as the international community knew that national judicial systems would fail to provide adequate, if any, justice to victims. It is up to the participants to decide if the Slobodan Milošević is responsible for the crimes that he is accused of in the case of Prosecution v. Milošević or if he was truly unable to control the Serbian separatist in Croatia and Bosnia and did not take part in the commission of said crimes as he claims.



## **IV. APPLICABLE LAW**

### **1. Article 1**

#### ***Competence of the International Tribunal***

*The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.*

### **2. Article 2**

#### ***Grave breaches of the Geneva Conventions of 1949***

*The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:*

- 1. (a) wilful killing;*
- 2. (b) torture or inhuman treatment, including biological experiments;*
- 3. (c) wilfully causing great suffering or serious injury to body or health;*
- 4. (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;*
- 5. (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;*
- 6. (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;*
- 7. (g) unlawful deportation or transfer or unlawful confinement of a civilian;*
- 8. (h) taking civilians as hostages.*

### **3. Article 3**

#### ***Violations of the laws or customs of war***

*The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:*



1. (a) *employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;*
2. (b) *wanton destruction of cities, towns or villages, or devastation not justified by military necessity;*
3. (c) *attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings*
4. (d) *seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;*
5. (e) *plunder of public or private property.*

#### **4. Article 4** **Genocide**

*1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.*

*2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

*(a) killing members of the group;*

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

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

*(d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.*

*3. The following acts shall be punishable:*

*1. (a) genocide;*

*2. (b) conspiracy to commit genocide;*



3. (c) *direct and public incitement to commit genocide;*
4. (d) *attempt to commit genocide;*
5. (e) *complicity in genocide.*

## **5. Article 5**

### ***Crimes against humanity***

*The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:*

1. (a) *murder;*
2. (b) *extermination;*
3. (c) *enslavement;*
4. (d) *deportation;*
5. (e) *imprisonment;*
6. (f) *torture;*
7. (g) *rape;*
8. (h) *persecutions on political, racial and religious grounds;*
9. (i) *other inhumane acts.*

## **6. Article 6**

### ***Personal jurisdiction***

*The International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.*

## **7. Article 7**

### ***Individual criminal responsibility***

*1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.*



2. *The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.*

3. *The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.*

4. *The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.*

#### **8. Article 8**

##### ***Territorial and temporal jurisdiction***

*The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991.*

#### **9. Article 9**

##### ***Concurrent jurisdiction***

1. *The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.*

2. *The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal.*



## **10. Article 10**

### ***Non-bis-in-idem***

*1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal.*

*2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal only if:*

- 1. (a) the act for which he or she was tried was characterized as an ordinary crime; or*
- 2. (b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.*

*3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.*



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