



Politics or Justice

Differentiating between the Nuremberg Trials and the International Criminal Tribunal for the Former Yugoslavia

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POLITICS OR JUSTICE?

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INTRODUCTION

Winston Churchill said in 1944 that Nazi leaders should be "hunted down and shot". (*Courtroom Television Network LLC*) The French and Soviets also supported summary executions. The Americans, however, pushed for trial after the faction within the U.S. government led by Henry Morgenthau, who supported a harsh plan designed to prevent Germany from ever rising as an industrial power, lost a domestic battle over the U.S. position on punishment for the Nazis.

In August 1945, the British, French, Americans and Soviets, met in London. They signed the agreement that created the Nuremberg court, officially the International Military Tribunal, and set up ground rules for the trial.

In early October 1945, the four prosecuting nations -- the United States, Great Britain, France and Russia -- issued an indictment against 24 men and six organizations. The individual defendants were charged not only with the systematic murder of millions of people, but also for planning and carrying out war in Europe.

Lt. Col. Murray Bernays, an attorney in the U.S. War Department who collected evidence on crimes committed against GIs, had devised a scheme to try the Nazis as conspirators for waging an aggressive war and to try Nazi organizations as a means of reaching hundreds of thousands of members. His ideas were promoted by Secretary of War Henry Stimson and it eventually was incorporated into the indictment.

The indictment of Nazi organizations was designed to deal with the problem of what to do about the hundreds of thousands of people who had been members of organizations such as the SS and the Gestapo. The idea was to label them as criminal organizations, and hold hearings to determine the extent to which a member is considered guilty.

The Nuremberg trials became a model after which subsequent international enforcement of justice might be patterned. Indeed, to many, the trials indicated that the international community would no longer tolerate transgressions against basic, universal human values, and that a mechanism was now in place by which to hold people accountable for "crimes against humanity."

Judge Charles E. Wyzanski Jr. explained in "[Nuremberg in Retrospect](#)" (*Atlantic*, December, 1946), that the exemplary manner in which the trial had been conducted had dispelled his scepticism about the feasibility of forging an international legal system: "Judged as a court trial," he wrote, "the Nuremberg proceedings were a model of forensic fairness.... But the outstanding accomplishment of the trial...is that it has crystallized the concept that there already is inherent in the international community a machinery both for the expression of international criminal law and for its enforcement."

The International Criminal Tribunal for the Former Yugoslavia ("Tribunal") was established by the United Nations Security Council in 1993 in order to put an end to the widespread and flagrant

violations of international humanitarian law occurring in the former Yugoslavia. Set up under the umbrella of the United Nations and established with the view to bring to justice individuals who organised and perpetrated war crimes in former Yugoslavia, its mandate is very much different from that of the Nuremberg International Military Tribunal. Even though crimes committed by the Nazis cannot mathematically be compared with the crimes committed in former Yugoslavia it is a cause for concern that the “Tribunal” is only concerned with individual guilt and not collective responsibility.

” I believe it is essential to make a distinction between what might be collective responsibility and individual responsibility. The Tribunal has not been established to deal with the possibility of collective responsibility. What is of interest to me in each of the trials in which I have sat in this court is to verify whether the evidence presented before it makes it possible to find an accused guilty. I seek to judge an accused. I do not judge a people. Yes, in the former Yugoslavia there were attacks against civilian populations. Yes, there were massacres and there was persecution. Yes, some of these crimes were committed by Serbian forces. However, to paraphrase a great humanist, I consider that to associate this evil with Serbian identity would be an insult to the Serbian people and would betray the concept of civil society. But it would be just as monstrous not to attach any name to this evil because that could be an offence to the Serbs.” (Judge Rodrigues (Presiding) over Trial Chamber I, case **Krstic IT-98-33 "Srebrenica"**)

In the words of Judge Rodrigues we can see an almost apologetic approach to the sentencing of Krstic and especially interesting is the fact that the Judge goes into depth to show that the Serbian people are not to be blamed for crimes committed in their name.

While fatal creation of the state of ‘Israel’ and capitulation under blackmail from the United States has brought UN to become the only mediator between the two superpowers it is obvious that general indictment of the German people gave a moral ground to the Zionist lobby to demand for an establishment of a Jewish entity. Turning a blind eye to the support that the illegal state of ‘Israel’ was receiving from the United States; in its quest to depopulate Palestine and to create a Jewish state; was the first major betrayal of UN’s founding ideals. Silent acceptance of mass deportation of Palestinians was contrary to ever louder cries of condemnation of Nazi policies.

On the contrary, defining the crimes committed against Muslims in the former Yugoslavia as being an individual responsibility is the way to prevent Muslims from achieving the same moral ground towards their killers as achieved by the Jews towards the whole of Germany.

In this paper I question the wisdom of making a distinction between justice at Nuremberg Trials and justice at the “Tribunal”. I will try to prove that even though the scale of the crimes committed is different, the crimes itself are the same, both committed by Nazis and by Serbian forces, and that both Nazis and Serbian forces were supported by majority of German and Serbian people. To ignore the fact that overwhelming majority of Serbs supported ethnic cleansing, mass murder, rape and genocide and not to find them accountable for being supporters of such crimes is defiantly a betrayal of international justice.

CHAPTER 1

The rise to power by the Nazi party in early 1930s have brought new phase of racial conflict in Europe. Jews as a nation, not as a religious group, have been persecuted in Europe for centuries. The idea of a justifiable extermination of Jews was not new when the Nazi party revealed its manifesto. Did Hitler hate the Jews because of their religion or did he use the issue of Jews for the power struggle in which he became the ultimate manifestation of evil, backed by the German masses?

In order to consolidate his idolising position, Hitler needed to present to the German people a single issue which would be blamed as a reason for all misfortunes and ills of German society. So, he created the idea that World War I was lost because of Jewish conspiracy and that the German nation was betrayed by Jews who at that time had considerable influence over the German Army. He created the belief that communist conspiracies and economic collapse in Germany after World War I were created by the same Jewish conspiracy. He gave the German people a unifying factor by creating hatred against Jews and furthermore aligned German patriotism with hatred towards the Jews.

Did the German people know about "Jewish Solution"? Did the German people know about concentration camps? Did the German people know of policies of "purifying the Germanic race"? I believe that the German people knew about all the crimes committed by the Nazi regime and that they were supporting that Nazi regime in its drive towards exterminating all Jews living under Nazi occupation.

Nazi party was a mass membership organisation. Those who were accepted as members were required to know its manifesto, aims, ideals and objectives. As early as 1933 the German people would have been able to see what the real objectives of the Nazi party was. An article written by Guy Stern (The Burning of the Books in Nazi Germany, 1933: The American Response) studied the consequences and response to burning of titles of Jewish and foreign authors and quotes the poet Heinrich Heine, who had said a century earlier: "When one burns books, one will soon burn people."

Hitler announced the Nuremberg Laws in 1935 in which it stripped the Jews of their civil rights as German citizens and separated them from Germany legally, socially, and politically. Jews were also defined as a separate race under "The Law for the Protection of German Blood and Honour." Being Jewish was now determined by ancestry; thus the Germans used race, not religious beliefs or practices, to define the Jewish people. This law forbade marriages or sexual relations between Jews and Germans. Hitler warned darkly that if this law did not resolve the problem, he would turn to the Nazi Party for a final solution.

More than 120 laws, decrees, and ordinances were enacted after the Nuremberg Laws and before the outbreak of World War II, further eroding the rights of the German Jews. Many thousands of Germans who had not previously considered themselves Jews found themselves defined as "non-Aryans."

Even before we study events after Nuremberg Laws one must ask himself how could the German nation accept such obvious racist law which openly discriminates against German nationals. Scenes of humiliation of Jewish children in front of their school peers, mass boycott of Jewish businesses and public insults of Jews were just prelude to burning of synagogues, mass imprisonment, concentration camps, slave labour, and finally death camps where millions perished. How could one

plead ignorance when such events were happening daily, overt and with public support? We can say that few perpetrated such acts but it is undeniable that the German people knew about everything and that the majority supported such acts.

When allied soldiers liberated death camps in 1945 they were aghast by the horrible scenes that they found there. First there was disbelief, and then frustration, followed by cry for justice. On individual command responsibility, allied officers rallied local German residents and brought them to death camps to see what has been done in their name. Those German people pleaded ignorance. They pleaded ignorance that they saw trains going into death camps full of people and coming out empty. They pleaded ignorance that they heard cries and smelt stink of burning flesh. They pleaded ignorance that death camp guards talk to them about what was happening in those camps. In any court of law such circumstantial evidence would be enough to find the accused guilty, even if they did not actively take part in killings, of being accessory in crime.

"Notice will also be given under Article 9 of the Charter that the Prosecution intends to ask the Tribunal to declare that the following organizations or groups of which the defendants or some of them were members of criminal organizations, and any member of any such group or organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of such group or organization. These organizations referred to are the following:

Die Reichsregierung (Reich Cabinet); Das Korps der Politischen Leiter der Nationalsozialistischen Deutschen Arbeiterpartei (Leadership Corps of the Nazi Party); Die Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the "SS") and including Der Sicherheitsdienst (commonly known as the "SD"); Die Geheime Staatspolizei (Secret State Police, commonly known as the "Gestapo"); Die Sturmabteilungen der NSDAP (commonly known as the "SA"); and the General Staff and High Command of the German Armed Forces.

(Minutes of the Opening Session of the Trial of the Major War Criminals, at Berlin by General NIKITCHENKO, President)

The Nuremberg Military Tribunal declared criminal the following organisations:

The Leadership Corps of the Nazi Party¹, SS (Protection or guard detachment)², Gestapo (Secret State Police, abbreviated to Gestapo), and SD (The security service of the SS, established in 1932).

In the zone of occupation of the United States the three länder passed a denazification law which required the registration of 13 million persons. Those that were subjected to prosecution were classified as either major offenders, offenders, lesser offenders, or followers. The major objective of the law was to remove those who had most closely followed and aided the Nazis from positions of leadership, or to prevent such persons from holding future public office. Those found to have been major offenders "were subject to immediate removal or permanent exclusion from public office, confiscation of property, and to a maximum of ten years in prison." More than 930,000 defendants were brought before the de-nazification courts.

¹ See Appendix 1

² Formed in 1925 as Hitler's praetorian guard. Heinrich Himmler became its leader, (Reichsführer-SS) in 1929.

Of them 1549 were classified as major offenders, 21,000 as offenders, 104,000 as lesser offenders, and 475,000 as followers. Over 500,000 people were fined for various criminal offenses, 122,000 suffered restrictions on employment, 25,000 were subject to confiscation of property, 22,000 were declared ineligible to hold public office, 30,000 were required to perform special labour, and 9000 were given prison sentences.³

No doubt that all these laws were brought in after WWII and subsequent trials had publicised greatly crimes committed by Nazi Germany. The German people were not able to say that they did not know. Evidence was contrary to that statement. By de-nazifying Germany, Allied powers have created general guilt in German peoples' consciousness. Such feeling of guilt is very important to prevent the repetition of anti-Semitism and racism in Germany.

³ Tutorow, [op.cit.](#) p.8

CHAPTER 2

If we turn to wars in the former Yugoslavia from 1991 to 2000 (wars in Slovenia, Croatia, Bosnia Herzegovina and Kosova) we could study the pattern of racism, Islamophobia, religious hatred and readiness to 'purify land' (term also used as 'ethnic cleansing'). This pattern has been carefully organised, planned and up to a certain level fulfilled. In the heart of such ideology is SANU (Serbian Academy of Science and Arts) with its Memorandum of 1986⁴. This is what University of Kansas Libraries Slavic Department on its web page says about this Memorandum:

"This memorandum is a critique of the Yugoslav system from a Serbian nationalist point of view, which assumes that Serbia was exploited by other Yugoslav republics and must correct the situation without hesitation"

The Memorandum of the Serbian Academy of Arts and Sciences (SANU), released in 1986, is a well-organized list of complaints and criticisms against the Yugoslav system, as it existed at the time. The main theme of the argument in the Memorandum is that Serbia was wrongfully taken advantage of and weakened under the 1974 constitution of Yugoslavia, and that as a result, Serbs are the victims of genocide (in Kosovo), among other things. The Memorandum is written in such a way that it acts as a call to arms for the Serbian people, and justifies any actions taken that will ensure the security of a 'threatened' Serbia.

With the publication of SANU's Memorandum in 1986 Serbian nationalism gain moral justification to embark on a course of creating a state for all Serbs. Cries like 'Where ever there is Serbian grave that is Serbia' were rallying the Serbian masses into frenzied state of madness. When in a speech in 1989 at Gazimestan (Kosova) Slobodan Milosevic said 'Serbs may not know how to work but they know how to fight' a million strong crowd cheered him and called for arms. They called for war against Albanians, Muslims, and all those who they considered as invaders going back 600 years by saying that they have to take revenge for the defeat Serbs suffered in the hands of the Ottoman Empire in the Fields of Kosova.

This one million Serbs was at that time 15% of all Serbs living in the former Yugoslavia. If we calculate what 15% of nation means it is easy to deduct that on the field of Gazimestan there was almost every able-bodied Serb supporting calls for ethnic cleansing, rape, and establishment of a Serbian state. This was a reflection of how the majority of Serbs felt. Those who were not present on the field of Gazimestan could be categorised as children, old people, women and those who could not come because they worked in emergency services.

From Gazimestan the messengers of evil spread to part of Croatia inhabited by Serbs, whole of Bosnia because Serbs constituted 1/3 of Bosnia and Herzegovina, whole of Serbia, Kosova, Macedonia, and abroad to emigrants Chetnics (Royalist Serbian movement that cooperated with Nazis in WWII) communities. Serbs mobilized their resources and the propaganda machinery was put in place. Daily reporting of massacres of Serbs in provinces where Serbs were minority were fabricated so that this crazed masses could be fed with hatred and willingness to do anything in the name of the Serbian Nation.

⁴ See Appendix 2

Serbian Orthodox Church gave blessings to 'freedom fighters' and embraced forthcoming war as a war of liberation from the infidels. Patriarch Pavle defined Serbian Nation as Heavenly Nation and Chosen People to such extent that Serbs started saying that 'today if God is Serb' It is common for Serbs to use this phraseology to mean God will support them. This was mass indoctrination on a Nazi scale.

When war started in Slovenia in 1991 it was just a prelude for things to come. It was organised in such a way that it was impossible for the Serbs to succeed as Slovenia was in actual reality not to be included in Greater Serbia. It was an ex-Yugoslav republic which was 95% Slovins (of Catholic faith) and it lied to the far west. SANU could not find historical justification for including Slovenia into the Greater Serbia. So, it was decided by SANU and by Slobodan Milosevic and his ruling apparatus to let Slovenia win its Independence.

When JNA (Yugoslav People's Army) was evicted from Slovenia it moved all its forces from Slovenia and stationed them in Bosnia and Herzegovina. Indoctrination of JNA was well on the way. It was already at that time mainly officered by Serbs who embraced the idea of creating a Greater Serbia on the ruins of Yugoslavia. Those non-Serb officers who did not show loyalty to this idea of Greater Serbia were expelled or when the war started in Bosnia and Herzegovina all these non-Serb officers were either removed, killed or were deserted. This Army was controlled by Slobodan Milosevic and it played a major part in the aggression on Croatia and Bosnia and Herzegovina.

The war in Croatia started soon after the JNA left Slovenia. Serbian nationalist rose against what they perceived as anti-Serbian state of Croatia (inhabited mainly by Croats – Catholics but with considerable Serbian minority) and in coordination with JNA laid siege to many Croatian cities. Other cities were 'cleansed' of non-Serbian population and Republic of Srpska Krajina was proclaimed. Many atrocities were committed such as in the city of Vukovar, which was razed to the ground and the sick, wounded and undefended population was massacred. Daily shelling of Dubrovnik, Zadar, Zagreb, Osjek and other Croatian towns were just drills for things to come.

While the war was still going on in Croatia, the Serbian military machine turned towards Bosnia and Herzegovina. In April 1992 an open large scale aggression against the independent country was put in motion by the command of Slobodan Milosevic, with the support of SANU, Serbian Orthodox Church and majority of Serbs.

Immediately it became obvious that previous threats for example if Muslims do not surrender they would all be killed and that Muslims as a people would disappear in Bosnia and Herzegovina were not just empty words. These threats were made in public and Radovan Karadic made the most blatant one in Bosnia and Herzegovina National Assembly just before the aggression started. His comments can be summarized as saying that if Muslims insist on calling for a referendum for the independence of Bosnia and Herzegovina such things may happen that results of which may be the complete extinction of Muslims. A number of towns were occupied and reports of mass killings, rape, torture, looting, burning, and expulsion were flooding from all corners of Bosnia and Herzegovina.

The state of Bosnia and Herzegovina was a unique blend of different religious groups. Muslims were 44%, Serbs (Orthodox Christians) 31%, Croats 17% (Catholic Christians) with the remaining 8% consisting of atheists, Jews, and others. The Serbian nationalists in their 'crusade' for a Serbian Holy Land decided to either enslave Muslim population or destroy all Muslims. In their attempt to achieve

this they agreed to maintain peace with the Croatian nationalists and even to unite until all Muslims were defeated. In 1993, a joint attack by the Serbian and Croatian forces was launched against Muslims and it lasted for more than a year. When Croatian nationalists realised that they could not trust their Serbian allies they pursued peace with the Muslims. For the next two years Croatian forces were mainly concentrated on maintaining their grip on land that they had occupied while fighting was mainly going on between the Serbian aggressors and Government forces. With the Dayton Peace agreement in 1995 the war stopped and the International community in particular the U.S.A. rewarded Serbian aggression with 49% of the territory of Bosnia and Herzegovina. The U.N. and the major powers sanctioned the partition of Bosnia and Herzegovina.

At first glance the 'Tribunal' served the same purpose of international justice, as the Nuremberg Trial. However, a closer look at its background and in particular its mandate shows how it was vastly below the standards of the precedents set at Nuremberg. Once more pressure from the U.S.A. was instrumental in setting it up not the least to satisfy the growing internal pressure from public for some form of accountability. As the BBC outlines below the mandate was significantly less than Nuremberg:

'Mandate

The tribunal is the first international body for the prosecution of war crimes since the Nuremberg and Tokyo trials held in the aftermath of World War II.

The ICTY was established by resolution 827 of the UN Security Council in May 1993 and all UN members are obliged to co-operate with it fully.

It has jurisdiction over individuals responsible for war crimes committed in the territory of the former Yugoslavia since 1991.

The offences are defined as:

Grave breaches of the 1949 Geneva Conventions

Violations of the laws or customs of war

Genocide

Crimes against humanity

The tribunal may not try suspects in absentia, nor impose the death penalty.

The maximum sentence it can hand down is life imprisonment.

Chief Prosecutor Carla Del Ponte and her team collect and sift the evidence to issue indictments and mount cases.

Mrs Del Ponte, a Swiss lawyer, is the third to head the tribunal. Our correspondent Elizabeth Blunt, says that her determination, and that of her predecessors, the Canadian Louise Arbor and the South African Richard Goldstone, has played a large part in its success.

In its seven years of existence the tribunal has been gradually working up to the moment when it has in front of it Slobodan Milosevic - the man it regards as ultimately responsible for Yugoslavia's suffering.

Indictments can be public or sealed.

The Tribunal has large teams of investigators working across the former Yugoslavia but it does not have its own police force and instead relies on the former Yugoslav republics or the international peace forces, S-For and K-For in Bosnia and Kosovo, to make arrests.

The tribunal's staff as of April 2001 numbers 1,103 people from 74 countries and the budget for 2001 is \$96,443,900.

Tribunal's record

Indictments:

Thirty-eight indicted war criminals are in the tribunal's detention unit

Thirty-eight accused suspects are still at large

Of these, 26 are publicly indicted and 12 are under sealed indictments

International arrest warrants have been issued for seven of those sought, including Radovan Karadzic and Ratko Mladic.

Trials and appeals

To date, 19 guilty verdicts have been passed

There have been two acquittals

Six cases have been completed, including appeals

Twelve cases are pending before the appeals chamber

Longest sentence passed: 45 years for former Bosnian Croat general Tihomir Blaskic

The shortest trial took 10 days, the longest 239

One verdict made history by establishing that the systematic use of rape could be prosecuted as a war crime.

Thousands of soldiers and civilians were involved in the violence as the former Yugoslavia disintegrated - but one consistent thread running throughout the proceedings has been the attempt to bring to trial those ultimately responsible for the crimes.

Paul Risley who was the prosecutor's spokesman during another key trial said: "What's most important about prosecuting war crimes is not to get the individuals who may have committed those crimes - the lowly soldiers, thugs, paramilitary types of police officers - but to get the most senior political and military leadership responsible for having ordered those crimes."

Tribunal's structure

President: Claude Jorda (France)

Vice-president: Florence Ndepele Mwachande Mumma (Zambia)

Three presiding judges: David Anthony Hunt (Australia), Richard May (United Kingdom), Almiro Simoes Rodrigues (Portugal)

They are supported by nine other judges from various countries. Twenty-seven new temporary judges are due to arrive in September to assist with the workload

Chief Prosecutor: Carla Del Ponte (Switzerland)

Deputy Chief Prosecutor Graham Blewitt (Australia).

Since the tribunal began its work, nine known suspects have died.

One, Slavko Dokmanovic, committed suicide in the detention centre in 1998.

Two were shot dead by S-For troops during attempts to arrest them. Another blew himself up with a hand grenade as German troops tried to seize him.

The rest have died of natural causes, including one in custody.”

There is, however, no process similar to de-nazification. The idea of the ‘Tribunal’ is not to try Serbian people nor to educate them, but solely to find individuals responsible for the crimes committed. Why is this so? The de-nazification of Germany after WWII have created a sense of guilt in German consciousness. The ‘Tribunal’ is creating a sense of victim in Serbian consciousness, and Serbs feel that the whole World is against them. There is still no major process where the Serbs would face up to the crimes that they supported and were done in their name. No wonder that nothing much is changing in former Yugoslavia. If the victim is denied justice and compensation than the victory belongs to their oppressor.

The effect of the Nuremberg trials was a moral high ground was granted to the victims i.e. the Jews. But in the case of genocide against the Muslims in Bosnia and Herzegovina, the international community was not even allowing the victim to name properly the people who carried the worst war crimes in Europe since WWII. To deny that the Serbian nation was an accomplice in genocide against the Muslims is to deny the victim any compensation either morally or financially for the suffering that they had endured.

The argument against is that all the parties involved committed crimes, but that is the same as saying that the Jews who rose in the Warsaw ghetto committed crimes against the Germans and therefore they are the same as the Germans! The scale and intention of the crimes committed by Muslims against the Serbs cannot even be compared. It would be immoral to even to try to compare them. Muslims did not systematically and in an organised manner rape, torture, massacre and expel the Serbs as the way they did to the Muslims.

Numerous concentration camps where up to 300 000 people were imprisoned at the time were as well organised as were the Nazi death camps. Systematic program of mass rapes left over 50 000 Muslim women raped and marked for the whole of their life. Mass executions took at least 200 000 Muslim civilians. Indiscriminate shelling of civilian targets left hundreds of thousands maimed, disabled and war scared. All of this was done under the clear instruction to destroy Muslims as a community and to make those who remain alive suffer for the rest of their life.

Until the 'Tribunal' or any other International body bring sense of collective guilt into the Serbian consciousness till then all the work will be half done and Justice will not be served.

Collective guilt of Serbian people goes from those who were members of SDS (Serbian Democratic Party), SPS (Socialist Party of Serbia), SRS (Serbian Radical Party) and many other organisations, those who were their supporters and those who did not speak up against their programs. Paramilitary organisations like 'White Eagles', 'Tigers', 'Volunteers', 'White Guards' and others can be compared to Nazi SS troops and there should be the same indictment against them as meted out to those Nazi organisations.

Slobodan Milosevic is not the cause. He is the product of an evil that was supported by the majority of Serbs. How long will it be until the next 'Slobodan Milosevic' takes power and lead the Serbs again into a 'Crusade' against Muslims? This is what International community is failing to prevent and see.

To come back to the words of Judge Rodrigues:

"Yes, there were massacres and there was persecution. Yes, some of these crimes were committed by Serbian forces. However, to paraphrase a great humanist, I consider that to associate this evil with Serbian identity would be an insult to the Serbian people and would betray the concept of civil society. But it would be just as monstrous not to attach any name to this evil because that could be an offence to the Serbs."

The Nuremberg Trials were supposed set up the parameters of a civil society. It is unbelievable that this man after all the evidence presented to him worries more about hurting the Serbs than to prevent future crimes committed by them. After ruling guilty a Serbian general of genocide, he goes into depth to say that some mad individual has done all that had happened. It would be the same as to say that Hitler himself killed all those people in WWII and the German people had nothing to do with it. The whole concept of Justice has failed when Judge Rodrigues failed to ignite a debate of guilt on the Serbian nation. He has done both, injustice to the victim and to those who committed the crimes by saying that the majority of Serb were good and fought for a just cause unfortunately some elements of the Serbian forces committed crimes.

What is needed for future peace in the Balkans is a mass re-education of the Serbs. It is necessary to bring home to each member of these criminal activities the fact that they were supporting evil and that they are guilty because of that. It is necessary to ban all political parties and organisations that were involved in the genocide even if it was in the most minimum way. It is necessary to destroy the myth of Serbian infallibility and to show that the majority of Serbs have behaved like bloodthirsty animals. It is necessary to compensate the victims and to show them that the International community acknowledges the crimes committed against them. Only then will justice be served.
[END]

Appendix 1

"The Leadership Corps of the Nazi Party consisted, in effect, of the official organisation of the Nazi Party, with Hitler as Fuehrer as its head. The actual work of running the Leadership Corps was carried out by the Chief of the Party Chancellery (Hess, succeeded by Bormann) assisted by the Party Reich Directorate, or Reichsleitung, which was composed of the Reichsleiters, the heads of the functional organisations of the Party, as well as of heads of the various main departments and offices which were attached to the Party Reich Directorate.

Under the Chief of the Party Chancellery were the Gauleiters, with territorial jurisdiction over the main administrative regions of the Party, the Gaus. The Gauleiters were assisted by a Party Gau Directorate or Gauleitung, similar in composition and function to the Part Reich Directorate. Under the Gauleiters in the Party hierarchy were the Kreisleiters with territorial jurisdiction over a Kreis, usually consisting of a single country, and assisted by a Party of (sic) Kreis Directorate, or Kreisleitung.

The Kreisleiters were the lowest members of the Party hierarchy who were full time paid employees.

Directly under the Kreisleiters were the Ortsgruppenleiters, then the Zellenleiters and then the Blockleiters. Directives and instructions were received from the Party Reich Directorate."⁵

⁵ *Judgment of the International Military Tribunal for the Trial of German Major War Criminals*. Nuremberg, 30th September and 1st October, 1946. London: HMSO, 1966, pp.67-68

Appendix 2

(Text of Memorandum) "There is deep concern in Yugoslavia because of stagnating social development, economic difficulties, growing social tensions, and open inter-ethnic clashes. A serious crisis has engulfed not only the political and economic arenas, but Yugoslavia's entire system of law and order as well. Idleness and irresponsibility at work, corruption and nepotism, a lack of confidence in and disregard for the law, bureaucratic obstinacy, growing mistrust among individuals, and increasingly arrogant individual and group egoism have become daily phenomena. The resulting blow to moral values and to the reputation of leading public institutions and a lack of faith in the competence of decision-makers have spread apathy and bitterness among the public and produced alienation from all the mainstays and symbols of law and order. An objective examination of Yugoslav reality suggests that the present crisis may end in social shocks with unforeseeable consequences, including such a catastrophic eventuality as the fragmentation of the Yugoslav state. No one can close his eyes to what is happening and to what may happen. Certainly, our nation's oldest institute of scientific and cultural creativity cannot do so.

In these fateful times, the Serbian Academy of Arts and Sciences feels obliged to express its views on society's condition in the conviction that this will help us find a way out of our present troubles. The nature of this document, however, obliges us to limit ourselves to the key issues of Yugoslav reality. Regretfully, these issues include the undefined and difficult position of the Serbian nation, a position brought to the fore by recent events.

In order to understand the primacy of ethnicity in the present practice of the League of Communists of Yugoslavia it is necessary to consider the influence of the Comintern on the Communist Party of Yugoslavia between the two world wars. The Comintern's strategy during that period derived from the conclusion that following the failure of the proletarian revolution in Western Europe, the Communist parties of Eastern, Central, and Southern Europe had to depend on national movements, even though they were expressly anti-socialist and based on the idea of national rather than class unity. Stalin engaged in crushing all opposition to such a strategy (as, for example, in the case of Sima Markovic, one of the founders of the Yugoslav Communist Party). In this spirit, the solution to the national question was formulated and developed theoretically by Sperans (Kardelj) in his book "Razvoj slovenskoga narodnoga vprsanja" (The Development of the Slovene National Question), which generally served as the ideological model for Yugoslav development in the direction of a confederation of sovereign republics and autonomous regions, which was finally achieved by the Constitution of 1974.

The two most developed republics, which achieved their national programs with this Constitution, are now the most ardent defenders of the existing system. Thanks to the political position of their leaders at the centers of political power, they have held (both before and after the decisive years of the 1960s) the initiative in all matters affecting the political and economic system. They modelled the social and economic structure of Yugoslavia to suit their own desires and needs. Nothing would seem more normal that they now defend the structure that they stubbornly took so long to build, a structure that represents the attainment of most of their national programs.

No one needs convincing that separatism and nationalism are active on the social scene, but there is insufficient understanding of the fact that such trends have been made ideologically possible by the Constitution of 1974. The constant reinforcement of and the competition engendered by separatism and nationalism have driven the (ethnic) nations further from one another to a critical degree. The

manipulation of language and the confinement of scientific and cultural professionals within the ranks of the republics and regions are sorry signs of the growing power of particularism. All new ethnogeneses are unfortunate products of locally closed, regional ideologies and shackled logic, and they are also symptomatic of a retreat from a common past, a common present, and a common future. It is as if everyone wished to flee as fast and as far as possible from a collapsing house. Mental attitudes warn us that the political crisis has reached the critical point, threatening the complete destabilization of Yugoslavia. Kosovo is the clearest expression of this.

No form of political oppression and discrimination on the basis of nationality is properly acceptable in modern society. The Yugoslav solution to the nationalities question could be considered at its inception an exemplary model of a multinational federation in which the principle of the unity of the state and state policy was successfully joined with the principle of the political and cultural autonomy of nationalities and national minorities. During the past two decades the principle of unity has become progressively weaker and the principle of national autonomy is stressed, which has in practice changed into a sovereignty of the parts (republics, which are not ethnically homogenous as a rule). The weaknesses that were present in the model from the beginning became more and more visible. All nations are not equal: the Serbian nation, for example, did not obtain the right to its own state. Unlike national minorities, portions of the Serbian people, who live in other republics in large numbers, do not have the right to use their own language and alphabet, to organize politically and culturally, and to develop the unique culture of their nation. The unstoppable persecution of Serbs in Kosovo in a drastic manner shows that those principles that protect the autonomy of a minority (Albanians) and not applied when it comes to a minority within a minority (Serbs, Montenegrins, Turks and Gypsies in Kosovo). Considering the existing forms of national discrimination, present-day Yugoslavia cannot be considered a democratic state.

. . .Yugoslavia is seen less as a community of citizens, nations and nationalities all equal before the law, and more as a community of eight equal territories. But even this variety of equality does not apply to Serbia because of its special legal and political position which reflects the tendency to keep the Serbian nation under constant supervision. The guiding principle behind this policy has been "a weak Serbia, a strong Yugoslavia" and this has evolved into an influential mind-set: if rapid economic growth were permitted by the Serbs, who are the largest nation, it would pose a danger to the other nations of Yugoslavia. And so all possibilities are grasped to place increasing obstacles in the way of their economic development and political consolidation. One of the most serious of such obstacles is Serbia's present undefined constitutional position, so full of internal conflicts.

The Constitution of 1974, in fact, divided Serbia into three parts. The autonomous provinces within Serbia were made equal to the republics, save that they were not defined as such and that they do not have the same number of representatives in the various bodies of the federation. They make up for this shortcoming by being able to interfere in the internal relations of Serbia proper through the republic's common assembly (while their assemblies remain completely autonomous). The political and legal position of Serbia proper is quite vague-Serbia proper is neither a republic nor a province. Relationships in the republic of Serbia are quite confused. The Executive Council, which is a body of the republic's assembly, is in fact the Executive Council for Serbia proper. This is not the only absurdity in the limitation of authority. The excessively broad and institutionally well-established autonomy of the provinces has created two new fissures within the Serbian nation. The truth is that the pro-autonomy and separatist forces insisted on increasing autonomy, but this would have been

difficult to achieve had they not received moral and political support from those republics in which separatist tendencies have never died out.

Relations between Serbia and the provinces cannot be reduced solely or even primarily to a formal legal interpretation of two constitutions. It is primarily a matter of the Serbian nation and their state. A nation that has regained statehood after a long and bloody struggle, that has achieved civil democracy, and that lost two and half million kinsmen in two world wars underwent the experience of having a bureaucratically constructed party commission determine that after four decades in the new Yugoslavia it alone was condemned to be without its own state. A more bitter historic defeat in peacetime cannot be imagined.

The expulsion of the Serbian nation from Kosovo bears spectacular witness to its historic defeat. In the spring of 1981 a very special, but nevertheless open and total war, prepared by administrative, political, and legal changes made at various periods, was declared against the Serbian people. Waged through the skilful application of various methods and tactics, with a division of functions, and with the active, not merely passive, and little concealed support of certain political centers within Yugoslavia (more pernicious than the support coming from outside), this open war, which has yet to be looked in the face and called by its proper name, has been continuing for almost five years. It has thus lasted longer than the entire Yugoslav war of liberation (from April 6, 1941 to May 9, 1945). The Balli (anti-communist nationalist) uprising in Kosovo and Metohija that broke out just before the end of the war with the participation of fascist units was broken militarily in 1944-45, but it appears not to have been broken politically. Its present form, disguised with a new content, is proceeding more successfully and is moving towards a victorious outcome. A final showdown with neo-fascism did not materialize; all of the measures so far taken have only removed the expression of this aggression from the streets and in fact, its racially motivated and unrestricted goals, which are being sought after by all means and at all costs, have only been reinforced. Deliberately drastic sentences are even pronounced on young offenders in order to incite and inflame inter-ethnic hatreds.

The physical, political, legal and cultural genocide perpetrated against the Serbian population of Kosovo and Metohija is the greatest defeat suffered by Serbia in the wars of liberation she waged between Orasac in 1804 and the uprising of 1941. Responsibility for this defeat falls primarily on the still living Comintern heritage in the nationalities policy of the Communist Party of Yugoslavia and on the acquiescence of Serbian communists in this policy and on the exorbitant ideological and political delusion, ignorance, immaturity, and chronic opportunism of an entire generation of post-war Serbian politicians, always on the defensive and always more concerned with the opinions others have of them and of their hesitant explanations of Serbia's position than with the true facts affecting the future of the nation that they lead.

Kosovo is not the only region in which the Serbian nation is being pressured by discrimination. The absolute (and not merely relative) fall in the number of Serbs in Croatia is sufficient proof of this assertion. According to the 1948 census there were 543,795 Serbs in Croatia (14.48% of the total). According to the 1981 census their number has been reduced to 531,502 or only 11.5% of the total number of inhabitants in Croatia. Over 33 peacetime years the number of Serbs in Croatia has declined, even in relation to the immediate post-war period when the first census was taken and when the effects of the war on the number of Serbian inhabitants in Croatia was well known.

Lika, Kordun, and Banija have remained the most underdeveloped regions of Croatia and this has greatly encouraged the emigration of Serbs to Serbia and migrations to other parts of Croatia where the Serbs, being newcomers, are a minority and socially inferior group, greatly exposed to assimilation. In any case, the Serbs in Croatia are otherwise exposed to a sophisticated and quite effective policy of assimilation. One component of this policy is the prohibition of all Serbian associations and cultural institutions in Croatia, which had had a rich tradition dating from the Austro-Hungarian and pre-war Yugoslav periods, and the imposition of an official language that bears the name of another nation (Croatia), thus giving concrete shape to national inequality. A constitutional provision has made this language obligatory for the Serbs in Croatia, and nationalistically inclined Croatian linguists are distancing it systematically and by well-organized actions from the language used in the other republics of the Serbo-Croatian language area, and this is helping to weaken the ties binding the Serbs in Croatia to other Serbs. Such action is gladly undertaken at the cost of interrupting language continuity among the Croats themselves and of eliminating international terms that are invaluable for communicating with other cultures, particularly in the field of science and technology. But the Serbian community in Croatia is not just cut off from their homeland culturally; that homeland cannot keep itself informed of their circumstances or of their economic or cultural situation anywhere near the extent to which it is possible for some nations in Yugoslavia to maintain contact with their compatriots in other countries. The integrity of the Serbian nation and its culture in Yugoslavia as a whole is an issue vital to its survival and progress.

With the exception of the Independent State of Croatia from 1941- 45, Serbs in Croatia have never been as persecuted in the past as they are now. The solution to their national position must be considered an urgent political question. In so much as a solution cannot be found, the results could be disastrous, not just in relation to Croatia, but to all of Yugoslavia.

The question of the Serbian people's position is given considerable weight by the fact that a large number of Serbians live outside of Serbia, especially Serbia proper, and that their number is larger than the total number of people of some other nations. According to the census of 1981, 24% of the Serbian people (1,958,000) live outside of the Socialist Republic of Serbia, which is considerably more than the number of Slovenians, Albanians, Macedonians and taken individually, almost the same as the Muslims. Outside of Serbia proper there are 3,285,000 Serbs or 40.3% of their total population. In the general disintegration process which has taken over Yugoslavia, the Serbs are hit with the most intense disintegration. The present course which our society in Yugoslavia has taken is totally opposite from the one that has moved for decades and centuries until the formation of a unified state. This process is aimed at the total destruction of the national unity of the Serbian people.

Having borne for over half a century the stigma and handicap of being the jailer of the other Yugoslav nations, the Serbian nation was incapable of deriving support from its own history. Many aspects of this history itself were even brought into question. The democratic bourgeoisie tradition for which Serbia had struggled successfully in the 19th century has remained in the shadow cast by the Serbian socialist and labor movement until quite recently because of narrow-mindedness and lack of objectivity on the part of official historiography. This so impoverished and restricted the true picture of the contribution made by Serbian bourgeoisie society to law, culture, and statesmanship that, deformed in this manner, it could not provide mental or moral support to anyone nor could it serve as a foothold for preserving or reviving historical self-confidence. The brave and honorable efforts at liberation exerted by the Serbs of Bosnia-Herzegovina and by all Yugoslav youth, which

included Young Bosnia, experienced a similar fate and were pushed into the historical background by the contributions of a class ideology whose proponents and creators were Austrian Marxists, confirmed opponents of movements of national liberation.

Influenced by the ruling ideology, the cultural achievements of the Serbian people are undergoing alienation, being usurped by others or denigrated, or they are ignored and retrogress; the language is being displaced and the Cyrillic script is gradually being lost. In this connection, the realm of literature is serving as the main arena for caprice and anarchy. The cultural and spiritual integrity of no other Yugoslav nation is so roughly challenged as that of the Serbian nation. No other literary and artistic heritage is so disordered, ravaged, and confused as the Serbian heritage. The political criteria of the ruling ideology are imposed on Serbian culture as being more valuable and stronger than scientific or historical criteria.

After the dramatic interethnic conflicts of the world war, it had appeared that chauvinism has lost momentum was even on the road to oblivion. This appearance has proven deceptive. It was not long before nationalism began rising up once more, and every change in the constitution served to promote its growth. Nationalism has been promoted from above; its chief proponents have been politicians. The fundamental cause of this multi-dimensional crisis is to be found in the ideological defeat of socialism at the hands of nationalism, which has produced the centrifugal processes that have brought the Yugoslav community to the brink of ruin and which has destroyed the old system of values.

Its roots lie in the ideology of the Comintern and in the nationalities policy of the pre-war CPY. The revanchism directed at the Serbian nation as an "exploiting" nation that was built into this policy has had far-reaching consequences for inter-ethnic relations, the social organization, the economic system, and the fate of moral and cultural values since the Second World War. The Serbian nation has been encumbered with a feeling of historical guilt and has remained the only nation not to solve its national problem and not to receive its own state like the other nations. Therefore, the first and foremost action must be to remove this burden of historical guilt from the Serbian nation, to categorically deny the contention that it enjoyed a privileged economic position between the two world wars, and to refrain from denigrating Serbia's liberation-oriented history and contribution in creating Yugoslavia.

Complete national and cultural integrity of the Serbian people is their historic and democratic right, no matter in which republic or province they might find themselves living. The attainment of equality and an independent development have profound historical meaning for the Serbian people. In less than fifty years, over two successive generations, the Serbian nation has been exposed to such severe trials—twice exposed to physical extermination, to forced assimilation, to religious conversion, to cultural genocide, to ideological indoctrination, and to the denigration and renunciation of their own traditions beneath an imposed guilt complex, and thereby disarmed intellectually and politically, that they could not but leave deep spiritual wounds that cannot be ignored as this century of the great technological takeoff draws to a close. In order to have a future in the international family of cultured and civilized nations, the Serbian nation must have an opportunity to find itself again and become a historical agent, must re-acquire an awareness of its historical and spiritual being, must look its economic and cultural interests square in the eyes, and must find a modern social and national program that will inspire this generation and generations to come.

The present depressing condition of the Serbian nation, with chauvinism and Serbophobia being ever more violently expressed in certain circles, favour of a revival of Serbian nationalism, an increasingly drastic expression of Serbian national sensitivity, and reactions that can be volatile and even dangerous. We must not overlook or underestimate these dangers for a moment under any circumstances. But a principled struggle against Serbian chauvinism cannot be based on the reigning ideological and political symmetry in historical guilt. The rejection of this symmetry, fatal to the spirit and morale, with its trite falsehoods and injustices, is a precondition for mobility and effectiveness on the part of democratic, Yugoslav, humanistic awareness in contemporary Serbian culture.

The fact that ordinary citizens and the working class are not represented in the appropriate councils in the Federal Assembly cannot simply be ascribed to favouritism for ethnic nationalisms; it is also the result of an attempt to place Serbia in a position of inequality and thereby weaken her political influence. But the greatest calamity is the fact that the Serbian nation does not possess a state like all of the other nations. True, the first article of the Constitution of the Socialist Republic of Serbia contains a provision to the effect that Serbia is a state, but the question immediately arises: What kind of a state is one that lacks authority within its own territory and lacks the means to protect the personal property of its citizens, to prevent genocide in Kosovo, and to prevent the emigration of Serbs from their ancient homeland? This position underlines the political discrimination against Serbia, especially when one remembers that the Constitution of the Socialist Federal Republic of Yugoslavia has imposed internal federalism on Serbia, creating a permanent source of conflicts between Serbia Proper and the provinces. The aggressive Albanian chauvinism in Kosovo cannot be contained until Serbia ceases to be the sole republic whose internal relations are ordered by others.

The Federal Constitution has formally established the equality of all the republics but this has been rendered worthless in practice by forcing the Republic of Serbia to renounce many of its rights and powers in favor of the autonomous provinces, the status of which is regulated by the Federal Constitution to a considerable extent. Serbia must openly state that this is an imposed arrangement. This is especially true in regard to the position of the provinces, which in reality have been promoted to republics and which regard themselves far more as constituent elements of the Federation rather than as parts of the republic of Serbia. Besides failing to consider a state for the Serbian nation, the Yugoslav Constitution also created insurmountable difficulties to the establishment of such a state. In order to satisfy Serbia's legitimate interests, a revision of that constitution is unavoidable. The autonomous provinces must become true integral parts of the Republic of Serbia by granting them a degree of autonomy that would not destroy the integrity of the Republic and would make it possible to act in the common interests of the wider community.

The unhappy matter of Serbian statehood is not the only deficiency that must be corrected by constitutional amendments. The 1974 constitution turned Yugoslavia into a very unstable state community, prone to consider alternatives other than the Yugoslav alternative, as has been made clear in recent statements by public figures in Slovenia and the earlier positions taken by Macedonian politicians. Such considerations and fragmentation lead to the notion that Yugoslavia is in danger of further corrosion. The Serbian nation cannot meekly await the future in such a state of uncertainty. Therefore, all of the nations within Yugoslavia must be given the opportunity to express their wants and intentions. Serbia would then be able to declare and define her own national interests. Discussions and agreements in this vein must precede an examination of the Constitution. Naturally, Serbia must not take a passive stand in all this, waiting to hear what others will say, as she has done so often in the past.

The position of equality that Serbia must strive for presupposes the same initiative in deciding on key political and economic issues as enjoyed by others. Four decades of Serbian passivity have been bad for Yugoslavia as a whole by failing to contribute ideas and critical appraisals based on her longer state tradition, enhanced feeling for national independence, and rich experience in struggling against home-grown usurpers of political freedom. Unless the Serbian nation within Serbia participate on an equal footing in the entire process of decision making and implementation, Yugoslavia cannot be strong--and Yugoslavia's very existence as a democratic, socialist community will be called into question.

An entire period in the development of the Yugoslav community and of Serbia has clearly ended in a historically worn-out ideology, overall stagnation, and ever more obvious regression in the economic, political, moral, and cultural spheres. Such a situation imperatively requires a profound and well-thought out, rationally grounded, and decisively implemented reform of the entire governmental structure and social organization of the Yugoslav community of nations, and speedy and beneficial integration into the modern world through social democracy. The human resources of the entire country must be involved to the utmost extent in social reform in order that we may become a productive, enlightened, and democratic society capable of existing on the fruits of our own labour and creativity and able to make our fair contribution to the human race.

The Serbian Academy of Arts and Sciences is taking this occasion to express once again its willingness to promote this portentous undertaking and the historical aspirations of our generation with all the resources at its disposal.” (Source: <http://www.ukans.edu/~slavlib/memo.htm>)

Dobrica Cosic (b.1921) was the president of the Serbian Academy of Arts and Sciences (SANU) at the time this Memorandum was written and had a leading influence on its content and direction. Cosic is a writer who has held numerous cultural and political posts since the end of World War II, among them representative in the Federal parliament, president of the Serbian literary community, and editor of several newspapers and literary journals. He was also the president of the new Yugoslav Federation.



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