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Introduction

In August, 1995, the Croatian Army liberated large sections of its territory, which had been occupied by the Serbs for many years. This operation is known as Operation Storm (Oluja). In Dalmatia, the most critical part of the operation was headed by Croatian general Ante Gotovina.

At the beginning of the 21st century, the International Criminal Tribunal for the Former Yugoslavia accused general Gotovina of crimes against humanity and violations of laws and customs of war. Also accused are Croatian generals Mladen Markač and Ivan Čermak. They are suspected, together with the late Croatian President, Franjo Tuđman, of participating in a joint criminal enterprise, whose goal was to remove the Serbian population from that part of Croatia.

The trial was completed in 2010. The prosecution of the International Criminal Tribunal in The Hague had not succeeded in proving a single count of the indictment. The verdict is awaited.

In the meantime many world-renown experts on international law wrote critically about the work and character of the tribunal in The Hague, deeming that it had distanced itself from the values on which international law is founded, and that it acted under the influence of politics.

They asked themselves and are still asking how is it possible to put on trial the commanders of an army that liberated its own territory in a brilliant military operation with a minimum number of killed and wounded. How was it possible to put Croatia and Croats on trial, the victims, in 1991, of internal (terrorist uprising by a part of the Serbs) and outside aggression (Serbian and Montenegro) with thousands and thousands of dead and wounded, as well as devastated villages and cities (Vukovar). The objective of this genocide, including culturocide (devastation of Dubrovnik and Zadar), was the creation of a »Greater Serbia«, with many Croatian areas in its composition. Krajina, the Serbian terrorist para-state with Knin as its center, was formed on a part of the territory of the internationally recognized Republic of Croatia, from where the attacks on the Croatian cities on the Adriatic Sea were initiated. Aggression on the entire area of Croatia was planned in Belgrade under the leadership of Slobodan Milošević.

The International Tribunal in The Hague neglects this entire context and highlights only the Croatian military operation in 1995, accusing Croatian generals of »persecuting Serbs from Croatia«. The facts indicate otherwise: the supreme defense council of the »Republic of Serbian Krajina« made a decision on the planned evacuation of civilians; it was to take place in front of representatives of the international community; and Serbs from this part of Croatia did not wish to remain despite the proclamation by the President of the Republic of Croatia, which called on them to stay.

The Tribunal in The Hague also neglects the fact that the army of the Republic of Croatia, after the fall of Knin (which was practically undamaged) continued with its operation on the territory of Bosnia and Herzegovina, in accordance with the agreement signed by Bosnian President Alija Izetbegović and Croatian President Dr. Franjo Tuđman. This operation too was led by general Ante Gotovina. Civilians in the city of Bihać, Bosnia and Herzegovina, which was surrounded by the Serbian army, were saved. Bihać was a safe haven, as was Srebrenica, the site of a terrible genocide of Muslims not long before. Thanks to the Croatian Army and general Gotovina, a massacre in Bihać was averted. What is more, the Serbs were retreating in panic towards northern Bosnia, and from that point on no longer represented a real military threat. They accepted the Dayton Agreement, which, actually, ended the war in Southeast Europe.

It was this kind of general Gotovina and others in the indictment who were put on trial in The Hague for a non-existent »joint criminal enterprise«, which is absurd, even more so because the prosecution raised indictments on the basis of information provided by the enemy in the conflict.

The lawyers of the Croatian generals were not the only ones participating in their defense. Given that the tribunal in The Hague did not allow the Republic of Croatia to appear as »amicus curiae«, legal experts gathered in an attempt to replace this role, as has the non-governmental organization of intellectuals under the name »Hrvatsko kulturno vijeće – Croatian Cultural Council«. The book that you have in your hands is a summary of the eight collections of symposium papers (a total of 1200 pages) that originated on the basis of presentations by Croatian intellectuals at eight symposiums of the Croatian Cultural Council held from the middle of 2006 to 2010.

Hrvoje Hitrec
President of the Croatian Cultural Council

»JOINT CRIMINAL ENTERPRISE« – What is that?

Milan Vuković, PhD

If we define international criminal law as a set of norms with the objective of suppressing crimes that cross the borders of individual countries, that is, crimes that violate certain basic values of humanity and of the international legal order, it is obvious that neither The Hague Tribunal nor its Statute can be grouped in the traditional concept of international criminal tribunal with legal competence.

This specific characteristic of The Hague Tribunal is obvious from the decision of its founding, because it was established by the UN Security Council, under the authority of Chapter VII of the Charter of the United Nations, while its competence was defined in Security Council Resolution 827 from May 27, 1993, paragraph 2, as well as the Statute, which is an integral part of the decision on the establishment of the tribunal. The judges themselves are authorized, under Article 15 of the Statute, to pass rules on the procedure and on evidence for prosecution prior to the start of trial and of the appeal procedure on the evidence procedure, on the protection of victims and witnesses, and on other related matters.

Although resolution 827, paragraph 2 emphasizes and defines the competence of the ad hoc established 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, the same provision is formulated in the same manner in Article 1 of the Statute. It is necessary to emphasize the power to prosecute »persons«, meaning natural persons.

I believe that it is necessary to emphasize that, in Article 2 of the Statute, stated in detail are acts considered grave breaches of the Geneva Conventions of August 12, 1949, as well as those »ordering grave breaches to be committed«, because the Croatian state leadership had constantly insisted that their defense efforts be supervised by international forces on the front lines, and had insisted that the international forces undertake certain efforts so that this would not be the obligation of the Croatian Army.

The Statute of the International Criminal Tribunal in The Hague introduces the criminal offence of GENOCIDE in Article 4, whereby it is first provided in a descriptive manner, stating that the International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article, or committing any of the acts enumerated in paragraph 3 of this article. The definition of genocide is provided in paragraph 2 of this article, defining it as: »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«.

Paragraph 3 of Article 4 defines the acts that shall be punishable:

- a) genocide,
- b) conspiracy to commit genocide,
- c) direct or public incitement to commit genocide,
- d) attempt to commit genocide,
- e) complicity to genocide.

In Article 5 of the Statute, all acts against humanity are specified: a) murder, b) extermination, c) enslavement, d) deportation, e) imprisonment, f) torture, g) rape, h) persecution on political, racial or religious grounds, i) other inhumane acts.

From all of the above, it follows that the elements of the incrimination, that is, the characteristics of the criminal act, must be indisputably defined by the norm that describes the act, because judges are not permitted to resort to analogy. If it is shown that there is a need, in addition to the Statute of the International Tribunal for the Former Yugoslavia, to call on an additional source of international law, then the general principles of law in question must be recognized by the civilized world, as in Article 31 of the Rome Statute of the International Criminal Court, which defines the grounds for excluding criminal responsibility in general.

With the belief that the provisions of the Statute on the competence of the International Tribunal for the Former Yugoslavia are insufficient, it is obvious that the prosecution and the judges themselves at times, interpret these voids at will in the manner that it is like there are no general rules on the International Criminal proceedings, as a consequence, they take on a quasi-legislative role when adopting and supplementing rules of procedure and evidence.

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed

This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according the general principles of law recognized by civilized nations

The criminal offence must be committed after the adopted regulation, and the punishment must be prescribed prior to commitment itself (Article 31 of the Croatian Constitution, Article 7 of the European Convention).

It is indisputable that contemporary criminal law excludes collective responsibility of one side in an armed conflict, war, so the International Tribunal, also known as The Hague Tribunal, was founded on the principles of individual criminal responsibility, rejecting collective responsibility of individual nations or states for possible crimes committed in its name, because criminal law, in principle, excludes strict liability.

At the beginning of 2004, in the month of March, partially changing the Indictment against general Gotovina, Čermak and Markač, the prosecution in The Hague used the qualification of guilty under the all-encompassing expression »joint criminal enterprise«. With this qualification, the prosecution, and the Tribunal as well, because the Tribunal provides approval of the Indictment – which is, otherwise, nonsense – attempts to qualify the Homeland Defense War, which took place on Croatian territory to defend against Serbian-Montenegrin aggression, the uprising of a part of the Serbian population in Croatia and the full military attack by the former Yugoslav Army, as a crime because Croats managed to defend and liberate their territory.

The »criminal enterprise« qualification is not only an insult to the legal facts in relation to the »right to peace«, but rather this qualification attempts to annul, in relation to Croatia's defense and victorious military operation, the very meaning of freedom and constitutional independence of Croatia, using the term 'crime' to depict its fight for freedom!

Inadequate knowledge of the facts that emerged with the breakup of the European division into blocs in those nations which, at that time, were structured as states, and the Croatian nation, which did not have its state independence, resulted in the mixing of the terms aggression and defense to the degree that the battle in defense of freedom and independence has been labeled a »criminal enterprise«!

When the Hague Tribunal's practice to accuse Croatia's victory and the persons who won these victories through battles appeared, the Constitutional Court of the Republic of Croatia responded with its REPORT no.: U-X-2271/2002, dated November 12, 2002 (Official Gazette, no. 133/02, November 15, 2002).

»The activities of the armed forces of the Republic of Croatia, conducted with the objective of liberating parts of the occupied territories of the Republic of Croatia, including removing direct threats to the lives of inhabitants and preventing the destruction of real estate caused by armed (military and paramilitary, para-police and/or terrorist) attacks by occupying forces undertaken from occupied territories, were in accordance with the constitutional obligation of the armed forces of the Republic of Croatia to protect the sovereignty and independence of the Republic of Croatia and the defense of its territorial integrity.

When liberating the occupied territories of the Republic of Croatia, the armed forces of the Republic of Croatia acted in the name of and according to the authority of a contemporary, sovereign, internationally recognized state.

By liberating areas of the Republic of Croatia in which an unconstitutional entity without democratic legitimacy and international recognition was formed, the armed forces of the Republic of Croatia suppressed the armed uprising and removed the results of

external armed aggression. In these territories, the armed forces simultaneously introduced the national (constitutional-legal) and, in doing so, the international-legal order as its part, with all rights, obligations and responsibilities that arise from the Constitution and the legislation of the Republic of Croatia and from international legal acts that the Republic of Croatia has accepted and ratified.

The Constitutional Court regards such a constitutional position and role of the armed forces of the Republic of Croatia during the Homeland Defense War indisputable and irrefutable«.

PARADOXES AND ABSURDITIES OF THE HAGUE INDICTMENT

Nedjeljko Mihanović, PhD

General Ante Gotovina is being accused of the *war crime*, »that he knew, or had reason to know, that forces under his effective control were preparing to commit murder of Krajina Serbs« (150 of them). A war crime, as defined under the Hague convention of 1907, stipulates and includes: »killing, maltreatment, or deportation to forced labor of civilians; killing or maltreatment of prisoners of war; execution of hostages, destruction of towns and villages, or such devastation as cannot be justified by military necessity.«

None of that could have been committed in the military-police operation »Storm:«

- a) because there was no way to kill a population which had already fled, because the Serbian population has evacuated itself to the Republic Srpska in B&H, and further towards Serbia proper, of its own volition, according to the plans of its leadership from the top of the Knin authorities;
- b) because no one could organize any forced labor of civilians who have willfully fled, nor was this planned in any which way; and
- c) because all prisoners of war have been unconditionally released by the Croatian authorities after the capitulation had been signed, and the »Storm« operation, which had lasted for four days, was over; finally
- d) »destruction of towns and villages« was logically not part of the military-police operation, because all the towns and villages in question, which had been occupied by Serbian terrorists for four years, were *Croatian state territory*, so rather than stumbling into self-destruction, the purpose was to liberate the country.

Crimes against humanity include »organized murder, extermination, delivery into bondage, deportation of civilian population, their disappearance, torture, or inhuman procedures.« In point I, article 23, general Ante Gotovina is being summarily accused of all these crimes.

First of all, the quoted number of »150 murdered Krajina Serbs« is not broken down in the indictment. It is known that Serbian terrorist squads, as they carried out the orders of their superiors for the evacuation of the Serbian population, punished those Serbs who refused orders to evacuate by shooting them.

The indictment accuses General Ante Gotovina (along with Čermak and Markač) for »extermination of the civilian population.« It is a generally known fact that the Serbian population started to withdraw and evacuate according to its own strategic plans, respectively the orders of its paralegal government (Milan Martić and Milan Babić), se-

veral days before the military-police operation »Storm« was due to begin. Most of the Serbian population accepted this strategic inspiration of their leaders, and such a contrarian plan, to return in an organized fashion, after a new campaign of war, as victors. There was no »forcing to flee« (point I, article 23), nor could it have, physically, taken place.

In order to acquire a complete picture of the events surrounding the military-police operation »Storm« one should know that the Serbs from the so-called Krajina did not only flee. They also put up armed resistance, especially in ambushes, in which 200 Croatian civilians and more than 100 Croatian soldiers, defenders, lost their lives.

On August 6, 1995, I was in Knin and on the Knin citadel as President of the Croatian Parliament, in the company of President Dr Franjo Tudman. I had unofficial exchanges with Croatian operational officers, who were involved in »Storm.« They recounted how they followed the evacuation of the Serbian population through binoculars, two days before »Storm« began. They thought the evacuation was in preparation for vigorous military activity by the Serbian paramilitary units. However, they were puzzled by the Serbian refugees burning their own homes and property, immediately after abandoning them on tractors and trucks in the direction of the Bosnian border. Similar Serbian burning of own houses was observed in the conflict of Serbs and Albanians in Kosovo, when individual Serbs were abandoning the region. It was motivated by an irrational contrarian attitude: let there be nothing left to the enemy!

Florence Hartmann, spokeswoman for the Hague tribunal, commented on this self-induced and strategically malign planned evacuation of the Serbian population in her book *Milošević – La Diagonale du Fou*: »Every Serbian refugee could testify that the Serbian population was fleeing under instructions from their own leaders. Every (Serbian) soldier could testify to the intentional withdrawal of the Serbian army, a consciously planned abandonment of the Krajina.«

We ask, what is this »deportation« (point I, article 23) all about? Within the scope of such a qualification, one should be aware of the testimony of US Ambassador Mr. Peter W. Galbraith, who was peaceably driven on a refugee tractor during the withdrawal of Serbs from Croatia. One should also consider the reports of UNPROFOR observers, which testify to the willful, premeditated and planned evacuation of the Serbian population from the territory which they kept under terror and occupation for four years.

Thus no organized and premeditated war crime against the rebel Serb population was committed on Croatian territory, because that population was withdrawing several days before the military-police operation »Storm,« according to its own contrarian strategic plan, aiming to return to Croatia in organized fashion following a new campaign of war.

In point 7, article 46, of the Indictment it is stated that the »Croatian army already applied itself to planning to return by force the RSK, i.e. Krajina region.« In objective reality, Croatian diplomacy had undertaken everything, up to and including the Geneva talks of August 3, 1995, in numerous exhausting and patient negotiations with the intransigent structures of the Knin authorities, to peacefully resolve and terminate a state of occupation, violence, persecution and liquidation of the Croatian population, and put an end to the nightmarish despotism of a terrorist para-state set up on Croatian historical

state territory, such as it was continuously from the 6th century to this day. Logically the malicious and insulting formulation »to return by force« should read, by all standards of international law and moral/intellectual awareness, »to liberate« the territory usurped by the RSK. With the Serb occupation of Middle-Dalmatian Croatian territory, Croatia was geographically de facto cut in half, the southern maritime Croatia separated from the northern Pannonia one. One could only reach Zadar, Split and Dubrovnik through the Gorski Kotar and by Rijeka. Which nation, and which state, would have tolerated such an endangered and paralyzed national existence. In the Falklands war, England had protected its islands, 12,000 km away from Great Britain. Why should permission to protect the territorial integrity of the state only be granted to great imperial powers, and denied to little nations. *O tempora, o mores!*

In my several conversations with President Tuđman, which I led at the time as President of Parliament, he expressed a markedly humanistic approach. His main political goal was: a peaceful ending to the state of war, into which we had been thrown by the Greater Serbian conquering megalomania, territorial expansion and greedy economic voracity. His war options and victorious impulses were both humane and peacemaking. In carrying out his decisions he acted according to the highest standards of humanitarian law. Immediately after »Storm,« he amnestied and released all prisoners of war, members of Serbian paramilitary units, among which there were Šešelj's and Arkan's volunteer Chetnik hordes, soaked in blood to their whiskers. He let them go as if they were innocent tourists, who had strayed into Croatia by accident. There was not a case of segregation or exclusion when turning over Serbian paramilitary prisoners. There is no occasion of such a generous and humane turning over of prisoners of war in the whole history of warfare. According to his own statement, for Tuđman »Storm« was: »The end of Croatia's historic cross.« (*Vlak slobode* (Freedom train), Zagreb 1996.) Similar peaceable motives can be established from Tuđman's public speeches and missives to the nation and the world.

We must be truthful and objective enough to admit that, immediately after the »Storm« operation moved towards the border of Bosnia and Herzegovina, there took place *random* destruction of property of the fleeing Serbian population, in the villages and hamlets of the recently occupied territory (burning of houses, barns, and stables). This was done by Croatian refugees who had started returning to their houses after four years of displacement, and found them completely destroyed, burned to the ground. These were displaced Croatian returnees, who carried by themselves the enormous burden of memories, displacement, and bitterness, who had encountered in their villages their own houses in a sorry state, with schools, churches, cultural buildings, and all their property destroyed. It should similarly not be forgotten, that Serbian terrorist squads also acted as a kind of punitive expedition for those Serbs which turned a deaf ear to the evacuation orders, and themselves burned the greater part of Serbian homes, especially all public property (factories, commercial buildings and industrial halls), with the mindless intention: let it not be left to the enemy! After four years of adversity, suffering and displacement, the Croatian population was greatly embittered. The anger people felt, on whom such a misfortune was inflicted, was difficult to overcome. Nevertheless, this was

not a »systematic attack against the civilian population,« as claimed in the Indictment, but a desperate, random, unpremeditated outburst of irrational revenge.

It is known from World War II that military and civilian units of the French Resistance movement persecuted the German national minority in Alsace and Lorraine, including destruction of their private property. The American front-line general George Smith Patton was on the Franco-German border at the time and led military operations. He too did not know, nor could he have known, what was to happen behind the front lines. Neither General Ante Gotovina knew, nor could he have known, what was to happen, and had begun to happen, behind the front lines. No one from the current Prosecution would dare indict General Patton for a »joint criminal enterprise« with the French Resistance, involving a »planned« destruction of the German minority's property. Why is a double and duplicitous moral position applied in the judgment of equivalent acts, in the case of Gotovina?

On August 13, 1995, President Tudman spoke on the phone with US Vice-President Al Gore about the basic, essential question of the strategic effects of the military-police operation »Storm.« Vice-president Gore expressed in most unequivocal fashion his praise and appreciation, what »Storm« meant for the international community and the unsuccessful, impotent UNPROFOR: »liberation from the efforts to protect Bihać and its 'pink zones,' thus greatly contributing to the realization of the American peace initiative on the territory of former Yugoslavia.« President Tudman received a similar admission from the aide to the US Secretary of State for European affairs Peter Holbrooke on August 16, 1995. The American ambassador Peter W. Galbraith, who had followed the Serbian evacuation from the occupied territories of Croatia physically in person, also expressed his agreement and appreciation. Between October 21 and 25, 1995, President Tudman took part in the celebration of 50 years of the UN in the US, and met with a number of statesmen, among them the American President Bill Clinton, who praised him for the quick and successful operation »Storm,« and for establishing the peace in the region of western Bosnia. We cannot imagine that President Clinton was not well informed by his observers in the »Storm« operation. Now all of a sudden, ten years later, this liberating and peace-bringing undertaking is being called in the Indictment »criminal,« and in addition »joint,« »combined,« a collective, general national crime. Even the German people at Nuremberg were not stigmatized with such attributes. It is glaringly clear and conspicuous to any objective and impartial judgment, that such a construction to perceive the Croatian liberation war, with its fatal ignorance and neglect of actual facts, is itself monstrous, unscrupulous, absurd, scandalous, and more personal than professionally objective.

HISTORICAL AND POLITICAL ASPECTS OF THE ACTIVITY OF THE HAGUE TRIBUNAL

Josip Jurčević, PhD

In all armed conflicts in the territory of former Yugoslavia Serbia was involved in the role of aggressor while all others defended themselves on their territories. In addition Serbia was the only one systematically preparing itself for an armed solution of »the Yugoslav crisis,« and the only one controlling an armed force, so that all other inner Yugoslav actors were predetermined to play the role of victims.

The only factor, »complicating and obfuscating« an objective understanding and a determined, civilized proceeding with respect to a simple and clear situation in the region of former Yugoslavia, can be found in exterior circumstances and actors. These range from the circumstances of Communism breaking down in Europe, followed by activation of a new European interest dynamics, to the traditional strategic importance of Southeastern Europe from the standpoint of different international circles of interest and powerful governments.

All of the above can, among the rest, be appreciated as well in the establishment and subsequent proceedings of the Hague tribunal, which are far below the level of international legal standards adopted a long time ago, as well as below the worst experiences in international relations so far.

The Hague tribunal was formally granted an exceptionally limited jurisdiction. It was created as an *ad hoc* court for the region of former Yugoslavia with the right to try individuals exclusively, with neither power over organizations, nor a right to try for aggression itself. In this manner the Tribunal theoretically and practically does not distinguish, equivocating instead, between aggressor and victim, in opposition to basic humane values, as well as moral and legal principles thousands of years old. Furthermore, the Tribunal never announced a trial against any individual outside the region of former Yugoslavia, although there are numerous and various grounds for that, the responsibility for the horrible war crimes committed in the internationally »protected zone« of Srebrenica being the most prominent.

The Prosecution of the Hague tribunal (which is one of the parties in trial proceedings) presents itself as The Court by media techniques and, which is especially worrisome, appears in international affairs as a political institution. In this way the Hague prosecutors have *de facto* become a political arbiter whose opinion is critical at the UN for imposing sanctions on individual countries.

By political and media pressure on governments and media, the Hague tribunal promotes the principle that all suspects are proven criminals, who have to prove their innocence before the Tribunal, a presumption in complete contravention with the common legal standard that guilt has to be proven in court and no one can be considered guilty without a binding court verdict.

The Hague tribunal grossly exceeded its allocated jurisdiction by introducing in practice indictments and trial of individuals for the so-called joint criminal enterprise (JCE), so that in proceedings against individuals it in effect puts on trial »criminal organizations,« meaning states. In addition the term itself is so broadly defined it introduced complete legal insecurity, a situation in which any individual, neglecting customary standards of guilt determination, can be indicted and convicted as a member of a criminal organization. The defendants are put in a position in which they cannot even appreciate of what they are accused, rendering them incapable of exercising their equal right to rebut the points of the indictment. The responsibility, or guilt, of an individual is immersed into a vague collective guilt, which is also in opposition to common legal principles.

Following the proceedings before the Hague tribunal, one is especially struck by the problem of establishing points of fact, either simple or complex. This does not refer to establishing the legal relevance of a fact for the court proceedings, but to the unsound methodology by which the Hague tribunal acquires facts in the first place.

Concerning the Republic of Croatia, the systematic repeating of Hague theses by the Tribunal already achieved psychological and social effects involving first disbelief and apathy, and eventually desperation. If the Hague truths were incorporated into textbooks, a complete breakdown of identity and social disintegration of the Croatian society would result, followed by its thorough remodeling in the service of interests already deeply embedded as financiers and owners.

Opposition to the Hague theses was left to self-appointed individuals, until recently, when general S. Praljak, himself one of the 6 Croats indicted for a JCE in Bosnia, began to resist them systematically, backed by the enormous resource of an archive containing more than 60,000 documents.

It should be pointed out that this database, containing documents of all the parties in conflict, as well as the international community, objectively renders absurd the Hague indictment against six Croats from Bosnia and Herzegovina (B&H) in which they and Croatia are accused of a JCE against B&H. Namely, a large number of documents attests without any doubt that no Croat institution (President, Government, Parliament) did at any time pass an act or a hint thereof in line with destroying B&H and/or annexing any part of it. Furthermore, documents of both states, B&H and Croatia, demonstrate that the institutions of the Croatian state, during the period of conflict between Croatian and Muslim units in B&H, continuously participated in and contributed to the arming of the Army of B&H, as well as established and trained its units on the territory of Croatia. In Croatian hospitals several thousands of wounded soldiers of the B&H Army were treated, many of which wrote grateful letters to Croatian authorities after becoming well,

and humanitarian aid also reached the Muslim population over Croatian territory without obstruction.

In the same period of time a large number of Muslim refugees were cared for without any discrimination, and Croatian authorities established and financed a system of schools for Bosnians, featuring a Bosnian teaching program, on Croatian territory. Likewise, numerous national sports representations of B&H were trained in Croatia and supported financially by the Croatian state, etc. Nevertheless, these aggregate facts and thousands of original documents supporting them never were made a centerpiece of public attention even in Croatia, while the Hague indictment for the alleged JCE against B&H remains a most severe threat to the Republic of Croatia.

A similar situation pertains with three generals of the Croatian army (HV) being accused, together with Croatian institutions, for an alleged JCE against Serbs in Croatia, during and after the liberation action »Storm.« Even though the media and several books published a number of original documents from the Croatian occupied territories, clearly demonstrating that the Serbian occupation forces planned and prepared the exodus of Serbian civilians from Croatia for several years, carrying it out before »Storm« – the supporters of the Hague theses both in The Hague and in Croatia insist on these points of the indictment.

Concerning the public perception and interpretation of »Storm« and other Croatian liberation operations, basic facts in their historical, political, and legal context are being ostentatiously neglected. First of all, beginning with the second half of 1991, Croatia acquired international legal status in a stepwise fashion, being eventually diplomatically recognized by key governments in January 1992, and becoming member of the UN in May of the same year. Based on its international status the Republic of Croatia had, according to all international laws and customs, full legality and legitimacy in establishing its jurisdiction over the occupied parts of its internationally recognized territory, the matter being its internal affair.

On all these grounds Croatia was fully within its rights to undertake liberation operations, »Storm« in particular, which, beside reintegrating a large portion of occupied Croatian territory, prevented a repetition of the Srebrenica humanitarian catastrophe in the Bihać region, and made it possible for the war in B&H to end, and the Dayton peace accords to be signed.

ICTY – HOW THE PROSECUTOR TAMPERED WITH THE TRUTH

Višnja Starešina

In his memoirs the former U.S. President Clinton wrote of about *Storm*: »In August (1995), there came a dramatic turnaround. The Croatian launched an offensive to take back Krajina, a part of Croatia that the local Serbs declared their territory. European and some U.S. military and intelligence officials were opposed to the operation, believing that Milošević would intervene to save the Krajina Serbs, but I was rooting for the Croatians. Helmut Kohl did the same because he knew, just like I did, that diplomacy would not work until the Serbs have suffered serious losses in the field.« This Croatian operation to restore the constitutional order on 18% of its area that was four years under the occupation of the Serb insurgents and the UN protection, was congratulated on by numerous diplomats included in the post-Yugoslav peace process, powerless to stop the Serb war machine with their peace messages. With its professional execution, *Storm* commanded respect of military analysts and surprised laymen. In mere 36 hours, the Croatian Army liberated Knin, until then considered the unconquerable stronghold of the Serb insurgents from which they had spited all the international peace efforts for four years. »Until the very moment the Croatian Army heisted the Croatian flag over Knin after mere 36 hours on the offensive, the spokesman for the UN continued to rave on the alleged fantastic fighting qualities and skill of the Serb troops. Croatian victory showed that they talked rubbish. In addition to putting UNPROFOR and Western policy-makers to shame, Croatian victory created a fundamentally new situation, opening the door to serious peace negotiations«, commented the Wall Street Journal several days later (WSJ of 10.08.95). New York Times reported from Sarajevo: »Both the staff and the patients from the Sarajevo hospital thanked the offensive of the Croatian Army against the Serb insurgents in Croatia for the breath of normality they are now experiencing... Both the staff and the patients reckon that the Serb forces have been destabilised by the serious attacks on their collaborators in Croatia.« The official Washington was satisfied with the result. »It was the first defeat of the Serbs in four years, and it changed the power status on the ground and the psychology of all the parties«, wrote Clinton. He revealed that one day prior to the launch of *Storm* he had visited the famous ABC News correspondent Sam Donaldson at the hospital, and the latter said from his hospital bed that a Croatian offensive could be beneficiary to settling the conflict.

On the other hand, the official UK was initially reserved towards the operation and in agreement with other members of the peace contact group – the U.S.A., France, Germany and Russia – invited Croatia to call off the offensive. Already on the very first day of the Storm operation, the co-chairman of the International Conference on the Former

Yugoslavia, former Swedish Prime Minister Carl Bildt, called for an indictment of Croatian President Tuđman, and for no other thing than for – excessive shelling of Knin, the stronghold and the »capital« of the Serb insurgents. From his base in Knin, the UN spokesman reported that civilian buildings were also targeted, including the hospital, and that there was shattered glass lying all around. Several days after the dramatic reports, the correspondent of the Washington Post found a different picture at the Knin hospital: »The town hospital, allegedly severely damaged, seems to have only sustained a single shell hit. A UN clerk who was at the hospital at the time believed that Croatian gunners were aiming at a firing Serb tank that was positioned close to the hospital.«

In the meantime, Prosecutor Carla del Ponte explicitly made *Storm* into »joint criminal enterprise« and towards the end of February 2004 issued new indictments against the then administrator of Knin after the end of the military operation, General Ivan Čermak, and the Military Police Commander, Mladen Markač. The first row among the participants of the criminal enterprise was populated by the deceased: first Croatian President Franjo Tuđman, wartime Defence Minister Gojko Sušak, the Commanders of the Generalstaff of the Croatian Army, Generals Janko Bobetko and Zvonimir Červenko. Moreover, as aids of the »joint criminal enterprise« Carla del Ponte also mentioned »other members of the HDZ and local authorities«. At the initiative of UK diplomats, Security Council resolution listed General Gotovina among the most wanted fugitive war-crime indictees, alongside Greater-Serbian leaders Radovan Karadžić and Ratko Mladić. Based on the claims of Carla del Ponte that Ante Gotovina was in Croatia and the Government would not arrest him, Croatia was barred from opening the EU accession negotiations and the process of its joining NATO was stopped. Gotovina was arrested in December 2005 on the Canary Islands.

Just as announced back in 1996 by UK policeman Simon Leach, the head of the ICTY investigation team in the Lašva Valley case, the first Croatian President Franjo Tuđman and Defence Minister Gojko Sušak were included in the »joint criminal enterprise« of ethnic cleansing of the Muslims in Bosnia and Herzegovina. The indictment itself would require a careful legal analysis because of its vagueness and its collectivisation of criminal responsibility. The way it stands written it practically criminalizes all the Croats in Bosnia and Herzegovina. »Croatian joint criminal enterprise in Bosnia and Herzegovina« began, according to Carla del Ponte, »on 18 November 1991 or earlier«, and it lasted until »about April 1994 and afterwards«. Its goal was to »subject, in political and military terms, and to permanently eliminate and cleanse the Bosnian Muslims and other non-Croats«, in order to create Greater Croatia within the borders of historical Banovina Hrvatska. The first rows of the members of the »joint criminal enterprise« were populated – in addition to Tuđman and Sušak – by Joint Chief of Staff of the Croatian Army Janko Bobetko and President of the Croatian Community of Herzeg-Bosnia Mate Boban. They were followed by Jadranko Prlić, Prime Minister of Herzeg-Bosnia, Bruno Stojić, Defence Minister of Herzeg-Bosnia, Slobodan Praljak and Milivoj Petković, HVO Commanders, Valentin Čorić, Minister of the Interior, and Berislav Pušić, in charge of the exchange of camp prisoners. Their trial began in The Hague in 2006. This indictment, too, includes the category of »others«.

Who are these »others« in the joint criminal enterprise? According to Prosecutor del Ponte they are: »various other officials and members of the Government and political structures of Herzeg-Bosnia/HVO, on all levels, including municipal authorities and local organisations, various leaders and members of the HDZ and HDZ BiH on all levels, various members of the armed forces of Herzeg-Bosnia: HVO, special units, military and civilian police, security and intelligence services, paramilitary formations, local defence forces and other persons acting under the control of or in cooperation with such armed forces, police and other elements; various members of the Armed Forces of the Republic of Croatia and other known and unknown persons.« Criminal liability of the accused, according to Carla del Ponte, did not even require that they all, »known and unknown«, be members of an all-Croatian criminal enterprise. »Additionally or alternatively«, they may be criminally liable for aiding and abetting a joint criminal enterprise. If the formula »additionally or alternatively« were applied to the letter, criminal liability for participation in Croatian joint criminal enterprise in Bosnia and Herzegovina could also extend to include the entire Muslim political and military leadership, including Alija Izetbegović and all his military leaders because in many instances, even during the severest Muslim-Croatian conflict in Bosnia and Herzegovina, they signed agreements in which HVO and the BH Army were the legal armies of Bosnia and Herzegovina.

To the ICTY Prosecutor, the JNA »undertook a military operation« against Vukovar in Croatia, whereas the Croatian Army in liberating 18% of its own territory around Knin in the *Storm* operation conducted a »joint criminal enterprise with the goal of ethnic cleansing«. In her interview to the Croatian Television Prosecutor del Ponte noted that General Gotovina »seemingly, conducted the operation in accordance with the rules of warfare«, but she also added: »had there been no crimes, the Serbs would not have left«. Just one day prior to the *Storm* operation, at the negotiating table in Geneva, Serb leaders were given the ultimatum Croatian offer – to accept autonomy in accordance with the Croatian Constitutional Law passed in early 1992 in accordance with the recommendations of the Badinter Commission and as a prerequisite to the international recognition of Croatia. On top of that, the Prosecutor also has the documents that show that the evacuation of the Serbs from Krajina was organised in advance by Milošević i.e. Serb authorities. To paraphrase Carla del Ponte, had the Croats not wanted to bring back their occupied territories and had they left it to Greater Serbians – there would have been no indictment for a »joint criminal enterprise«.

The Prosecutor's approach to the Croats in Bosnia and Herzegovina is similar. Any military operation of the HVO is part of a criminal enterprise. Even in the cases when Croatian villages were defended, the HVO is treated as an occupation force. Paradoxically, the very same Prosecutor treats foreign Islamist mujahedeen fighters as part of the forces of the BH Army, as fighters for integral, democratic and multiethnic Bosnia and Herzegovina. Not in a single indictment mentioning their atrocities are such atrocities qualified as persecution on religious, ethnic or national basis or crimes against civilian population, but merely as a violation of the rules of warfare.

CROATIA AND THE ICTY: POLITICS OR JUSTICE? – A BRITISH PERSPECTIVE

Robin Harris, PhD

It is an honour to be asked to address this distinguished gathering of Croatian intellectuals. The subject of your conference might appear, on the face of it, to be rather narrow. But any such initial impression is misleading. The question of what constitutes a »joint criminal enterprise«, in the sense in which that expression is used by the International Criminal Tribunal on the former Yugoslavia (the ICTY,) requires much more than a technically correct judicial answer – if such a thing could, by chance, be found. It goes, in fact, to the heart of the relationship between politics and justice and to the role of national and international courts. It bears directly on the interests and, indeed, the sovereignty of Croatia. It has, by extension, profound implications for the future conduct of Western foreign policy. And last, but by no means least, it involves the fate of General Ante Gotovina and his co-accused in the Hague – something which concerns me, and doubtless concerns you too, very much indeed.

We do not, and should not, try to escape the cultural background from which we approach such matters. Inevitably, I bring with me a British perspective. But let me say, at once, that it is what could be termed a traditional British perspective, one rooted in well established national values, rather than one which coincides in any fashion at all with that adopted by recent British governments. And even in democracies, nations rarely deserve to be judged by their political class.

British political influence in the affairs of the former Yugoslavia over the last fifteen years has been wholly bad. British policy has been, successively – to try to keep an unviable Yugoslavia together; to deny the victims of aggression the means to defend themselves; to veto international action to help the helpless; to support by a range of means the perpetrators of genocide; to perpetuate the myth that all the parties involved in the conflict were equally guilty; to indulge in a pitiful campaign of self-justification, as the failure of past British policy became evident; and, most recently, to erect, from sheer spite, as a high a hurdle as possible against Croatia's re-joining Europe. I do not apologise for any of this, myself, because I and many others in Britain, most notably Lady Thatcher, opposed these policies at every turn. I merely note this litany of failure as a shameful fact.

The British perspective I adopt is, therefore, different and, I would argue, more authentic. Britain is historically home to a (properly defined) liberal tradition, one which places a high view on the rule of law, which respects dissent, which is inveterately hostile to the concentration and centralisation of power. This traditionally predisposes us to

sympathy for the underdog and to dislike for arrogance and brutality. The tradition extends across the political spectrum. It was George Orwell a great British writer of the Left, who in his novel *1984* conjured up the memorable image of communism as »a boot stamping on a human face – for ever«. British governments should have seen who, in Greater Serbian Yugoslavia, was wearing the jackboots.

There is another side, however, perhaps a more conservative one, to British political values. The British are naturally sceptics – often unfortunately in religion, usually and healthily in politics. Unlike our American cousins, with whom we share much else, we traditionally distrust plans to create a perfect future at the expense of an acceptable present. We prefer the known to the unknown, let alone the unknowable. We are sometimes idealists. But, when we are true to ourselves, we are never utopians.

Utopianism, like totalitarianism, to which it is wrongly prescribed as an antidote but with which it in fact shares many features, is an eternal temptation. It is based upon hubris, of which there is no end. And like all such hubris, from the erection of the Tower of Babel described in the Book of Genesis to today's ideas of universal international jurisdiction embodied in the ICTY, it always ends in tears.

The ICTY, measured against these instincts and impulses, is a thoroughly unsatisfactory institution. It embodies the assumption that justice will be surer, more honest and more effective, if it is removed from nations and local communities and administered by an unaccountable class of quasi-legal professionals. That assumption is manifestly false. It defies any of the logic we use to create or to assess other kinds of institution. It amounts not so much to the rule of law but, at best, to the rule of lawyers – in this case lawyers who feel no compunction about making up law as they go along. Some results are immediately obvious. The ICTY is grossly over-manned. It has over 1100 staff, costing a quarter of a million dollars a year to run. Despite or because of these bloated resources, it is cumbersome, inefficient and slow. »Justice deferred is justice denied«, runs the ancient proverb. ICTY justice is always deferred, often distorted and frequently discarded as well.

Turn to its website and you will witness the Court's hubristic view of its own alleged significance. It claims to be a »pioneering institution«, one which has transformed the application of international law – for instance by broadening the (in fact, enormously dangerous) concept of »command responsibility«. Indeed, its public pronouncements read like those of political lobbyists, not officers of a court, and they are redolent of a vast, self-serving agenda.

The ICTY behaves in a more capricious and arrogant manner than any ordinary government would dare to do. It has, for example, taken to asserting its power and protecting its interests by outrageous interventions against Croatian journalists. If such abuses were perpetrated against press freedom in Britain or America, they would bring excoriation upon the authorities; they deserve to do so wherever and whenever they occur.

Yet here I must make a confession. When the ICTY was instituted by the UN Security Council in 1993 I was delighted. The reason was simple. The failure of will by the international community to uphold justice and order in this region was manifest and seemed

immovable. The distant threat of global justice at least seemed better than no threat at all. Just to get the phrases »war crimes«, »crimes against humanity« and even »genocide« into public discussion made it more difficult for the cynical accomplices of violence in London, Paris, Washington or Moscow to pretend that Vukovar and Sarajevo just constituted »business as usual« in the Balkans. But I was wrong.

The ICTY has become a monster, and given the ideology and interests of its proponents and practitioners, it was bound to do so. It has probably not saved a single life. It has certainly not prevented a single atrocity. Ratko Mladić and his confederates were not deterred from murdering thousands of Muslim men and boys at Srebrenica by knowledge of its existence. And Milošević was not deterred from ethnically cleansing Kosovo of its Albanians either.

In fact, the ICTY only began to be effective at all, in the sense of laying its hands on indictees, when the military tables were turned against Belgrade. The figures show that almost all the 161 indictments issued, and the 94 cases processed, occurred *after* Operation Storm. Before then the Court was virtually powerless. In other words, it is thanks to President Tudjman and Generals Gotovina, Čermak and Markač, with help from the Bosnians and the Americans – thanks, then, to those named in the indictments for participation in a »criminal enterprise« – that the ICTY can function properly at all. But somehow I doubt whether the ICTY prosecutor, Carla Del Ponte, is likely to say 'thank you' – any more than she is likely to say 'sorry' for accusing the Vatican of helping shelter General Gotovina in a Croatian monastery, which proved totally false and a gross slander.

The decision to set up the Court was made, we should recall, in lieu of a lack of consensus by outside powers on intervention. But the ICTY itself solved nothing. Only when the United States belatedly overrode European objections and gave support to the Croatian Government's action to re-take the so-called Krajina was some kind of solution possible. It cannot be said too often or too loudly in every international arena: No Operation Storm; no Dayton. No Dayton; no Bosnia. No Bosnia; no stable peace in the region. It's really as simple as that.

Unfortunately, the decision to set up the ICTY injected a new factor into the equation. It threatened to steal defeat from the jaws of victory, not least for Croatia. In order to justify its existence, the Court had to show results that neither the processes of war, nor politics nor nationally administered justice could provide. This gave it a perverse incentive to focus on alleged crimes that nobody else would seriously consider crimes at all. The Court sought to enhance its credibility by treating the guilty and the innocent nations alike. It was predictable. The Court has been doing what all such institutions always do. It was preserving and advancing its own interests. That is the background to the indictments of General Gotovina and his colleagues.

But why has it been allowed to behave in a way so different from that originally envisaged and expected? Why has it not been called to order? The answer is that it suited the great powers for the ICTY to function in this way. The US wanted to make it easier for the Serbs to hand over Mladić and Karadžić, which was at least a worthwhile goal – though the US will certainly regret its decision when the details of its involvement in Opera-

tion Storm come out, as they must and will. For their part, the British, French and Russians, who had no time for Croatia anyway, were simply pleased to have the Croatian operation in 1995 put on an equal footing with the earlier Serb ethnic cleansing and aggression, which they had tacitly supported and publicly minimised. Examining the behaviour of the ICTY in these matters, one can see how the utopian goal of total justice for all has merely opened the way to gross injustice for some. The judicial process, adapting Clausewitz's famous formula, is now merely the extension of politics by other means.

But let us look more closely at Operation Storm itself. And if these facts are still better known to this Croatian audience than to me, I still rehearse them, because it worth a foreigner re-stating the truth – not least for the benefit of other foreigners.

In no sense can Storm be made the equivalent of, say, the cruel devastation inflicted by the Serbs in Eastern Slavonia. Knin never became a Vukovar, nor was ever likely to be. Storm was, after all, an operation to regain Croatian territory, internationally recognised as such. Moreover, it was a triumph – a rapid exercise based on overwhelming firepower, real time intelligence, efficient logistic support and the avoidance of civilian casualties, in short a text-book NATO-style operation. And not surprisingly, since so much American technical assistance, training and advice was involved.

Its consequences were overwhelmingly beneficial. The Bihać pocket, one of the very unsafe »safe areas« designated by the UN, was relieved. The occupied area of Western Croatia was re-taken. The siege of Sarajevo was lifted. The greatest regret is that Storm did not occur earlier, or Srebrenica too might have been saved.

Civilian casualties in Storm were amazingly light. But the only way in which such an outcome can ever be assured is to allow civilians freedom to flee the fighting. As it is, some 80,000 or so Serbs left, not just the immediate area but Croatian territory altogether. The ICTY indictment claims, of course, that this was the intention, the root of the »joint criminal enterprise«. But it has produced no evidence to substantiate this. In particular, unlike the case of earlier Serb attacks and ethnic cleansing, it can point to no public statements, and as far as I know no private plans, to achieve an ethnically purged territory. Indeed, I cannot see any reason why Zagreb would have wanted a mass exodus of Serbs at this point, since it was bound to create enormous political problems.

Anyway, although evidence of *mens rea* in the alleged crime is entirely lacking, this does not seem to bother the ICTY prosecutor in the slightest. She proceeds instead to an extraordinary tactic which can best be summed up with another Latin tag, namely *post hoc, propter hoc* – that is the assumption that intentions can be derived from subsequent events. In this case – the Serbs left – so they must have been expelled – so their expulsion must have been the original intention. Such reasoning would not hold up, and would not, I believe, even be advanced, in any British or other Western court; but it is typical of the maverick way in which the ICTY proceeds.

In any case, the Serb population was not expelled. As Peter Galbraith, US ambassador to Croatia at the time has pointed out: »The fact is, the Serbs population left before the Croatian army got there. You can't deport people who have already left«. He is right.

In fact, we can think of many probable reasons why the Serb population might decide of its own accord to leave Croatia. The scale of the persecution and pillaging suffered by the Croat population in the area during the previous four years was so great that many of these Serbs must have been involved. They may have feared either rough justice or real justice and they will have hoped to avoid it. The area they left was in a deplorable condition, partly because of economic blockade, but mainly because of the incompetence, disorder and criminality which flourished under the so-called SRK government. Why stay?

In fact, though, we do not need to speculate. We know precisely what prompted the Serbs to leave – they were instructed to do so by their leaders. The evidence is clear and irrefutable. It comes from testimony given in the Milošević trial and so was available to the ICTY prosecutor. And if she was not paying attention that day she could surely have consulted the ICTY official press spokesman, Florence Hartmann. Previously a journalist on *Le Monde*, she has given her own account of these events in her book *Milosevic – La Diagonale du Fou*. Mme Hartmann heartily disliked President Tudjman and so is the last person to give him and his colleagues the benefit of the doubt. Therefore, what she says of these events must bear particular weight when she exculpates Zagreb and inculpates Belgrade. She writes (I quote):

»Each (Serb) refugee could bear witness that the population had fled at the summons of its own leaders. Each (Serb) soldier could testify to the deliberate withdrawal of the Serb army...In sum, the consciously planned abandonment of Krajina«.

Florence Hartmann places the blame for the exodus of Serbs on Milošević, acting through his nominee General Mrkšić, and so did many Serbs. She is probably right, and probably right too in thinking that these Serbs were seen by Belgrade as more useful to populate a Greater Serbian Bosnia than to fight a losing battle against Croatia. But the precise allocation of responsibility between Serb leaders is unimportant. The Belgrade journal *Politika* subsequently published a facsimile, which I have with me, of an order by Milan Martić, so-called President of the so-called SRK, dated 4 August 1995, which orders the (I quote) »planned evacuation of all the population not able to fight« from the area. The Serbs were told to leave by other Serbs not forced to leave by Croats.

The later real and inexcusable abuses against what remained of the Serb population committed by returning Croats do not change this judgement. The departure of the Serbs was not ethnic cleansing – it was (in Martić's expression) an »evacuation«. The indictments against Generals Gotovina, Čermak and Markač are, therefore, fundamentally flawed. Without the convenient device of the »joint criminal enterprise« the specific charges against them cannot stand. But this existence of this »enterprise« is unproven and, indeed, unprovable – for the simple reason that it did *not* exist. The case against the Croatian generals and, by extension, against the Croatian Government of the day is, therefore, baseless.

But this does not mean that responsibility by other parties for other crimes should be ignored, at least if the ICTY is to continue its activity. Let us here recall that the founding statute of the Court does not exclude crimes committed by those coming from outside

Yugoslavia. It is surely questionable whether Western leaders and commanders should not have been indicted for allowing atrocities to continue which they could have prevented. The fact that UN commanders tasked with protecting the safe havens like Srebrenica have escaped such indictments, despite the apparently limitlessly flexible concept of »command responsibility«, merely confirms that the Court's decisions are always politically circumscribed and sometimes politically determined – though not, unfortunately, in any sensible or defensible manner.

The West in general and America in particular should be very concerned about the precedent which is being set by the ICTY cases relating to Storm. The Americans are, of course, right to be confident that the ICTY will not suggest that they were part of a criminal enterprise, despite the fact that they were participants in the planning of Storm and had real time knowledge of everything significant that occurred in the course of it. But the suggestion that a »joint criminal enterprise« can be inferred if, as a result of a military intervention which is otherwise properly conducted, some civilians are killed, civilian property is damaged and large numbers of civilians leave, should give Washington and London nightmares.

At a rough guess, some 150 civilians were killed and 80,000 more fled from the so-called Krajina, when the Croatian army liberated its territory in 1995. By contrast, about a thousand civilians probably died and 190,000 more fled Kosovo when NATO took military action in what was Serbian territory in 1999. I support the Kosovo action. But then I supported Storm. I also support the subsequent decisions to attack first Afghanistan and then Iraq. But the US and the UK do not have to bother with people who think like me, people who know right from wrong and who know that force is sometimes needed to ensure that right prevails. They have to worry about people like Carla del Ponte and her more than eleven hundred colleagues, and even more about the new International Criminal Court established by the Rome statute. They have reason to fear that out of the Pandora's box they opened when they set up the ICTY, a completely new kind of political justice will emerge – one which will render national courts and national governments increasingly irrelevant, which will paralyse peace making and peace keeping interventions, and which will play into the hands of tyrants and aggressors.

That great Anglo-Irish patriot and thinker, Edmund Burke, famously observed: »All that is necessary for evil to triumph is that good men do nothing«. Good men, and not just good Croats either, have a duty to act to have the Storm indictments thrown out – and then to bring down the shutters on the ICTY.

THE TRUTH IN CHARGES BEFORE THE TRIBUNAL FOR THE FORMER YUGOSLAVIA

Željko Horvatić, PhD

In the amended indictment against three defendants (Čermak, Gotovina, Markač) of 17th May 2007-individually listed president of the Republic of Croatia, Minister of Defence and the two generals, all deceased, are accused of JCE (joint criminal enterprise), and in what was at first the »secret part« of the indictment, seven more people from the highest leadership of Croatia during »Operation Storm« are also accused, of allegedly participating in falsely-based-and-legally-unacceptable construction of JCE. When even these people are added in the indictment, it is clear that these are not just randomly chosen persons, but it is about further upgrading of legal distortion of the international criminal law, which does not respect basic standards of modern civilized criminal procedure. So in 1.15 of Annex A of the amended indictment of 17th May 2007 it is said, »Many people participated in this joint criminal enterprise with Ante GOTOVINA, Ivan ČERMAK and Mladen MARKAČ. These persons are: Franjo TUDJMAN (deceased), Croatian President, Gojko ŠUŠAK (deceased), Croatian Minister of Defence, Janko BOBETKO (deceased), Commander of the Main Staff of the Croatian Army until 17 July 1995 when he was retired; Zvonimir ČERVENKO (deceased), Commander of the Main Staff of the Croatian Army (appointed July 17th, 1995). »I would like to point out the formulation »many people« (unchanged from before) and the use of capital letters for identifying all persons, the three defendants and the other four persons. By doing so the Prosecution formally and unquestionably equals the status of all seven defendants. The above mentioned persons as members of the »joint criminal enterprise« except the three (Čermak, Gotovina, Markač), although they are imputed the worst crimes against humanity and international law, cannot be accused in a formal sense, not only because the indictment cannot be issued nor sustained against the deceased in a civilized criminal proceedings, but also because there is no concrete evidence of them being guilty, and they have no means of defence against these charges before the Tribunal. (Nota bene, according to the statements from the prosecution, (A. Hoare) General prosecutor refused to accuse then and still now living Jovic, Kostic, Kadjevic, Adžić and others as members of the ZPE together with Milosevic, while he was still alive). Is this not clear proof that she does not want the Trial Chamber to establish the truth about the criminal activities of the Great Serbian aggressor and the Yugoslav Army against the Republic of Croatia, and at the same time attempting to impute the ethnic cleansing of Serbian population, to the defence of the police and armed forces of the attacked and occupied part of the internationally recognized state, what in other words is known as geno-

cide. This is even clearer when in the amended indictment many various officers, employees and members of the Croatian government and political structures at all levels (including those from local government and organizations), are accused and considered guilty, together with various leaders and members of the HDZ, officers of the army, special police, civilian and military police, and other security and / or intelligence services of the Republic of Croatia and other known and unknown persons.(item 16 Annex A from 17th May, 2007.)

It is more than obvious that by doing this, the Prosecution is more and more moving away from the legal imperatives of the explicitness of the charges, from the effort to establish the truth in the criminal procedure, and certainly it is not backing away from the plans of the Tribunal to convict all these people (all structures of Croatian government, armed forces, police, HDZ political party and every known and unknown Croatian citizen), of participating in a »joint criminal enterprise«, shaping their political and historical »truth« about the events following the breakup of the former Yugoslavia.

Of Carla del Ponte's actions, and of the actions of her Prosecution up to now, I, as a party of all these proceedings before the court, can claim that these actions are inconsistent with the rights and obligations which that body has under the statute of the ICTY, and there is ample evidence for this, too. Especially worth noting is the statement of G.A Nikiforov as an authorized representative of the Prosecution who, on 11th September – 2006, inter alia stated, that Croatia by seeking the status of *amicus curiae*, actually »aligned itself with defending the crime.« Two weeks later, on 29th September – 2006, ICTY Chief prosecutor Carla del Ponte held a speech at the International Seminar organized by the Finnish Presidency of the EU and Internal Amnesty International in Helsinki entitled »Building a Culture of Accountability – Action against Impunity in the External Relations of the European Union – The Achievements and challenges of the ICTY.«

In her presentation, which was not only related to the activities of the Prosecutor's Office, but the overall activity of the ICTY, she, and not the first time, on purpose identified the activities of the Prosecutor's Office and the Trial Chambers as a joint activity of the Tribunal for the Former Yugoslavia. By doing this all that is contrary to her own claims and claims of the prosecution as a party in the proceedings, she portrays as being opposed to the tribunal as an institution of international criminal justice. So after allegations of the existence of »anti-Hague propaganda« she continues, again without authorization of the court: We are under constant attack or attempts to minimize the efforts of the Tribunal. The facts of the indictment and evidence presented in the courtroom are contested, the allegations of prejudice and politicization mixed with outrageous lies and manipulations continues – all in an attempt to blind people and protect of what is presented as national interest and »historical truth«. That is what she says about those and who dare to oppose the claims of the prosecution as a party of the proceedings »in the courtroom.«

But now what follows is a direct attack on Croatia, UN member state and one of the founders of an ad hoc tribunal, claiming that the Republic of Croatia is exactly the example of the above described attempt of manipulation and scandalous lies just because they had the best of intentions to help the court using the opportunity of Rule 74 of the pro-

cedure and evidence before the Tribunal: »We are faced with a situation that governments and parliaments in their political declarations are trying to change or re-interpret history and distort the facts obvious to all reasonable observers. For example, the Croatian government is now trying to proclaim itself as *amicus curiae* in cases before the ICTY to dispute the allegations in the indictment, confirmed by the judges of the ICTY in order to explain the actual »historical and political circumstances.«

What is particularly worrying, and also disqualifies the above mentioned person as the Prosecutor is reference to the facts »that are well known to all reasonable observers.« These are the sources of truth not the evidence for her, on which a verdict of the ICTY is to be based. Who these »reasonable observers« are and what is »well known« to them can only be assumed, but the prosecutor has to be reminded again that in the court proceedings the evidence is shown, and, those »reasonable observers« can write their memoirs or political pamphlets, interpreting their visions of the truth as it suits them.

In any case, this statement and the earlier statement of her spokesman do not correspond to the spirit of the stipulation of Art. 16 paragraph 2. of ICTY Statute, which requires »the Prosecutor's Office to be an objective and independent body.« The objectivity and independence have to be not only apparent but real. Reality of objectivity, however, not only violates the »soliciting or receiving instructions from any government«, but also misrepresents to the public that some countries do not fulfil their obligations towards the ICTY, or that they are trying to avoid them by covering up the truth. Moreover, the objectivity is violated by every public appearance of the Prosecutor's Office that exceeds its jurisdiction and functions as prescribed in Art. 18.1. and 2 of ICTY Statute.

In conjunction with this statement we should once again draw attention to the actions of the General Prosecutor, who according to the discovery of the New York Times, with her arrangement in Belgrade in 2003, contrary to the existing evidence of the truth, voluntarily reduced the charges down to just one, out of several perpetrators, within the jurisdiction of the ICTY. Because such activity is contrary to the mandate of the UN Security Council, and also for other legally unacceptable practices (factually and legally unattainable charges, which are constantly being extended, etc.), ICTY Chief Prosecutor has become an active destructive part of the international criminal justice system, because she is continually damaging the idea of its work as a guarantee of supra-national justice and fairness for all countries and every member of contemporary humanity.

Consequently, the UN Security Council should not allow the announced departure of the ICTY Chief Prosecutor Carla del Ponte from her position without holding her responsible first for incompetence and abuse of her powers and permanent impairment of trust of the UN member states and world public in the international criminal law and justice.

If there was not a proven tendency to legally shape the historical truth at any cost and regardless to the truth, and if there was not a truth in the horizon about the modern international criminal justice and in the practice of such an ad hoc tribunal, which under the influence of one-sided political interest is not good only for the present but also for the future of judiciary, the objective legal arguments would come into consideration,

which make the legal construction of JCE legally unacceptable. Quite tersely I want to remind of the arguments about the unsustainability of that structure in the international criminal law and the indictments before the ICTY.

First of all »joint criminal enterprise« was not part of the customary international law at the time when the acts that defendants are charged with were committed, and such an accusation is inconsistent with the principle of legality. Joint criminal enterprise is in contradiction with the principle of guilt as one of the fundamental principles of modern criminal law. By dangerous extension of the element of guilt (*mens rea expansiori*) joint criminal enterprise has gotten quite close to guilt by association (*guilt by associatorii*) which is not prescribed in the Statute of the ICTY. Conclusions about the existence of defendant's intent are questionable in terms of the principles of presumption of innocence which is written in Article. 21/37 of the Statute.

Jurisprudence of the ICTY regarding the content of the theory of JCE and the provision of the Statute in which this theory is supposedly »implicitly« contained is inconsistent which is not in accordance with the principle of legal certainty and the principle of fairness. With this extensive application of the theory of JCE on the entire political and military structures of states and other »known and unknown persons« requirement of the precision of accusation is not met. Indictment, broadly conceived on the basis of the theory in which the JCE included »collective« blaming not only of the persons against whom proceedings are being conducted, but also of the entire civil and military structures, as well as »known and unknown people«, threatens the achievement of the purposes and activities of the ICTY. By introducing theoretical concept of the extended JCE in practice of the ICTY, status guilt has been introduced also, which actually has nothing to do with the personal criminal responsibility referred to in the Article 7 (1) of the Statute of the ICTY. Personal criminal liability exists if the defendant, among other things, committed the crime within the jurisdiction of the tribunal by an active act or omission which can be equal to such action in meaning and content. The fact that a person held a certain function or that he belonged to a particular organization or group (formal and /or informal criteria) cannot imply responsibility on the basis of Article 7 (1) of the Statute. That would be responsibility by association (*guilt by associatorii*) which is not contained in the Statute neither explicitly nor implicitly. Through the practice of the Tribunal it is pointed out that the purpose »of the proceedings before the ICTY is to provide reliable factual findings thus contributing to reconciliation and the restoration of peaceful coexistence among the people«. It is dubious to what extent the so-called principles highlighted in the basic legal documents of this ad hoc international criminal tribunal can be achieved, if most of the general and professional public in the countries to which the jurisdiction of such courts exists, consider the construction of the JCE legally unfounded, morally unacceptable and grossly unfair? These are not questions that the ICTY has the right to ignore. These are the facts, especially from the perspective of Croatian citizens who led a lawful defensive war, which greatly affect the credibility of not only prosecutors but the court (which has so far been largely benevolent in comparison to so extensively designed indictments) and question its final historic evaluation. Extensive application of the theory of JCE will have negative consequences in the process of

recognition of international criminal law and jurisprudence. Experts of international criminal justice reasonably believe that the introduction of the JCE theory into practice of the Tribunal led to degrading verdicts and have brought into question the didactic significance of its decisions and its historical legacy. Too broad concept of accountability of political leaders on the basis of the theory of JCE in the future could result in the unwillingness of states to cooperate with the permanent International Criminal Court and bring into question its jurisdiction based on the principle of complementarity. In addition, some of the most influential countries in the world (the U.S.) are still not parties of a global agreement, and it is expected that their future aloofness will be influenced by the uncritical form of the derived criminal responsibility of political leaders and military commanders by the ICTY.

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA – THE SECRET PROJECT OF THE POWER ELITE

Edward Slavko Yambrusic, PhD

The International Criminal Tribunal for the Former Yugoslavia – The Hague tribunal – the ICTY, is the product or the result of international cocky behaviour of world powers, whose decisions prove the intellectual and moral relativism that has recently been condemned by the Holy Father Benedict XVI during his visit to Britain. This dangerous relativism, said the Holy Father threatens with the destruction of the fundamental values of civilized society and of human dignity, justice and truth. Here we are reminded by the Pope, through the Blessed John Henry Newman (1809 1890.) that the man whom God has enabled to distinguish good from evil – was created to seek the truth.

The passion for truth and intellectual honesty is a big challenge, but it can have profound consequences and responsibilities. This is perhaps why the majority of Croatian intellectuals remain silent, and quietly observe the daily violation of human dignity of the Croatian people as well as violations of sovereignty or independence of Croatia. We who accepted the challenge and participated in the eight meetings, we understood it well and tested it.

Although more or less ignored, we have initiated a fundamental question of the legality and morality of the Hague tribunal. Tribunal (ICTY) was supposed to be the answer to the cry of the victims to stop the aggression, violence and genocide. But the power elite have created a self-contained sui generis system that identified the victim with the aggressor and that is illegal in its conception, structure and practice. Conceptual structure of the Tribunal is diametrically contrary to the Nuremberg principles and precedents. Unlike the UN International Law Commission, which worked on this issue for 50 years, international technocrats took only two weeks to formulate a sui generis code that violates existing international criminal law and public order.

The Court has become a political instrument that has replaced »peace keepers« – peacekeeping forces – also being lower risk and cheaper cost for the international community, supposedly its authority law was supposed to replace military forces to restore peace and security in the former Yugoslavia. Experience has shown that it was a total failure that has contributed to the genocide in Srebrenica and that it is in fact the military forces of the Croatian Army led by generals who sit in the Hague prison, who prevented another genocide in Bihac and allowed the Dayton agreement. The distribution between ag-

gression and violence on one hand and legal self-defence on the other hand are considered to be *ius cogens* norm in the consideration of contemporary international public order.

The creation of the court over the Declaration (808/827) of the Security Council is an *ultra vires* action because the Security Council as a political executive body has no power to create judicial body.

In those documents Serbian aggression on Croatia and Bosnia becomes »the situation«. Resolutions speak only about the »effectiveness« of aggression disregarding international law – *ius ad bellum*, which determines the legality of the use of force in international conflicts.

As far as the structure of the Code of the Tribunal – the architects of this Tribunal violated the fundamental principle of legality *nullum crimen sine lege*.

With regard to case law, rules of procedure of the Tribunal are broad, and open up a lot of room for interpretation and variation, which gives undue discretion to the Tribunal to create new rules in the context of specific cases.

The Hague tribunal infringes the fundamental values of human dignity and the sovereignty of the state. However, the respect for the dignity of the individual is a precondition for justice before the law.

War crimes in this international conflict in former Yugoslavia – from the joint criminal enterprise (CPA) orchestrated and planned by the hands of the Serbian Academy of Arts and Sciences (SANU), through the policies of Milosevic and the Yugoslav National Army (JNA) were committed by Serbian aggressors as an instrument for guiding War. These atrocities can never be put in the same nomenclature as the alleged violations of the customs of war and they cannot be fairly decided before the same judicial forums. Trying defenders and keeping them in the same prisons with perpetrators of aggression, the Hague tribunal deeply hurt the human dignity of Generals Gotovina, Čermak and Markač, as well as all those veterans who participated in the war, or lawful defence of their homeland.

As for the theory of »joint criminal enterprise« (CPA), that legal theory without the crime of aggression is absurd because the CPA is *animus* of the crime of aggression. Theory of CPA was supposed to replace the crime of aggression and crimes against peace since the Tribunal has no jurisdiction in the issues of aggression. However, aggressive war is the biggest *ius cogens*, international crime *ab initio*. Tribunal's failure to distinguish between aggressive war and legitimate self-defence makes a mockery of international justice and insults the most sacred feelings of the individual whom God has endowed to distinguish good from evil.

This sad but serious example of the audacity of force, the arrogance of power, is a challenge to all free people and institutions that are built based on the rule of law, moral imperative and essential values of Western civilization.

It is a challenge – as the Pope warned us – for those entrusted with the »sacred duty« to preserve the value of human dignity, individual freedom and state sovereignty as the most perfect social institution in which one finds peace, security and survival worthy of a man.

ABOUT THE CIRCUMSTANCES OF THE ORGANISED DEPARTURE OF THE ETHNIC SERB POPULATION DURING THE »STORM« MILITARY AND POLICE OPERATION IN AUGUST 1995

Nikica Barić, PhD

Immediately after the first multiparty elections in Croatia in 1990, there began the insurgency of a considerable part of the Serbs living in Croatia, aided and abetted by the then Serbian authorities in Belgrade headed by Slobodan Milošević and the Yugoslav People's Army (JNA). The purpose of the insurgency was to establish Serb autonomous areas on the Croatian territory and, in the playoff to the Yugoslav crisis, keep such areas within the rump Yugoslavia, actually an enlarged Serbian state. In the areas where in their aggression against Croatia they gained control, the self-styled »Republic of Serb Krajina« (»RSK«) was set up with the town of Knin as its capital towards the end of 1991. The efforts of the Croatian authorities to conduct peaceful reintegration of the occupied areas, guaranteeing the Serb ethnic minority autonomy in the areas they used to prevailingly populate before the war, failed because the Serbs from Knin refused to seek for an end to the crisis within the framework of a Croatian state. Eventually, in 1995, Croatia launched the »Lightning« and »Storm« military and police operations and brought back under its control most of the occupied areas, eventually reintegrating the remaining occupied area in Eastern Slavonia into Croatia by peaceful means.

During the existence of the »RSK«, most of its politicians, civilian and military officials were continually making statements to declare that there will never be any co-existence between the Serb insurgents and Croats and that the separation of the »RSK« from Croatia was a permanent state that could not be changed, i.e. that a clear borderline was to be drawn between the Croats and the Serbs.

In mid-1993, president of the »RSK« Goran Hadžić said that the Serbs who stayed on to live under the Croatian authority were »Fascist Serbs who supported Tuđman« and that any co-existence with the Croats was treason to the Krajina Serbs. In the beginning of August of the same year, Chief of the Generalstaff of the »Serb Army of Krajina« (»SVK«) Major General Mile Novaković said in a document that the Krajina Serbs did not accept »co-existence« with the Croats nor intended to, »at any cost«. Simultaneously, Milan Ilić, a Serb official in Eastern Slavonia, said that the UN forces with their presence showed both the Serbs and the Croats, but »particularly the Croats«, that

these two nations could only live and exist if clearly separated, but they could »never again live together«.

On 15 June 1995, Dalmatian Episcopos Longin, a highly positioned priest of the Serb Orthodox Church, met with the observers of the European Union in Knin and said that in case of a Croatian attack the Serb Orthodox Church would advise Serb civilians to abandon their homes, because the Croatians only wanted the territory, not the Serbs.

At the same time, UN representatives, too, estimated that the »Serb population was prepared« to insist on »creating a common Serb state« or »Greater Serbia«.

As Leonid Kerestejants, the then Russian Ambassador to Croatia, later said in an interview:

»I went to 'Krajina' relatively often. I saw it was all rather squalid. I met scared and worried people there who did not know what to expect. (...) I also noticed that in proportion with the hopelessness and frustration in 'Krajina' there grew the rigidity, stupidity and arrogance of their local leaders. It was terrible.«.

Immediately after the »Lightning«, Milan Martić turned to Slobodan Milošević, desperately crying for support. He said that among the Krajina Serbs there was a »widespread belief« that the »Serb cause was betrayed«, notably »by the Serbians«. Rumours of treason were spreading throughout Krajina, and »people noted in disbelief that that we have been forgotten by both Serbia and the Republic of Srpska«. In many towns and villages people were »packing and preparing to leave«.

The situation became dramatic when at the end of July 1995 Croatian forces took Glamoč and Bosansko Grahovo and fell directly in the back of Knin. There were less and less Krajina Serbs who believed »encouraging messages«. Crowds at bus stations in towns of the western area of Krajina were growing just like the bus fares for the destinations in Serbia and in the Republic of Srpska. They all wanted to send their children and women »to safety«. Once the Croatian forces took Bosansko Grahovo, there was nothing that could stop the locals from leaving, because the decision about preventing the departure would have had to be made by the very ones who had already sent their children »to safety« before others.

The evacuation measures in Krajina were specifically conducted by the Civil Defence. The scope of its activities had already been defined on 21 March 1992, when the Assembly of the »RSK« passed the »Law on Defence«.

When in January 1993 the Croatian Army liberated part of the occupied area in the Zadar hinterland, the Civilian Defence HQ of the RSK worked on the preparation for the evacuation of Serb civilians. On 14 June 1993, this authority sent a letter to the Government of the »RSK« and the Ministry of Energy of the »RSK« requesting that in accordance with the estimate of the possible »renewed aggression« against the »RSK« the required supplies of fuel should be urgently provided for the sake of evacuation of the civilian population, if it should become necessary.⁹ At the meeting of the Assembly of the »RSK« on 21 March 1994, a delegate asked when the fuel for the evacuation would be provided. In the response of the Ministry of Defence of the »RSK« it was noted that the

local Civil Defence HQs had prepared plans for the evacuation of the population and in accordance with them reported how much fuel they needed for the evacuation.

As soon as the »Lightning« operation began, the authorities of the »RSK« started an organised evacuation of the ethnic Serbs from Western Slavonia. On 1 May 1995, the Civil Defence HQ of the »RSK« issued an order to all the local Civil Defence HQs, in accordance with the situation created by the Croatian »aggression« on Western Slavonia. All the district and municipal Civil Defence HQs were to be activated accordingly, remaining permanently on call, undertaking all the necessary measures to protect and rescue, with the focus on »bringing people away, evacuating and accommodating them«.

The document with the »Estimate of Threat and Possibility of Protection and Rescue« was considered and adopted at the 1st meeting of the Civil Defence Headquarters of the »RSK« on 14 July 1995.

On 4 August 1995, Croatia launched the »Storm« military operation. The same day in the afternoon, there was a meeting of the Supreme Defence Council of the »RSK« in Knin, attended by president of Krajina Milan Martić and Chief of the General Staff of the »SVK« Lieutenant General Mile Mrkšić. The thrust of Croatian forces from Velebit and Dinara towards Knin opened the possibility for the Serb-held area in Northern Dalmatia and Southern Lika to become surrounded. It was, therefore, decided that the population from that area was to be evacuated.

Consequently, the Supreme Defence Council of the »RSK« issued the following decision on 4 August at 16:45 hours:

»Due to the new circumstances created by the open all-out aggression of the Republic of Croatia against the Republic of Serb Krajina and the initial defence success, the territory of Northern Dalmatia and part of Lika is now largely under threat, and for this reason we

HAVE DECIDED TO

1. Begin with the planned evacuation of all the non-combatant population from the municipalities of Knin, Benkovac, Obrovac, Drniš and Gračac.
2. Carry out the evacuation in an organised manner according to the plans received on the routes towards Knin and further via Otrić to Srb and Lapac.
3. Request evacuation support from the UNPROFOR Command for Sector 'South' headquartered in Knin«.

The decision was signed by Milan Martić, and it was authenticated by the »SVK« Generalstaff at 17:20 h. The UN forces soon confirmed themselves that on 4 August the authorities of the »RSK« requested support for the evacuation of 32,000 persons from Knin and its surroundings.

Although this decision of Martić did not provide for the withdrawal of the Serb army, this is precisely what happened. Chaos ensued, because Serb soldiers began to abandon their units to follow their families who were being evacuated. Thus, on 4 and 5 August 1995, Serb civilians and the army mostly abandoned the area of Northern Dal-

matia and Lika, and the Croatian Army entered the deserted town of Knin on 5 August. On the basis of the facts presented it can be concluded that the leadership of the self-styled »RSK« carried out a planned evacuation of the Serb civilian population from the area of Northern Dalmatia and Lika, and that there is no responsibility on Croatian part for this event.

MY WORK IN THE OFFICE FOR DISPLACED PERSONS FROM AUGUST TO NOVEMBER 1995.

Adalbert Rebić, PhD

On 9th August along with Mr. Joseph Esterajher, with two huge trucks full of humanitarian aid (food and drink and other necessities) I went by the order of President Franjo Tudjman to Glina and Topusko, to deliver the aid to the Serbs, especially women and children, who have been there for two to three days without food and water. We couldn't go further than Glina by trucks. We left them with the drivers in Glina and decided to go alone to Topusko. In Glina, I met Mr. Peter Galbraith, U.S. Ambassador to the Republic of Croatia. I asked him whether he had any remarks on our defensive action. He replied that he had no objections.

He told me that everything was going fine. He admired our troops. When we arrived at Topusko, a column of Serbian refugees already began to form, people who wanted to leave Croatia in spite of our exhortations to make them stay here where their homeland is. I was ordered by General Stipetić to stand at the head of the column and to take people through Glina and Sisak to the motorway and to give them the food on the first gas station on the motorway. And that's what happened. I followed the column in the car as Head of the Office for Displaced Persons and Refugees together with Joseph Esterajher, behind our police and representatives of the ECMM. The column was accompanied by the officials of UNCRO, ICRC and the ECMM, the representatives of the Croatian Red Cross and social care workers, and guarded by the members of the Croatian MUP (Ministry of internal affairs). In the column there might have been about ten thousand people, both civilians and members of the Serbian paramilitary forces. We stopped for about an hour in Sisak, because the buses and trucks were overloaded with things belonging to Serbian refugees, and could not go through the underpass at the entrance of Sisak. Then I spoke with Mr. Johann Kramb, the representative of the European Community Monitoring Mission (ECMM) about the exodus of Serbs from the Croatian liberated areas. Johann Kramb told me »that it was not clear to him why people were leaving Croatia«. He concluded that it must have been so called »avalanche effect« in which everyone leaves without knowing why or where. I asked him what to do with so many refugees, whether to force them to go back to their homes. He said: »No, no way! You have to let them go where they have decided to go. « I was told the same thing by the representatives of UNHCR. I also asked him what his view of our behaviour toward people in the column was. Kramb said that he had no complaints regarding our behaviour, that is, the behaviour of the Croatian authorities. »Everything is going very well. Of course, there are small problems that are understandable in the organization of such a big number of refugees,

but, generally speaking, what I have seen tells me that everything is OK« said Kramb. He added that that same afternoon in Glina he heard that hundreds of Serbs wanted to stay in the liberated areas of Croatia, but they were not permitted to do so by the Serbian army.

During the same break, in Sisak, I took an opportunity and asked a man in a Serbian car, who was in military uniform with a gun on the band – and for whom Mr. Kramb said was a Minister in the Krajina government, unfortunately his name escaped me – to turn Serb fugitive column in the opposite direction so they would all return to their homes. They were all invited to stay in Croatia by our president and they were all guaranteed security. He replied: »The government of Serbian Krajina, has decided and ordered that we all are to return to Yugoslavia, and never go back.«

Sometime around 3:30pm we reached the motorway and at the first gas station before Lipovljani we distributed drinks, milk, bread, cigarettes and fuel for their vehicles, all for free. We also distributed the leaflets in which they were invited to stay in Croatia, their homeland, by President Tudjman. They didn't even want to read the leaflets. We did the same thing the next day, in the morning, near Županja. I ordered the head of the regional office in Vinkovci to organize humanitarian aid for the Serbs and to give them the leaflets containing an invitation to return to their homes and to stay in Croatia. He did the same thing the next morning.

After distributing humanitarian aid to the refugees, I returned to Zagreb before Esterhajher, to attend a press conference in the hotel »Intercontinental«, with both local and foreign journalists. I told them about the current refugee situation in the liberated areas. I informed all attendees that I had just returned from the liberated areas, in Glina and Topusko and had distributed two lorries of humanitarian aid following President Tudjman's explicit orders and urged representatives of the Serbs to stay in Croatia, but they would not listen. I asked the representatives of ECMM and the UNHCR, who were with us in the field, what to do. They responded: »You must allow them to go where they want to!«.

A few days after the Assumption of Mary, thousands of Croatian refugees started arriving from Banja Luka every day. From 12th to 28th August, about 30,000 Croats were exiled from Banja Luka. They needed to be accommodated urgently in abandoned houses and schools. Those were difficult days! On 20th August I accompanied Mrs. Emma Bonino, EU Commissioner for Humanitarian Affairs, on a helicopter tour over liberated areas, and on 22nd August I met with Urs Betschart, Swiss Deputy Minister for Refugees and Peter Haeller, his associate. They demanded Croatia to take back 300 of its refugees urgently and about 10,000 refugees from Bosnia and Herzegovina, as they had Croatian passports.

On Sunday 17th September I was at the Presidential Palace for the awarding of medals. And 27th September I was at a meeting in the Ministry of the Interior with its officials, as well as the officials from the Ministry of Foreign Affairs, Ministry of Justice, and the administration concerning the return of Croatian citizens of Serbian nationality who left Croatia during Operation Storm and now want to return. The government empowered me as the director of Office for Displaced Persons to issue the so called-entry visas to

all refugees as well as Croatian citizens of Serbian nationality. I informed the Ministry of the Interior that I had been doing it since the first days after the Storm, and that every day Serbs were returning to Croatia. On 3rd October I received representatives of the ECCM (European Community Monitor Mission) who had some questions regarding the return of refugees to Bosnia. I explained to them the process of refugee return in Bosnia and Herzegovina: 1. Return is realized in the framework of international conventions on refugees, 2. It is negotiated with the representatives of BiH authorities, and 3. Refugees are returned only to safe places, gradually and in an organized manner. Country without people can neither be renewed nor developed nor defended. Those same issues I discussed with the Commissioner of UNHCR, Jambora.

On 9th and 10th October I attended a meeting in Geneva with Mrs. Sadako Ogata, High Commissioner of UNHCR, accompanied by her advisor for humanitarian issues in the areas of the former YU, Mrs. Bielefeld. She wanted me to clarify some complaints made by Bielefeld, who claimed that Croatia had committed crimes against Serbian population in Operation Storm. The next day was the meeting of the UN working group for humanitarian issues in the former YU. Sadako Ogata gave an introductory presentation and accused Croatia of committing crimes associated with »Operation Storm«. In my presentation I informed the assembly about providing for 406,000 refugees and displaced persons, and about how they were returning after the liberation of all occupied territories. BiH Ambassador in Geneva, in his presentation, confirmed my words and how Croatia provided for the refugees and accused the UNHCR and other international humanitarian organizations of being silent about the horrible crimes committed by Serbs against the Bosnian people in Bosnia in the shadow of accusations of alleged violations of human rights in Croatia.

CONSTITUTIONAL AND LEGAL FRAMEWORK OF COOPERATION WITH ICTY

Bosiljko Mišetić

We need to be reminded of the fact, which is more or less known, that the Constitutional Law on Cooperation of the Republic of Croatia with the International Criminal Tribunal was adopted because it is the constitutional provision, not only according to the Constitution of RC but according to the Constitution of all democratic countries in the world, that Croatian citizens are tried at their domicile courts and according to the domicile law. Exception to this constitutional value, RC had to regulate by the constitutional law, whose norm has the power of the constitutional norm. It is therefore the first assumption that Croatia could meet its international commitments and act upon the decisions of the Hague tribunal.

Same constitutional law determines who is responsible for the co-operation: the state bodies which in a particular case perform certain tasks of cooperation, that is they carry out the decisions of the International Criminal Court. Then, the obligation to cooperate, but also an explicit stipulation in paragraph 2 of article 3, of the Constitutional law on cooperation of Croatia with the International Criminal Court, where it is explicitly stated that Croatia will comply with the request of the International Criminal Court, but is not obligated to comply with a request or a decision if it is contrary to the Constitution of the RC.

As long as in the factual description and the legal qualification of the Croatian general is written »joint criminal enterprise«, the Republic of Croatia, except with an instrument of interlocutory appeal, and with reference to rule 74 with the status of *amicus curiae*, hardly has an effective instrument to oppose the co-operation, in other words it has to act upon the decision of The Hague tribunal.

I should remind everyone that the contents of the first indictment for General Ante Gotovina did not contain the qualification of »joint criminal enterprise«. This qualification contained the indictment against General Markač and General Čermak, and after »putting to the test« of the Croatian government it was also added to the amended indictment against General Gotovina.

The Prosecutor of the Hague Tribunal must have reasons for putting the qualification of »joint criminal enterprise« in the indictment. In fact, she who is regularly when necessary in contact with the Croatian national leadership must be familiar with the contents of the Constitutional Law on Cooperation of Croatia with the International criminal court, and she must also know of the stipulation of cited paragraph 2 of article 3 – of

the same Constitutional Law. She is also aware that giving such a qualification of »joint criminal enterprise« to legal and legitimate military operation »Storm,« and adding the same in the indictment of the Hague Tribunal is unconstitutional, and as a result of that it is not only the right but a constitutional obligation of the competent national authority that in that particular case it is not obligated to cooperate or comply with any request or decision of the Hague tribunal.

In fact, the Constitution of the RC stipulates that the Republic of Croatia is unique and indivisible, that the sovereignty of the Republic of Croatia is inalienable, indivisible and non-transferable, that at the time of *tempore criminis* Croatia was an internationally recognized sovereign country, that as an internationally recognized sovereign country is constitutionally governed country, that before that The Security Council introduced sanctions against Serbia and Yugoslavia for aggression on Croatia and Bosnia and Herzegovina, that the Security Council resolutions have the power of the norms of international law, that the public order in the RC was disturbed at that time because of the act of aggression from the Republic of Serbia and Yugoslavia, that the RC as a member of the UN, is constitutionally governed as a unitary and indivisible, and that it is the constitutional and legal task of all government bodies, from the head of state to a police constable or Croatian army officer, therefore, every single person within its constitutional rights and obligations, to take every police and military measures to establish a legal system that is disrupted by an act of aggression. However, when the Hague tribunal prosecutor stood up with such qualification she knew that nobody, absolutely nobody in the national leadership would say, -Mrs. del Ponte, we are a state governed by the Constitution, we are a democratic and legal state, we are a serious country that wants to honour international commitments, we undertook to cooperate with The Hague tribunal, we passed the Constitutional Law on Cooperation with the Hague Tribunal, the principle of legalism and the rule of law are our constitutional values, we are obliged to abide by the Constitution and Constitutional Law, so be so kind as to change your indictment by leaving the qualification of »joint criminal enterprise« out because such a statement is contradictory to the already quoted constitutional regulations on the unity and indivisibility of the territory of Croatia as well as regulations of Rights and obligations of certain public bodies. Please note that if the national leadership and the head of State had not undertaken the military-police operation Storm there could have been a constitutional procedure before the Constitutional Court and Parliament against the Head of State for violating the Croatian Constitution.

So military operation Storm is not the criminal enterprise of the Croatian state leadership, but if it had not been undertaken the question about violating the constitutional law could have been raised.

The Croatian leadership corresponds with such humility towards The Hague tribunal, primarily towards the UN war crimes tribunal prosecutor, that after being denied the status of »friend of the court« under Rule 74, there was no serious reaction to the statement of representatives of the Tribunal that Croatia may not have the status of *amicus curiae* because it is aligned on the side of crime.

Equally stunning is the silence of Croatian public, especially journalists and public officials, and Croatian authorities reaffirmed and violated the Constitution of the Republic of Croatia in the proceedings against the Croatian journalists and writers according to charges of contempt of court – the publication of information under Rule 77 of Procedure and Evidence.

Until when the crimes under the jurisdiction of the Hague tribunal could have been committed? The statute of the ICTY defined the beginning, and that was in 1991. As the Security Council resolution and the Statute of the International Court 25th May 1993. the time when Croatia was in war or armed conflict, every single crime listed in the four groups of international humanitarian law can only be committed in war or armed conflict. It is the time when crime could have been committed under the jurisdiction of the Hague tribunal. For those acts committed at that time, Croatian state authorities are obliged to cooperate and act in accordance with the demands and decisions of the Hague Tribunal.

Rules of Procedures and Evidence were adopted and issued pursuant to the statute of the Tribunal. According to the rules of procedures, the Tribunal may declare guilty of contempt of court those who knowingly and wilfully violate Rule 77 – Contempt of International Court.

I repeat that this is the rule of procedure, and that there are sanctions for violating the rule of contempt of international court. This rule and this sanction apply to all the participants in the proceedings, the judges and council members, the prosecution, as well as to the defendant, his counsel, translators, journalists or any other person who happens to be in court or out of court.

According to this rule the Prosecution has the right to accuse a person of contempt of court. Criminal Court Judge also has the right to publish and issue the indictment, the defendant has the right to plea, and the court can order his sentence. This is all assuming that the defendant is a participant of the proceedings, so he is accessible to the court, or if he is unavailable to decide to access the Court on his own.

Once again we raise the question or seek answers regarding the obligation of the Croatian authorities if the person is a citizen of the Republic of Croatia against whom some sort of disciplinary procedure is taken, under Rule 77 for contempt of court or in specific cases, disclosure of information.

Croatian state is not in this case obliged to proceed according to arrest warrant and order for extradition of its nationals if he does not respond to the Hague tribunal for a criminal violation of Rule 77 proceedings – Contempt of court.

This is because the International Criminal Court has jurisdiction over individuals in accordance with the stipulations of the Statue, and the Statute defines the crime it is responsible for, the area and time. The accused journalists and writers met the requirements of only one condition, and that is being the citizens of Croatia, i.e. from the area of former Yugoslavia, and they didn't meet the other two statutory requirements, those being the time and another offence. The conclusion is that since the stipulations of the Statue cannot be applied to Croatian journalists, and they are not direct participants of the

proceedings, and if they themselves chose not to respond to the Hague Tribunal, Croatian authorities complying with the request of the Tribunal are actually violating the Constitution at the detriment of their own citizens.

IS THE HAGUE TRIBUNAL INTERESTED IN THE COMPLETE AND OBJECTIVE PICTURE OF THE EVENTS OF THE PAST WAR?

Mile Bogović, PhD

The Hague is not building a legal order that is founded on justice. The international community has *its notion* of both the Tribunal and of our part of the world, and it is demanding that all available means are included in order for this notion to be achieved as soon as possible. In doing so, it chooses what fits into this notion, and it does not take into account what does not.

We will all certainly agree with the idea that, in assessing certain events, it is important to distinguish what is the *cause* and what the *effect*, that is, under what circumstances something occurred. On September 21, 2000, the Croatian Conference of Bishops explicitly stated that those widely accepted principles must also be applied in the assessment of events in the past war. Those principles were also repeated in a certain manner by the »Justitia et pax« Commission of the Croatian Conference of Bishops on July 23, 2001.

Neither of the statements had the intention of saying that everything on the part of the Croatian Army and every one of its officers and soldiers, from the beginning of the war until the end, was without incident, but rather the statements call on the accepted norms of ethics and morals so as to be able to get an accurate and complete picture of events in the war. Legally a distinction should be made between war crimes and crimes during the war. A war crime is committed by the side that started the war in the event that it commits a crime. A crime during war is committed by the side that is not guilty of starting the war, but the crime is what it may have committed.

In their statement at the plenary assembly in Krk on October 23, 2002, the bishops especially emphasized the need of looking at the *entire* events during the war and the danger of separating certain events and acts from the entire context of events.

Those wishing to deceive frequently use this method: a part is taken (*pars pro toto*) and extended to represent the whole. This method is omnipresent today.

Common sense dictates that the above postulates are easily accepted. In the case of the past war, some conclusions have been drawn about its causes and effects, about the entire context of events, about international factors that affect the forming of order in this part of the world, about Croatia's right to defend itself, but lacking is the final judgment on the causes, as well as the sequence of war events and the forming of new coun-

tries. The question of responsibility for the war is the first issue, which has, however, been evaded, but indirectly it has been cast Croatia's way because criminal intent has been ascribed to the Croatian leadership and not its Yugoslav or Serbian counterpart.

For a final decision on the war, the international community is waiting for the results of The Hague Tribunal. Chief Prosecutor Carla Del Ponte has stated that the history of our part of the world will be written in accordance with the decisions of The Hague Tribunal. It does not come as a surprise that she has given herself such importance. What does surprise is that, through this Tribunal, attempts are being made to »correct« the historical truth, that is, to formulate it as the powers would like, and not how it really was. Therefore, this failure of the international community – to define itself in a timely manner regarding the previous war in our part of the world – did not take place by mistake, but rather was planned, because in this manner the results could be revised and the decisions directed in accordance with the desires of the global powers.

Namely, it was not difficult to reach the core of the war events in this part of the world. Three sides from the area of the former Yugoslavia participated in the war: Serbian-Montenegrin, Croatian and Muslim, while international forces were a fourth factor. It was also not difficult to note who initiated the wheels of war and with which targets. However, the international community did not want to leave room for suspicion about whether or not its forces contributed to the movement of the wheel of war and how it turned. It reserved for itself the role of referee, in this way removing its responsibility for everything that occurred in the war.

In The Hague Tribunal, the effects were treated as the causes, what occurred later, as though it had before. When the causes and effects are inverted, anyone can be accused and we arrive at the paradoxical situation: finding their way in the accused bench first are those who defended compared to those who were attacking them, according to command responsibility discredited the defending generals and in front of the public we treat them as members of a »criminal enterprise«, while the principal commanders and instigators of the war walk freely. In other words, we celebrate the victory as the outcome, but we imprison and draw up action plans for the arrest of those who fought for it; we boast of the defense of our homeland, yet we allow our defenders to be slandered. It is a fact that those who are most deserving that we were not overrun today find themselves at the mercy of media slander and The Hague Tribunal – if they have not already passed away.

The blame of the Croatian Government today lies in the fact that it had even accepted such a notion, such a formula as the starting point, because it is a losing battle for Croatia right from the outset.

When the cause and effect and the historical context are ignored, and then the »truth is improved«, the need arises among the powers for more sins than were actually committed in order to justify the sentences prepared in advance. Those who need a crime, when the crime is there, victoriously uncover it, and when there is no crime, or not in sufficient measure, they create it according to their own needs.

The expression that crimes must be *individualized* has a dual meaning. This expression is justified so that a mistake committed by an individual does not transfer to the wider community. However, this principle was not applied in this sense in the case of the Croatian state, but only to some protected individuals and the international community. At the same time, it creates a suitable climate so that, according to need, each individual can be isolated and then, with »full right«, subjected to investigation of his negative aspects.

ANALYSIS OF EVENTS LEADING TO THE MILITARY-POLICE OPERATION »STORM«

Miroslav Međimorec, PhD

In June 1995, there were new initiatives to end the embargo on arms to the Federation of Bosnia and Herzegovina, and plans were made to evacuate UNPROFOR from Bosnia and Herzegovina (BiH). The so-called Army of the Serbian Republic (Republika Srpska, RS) shot down an American F-16 aircraft enforcing the No-Fly Zone. Great Britain and France obtained support for their plan to form the Rapid Deployment Force (RDF) which was quickly deployed in BiH. These forces were supposed to protect the interests of Great Britain and France, in effect to guarantee the Serbian conquests and Serbian victory in the war. Amid consultations in the UN Security Council, the US (Madeleine Albright) sharply objected to Akashi's interpretation of the RDF mandate, which according to him should not have differed from the UNPROFOR mandate. The US advocated a more forceful mandate in contrast to UNPROFOR inefficiency. At the end of June, Milošević met the commanders of various Serbian armies (generals Perišić, Mladić, Mrkšić, Bulatović) and explained to them that the Contact Group plan secured the survival of the RS, which only remained to be »sealed,« after which the weight of the war was to be shifted to the defense of the so-called Republika Srpska Krajina (RSK). It is completely clear that Slobodan Milošević directed all Serbian armies and no serious political negotiations could be held without him. During July Serbian forces attacked all »UN Safe areas« in BiH, while the international negotiators Bildt i Stoltenberg initiated another round of talks. Bildt and Milošević met in Belgrade on July 1st, a day later Bildt i Stoltenberg met Tuđman in Zagreb to propose a meeting with the representatives of the RSK in Geneva. Tuđman agreed, provided certain conditions were met: a realization of the UNCRO mandate, opening of the gas pipeline and railway line. At the beginning of July Serbia mobilized its military conscripts and officers born on the territories of the Republic of Croatia (RH) and BiH and directed them to join the so-called armies of the RS and RSK. Bildt and Stoltenberg met Milan Martić in Knin on July 4th, and warned him of the danger of a military confrontation between the RH and the so-called RSK, which was to be prevented by a new round of talks in Geneva.

The ministers of foreign affairs of RH and BiH delivered a joint letter to the President of the UN Security Council on July 5th, emphasizing the necessity of prompt mutual recognition of all states, successors to the former Socialist Federative Republic of Yu-

goslavia (SFRY), not merely of the rump Socialist Republic of Yugoslavia (SRY) and BiH, as proposed by Bildt.

The so-called Army of the RS occupied the »UN safe area« Srebrenica on July 11th, and first reports of war crimes by the Bosnian Serbs appeared soon afterward, but there was no firm denunciation or reaction by the UN. Only T. Mazowiecki, the UN General Secretary's special envoy for humanitarian issues, resigned his post in protest over UN inefficiency. In retaliation for the NATO air strike against the positions of the so-called Army of the RS around Srebrenica, the Serbs shelled Sarajevo. The US Senate was preparing to pass a law ending the embargo on arms to BiH, while the Duma, lower house of the Russian Parliament, accepted a draft law to end economic sanctions against the SRY, and a resolution to »end the military jurisdiction of the NATO alliance over BiH.«

Serbian forces took Žepa and continued their offensive against the »Bihać safe area.« The London conference denounced the attack on Bihać on July 21st, but decisive NATO action was announced only in case of an attack on Goražde. The conference lent support to Bildt's proposal of mutual recognition between the SRY and BiH, which was strongly opposed by the RH and BiH. A day later, on July 22nd, Tuđman and Izetbegović met in Split and signed the »Split declaration.« Everything led to the only possible solution, an independent and judicious undertaking to liberate the occupied parts of the RH, Sectors North and South.

The »Split declaration,« signed on July 22nd, 1995, in Split, is the key document for the events leading to the operation »Storm« and the liberation of the occupied sectors North and South.

The RH, BiH and the Federation BiH all agreed on the assessment that the Serbian attacks on the »UN Safe areas,« and rejection of peace plans by the Croatian and Bosnian Serbs were all part of a coordinated strategy to continue aggression on the RH and BiH in order to create a »Greater Serbia.« Croatian Serbs have been invited to a peaceful reintegration into the legal constitutional order of the RH, likewise the Bosnian Serbs to accept the plan of the Contact Group. Both the Republic and the Federation of BiH called upon the RH to provide military help against aggression, especially in the region of Bihać. The RH responded to this call. On this basis, an agreement was reached to extend and strengthen defense cooperation based on the »Friendship and cooperation treaty between the RH and the Republic of BiH,« signed on July 21st, 1992. (SOURCES: public media)

Ambassador Galbraith learned of the plans to open a corridor to Bihać over Slunj in his meeting with the chairman of the Croatian Army General Staff, general Červenko. In a meeting with Milan Martić the same day in Knin, Stoltenberg appealed to the so-called RSK to carry on the process of negotiations, a meeting with open agenda was to be held in Geneva. The UNHCR warned that continuing the attack on Bihać could trigger a large wave of refugees, »about 150 000 could end up crammed in Bihać.« (SOURCES: public media)

On July 25th, the action »SUMMER-95« began in the direction of Grahovo and Glamoč. The UN in BiH was preparing to evacuate civilians from the enclave Žepa, taken by

the forces of the so-called Army of RS. Ambassador Galbraith delivered a demarche to the Croatian Foreign Ministry in which it was pointed out that the RH would not be »punished« if it initiated military operations to unblock Bihać. (SOURCES: public media) On the same day, a session of the Government of the so-called RSK was held in Beli Manastir, with visible disagreement between the followers of Slobodan Milošević and the »Martić faction.«

A day later the US Senate passed unanimously a resolution on the unilateral lifting of the embargo on arms against the Army of the Federation of BiH.

The HVO (Croatian Defense Council) and HV (Croatian Army) forces entered Grahovo on July 28th. Karadžić declared a state of war alert in the so-called RS. The British foreign secretary Malcolm Rifkind stated that the Government of BiH had to choose between force of arms and the UN presence: »they cannot have both.« (SOURCES: public media)

On July 29th Ambassador Galbraith communicated the US estimate that the Serbian attacks on Bihać were weakening and that the taking of Grahovo achieved its objective, to decrease Serbian pressure on Bihać. (SOURCES: public media)

President Tuđman met Yasushi Akashi in Brijuni, stating Croatian demands with respect to the participation of the RH in negotiations with the so-called RSK in Geneva: representatives of the RH will not negotiate with Milan Martić, who was put on the war criminals list by the Tribunal in The Hague; the oil pipeline through occupied territory must be opened; direct negotiations must begin on opening all communications across the occupied territories, especially the Zagreb-Knin-Split railway, and initiate serious negotiations on the imminent implementation of the Constitution of the RH on occupied territories. (SOURCES: public media) On the same day, the High defense council of the so-called RSK declared a state of war on its whole territory.

On July 30th, general Mladić and the General Staff of the so-called Army of the RSK agreed on coordination and future operations to recoup Glamoč and Grahovo.

On July 31st, top military leaders in the RH met with President Tuđman in Brijuni, discussing plans for an all-encompassing operation to liberate the Sectors North and South in the immediate future. (SOURCES: public media) Galbraith obtained permission to meet Babić contingent upon the permission of the Croatian side (president Tuđman). The US Congress passed a resolution on the unilateral lifting of the arms embargo against the Federation of BiH on August 1st. The ministers of foreign affairs of RH i BiH sent a joint letter to the Contact group, expressing their disagreement with the »Bildt package.« Tuđman received Galbraith, informing him of the plan to initiate the operation to liberate the Sectors North and South. The Croatian delegation will go to the Geneva negotiations and reiterate the request for the occupied territories to be integrated into the legal constitutional framework of the RH. Tuđman did not believe the Serbs would acquiesce to that demand. Galbraith expressed the attitude of the American Government that civilians and members of the UN should be protected during military operations. (SOURCES: public media)

On August 2nd Galbraith met Babić in Belgrade, warning him that the RH could bring »other means« to bear if its conditions were not met. Babić accepted the offer: a political solution on the basis of a modified »Plan Z-4«, but he needed the support of Slobodan Milošević for that. Martić gave an interview in »Il Giorno«: »This war will decide on the biological survival of the Serbs, a general mobilization is under way, 12 000 have arrived from Serbia. In a short while the RS, RSK and SRY will be united. The Serbs no longer trust the UN. The RSK and Italy should have a common border midway through Zadar« (SOURCES: public media). The German foreign minister Klaus Kinkel stated that the Croats have promised the military operation which they consider necessary was going to be properly conducted, Bonn and Washington believed the war would be short, and there would be no civilian casualties, while the 8000 UN troops would not be targeted. (SOURCE: Croatian foreign ministry official note.) Galbraith returned from Belgrade and met Tuđman immediately, believing a peaceful reintegration was still possible. Tuđman had his doubts, leaving all options open until the end of the Geneva talks. (SOURCES: public media).

In the August 3 session of the Geneva talks, the Serbian delegation refused to accept the peaceful reintegration into the constitutional framework of the RH.

The military-police operation »Storm« began in the early morning hours (05.00) of August 4th, 1995.

The President of the Republic of Croatia Dr. Franjo Tuđman read a letter to Croatian Serbs in which the RH guaranteed their personal safety, protection of private property and all minority rights guaranteed by the Constitutional law on minority rights. The chief UN representative in the RH Yasushi Akashi made a statement, transmitted by HINA, in which he expressed sorrow over the outbreak of hostilities and fear of further escalation of war. In the light of the latest diplomatic initiatives this was a regression and Akashi »invited both sides to return to the negotiating table.«

The Croatian foreign affairs minister Dr. Mate Granić sent a letter to the president of the UN Security Council and to the foreign affairs ministers of all significant countries in the world, explaining the reasons for initiating the operation. »The Croatian government was forced to adopt decisive measures for many reasons.« (Source: Croatian foreign ministry)

Some time later Akashi met the head of office of the President of the RH Mr. Hrvoje Šarinić, expressing his concern for the safety of civilians and of UN personnel. Already by noon, Carl Bildt fiercely accused the RH for the breakdown of the peace process, abrogation of the articles of war and endangering civilians. He equated Tuđman's »guilt« for the bombardment of Knin with Martić bombarding Zagreb and requested responsibility before the Tribunal in The Hague. »This shall throw a future dark shadow on Croatia for a long period of time.« (HINA)

The Supreme defense council of the so-called RSK met in Knin on August 4th in the afternoon and decided to evacuate the civilian population from the Sector South. The

beginning of the evacuation made for confusion and triggered a general evacuation of civilians and military from both Sectors South and North. This lost the only opportunity the so-called RSK had to defend itself by buying time, i.e. by a quick intervention of the international community, which was traced out by Carl Bildt himself in his hasty reaction to the beginning of the „Storm.«

Carl Bildt did not stop with the denunciation of the RH and President Dr. Franjo Tuđman, but hurried to Belgrade the very same day, where he met Slobodan Milošević.

Knin was liberated already by the second day of the Croatian military-police operation. The liberation of the occupied parts of the former Sectors North and South proceeded successfully, with the army of the so-called RSK withdrawing in panic, together with the Serbian population, which, under the influence of powerful propaganda and sowing of fear (»ustashi are coming and butchering everyone«), did not trust the guarantees of the President of the RH. The minister of foreign affairs of the RH (Dr. Mate Granić) wrote a letter to Carl Bildt responding to his unfounded accusations of the RH and its president (HINA). Carl Bildt continued his diplomatic activity aiming at the widest possible condemnation of the Croatian action and a decisive international response. His attitude was supported by the minister of foreign affairs of the Russian federation Kozirjev. (SOURCES: public media) The ambassador of the RH to Geneva transmitted some reactions of the diplomatic corps to the military-police operation »Storm:« Great Britain was still pinning its hopes on an agreement between Carl Bildt with Slobodan Milošević, it will keep an equal distance to all sides, will make an effort that no one wins the war, does not wish the Serbs to be defeated under any circumstances. Great Britain professed itself most adversely about the RH and its policy, conceiving it as a threat to its interests and to the future stability of the Balkans (SOURCE: note of the Croatian ambassador in Geneva). According to the note from New York, most members of the European community were satisfied with the Croatian action, because it cut the Gordian knot of the crisis in the region of former Yugoslavia (SOURCE: Croatian Ministry of Foreign Affairs). General Janvier denied the initial news/accusations that the Croatian side took UN personnel as hostages, it did not take them for prisoners but evacuated them to safety.

The minister of foreign affairs of the RH Dr. Mate Granić went to Geneva to an urgent meeting with Stoltenberg, Solana, Bildt, and van den Broek: Solana stated that the EU felt deceived, because the RH began its action while negotiations were still under way. This was not the behavior of »future Europeans.« Bildt demanded that the RH denounce itself to the Tribunal in The Hague because of the bombardment of Knin. Answering these accusations Granić explained that the Serbian delegation decisively rejected the appeal for a solution based on peaceful reintegration of the temporarily occupied territories of the RH. »Croatia is part of the solution, not part of the problem« (SOURCE: note of the Foreign Minister of the RH). Milošević was (dis)informing the world public opinion alleging Croatian bombardment of civilian columns, Croatian army tanks crushing civilians (it turned out later that these were tanks of the so-called army of the RSK, which crushed part of a civilian column on the road Glina-Dvor during their retreat), massacres in Dvor and Topusko. While part of the international community joined Milošević in his attempts to smear and proscribe the Croatian military-police action, the

US ambassador Peter Galbraith himself went to the liberated territory (Petrinja) to find out the truth. The Serbs told him that the so-called army of the RSK pressed upon the civilians the need to run away, because the Croatian army would otherwise kill them. The truth was obvious from tens of examples of Serbs who stayed put and nothing happened to them (SOURCE: public media). On the same day, the US defense minister William Perry stated that the Croatian action could open the way for peace in BiH, which would be achieved by negotiations (SOURCE: HINA, REUTERS).

On the next day, August 7th, after failed negotiations to surrender the Kordun corps of the so-called army of the RSK and reach armistice, mediated by UNCRO, the Croatian army advance went on, and so did the evacuation of the so-called army of the RSK and civilians across the border between the RH and Bosnia and Herzegovina.

The US ambassador Peter Galbraith stated for the BBC that Croats were not taking part in »ethnic cleansing, because that practice is organized by Belgrade, and carried out by Bosnian and Croatian Serbs« (SOURCE: public media).

The »sin« of the RH, its military-police operation »Storm,« was not forgotten. After the unfortunate decision of the Croatian Parliament in 2000, to allow jurisdiction of the Tribunal in The Hague over the lawful action to bring occupied territories back into the constitutional and legal framework of the RH, the indictments of the generals Gotovina, Čermak and Markač declared it to be a »joint criminal enterprise.« The present analysis was an effort to prove the contrary, that this decision and action was, at that time, the only possible and successful approach to solve a complicated internal and international question. The political leadership of the RH availed itself of a legal means such as would be used by any sovereign state under similar circumstances. The Croatian army and its commanders followed the decisions of their political leadership (the Constitutional Court of Croatia concluded that the operation »Storm« was fully legal), and there was no »joint criminal enterprise« which would make their actions doubtful.

INTERNATIONAL COURT IN THE HAGUE – LAW, JUSTICE AND POLITICS

Goran Granić

The key deficiency of the Court's mission is in not including the term aggression on its list of war crimes, thus failing to categorize war as the biggest crime from which all other crimes in ex-Yugoslavia have originated. Only convictions against those determined responsible for leading the war of aggression could properly contextualize the entirety of the war and the crimes committed in it. The proof for this hypothesis is in the fact that nobody within the leadership of the JNA or those responsible for the aggression, who had ample opportunity to impose peace in this time-delimited war, was ever accused. This very fact prevented the Court from fulfilling its main mission because it did not allow it to give all crimes the context they deserve. Imagine the court proceedings in Nurnberg: what would have been the outcome if it had not been possible to prosecute for the war of aggression, and if all sides who committed war crimes were prosecuted at the same time.

The prosecution of the International Court in The Hague has organized its operations on an ethnic principle: one team investigated crimes committed by Serbs against Croats; the other team investigated crimes of Croats against Serbs; while in Bosnia and Herzegovina all three combinations were possible. This working logic could be associated with the basic goal of the Court, which is to punish those most responsible within each nation, although it is totally contrary to the actual developments in the war and to war crimes. Considering the fact that there were no significant communications between the investigating teams, that at times there was even a competitive relation, it is not unusual that in the two separate proceedings the prosecution comes out with diametrically opposing grounds for its indictments.

The ethnic principle of the Court's working methods resulted in two completely different descriptions of events surrounding war crimes, and of the related material evidence of the very same crime. The best example of this discrepancy is the accusation for crimes in Ahmići: an indictment and evidence against Croats for the crimes committed; and, an indictment and evidence against Bosnians for the crimes committed.

This kind of division along ethnic lines resulted in some other unacceptable consequences, which affected the fairness of the Court. The selection of the accused and the content of the indictment reflected the expectations of one nation towards the crimes of the other nation. For example, the content of the indictment against General Bobetko

was extracted from the indictment against him brought about in 1994 in the so-called Republic of Serbian Krajina.

Not processing the war as a singular event resulted in processing cases that were taken out of their order of occurrence, so an indictment for events in 1995 and the omission of any indictment for crimes in 1991 leads to the conclusion that justice is not the Court's priority, but rather some other interests. For example, let us consider Vukovar. The indictments were raised only for the crimes at Ovčara, and limited to lower ranking officers only. There has never been an indictment against the leadership of JNA, which is also completely contrary to the logic of the Prosecutor used in the cases of Medak Pocket (Medački džep) or Storm (Oluja). Namely, in the case of Medak Pocket and Storm the Prosecution used a top-down principle: the highest positioned persons from the Croatian side were accused, although they had no connections to those particular events, but in the case of Ovčara only the persons giving immediate orders were accused. According to that, it may appear that the crime at Ovčara was not planned by the headquarters of JNA but by low ranking officers, while the crimes during Operation Storm or Operation Medak Pocket were planned by the headquarters of the Croatian Army and the State leaders. This »historical truth« could remain even after the Court completes its work. Our generation, which has lived and witnessed those events, knows it is not so, but for future generations the indictments and rulings of the Court will be authoritative.

The foundation for political influence occurred at the point of setting the goals and the mission of the Court. One can establish a hypothesis that the very plan of those responsible in the international community, whose political interests are portrayed through the decisions of the UN Security Council, was to impose peace and a political solution for Croatia at the moment when one third of its territory was occupied. This conclusion is derived from the way the Prosecution criminalizes Operation Storm, which has disrupted all plans of the international community to accept the results of the war in Croatia by means of political surrogates. In the same way we can consider the treatment of Operation Medak Pocket, which has, to a smaller extent, but with the same impact, changed the ratios in terms of the control of territories. Reviewing the approaches by the Prosecution and the Court itself related to these two liberating operations and then comparing them to the approach to Vukovar, where the indictment was on a very low level and only for one crime, the Ovčara, it is obvious that there is one approach taken toward the »breakers« of Yugoslavia – the Croatian Army – and another approach toward the »keepers« of Yugoslavia – JNA. The former are being accused for a joint criminal enterprise and responsibility is sought on the highest level; while the latter are accused according to the principle of individual responsibility, restricted to the lower levels only. The proof for this hypothesis can be found in the documents of the UN Security Council and ICTY. The hypothesis is not based on a conspiracy theory, but on a fifteen year long analysis of the mutually connected events in Croatia and around Croatia. From it, it follows that:

those responsible in the international community wanted to keep Yugoslavia together at any cost, so they agreed to a limited military intervention by the JNA, and in re-

turn they did not include the term aggression nor a category for responsibility for the war in the list of war crimes; there was also no indictment against the JNA leadership;

The war is treated as a civil conflict by equally responsible parties;

The results of the war in Croatia in 1991, which resulted in the occupation of one third of its territory, should be transformed into a political solution.

Those in Croatia who have prevented the realization of such plans should be punished. The extended arm of influence by some countries in the preparation of the indictments was made possible through the investigating teams of the prosecutor which include members of the intelligence services of influential countries.

The political pressure was extended in the case of General Bobetko when Croatia was asked to forsake the legal means in protecting the State's interests, by suggesting that military officers were not obliged to give orders and measures to protect people and their belongings from constant terrorist acts.

The political pressure was also extended by demanding the arrest of General Gotovina as a condition for opening negotiations for membership in the EU.

The shift in the treatment of war crimes committed by Bosnians after September 11, 2001 can also be considered political influence; namely, they were no longer only victims but also responsible for war crimes.

These different kinds of political influence have had direct consequences on the position of the accused, as well as on the Republic of Croatia itself. As a positive influence one can indicate that the activities of the Court in The Hague have encouraged legal institutions in Croatia, Bosnia and Herzegovina and Serbia to begin investigation of those responsible for war crimes.

THE HAGUE COURT AND THE »JOINT CRIMINAL ENTERPRISE«

Lujo Medvidović, MSc

Surprisingly, in the case of this indictment, the facts are not relevant:

- The Memorandum of the Serbian Academy of Sciences and Arts (SANU), published in 1986, stated that the Serbian people were endangered in Serbia and outside Serbia, and this situation could somewhat improve if all other nations in the former Yugoslavia worked harder and saved more so that the Serbians could live better;
- Milošević takes over power in Serbia in 1987 under the slogan »if we do not know how to work properly we know how to fight properly«;
- The first multiparty elections in Croatia were held in March and April 1990 resulting in the constitutive session of the multiparty Croatian Parliament (Sabor) on May 30, 1990 and the election of Franjo Tuđman as the President of the Republic of Croatia – well before the first logs were placed on Croatian roads by Serbian rebels;
- The Constitution of the Republic of Croatia was adopted on December 22, 1990;
- The Croatian referendum on independence was held on May 19, 1991, the turnout at the referendum was almost 80%, of which 93.24% of its citizens voted for independence;
- The Croatian National Guard (*Zbor narodne garde, ZNG*), the name of the first modern Croatian military force presented to the public in a special ceremony at Zagreb Soccer Club's stadium on May 28, 1991, and which became the first professional armed forces with defense and training duties;
- Historic decision of the Croatian Parliament on June 25, 1991, declares the start of the process of Croatia's independence from Yugoslavia which was completed in October 1991.

The indictment does not mention that the Republic of Croatia was recognized by all members of the European Union on January 15, 1992, which was confirmed at the 46th Session of the General Assembly of the United Nations on May 22, 1992, when the Republic of Croatia became the 178th member of this world organization – well before Operation Storm, and that the terrorist so-called Republic of Serbian Krajina has never been recognized by anyone.

The indictment from the standpoint of criminal law sanctions and verdicts hides the answers to many other questions: (1) when, how, why and with which balance of power did the armed conflict start between the »Krajina Serbs and the former Yugoslav Army« on the one hand and »Croatian forces« on the other hand; (2) how, why and on which moral, legal and political basis was the »region of Krajina« really proclaimed, and how

can this self-proclaimed creation – proclaimed on the territory of the Republic of Croatia – compare to the Republic of Croatia, an internationally recognized country; (3) has the »region of Krajina« ever separated from the legal and state structures of the Republic of Croatia, how and when; (4) who was actually in power in »Krajina«, especially in its southern part; (5) is it possible for a state to commit aggression on its own territory?

This indictment suggested a conclusion that dismemberment of the territory of the Republic of Croatia, the disruption and interruption of communications, as well as the formation and forceful holding of the »region of Krajina« were positive acts and that all those actions were undertaken by unarmed civilians (!?!).

We repeat the question: since it all started as a crime against peace, can such a crime remain unpunished?

It was stated that, during Operation Storm, genocide took place by expulsion of the so-called Krajina Serbs, but it is not mentioned that an important decision of the »Supreme Defence Council of the Republic of Serbian Krajina«, No. 2-3113-1/95 of August 4, 1995, at 16;45, which was signed by the »President of the Republic, Mile Martić«, was issued, ordering »the planned evacuation of the military-able population (...) according to the already prepared plans along the routes leading from Knin toward Srb and Lapac."

The role of the international observers was also passed over in silence, including the United Nations Protection Force (UNPROFOR), bearing in mind the facts that took place before Operation Storm in 1995: (1) that the defenders of Vukovar were taken to the execution places before the eyes of UNPROFOR forces; (2) that the Srebrenica genocide took place in the most protected zone in the world against people who were guaranteed their security by the United Nations Headquarters; (3) that the UNPROFOR command in Zagreb asked the Headquarters of Civilian Protection of the Republic of Croatia on September 22, 1993, long before Martić's rocket attacks on Zagreb, which took place on May 2 and 3, 1995, about the possible protection of the members of UNPROFOR in the civilian bomb shelters in the case of air attacks, which they had evidently expected. Did they inform the Civilian Protection Headquarters or share the information on the type and source of danger for Zagreb and other cities? Have they handed over supporting documentation to initiate legal prosecution against bombers and rocket aimers?

Operation Storm lasted 72 hours. Considering the (1) permeability of borders, (2) technical possibilities for fire arson and distance demolition, (3) presumption that the planned evacuation of the Krajina Serbs under the command of Mile Martić included placing of devices for the destruction of humans and material goods in the territory which was abandoned, (4) state of the system of the civil protection in the field – the question being one of concretization of each individual case of murder, destruction and burning – bearing in mind the characteristics of the criminal action – that the criminal offence is an act by a concrete individual (.), unlawful (.), committed (.), socially dangerous (.), prescribed by law as a punishable offence (.), – that is, a crime which cannot be morally or legally justified. Especially bearing in mind the behavior of all participants in the observed events, and not excluding the mentioned planning and planned behavior of the so-called Krajina authorities and its external associates, as well as actions of the international observers.

THE HAGUE TRIBUNAL'S DOCTRINE ON JOINT CRIMINAL ENTERPRISE AND UNIVERSAL VALUES

Miroslav Tudman, PhD

It is a legal, political and historical fact that Operation Storm was a military-police operation that liberated the occupied territories of the Republic of Croatia, thus reestablishing the territorial integrity of the Croatian state. The right of the Croatian people to their own state is based on the right to self-determination. The right of peoples to self-determination was defined in the UN Charter (1945). Sovereignty is the organizational principle of the UN member states. Aggression was clearly defined in UN General Assembly resolution 3314(XXIX) adopted on 14 December 1974.

However, none of these principles and values fundamental to the United Nations was incorporated as criterion for evaluating events, operations and actions, which are sought to be interpreted as criminal enterprise.

Is it only a coincidence? If we carefully read the book by Florence Hartmann, a reliable witness and interpreter of the ambitions and determinations of the Hague Tribunal's Prosecution, we will not find any mention of freedom as a fundamental value – the value which served as the guiding vision to all nations seeking to create their own states in the process of dissolution of former Yugoslavia.

Freedom is a fundamental human right and a fundamental value. The United Nations Charter (1945) and the Universal Declaration of Human Rights (1948), which define fundamental human rights, imposed the notion that international order should be founded on universal recognition of human rights. In the following decades this notion was a strong moral and driving force of decolonization. During the next twenty years 800 million people around the world were liberated from European colonial empires only; and after the collapse of the communist system and the Warsaw Pact, some 150 million people broke free from the communist totalitarianism. Tens of millions of people began to live in their own newly emerged countries on the European soil.

If international justice and the doctrine on Joint Criminal Enterprise (JCE) derived from universal human rights (as defined in the mentioned UN documents), then the problem of establishing the limits of responsibility for crimes committed would not exist: if the plan was aimed at crime, or involved committing crimes in order to achieve a goal which in itself is not a crime – then criminal liability would not be an issue..

The right of nations to self-determination, freedom, independence and sovereignty is not and cannot be a criminal enterprise. The JCE doctrine criminalizes these aspirations in the following way: it denies their existence and attributes the crimes committed

in war, or supposed crimes, to secret intentions of democratically elected leaders of national movements and emerging states. These intentions are not derived from their political plans and programmes because they cannot be found there; Croatian politics is the best example.

That is why the Hague Tribunal states that neither states nor state policies are on trial. The joint criminal enterprise is attributed to some »vague common intention« which is then verified regardless of political plans or programmes for achieving national freedom, independence and territorial integrity.

This is possible because the doctrine on JCE separated the truth about political and historical events, realized according to certain plans and programmes, from crimes committed in the war for which the doctrine postulates to have been done intentionally. Separation from political and historical reality leads to voluntaristic interpretation of intent and explanation of criminal enterprise. The interpretation of intent is derived just from the fact that the crime was committed (if committed) and not from real circumstances in which the crime occurred. In this way, the truth as the argument of defence is *a priori* excluded and the decision to punish the crime is given the status of truth.

This indifference towards the truth about political and historical events, towards the existence of personal and national freedom and the fact that by establishing democracy Croatia for the first time became a community of individuals of equal dignity, is indeed an indifference to universal human rights. »Methodical indifference to the truth necessarily gives rise to blindness to good and evil«, says Michel Schooyans.

But this indifference to the truth, »blindness to the good and evil«, is not always consistent in the Hague Tribunal. As spokeswoman Hartman testifies »... Louise Arbour nonetheless opened a preliminary investigation intended to examine complaints against NATO, triggered by the bombing which caused huge civilian casualties (during the intervention in Kosovo in 1999). NATO responded by public threats...They said they did not understand how »a just war and a repressive war including ethnic cleansing could be put on the same level«. In June 2000 it was concluded that there was no need to open an investigation because NATO's errors were not intentional«.

The Hague spokeswoman does not disclose who concluded that there was no need to open an investigation because »NATO's errors were not intentional«. It was probably the Prosecutor's Office as the Court has no competence to launch investigations. However it may be, it proves that when NATO is concerned, the Prosecutor's Office was forced to respect the difference between waging a just war and a repressive war; that it was forced to assess intentions from the character of war (that is why »errors were not intentional«); in short, it was forced to take account of the truth and the overall context of events.

Abandonment of investigation against NATO is an exception and the reasons may be debatable. But the fact is that in the case against Croatian generals the Office of the Prosecution applies the doctrine of JCE, thus creating a construal detached from reality in every sense.

International justice as it is imposed and implemented by the Hague Tribunal is determined by the omnipresent principle of selectivity:

Selective indictments. Given the limited duration of the ICTY and the limited financial and other potentials, selective persecution is not by itself an argument against international justice. However, selectivity based upon the conviction that all sides are equally to blame and determining the number of indictments and indictees according to political criteria is unacceptable.

Selective investigations by the Prosecution. Florence Hartmann's book testifies that the Prosecution was polarized within itself. Almost by a rule, the British and Australian investigators and prosecutors boycotted and refused to investigate and then indict Milošević. Their attitude resulted in the focus on »Croatian« crimes, in conjunction with non-governmental organizations which delivered selective information and had no intention of collecting evidence on crimes committed during the aggression against Croatia.

Selective choice of incriminations and manipulation of their chronological sequence. Indicting the Croatian generals without prior sentencing of crimes committed in the aggression against Vukovar, Dubrovnik, Škabrnja, and ethnic cleansing of Croats in Banovina, Krajina, Podunavlje etc. is morally and politically incomprehensible and unacceptable. Accusing Croats of crimes committed in the defensive war and not accusing the Greater Serbian policy for aggression, has resulted in manipulation of the truth, manipulation of international justice, and manipulation of the presentation of facts to the domestic and world public.

Selective application of the doctrine of JCE compromises international justice in two ways. Firstly, in itself it is vague and morally unfounded for it ignores universal values – the foundations of international order; secondly, it is applied selectively to indict those who fought a defensive war while abolishing those who committed aggression.

Selective collection of documents. Major powers may conceal the existence of certain documents because »all documents that were released in external operations /are/ confidential«. If we add to it the prejudices of the investigation and prosecution teams that have affected the search for documents and evidence, as well as the interconnections and political games played by »programmed« non-governmental organizations and certain intelligence services, then the value of the documents collected by the Prosecution is very doubtful and bias is confirmed.

Selective availability of documents. The Prosecution has collected a vast amount of documents, which they use at their own discretion in individual cases.

Selective protection of documents. The Prosecution and the Court, under the guise of protecting witnesses, sometimes protect untrustworthy documents (and witnesses) from public judgment by declaring them confidential. They indicted journalists (J. Jović, M. Rebić, I. Marijačić, D. Margetić) who had published documents of the Prosecution marked as classified, because those documents discredit the Prosecution in the eyes of the public.

Selective choice of witnesses. The Prosecution is, independently of its own will, faced with the refusal of the great powers to give consent to their officials and employees to testify, in view of the danger that »the witness may become the accused«. A member of the staff of the French Ministry of Defence interprets such a decision as follows: »They are

not asked to tell what they saw, but to say that we refused to act to prevent what we saw, or that we did not see what we should have seen«.

Selective status of witnesses. The status of witnesses in the tribunal is not equal. It is selective and reveals unequal treatment not only of witnesses, but also of states and national interests of which they testify. The Hague investigators interrogate the Croatian officials and military commanders without the presence of government representatives, and to our knowledge, a »representative of the national authorities empowered to request the withdrawal of any question or to demand proceedings behind closed doors« was never present at any hearing.

Selective choice of testimonies. In their verdicts the judges often draw on testimonies of some witnesses, without explaining why they did not take into account other or different testimonies.

The International Tribunal for the Former Yugoslavia is a legal experiment. Major powers have publicly supported but have behind the scenes boycotted the work of both the Office of the Prosecutor and the Court. That is why the experiment got out of control with a tendency of becoming an independent international power. The ambition of the Prosecutor's Office has become global: to become a power beyond national rights and national interests of individual states. Ardent advocates of international justice are seeking a legal structure above national states and courts. They regret that international courts do not have their own police and executive power and that they are dependent on states and their political will to cooperate. But they are convinced that »international humanitarian law has over the years acquired an undisputed legitimacy in public opinions of countries. It has become a standard reference used by the international opinion to interpret conflicts and judge the behaviour of states and warlords«.

We are faced with two opposed concepts of establishing a new international order. Globalists tend to limit the power of national states and great powers. They are advocates of international courts. They want the humanitarian law, based on the so-called »new human rights«, to substitute the universal values as defined by the UN Charter of 1945 and the Universal Declaration of Human Rights (1948). »The new human rights« form the basis for the promotion of global values: the global market, technology, information, the free flow of people, goods and capital.

WAR-MONGER WITHOUT INDICTMENT

Hrvoje Kačić, PhD

Considering the continuous and repetitive application of the criminal-law concept of so-called command responsibility, it is truly beyond comprehension that the chief of the General staff of the so-called Yugoslav People's Army (JNA) has not so far been processed, i.e. fallen under indictment by the Hague tribunal. Apart from avoiding his prosecution, not a single general of the JNA General staff, which had complete command responsibility for all land, air and sea operations of the Yugoslav army, has been indicted by the Hague tribunal.

It is hard to understand above all that this undeniable omission by the Tribunal should apply to the criminal activities of General Blagoje Adžić, who was head of the General staff of the JNA with headquarters in Belgrade from the beginning of the aggression on Croatia to the middle of May 1992.

General Adžić had demonstrated his war-mongering and aggressive attitude in front of 150 of his subordinate colonels and majors in a speech delivered on July 5, 1991, at the Military Academy in Belgrade, entitled »We lost the battle but not the war,« which speech was published in the media, although not in full.

I quote only a few statements and commands from this aggressive war directive:

- the multiparty system brought nations into conflict...
- there is a threat of external intervention by Germany, Austria, Hungary, and Czechoslovakia...
- traitors should be killed on the spot without mercy or reflection...
- we have to use fear to force the enemy to capitulate, so from now on use all your powers and open fire on anyone who opposes our activities...
- finally, comrades officers, I demand that in carrying out these tasks to completion you use all your knowledge to further the ideals of the October revolution and to fight for Yugoslavia...

General Adžić was directly involved in the aggression and destruction of Vukovar and Dubrovnik. His involvement is beyond doubt also in the action of MiGs from the Bihać airport against the inner city region of Zagreb on October 7, 1991.

One should also take into account the shooting down of the EC helicopter by two MiG jets at the beginning of January 1992, when four Italians and one Frenchman were killed, who were part of the observation mission of the European Community. Emir Šišić, who was the pilot of the MiG 21 involved, was processed by a court in Rome. (He received a 15-year jail sentence.) There is no question this pilot did criminally down and

kill five EC representatives/monitors, but why has the guilt of those criminals who gave the orders for the operation been ignored? The orders to scramble that MiG came from Belgrade, straight from the top military command of the JNA. Given the very sharp reaction of the world public opinion to this criminal act, the erstwhile defense secretary in the Yugoslav government general Veljko Kadijević publicly announced that he would start an investigation to find those responsible for the downing of the EC helicopter. Because of this statement, minister Kadijević was deposed, formally by tendering his written resignation on January 7, 1992, while the protagonist of that removal was precisely Blagoje Adžić, who remained the principal and most responsible person in the command structure of the JNA.

As an example of the Hague tribunal's failure to demonstrate in court the proofs of aggression of Serbia against Croatia, we can point to the way it treated the so-called RAM project, as it was applied in the process against Slobodan Milošević. An editorial in the weekly »Vreme« claimed this plan was no fiction, but involved the demarcation of Serbia's western borders.

It is truly upsetting to realize that the RAM project, as published in the weekly »Vreme« in September 1991, has been used in the discovery proceedings against Slobodan Milošević as if it had nothing to do with Croatian territory, but only in relation to the preparations of the aggressive attack of Serbia against Bosnia and Herzegovina, when it is obvious from the appended transcript of a telephone conversation between Milošević and Karadžić that they discussed the bombardment of Croatian territory.

Namely, in the taped telephone conversation Milošević informed Karadžić that all the necessary weapons would be provided by Uzelac, who was the commander of the Banja Luka military district at the time. Karadžić is literally demanding a bombardment, to which Milošević answered that »today is not a good day for the air force because the EC is in session«...! This conversation took place in mid-September 1991, in other words during the military operations against Croatia, while the aggression of Serbia against Bosnia and Herzegovina took place only in the spring of 1992.

Nevertheless, two witnesses, Vojislav Jovanović, who was Serbian Minister of Foreign Affairs in 1991, and Smilja Avramov, advisor to the same minister, bore false witness before the Hague tribunal that RAM was a preparation of an attack on Bosnia and Herzegovina. A similar false statement was made before the Tribunal by a further witness, a so-called »Croatian cadre.«

In the introduction to the news-magazine's commentary of that document the following was noted:

»Reliable sources reveal to »Vreme« that RAM is no fiction. Concretely, RAM is a project to delimit the western borders of Serbia, to create the framework for some new Yugoslavia in which all Serbs would live on their territories in a common state. These sources claim that dr. Karadžić is in consultation with the generals. There are close contacts between the leaderships of the Krajinas, the Bosnian and the Knin one, and the top of the army, which is fulfilling all their wishes. The JNA has absolutely aligned itself with the Serbian sides, so that officers are being told what is to be conquered.«

I should mention at this point that I have personally delivered a photocopy of the Belgrade weekly »Vreme« in a plenary session of the Conference on Yugoslavia in The Hague on September 26, 1991.

In numerous resolutions of the UN Security Council, sharp rhetoric was directed at Serbia and Montenegro, with sanctions imposed against them since May 1992. However, the use of their armed forces in the attack on Croatia was never qualified as aggression. The Hague tribunal proceeded in the same way. The only explanation for such behavior is an attitude to avoid determining which state was the aggressor and which the victim, with the purpose of equalization of guilt for all suffering, loss of life, and devastation.

The Badinter arbitrage committee, founded by the European Community (and whose establishment was accepted by the erstwhile federal government and all six republics), did stipulate that Croatia and Slovenia have acquired statehood on September 7, 1991, and from this date on Croatia and Slovenia have been independent and sovereign states under international law.

Attention should be drawn to the proceedings against Admiral Miodrag Jokić, the commander of the southern maritime district, before the Hague tribunal. It is impossible to explain, or to justify, the omissions and absence of objective procedure in raising the indictment against this admiral.

I have asked Admiral Jokić in front of diplomatic corps dignitaries to declare himself and admit the cardinal lie, which was signed by Dragutin Zelenović, then prime minister of Serbia, in the name of the Serbian government in an official dispatch to the Croatian government dated October 10, 1991, with the statement, I quote:

»In its session of October 4, 1991, the Government of the Republic of Serbia was informed of the dangers threatening the population and town of Dubrovnik, which is part of the history of the Serbian and Croatian people, as well as a magnificent monument of world cultural heritage.«

This document presents evident proof that the aggression on Croatian territory was carried out with the connivance and in the name of the Government of the Republic of Serbia. There is no record that this evidence has been used in the criminal proceedings against Slobodan Milošević, while no indictment against the Serbian prime minister was raised.

Admiral Jokić had appeared voluntarily before the court, so his indictment was narrowed in plea bargaining, given that he had admitted guilt and made a statement expressing sincere regrets for the bombardment and devastation of Dubrovnik.

The justification of the Hague tribunal's ruling cites »sincere regret« and admission of guilt, while the court documents repeat on many occasions that there were two dead (»two victims«) and three wounded on that day. However, the outcome of the JNA attack in the Dubrovnik region on that day was 19 dead and more than 60 wounded. During the period Miodrag Jokić was commander of the so-called southern maritime region, which encompassed Dubrovnik, there were more than 250 victims.

Defense witness Marjan Pogačnik, retired admiral, testified in the proceedings against Admiral Jokić before the Hague tribunal that »Miodrag Jokić was always promoting the full equality of all nations and ethnic groups, and that was his fundamental approach, and he never expressed any nationalistic views.« (Appendix 3.)

The court accepted this deposition as the truth, even though the Titograd daily »Pobjeda« published a large photograph of Admiral Miodrag Jokić in November 1991 (and this was specially reproduced in a monthly edition of the then-leading daily in Montenegro under the tendentious title »WAR FOR PEACE«), under which one can literally read the following:

»It is not far-fetched to assume that the ustashi, who do not abide by any values, except their own skin, will destroy old Dubrovnik themselves, merely to accuse the JNA of that misdeed.« This document was also not used in the proceedings against Admiral Jokić, and many of the conclusions reached were in contradiction with the real facts.

In order to protect the endangered population, the Security Council of the UN decided in 1992 to establish UNPA zones in Croatia and B&H. Given the experience with escalation of violence, which began in Kosovo in the mid-eighties, this intention was implemented by establishing so-called »Protected Areas.«

Representatives of the international community decided, based on past experience, that certain areas and towns qualified for a higher level of protection than »Protected Area,« because they were under greater threat. For this purpose the UN SC defined so-called »Safety Zones.« Thus it passed Resolution 819 on April 16, 1993, establishing the Safety Zone of Srebrenica. Finding this decision useful and necessary especially for the protection of the civilian population, some weeks later Resolution 824, passed on May 6, 1993, established UN Safety Zones in Bihać, Sarajevo, Žepa, Goražde and Tuzla. Protection in these established safety zones was due to be provided by military forces of the UN. As is known, in establishing the mandate of UN military forces in Croatia and Bosnia the UN required a cease-fire agreement between all parties in conflict as a precondition, i.e. the mandate was »peace-keeping,« the continuation of a peace already established.

Croatia really did save Bihać, and Cazin, and Goražde. Obligations undertaken by UNPROFOR troops were factually carried out by Croatia, thus preventing even more tragic consequences than the ones which already occurred.

Croatian Army operations put an end to the suffering of the exhausted population of the so-called safety zones of Bihać and Goražde, which incidentally also repaired the tarnished reputation of the UN and improved the position of many erstwhile UN functionaries.

Foreign diplomats estimated at the time that Croatian protection of Bihać saved tens of thousands of people from massacre. Why Tadeausz Mazowiecki is not being invited as a witness in the criminal proceedings before the International War Crimes Tribunal for the Region of Former Yugoslavia, or why at least the last 3 or 4 of his eighteen reports are not submitted to the court as documentary evidence? These proofs would certainly contribute to rejecting the qualification of »Storm« as »criminal enterprise.« All representati-

ves of Croatia should finally understand it is their duty to demonstrate to the world, and especially to the members of the European Community, that precisely THE CROATIAN MILITARY-POLICE OPERATION »STORM« CARRIED OUT THE OBLIGATIONS PREVIOUSLY UNDERTAKEN BY THE SECURITY COUNCIL OF THE UN.

Croatia is obliged to cooperate constructively with the Hague tribunal, but this does not mean one should tolerate omissions of facts and proofs which are beneficial to us. Croatian representatives in various institutions of the international community are obliged to resist any attempt to qualify »Storm« as a criminal enterprise, because that is a glaring example of blanket criminalization.

Namely, it is our duty to establish that in those circumstances Croatia and Bosnia-Herzegovina signed the so-called Split agreement, on July 22, 1995, by which the neighboring state affirmed that Croatia could undertake military operations on B&H territory in order to prevent violence perpetuated by Serbian paramilitary units.

In that dramatic state and circumstances, Tadeusz Mazowiecki, special envoy of the EC and UN for human rights on the territory of former Yugoslavia, who spent two years and eleven months on the territory of Bosnia and Herzegovina, and also in various regions of Croatia, Macedonia, and Serbia, respecting his own moral principles, resigned precisely on July 27, 1995, explaining that he did it because of the inefficiency of the UNPROFOR and the hypocrisy of the international community.

There is no foundation, nor is it proper, to acquiesce that Dayton led to the end of armed conflict in Bosnia and Herzegovina. One cannot tolerate that Croatian representatives should state that Dayton, that is »the Dayton agreement,« brought peace to B&H, leaving out the above-mentioned contribution of »Storm.« It is the successfully executed military-police operation »STORM« which, within 82 hours, stopped the bloodshed and tragic conflict also on the territory of the neighboring state, Bosnia and Herzegovina.

POWERFUL WEAPON OF THE OPPONENTS OF THE CROATIAN STATEHOOD

Mate Kovačević

British troops within the UNPROFOR mandate in Bosnia and Herzegovina, as opposed to the soldiers from other countries who also wore blue helmets, had the task to protect the Serb positions in Bosnia and Herzegovina from NATO attacks. As regards the Muslim-Croatian conflict that has been most thoroughly dealt with by U.S. military historian Charles Shreader, the British were involved up to their necks. U.S. intelligence sources disclosed the liaisons between the command of UN military effort in Sarajevo and the special units of the British Army (SAS), who jointly worked to neutralise NATO strikes against the Serb positions. Vulliamy claims that British soldiers within UNPROFOR waged a secret war on all three sides, killing many more Croatian, Muslims and Serbs than officially admitted by the British Government. Although these British atrocities were known, and weighed heavy on the conscience of individual commanders – »I have long thought about whether I had the right to kill those people« confessed Brigadier Duncan, commander of the 1st Battalion of 22nd Cheshire Regiment to journalist Vulliamy – as well as the published facts about the role of the British forces in the liquidations of Croats in Central Bosnia and their soldier's excesses particularly against the Croatian people, the ICTY never raised the question of criminal liability for the liquidation of several hundred Croats, as the British journalist shyly mentions in his article. The role of Britain in instigating the war between the Muslims and the Croats has not only never been clarified, but – in spite of the articles even in the UK press that following the arrival of the British to Vitez, in October 1992, the war broke out between the Muslims and Croats a few days later – this has never intrigued the ICTY. Vulliamy's note – saying that when a new British unit came to Vakuf to replace the unit of Brigadier Duncan they promptly started a conflict with Croats, and a delegation of the BH Army paid them a visit with a request that they should stop shooting at the HVO because the Croats thought it was the BH Army and retaliated by shooting at their positions – shows that the claims of the British involvement in instigating the war between the Muslims and Croats are substantial. According to the information of the UK Defence Ministry, the British killed 38 persons in Bosnia, and Vulliamy reported that a senior British officer told him that he should triple that number easily, i.e. that he could add one zero. Nobody has been brought to justice for these crimes against Croats. How could they, when e.g. an entire unit of the Dutch blue helmets actually enabled the Serb forces to do the massacre in Srebrenica? In addition to killing, ethnic cleansing includes a number of various actions to destroy or drive a group of people away from a particular area. The High Representatives in Bo-

snia-Herzegovina, Briton Paddy Ashdown and Austrian Wolfgang Petritsch, managed to drive away from Drvar and Glamoč almost five thousand Croats, without having to answer to justice for the consequences of their policies.

The administration of justice with a view to ever so slight satisfaction of the victims, especially through the operation of the ICTY, leaves the Croats particularly dissatisfied, because simultaneously, the three commanders indicted for the atrocities in Vukovar are released from liability, just like the commander of the Muslim troops Sefer Halilović who was indicted for the mass liquidation of the Croats in the Neretva valley, in the villages of Grabovica and Uzdol. Justice used only to additionally frustrate the victims is not justice but politics, and in case of the ICTY and its treatment of the Croats it can be concluded that it is a long hand of the same powers that stood behind the aggressive Yugoslav policy in 1991 according to which Belgrade should have liquidated the Republic of Croatia and its political leadership elected in the first free multiparty elections in a matter of two weeks.

UNFOUNDED ACCUSATIONS

Josip Jović

The International Criminal Tribunal for War Crimes Committed on the Territory of the Former Yugoslavia being a political tribunal would in itself not be a bad thing. Notably, if as an independent institution it were in the service of justice, truth and peace, then it would also play a positive political role. However, being under the direct political pressure of individual states and politicians and in the service of distortion and fabrication of what really happened to support some partisan political interests, than it is a political court martial, a false tribunal, and should openly be called so.

The political inspiration and instrumentalisation of the ICTY was indicated by the evaluation of Croatia's cooperation coming from the Foreign Office and the Prosecutor's Office, that were synchronised and always identical.

Finally, any dilemmas were dispelled by the very actors of the trials in The Hague, Chief Prosecutor Carla del Ponte and her spokesperson Florence Hartman who in their memoirs clearly disclosed the political background, a combination of different influences, unprincipled sidings and political calculations. Marko Atila Hoare, a British historian and a member of the investigative team of the Prosecutor's Office, testified in two Croatian weeklies (*Hrvatski list*, *Globus*) that Carla del Ponte cancelled already prepared indictments against Kadijević, Kostić, Adžić, Jović and others.

The messages of the ICTY conveyed through its indictments and judgements, with political and historical implications, are as follows: in the 1990s, there was civil war in the Balkans caused by the nationalist leaders on all sides. The guilt for the war is, therefore, equal, crimes are evenly distributed on all sides. Croatia must not have liberated its occupied territory with its Army, and ultimately, it must not have become independent in the first place.

There are two very sinister accusations hanging over the Croatian state and people as contained in all the indictments, as well as in some already passed judgements: the first one is that Croatia conducted ethnic cleansing and planned criminal enterprise to deliberately eliminate ethnic Serbs, and the second one is that Croatia undertook aggression against the neighbouring Bosnia-Herzegovina with a view to breaking it up and annexing part of that state. In regard of those accusations Croatia should have not only responded more vigorously, but also refuse any cooperation. Instead, we have had cooperation without boundaries for eight years now, without any question or objection, and not only cooperation with the Tribunal but also with the Prosecutors i.e. the antagonist party putting the heavy charge of blame on Croatia, with possible even more severe con-

sequences, far more severe than the ones that would have been incurred by the possible blame for non-cooperation.

Mesić, as stated by William Tomljenovich, an ICTY investigator, sent the Tribunal 666 documents precisely. Unlawfully, of course, because under the Constitutional Law any documents must go through the Government Office for cooperation. Seeking the subsequent legalisation for the documents that were already in its possession, the Tribunal itself confirmed that it had gotten them unlawfully. The documents included the key Brioni transcripts i.e. the minutes of the meeting of the military and state top officials on the eve of the decisive liberation operations, a top secret military document. Transcripts are lacking in authenticity, the audio recording is not identical to the written version. The Government requested the Attorney General to confirm their authenticity, and even before the Attorney General could do his job, the Government notified the ICTY that the transcripts were authentic.

Carla del Ponte mentions one significant conversation with Prime Minister Ivo Sanader of 19. April 2005.

Sanader desperately tried to convince her: I want Gotovina in The Hague, and if I could, if I knew, I would surrender him immediately, we shall do our best, I want your positive report. Mrs. Carla is sceptical: I doubt it, you have not done anything since March. Now, Sanader is imploring: You are right, you are absolutely right, I am prepared to change. On this occasion Sanader agrees to searching monasteries where Gotovina could hide and to tap the telephones of the suspicious Franciscans. Once Gotovina was located, Sanader personally brought the happy news to Carla del Ponte: We have him! After all this, Carla del Ponte must be satisfied. She was afraid that Sanader would not cooperate, because he was from Tuđman's party, but he showed better and more pliable than Ivica Račan. This same Sanader would, after the judgement of the »Vukovar three« and followed by TV cameras a few weeks before the elections, come to Vukovar to express his dismay at the judgement and his ostensible solidarity with the victims.

Domestic war crime trials (Norac, Ademi, Glavaš) organised on the orders from the ICTY were conducted by the same methodology and under the strict control and on the basis of the materials collected in The Hague. The judgements were predictable, pre-determined. The journalist who allegedly discovered Glavaš' crimes, promptly followed by a quick action of the General Prosecutor, Glavaš' stripping of MPs immunity, his custody etc., was promptly given several international awards for »investigative« journalism, including the one from the South East Europe Media Organisation in charge of reconciliation and bringing the hostile nations close together again. Mirko Norac – the symbol of the Croatian youth who defended their country and their people with their heart, who joined the Croatian Army at 24, fought the hardest battles, deservedly received the highest military ranks – has been sentenced in two concurrent processes to a total of nineteen years for the line-of-command responsibility for the killings of civilians and looting. President Franjo Tuđman and Defence Minister Gojko Sušak, in regard of whom it is incessantly repeated that they would have ended up in The Hague as war criminals as well, are publicly defamed as symbols of evil.

Croatian relation to the ICTY is burdened by heavy political, legal and even moral questions and dilemmas, calling to mind Biblical parables: the one of Abraham sacrificing his son to be in God's grace, or better the one about the head of John the Baptist requested and obtained by Salome. One of the lessons concerning false witnesses and perjurers could be that it is dishonourable to lie for one's country, but it is even more dishonourable to lie against one's country. Finally, there is the burning insult of Carla del Ponte herself that the Croatians are sons of the bitches just like the Serbs, but that the Croatians are mean sons of the bitches. Are we really sons of the bitches? Masters always think and say that about servants. Mrs. del Ponte probably did not mean that absolutely all of us are sons of the bitches. She probably meant those she collaborated with. It is, however, absolutely not true that they were mean, at least not to her, having been nothing but totally submissive to her at all times. If they were mean, they were mean to their own people to whom they always said one thing, and then went on to do another, acting and posing as defenders of the dignity of the war, of the truth and the freedom won in the war, whilst actually unlawfully and immorally working against it. History will be the ultimate judge.

IN THE WHIRLWIND OF POLITICAL INTRIGUE

Mate Ljubičić, MD

The trial of General Slobodan Praljak and a group of Croat officials from Bosnia and Herzegovina before the »Tribunal for War Crimes Committed on the Territory of the Former Yugoslavia« in The Hague is a demonstration of the power of politics over justice.

The historical and political background of edging the Croats out of today's Bosnia and Herzegovina is found in the modern chess-game battle for the domination of the territory that was once under the rule of the Ottoman Empire. Today, as some powers believe, it should be reunited in a Balkan federation. The Croats are an obstacle to the Muslim-Serb balance in Bosnia and Herzegovina, and the trial of General Praljak is being staged along the lines of edging the Croats out of the picture in Bosnia and Herzegovina. For the time being, the only protest against this scheming plot has come from the representatives of the Catholic Church.

The historical fate of the once Croat lands of Bosnia and Herzegovina i.e. of the Croats as the natives in Bosnia and Herzegovina is one of long-term collective suffering of almost biblical proportions. Since the year of 1463, when Bosnia – and a year later Herzegovina – fell under the Ottoman rule, there has been an uninterrupted struggle of the Catholic Croatians to survive in their own country. As an ethnic and religious community they have survived various persecutions, torture, massacres, enslavement, pillage, levies, demolition of sacral facilities only to see the construction of Islamic and in some cases even Orthodox temples on the burnt down remnants of their churches.

The sources of the Muslim aggression against the Croatians in Central Bosnia and in the river Neretva valley are to be sought in the »Islamic Declaration« (1970) of Alija Izetbegović and the unfavourable position in which Izetbegović found himself when the Serbs occupied nearly 70 percent of the territory of Bosnia and Herzegovina. As an illustration here are some excerpts from the »Islamic Declaration« that show the real political ideas of Alija Izetbegović and his view of the way the state should be organised:

»There is no Islamic order without independence and freedom. And vice versa: there is no independence and freedom without Islam.« »The most concise definition of the Islamic order defines it as a unity of faith and law, education and force, ideal and interest, spiritual community and state, voluntariness and coercion. As a synthesis of these components, the Islamic order has two basic prerequisites: Islamic society and Islamic government. The first one is the content and the second one is the form of the Islamic order. Islamic society without Islamic government is unfinished and powerless; Islamic government without Islamic society is either a utopia or violence. A Muslim, generally, does not exist as an individual.«

What could the Croats expect then, from the Muslim program that was being implemented by Izetbegović, or what can the Croats expect today in the Federation with Muslims and the Islamic spiritual revolution pending? The grab for the Muslim *Lebensraum* in the Croatian territories began after the Owen-Stoltenberg plan for the territorial organisation of Bosnia.

During the Muslim aggression on the Croatian areas in Bosnia and Herzegovina, the Republic of Croatia accepted huge numbers of displaced persons and refugees from Bosnia and Herzegovina, including the Muslims. General Praljak mentioned that at that time there were about 700 thousand refugees and displaced persons in the Republic of Croatia (282 thousand displaced persons and 400 thousand refugees). On the other hand, in a weird twist of reality, Muslim warriors after fighting against the Croats in Bosnia and Herzegovina came on their leaves to Croatia to recover and rest with their refugee families. At the same time the BH Army waged war on the HVO, the Republic of Croatia supplied military equipment and arms to BH Army to protect them from the Serbs, and took care of the wounded of the BH Army. General Praljak published a book of documents on the medical treatment of about 15,000 wounded BH Army troops at Croatian hospitals in Split, Slavonski Brod, Karlovac, Vinkovci and Zagreb, and their complete rehabilitation and subsequent recovery. Simultaneously, HVO units enabled and assisted the transportation of wounded Muslim soldiers to Third States.

The most involved in this war chaos were Great Britain and France who opposed more resolute and broader U.S. military action through NATO. »Not only that, but obstruction also came in the form of diplomatic initiatives of Akashi, Lord Owen and General Rose, and the European allies were not too worried about the pending fall of the Bihać enclave. When on 25 November 1994 the Serbs continued their attacks, there followed a unilateral NATO action. Just 20 U.S. aircraft were involved, attacking ground targets, but with no success because of the British sabotage by guiding the aircraft to the wrong targets. »The Times« discovered that General Rose, the Commander of the UN forces in Bosnia and Herzegovina, had intended to give the Serbs copies of the top secret NATO flights. Croatian Admiral Domazet says that the Serbs were aided time and again by UNPROFOR troops preventing an HV and HVO attack by reinforcing their numbers in the Dinara area and deploying in the space between the Croatian and forces and the Serb troops attacking Bihać, to additionally secure the Serbs' back. Stating that on 2 June 1995 the Serbs shot down a U.S. F-16 and blocked the entire NATO forces, Domazet finds that in the fall of Srebrenica, too, an important role was played by a member of the British special forces with the code name of Camerun who wrongly guided NATO aircraft. Eventually, fearing the public reaction to a possible fall of Bihać, the United States had no other option but to rely on the Republic of Croatia that finally launched its military and police operations to liberate its occupied territories and save the Bihać area from the fate of Srebrenica.

There is an obvious political syndicate of some of the domestic media to propagate perjury, headed by the circle around Stjepan Mesić who has been building his politics on his false testimony before the ICTY for several years now. He is defaming the Croats in Bosnia and Herzegovina and President Franjo Tuđman. In addition to the objective cir-

cumstances and power play, the question of the ostensible sell-out of the Bosnian Sava region has been best answered by the former and the actual U.S. Ambassadors to Croatia – Peter Galbraith and Robert Bradke. On 17 October 2008, as reported by the Croatian News Agency (HINA), Galbraith said that the Croatian Army should have been allowed to take Banja Luka. Consequently, it was prohibited that the operation should be ended in such a manner, from which follows that Galbraith's statement is an open confession that the Republic of Srpska is a creation of the international community. In an interview to the daily *Večernji List* (8 November 2008), actual U.S. Ambassador Robert Bradke said that the Croatian thrust to Banja Luka would only have meant unnecessary additional casualties and refugees, because the Croatians would have had to give that territory back in Dayton anyway.

To accuse Croatian President Franjo Tuđman – who in spite of the passive stance of the international community succeeded in defeating the aggressor in Croatia and to prevent massacres of the Muslim population in Bihać, as it was precisely owing to President Tuđman that this town avoided the fate of Srebrenica – is something that may only come from the policy that was defeated, at least in Croatia, owing to the brilliant Croatian victories. Taking statements out of the context of the time and present them, like Prosecutor Scott does, as categorical claims, is paramount to a claim that the Bible says there is no God! Namely, these words truly stand written in the Bible, but in the sentence »The fool says in his heart, »There is no God.« That Bosnia and Herzegovina were once integral part of a Croatian state, that the Croatians consider them as their lands, and even that most Muslims declared themselves ethnic Croatians until 1945 and together with the rest of the nation participated in the restoration of the Croatian statehood, is no secret, just like it is no secret that in the meantime they have opted to go it alone and build a distinct national identity. These facts also refute the Prosecutor's claim that Tuđman ostensibly wanted to establish Greater Croatia within the borders of Banovina Hrvatska from 1939.

Consequently, we can rightly conclude that the ICTY judgement supports the Muslim policy of ethnic cleansing of the Croats in Bosnia and Herzegovina, whilst simultaneously conducting completely baseless trials against Croat officers who ultimately saved Bosnia and Herzegovina from completely falling into the hands of Slobodan Milošević. Or, is perhaps General Slobodan Praljak put on trial precisely for that?

POLITICAL GAMES SURROUNDING (ABOUT) OPERATION STORM

Marko Barišić

Florence Hartmann, the former spokeswoman for Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY), during the war she was a correspondent for the French newspaper *Le Monde* and in her report from May 9, 1995, after Operation Flash (Bljesak), published the statement of the British Ambassador Gavin Hewitt, who had spent a whole day touring the territory and talking to many eyewitnesses, stating that the Croatian military and police behaved very correctly. He did not neglect to state he was »very surprised by reports from the United Nations Office in Zagreb which mentioned looting and violation of human rights.« Hartmann also carries the statement of a Serbian prisoner, providing his first and last name and age, who, upon returning to Pakrac, stated that there were no mistreatments and that they were »fed and correctly interrogated« during their captivity. At the end, Florence Hartmann raises the question whether this is an »incompetence or manipulation« of the UN representatives? »It is both the Western diplomats answered,« as she stated in the conclusion of her report.

With respect to such a context, it is not surprising that Operation Storm was met with the same or even more distrust three months later, since it was clear, if it succeeds, as the former US Secretary of State, Warren Christopher, stated, it will lead to a new strategic situation. Already, during the first day of the operation, at the proposal of France and Great Britain, the European Union demanded the suspension of the operation, simultaneously freezing all relations with Zagreb. On the second day, after the Croatian army entered into Knin, the British Government at the time came out with public accusations that Croatia was carrying out ethnic cleansing.

A day later, on August 6, 1995, the United States dismissed these British charges. »This is not ethnic cleansing. Ethnic cleansing is a practice that is supported by the leadership in Belgrade which was carried out by the Bosnian Serbs and also Croatian Serbs, forcefully expelling the local Muslim or Croatian population, using terror tactics,« a statement by then US Ambassador to Croatia, Peter Galbraith, carried by the Reuters News Agency. Defending his position, Galbraith later clarified that the Serbian population left by orders of its leaders »before contact with Croatian forces,« which cannot be treated as ethnic cleansing and persecution of the population.

The same is claimed by numerous Serbian sources. As for example, Milisav Sekulić, an officer in the rebel Serbian army, stationed in the Knin headquarters at the beginning of Operation Storm. In his book *Knin je pao u Beogradu* (Knin Fell in Belgrade), he accu-

ses the leaders of the Serbian para-state, Martić and Mrkšić, that they had organized and implemented the evacuation of the Serbian population, even though, according to his interpretation, the situation on the frontline did not demand it. Sekulić writes that already during the first day of Operation Storm, at the meeting of the political and military leadership of the so-called Krajina Republic in Knin on August 4th at 16:45, a decision was made to evacuate civilians.

First, according to his testimony, leading officials of the para-state left Knin for a separate command post in Srb. They were afterwards followed by civilians who were joined by army units abandoning their positions. In connection with this, there is an interesting statement by the former leader of the so-called Krajina, Milan Babić, which he gave to the Reuters News Agency on August 8, 1995. In his statement to Reuters Milan Babić accused Milan Martić, president of the Republic of Serbian Krajina that he intentionally initiated the exodus of the Serbian population in order to draw then Yugoslavia, actually Serbia, into the war against Croatia. »I was stunned when I learned that the Main Headquarters of the Serbian army of Krajina and president Martić ordered the general evacuation and withdrawal of the army," stated Milan Babić to the Reuters News Agency.

In the summer of 2000, an official letter arrived in Zagreb written by

Graham Blewitt, the Deputy Chief Prosecutor at the War Crimes Tribunal in The Hague at that time. In the letter, among other things, Blewitt claimed that the »Republic of Croatia carried out aggression against the Republic of Serbian Krajina and its main city Knin«.

With such a formulation, the Office of the Prosecutor at the War Crimes Tribunal directly violated Resolution 871 of the General Assembly of the United Nations, dated December 9, 1994, which does not mention at all the name of the Serbian para-state in Croatia, and only speaks about the »occupied parts of Croatia«. The resolution of the fourth political committee of the General Assembly of the United Nations of October 21, 1994, strongly condemned »self-proclaimed Serbian authorities in the Croatian areas under control of Serbs because of their militant actions that led to ethnic cleansing in the United Nations Protected Areas (UNPA)«. This resolution in paragraph 5 also speaks about »parts of Croatian territory under Serbian occupation« and once again reaffirms the »territorial integrity of the Republic of Croatia within its internationally recognized borders«.

After some protests from the Croatian Government, Blewitt somewhat relativized his statement but did not withdraw it. Later indictments showed that this thesis was not abandoned. First against general Ante Gotovina who led the Croatian forces that entered into Knin, then against the former Chief of Staff of the Croatian Army, Janko Bobetko, for Operation Medak Pocket (Medački džep), followed by the indictments of generals Mladen Markač and Ivan Čermak in connection with Operation Storm. The indictments were put together in such a way as if Croatia had to be put on trial, as Blewitt in moments of candor wrote in a letter to the Croatian Government, because of the military elimination of the Serbian para-state which, according to him, needed to stay permanently outside Croatian jurisdiction.

Blewitt's handwriting is also obvious in The Hague indictments against Croatian generals which included the same legal formulations as expressed by the former officials of the so-called Krajina in their »indictments« against Croatia.

One of these officials, Savo Štrbac did not hide his political goals from the public. His intention was, as he used to say, to create accusations which would bring indictments for the leading Croatian political and military persons at the time of Operation Storm; and upon their sentencing, the conditions would be created for the restoration of the Serbian para-state in Croatia. Several months before Operation Storm, Štrbac, as an official of the Krajina government in Knin, stated for the foreign media that »Krajina« would never be a part of Croatia, declaring himself as a representative of the extreme radical faction, which refused any kind of a political solution other than the formation of »Greater Serbia«.

THE HAGUE TRIBUNAL AND ITS JOINT CRIMINAL ENTERPRISE

Academician Josip Pečarić

The arms embargo and all sundry help to the aggressor did not prevent the Croatian state from being born. It was necessary to find another instrument which would be capable of acting likewise in new conditions, given the existence of the Croatian state. This was not simple, because the Badinter commission did once correctly rule on the reasons for the aggression and on the right of the Croatian people to be independent.

Let us remember that the Charter of the international criminal tribunal in The Hague is in accord with the so-called Nuremberg principles, i.e. is patterned after the Nuremberg trials, in which an international military tribunal tried the principal war criminals of the Third Reich, in the period from November 20, 1945, to October 1, 1946. In the first place was the »crime against peace,« defined at the time as a crime which included: planning, preparing, instigating and leading an aggressive war. Incriminations included war crimes and crimes against humanity, but these were leveled only against those who committed the crime against peace, i.e. who engaged in aggressive war.

There is no »crime against peace« in the Charter of the Hague tribunal. Is it because those who permitted it should also be held answerable for it? It is known who gave the permission for the beginning of the war. It is known that Milošević was granted 15 days to break Croatia. Is that why the story of a civil war was concocted, even though there was no conflict within parts of the same nation? Or is it because it was envisaged at the outset that the court would be a political one, according to which all will be equally responsible. Namely, it is known that the UN Security council established the Hague tribunal not to try war crimes, but to use it as a lever to establish peace in the region. This is why some may have left out the »crime against peace« in the Charter of the court even without malign intent. Nevertheless, governments which supported Greater Serbian aggression certainly did not find it convenient for that court to try aggressors, meaning their ally Serbia.

Without a crime against peace, i.e. the crime of aggression, without the most important crime in the Charter of the Hague tribunal, the role of the Tribunal could easily be perverted and turned into its own inverse. Instead of trying for war crimes, the Tribunal tries those who fought for their freedom, it tries the state which is not according to the taste of world powers that be, it has become an institution which, because of all that, produces a false history of the end of the twentieth century, history which should in that way clean up the role of the world powers, and by that also the role of the Hague tribunal.

The contriving of an aggression of Croatia on B&H was confirmed by the American military historian Charles R. Shrader (who taught military history at the West Point Military Academy), author of the book *Muslim-Croatian civil war in central Bosnia*. He proved that the aggression was of Muslims against Croats, and it is known that the Croats were surrounded and ten times weaker than the aggressor.

In the extended indictment against general Gotovina it is stated that the Hague tribunal considers it a »criminal enterprise« that »since 1992 the Croatian Army applied itself to planning to return by force the territory of the RSK. In 1992, 1993, 1994, and 1995 Croatian forces carried out military operations whose this was the final objective.«

The main »proof« in the new indictment against General Gotovina is the Brijuni transcript which was submitted to the Hague tribunal from Mesić's office and which the participants to the conversation confirmed as a forgery.

»JOINT CRIMINAL ENTERPRISE« IN HAGUE'S INDICTMENTS AND THE INFLUENCE OF SUCH AN APPROACH ON THE PROCEEDINGS FOR WAR CRIMES CONDUCTED BY CROATIAN COURTS

Ankica Luetić and Zoran Mimica

The proceedings of the ICTY have, beginning from an incorrect approach to historical facts, followed by a neglect of the constitutional laws of the Republic of Croatia, to a neglect of the means of collecting evidence and a selective collection of evidence, resulted in an indictment in which a legitimate and flawlessly-led, liberating military operation »Storm« was deemed as a »joint criminal enterprise subsequent to the activities of general Gotovina with others, including President Tudman, Generals Ivan Čermak and Mladen Markač, Ministry of the Interior (MUP RH), Military Police and the civil administration«, all with a common purpose to »forcefully retake the territory of the Republic of Serbian Krajina (RSK), or the Krajina region, into the legal framework and laws governing the Republic of Croatia«. The listed outcomes that such »joint criminal enterprises« have achieved are: »formulating plans and launching the military offensive« with a purpose »to retake Krajina« or »to retake the Krajina region,« launching attacks »against the civil population, namely the Serb population of the southern part of the Krajina region«.

It is sufficient to skim through this incitement to conclude that it negates the Constitution of the Republic of Croatia (RH), the territorial integrity of RH, the rights and responsibilities of its civil administration and its military leadership, the citizenship of the population of the occupied territories, while it acknowledges the existence of territories and governments of the legally non-existent RSK, whose territory was »forcefully retaken into the legal framework and laws governed in the Republic of Croatia,« or, in a different formulation »retaken« and »attacks were launched against their population.«

The status of »friend of the Court« (*amicus curiae*), which RH offered to the Court in case of such an indictment, was not approved, with the explanation that RH is not »neutral.« This stems from the prosecutor's fear that the participation of legal, military and history experts would challenge their thesis about the »joint criminal enterprise« that forms the basis of the indictment.

On the other hand, from 1994, when parts of Croatia were under occupation, the Hague prosecution office chose Savo Štrbac for its primary collaborator on Croatia, a member of three criminal governments of RSK, assigning him the task to collect evidence for indictments against Croats. Most of the content of the indictment against six Cro-

ats from Bosnia and Herzegovina and Generals Gotovina, Markač and Čermak are his doing. Analyses show that Štrbac prepared about 300 witnesses. Štrbac was a collaborator of the Yugoslav Secret Services before the war, and after, in Knin, Milošević's »controller.«

The Hague's prosecution does not hide the fact that all proceedings against Croats from Croatia and Bosnia and Herzegovina have been launched and are being conducted according to evidence and data which were obtained from Sava Štrbac representing the »Veritas Documentation-Information Center«.

It is obvious that The Hague proceedings are being conducted based on indictments derived from »evidence material« collected by the careful execution of integrated intelligence activity with associations of dubious origin. At its head is the person who was the secretary of the Government of the so-called RSK; before this he was a judge at the district court in Zadar. His areas of activities were directed towards the disintegration of the constitutional and legal system in the Republic of Croatia, towards the realization of the idea of Greater Serbia through the criminalization of the Homeland War and the establishment of a collective guilt of the Croatian people for the Homeland War. This is all in direct contradiction with the Homeland War Declaration, which was enacted by the Croatian parliament, and in which the Homeland War was without any doubts declared as a response to aggression on Croatia, and not as a civil war.

In the article »The Homeland War,« published in »Fokus« on September 17, 2004, Sava Štrbac explains his criminal plan directed towards the disintegration of the constitutional order of Croatia and declares that in five attacks on RSK, the territory protected by the UN, Croatia, as a member of the UN, has conducted five aggressions against the UN. Štrbac: »This opens enormous possibilities. Should the accused generals, the leaders of the biggest Croatian military operations, be proven guilty, which we seek, then those leaders will be the convicted war criminals, and the actions they had led will officially be criminal actions. War which is based on criminal actions is neither a »homeland« nor defensive war, but rather it is criminal and aggressive. This is a chance for us Serbs to use legitimate and legal means to obtain the right for statehood of the Republic of Serbian Krajina.«

Comparing the contents of the indictment by the Hague's prosecution against the generals of the Croatian Army for Operation Storm with the goals of the »Veritas« association represented by Sava Štrbac which has collected the evidence for the prosecution, it becomes obvious that they are essentially equal: to prove that the war in Croatia was a civil war, to equalize the responsibility of all sides in the conflict, and to deny the legitimacy of the liberating operations which restored the territorial integrity and the sovereignty of the Republic of Croatia within its internationally recognized borders.

**THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA**

THE PROSECUTOR

v.

Ante GOTOVINA

Case No. IT-01-45

AMENDED INDICTMENT

The Prosecutor of the International Criminal Tribunal for the former Yugoslavia, pursuant to her authority under Article 18 of the Statute of the International Criminal Tribunal for the former Yugoslavia («the Statute of the Tribunal»), charges:

ANTE GOTOVINA

with **CRIMES AGAINST HUMANITY** and **VIOLATIONS OF THE LAWS OR CUSTOMS OF WAR**, as set forth below:

THE ACCUSED
Ante GOTOVINA

1. **Ante GOTOVINA** was born on 12 October 1955, on the island of Pasma within the Municipality of Zadar in the Republic of Croatia, at that time part of the Socialist Federal Republic of Yugoslavia (the «SFRY»).
2. **Ante GOTOVINA**, a former French Legionnaire of the rank of Chief Corporal, returned to Croatia in June 1991, whereupon he was appointed Chief of Operations and Training of the 1st Brigade of the *Zbor Narodne Garde* («ZNG») (National Guard Corps). From February to April 1992, he was Deputy to the Commander of the Special Unit of the Main Staff of the Croatian army, the *Hrvatska Vojska* (the «HV»), and from April to October 1992, he was assigned to the Croatian Defence Council, the *Hrvatsko Vijeće Obrane* (the «HVO»).
3. On 9 October 1992, **Ante GOTOVINA**, holding the rank of Brigadier, was appointed the Commander of the Split Operative Zone of the HV (which in 1993 was re-named the Split Military District), and held that command until March 1996.

On 30 May 1994, he was promoted to the rank of Major General. By early August 1995, he had been promoted to the rank of Colonel General.

4. On 4 August 1995, the Republic of Croatia launched a military offensive known as »Oluja« or »Storm« (»Operation Storm«), with the objective of re-taking the Krajina region. **Ante GOTOVINA** was the overall operational commander of the Croatian forces that were deployed as part of Operation Storm in the southern portion of the Krajina region, including the municipalities, in whole or in part, of Benkovac, Gracac, Knin, Obrovac, Sibenik, Sinj and Zadar. On 7 August 1995, the Croatian government announced that the Operation had been successfully completed. Follow-up actions continued until about 15 November 1995. In early August 1995, following the re-taking of the Krajina region, **Ante GOTOVINA** moved his headquarters to Knin, the capital of the Krajina region, which was located within the Split Military District.
5. On 12 March 1996, the President of the Republic of Croatia, Franjo TUDJMAN (»President Franjo TUDJMAN«), appointed **Ante GOTOVINA** Chief of the HV Inspectorate.

INDIVIDUAL AND SUPERIOR CRIMINAL RESPONSIBILITY

6. **Ante GOTOVINA** is individually criminally responsible for the crimes which are referred to in Articles 3 and 5 of the Statute of the Tribunal and which are alleged in this Amended Indictment pursuant to Article 7(1) of the Statute of the Tribunal. Acting individually or in concert with others, the accused planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation, or execution of such crimes, or foresaw the likelihood that they would be committed.
7. By using the word »committed« in the Amended Indictment, the Prosecutor also includes acts that the accused committed by participating in a joint criminal enterprise. During and after Operation Storm, at all times relevant to this Amended Indictment, **Ante GOTOVINA**, with others including Ivan ČERMAK, Mladen MARKAČ and President Franjo TUDJMAN, participated in a joint criminal enterprise, the common purpose of which was the forcible and permanent removal of the Serb population from the Krajina region, including by the plunder, damage or outright destruction of the property of the Serb population, so as to discourage or prevent members of that population from returning to their homes and resuming habitation.
8. The crimes enumerated in Counts 1 and 3 to 6 of this Amended Indictment were within the common purpose of the joint criminal enterprise. The accused had the state of mind necessary for the commission of each of these crimes.
9. The crimes enumerated in Counts 2 and 7 and, as an alternative to the allegations in paragraph 8, Counts 1 and 3 to 6, were the natural and foreseeable consequences of the execution of the joint criminal enterprise and the accused was so aware.

10. During Operation Storm and its aftermath, Croatian forces attacked and took control of towns, villages and hamlets in the southern portion of the Krajina region. Pursuant to the orders of **Ante GOTOVINA**, these forces carried out the acts which give rise to Counts 1 and 3 to 6. By his acts and omissions, the accused thereby encouraged others, including Croatian civilians, to also perpetrate those acts that give rise to those charges. Further, the accused **Ante GOTOVINA** had a duty to restore and ensure public order and safety, and he failed to fulfill this duty.
11. As the overall operational commander, **Ante GOTOVINA** exercised *de jure* and/or *de facto* command and control over Croatian forces during Operation Storm. In the aftermath of Operation Storm, **Ante GOTOVINA** retained command and control of HV forces that continued to be deployed in the southern portion of the Krajina region.
12. **Ante GOTOVINA**, while holding a position of superior authority, is also individually criminally responsible for the acts or omissions of his subordinates, pursuant to Article 7(3) of the Statute of the Tribunal. A superior is responsible for the criminal acts of his subordinates if he knew or had reason to know that his subordinates were about to commit such acts, or had done so, and the superior failed to take the necessary reasonable measures to prevent such acts or to punish the subordinates.
13. **Ante GOTOVINA** had the power, authority and responsibility to prevent or punish serious violations of international humanitarian law committed by Croatian forces during and after Operation Storm. The accused knew, or had reason to know, that all crimes alleged within this Amended Indictment were about to be committed or had been committed by his subordinates, and he failed to take necessary and reasonable measures to prevent acts or to punish the perpetrators thereof. The accused is therefore individually criminally responsible under Article 7(3) of the Statute of the Tribunal.

GENERAL ALLEGATIONS

14. At all times relevant to this Amended Indictment, a state of armed conflict existed in the Krajina region of the Republic of Croatia in the territory of the former Yugoslavia.
15. At all times relevant to this Amended Indictment, the accused **Ante GOTOVINA** was required to abide by the laws and customs governing the conduct of war, including Common Article 3 of the Geneva Conventions of 1949.
16. The acts or omissions alleged against the accused in this Amended Indictment, which constitute Crimes against Humanity, are crimes punishable by Article 5 of the Statute of the Tribunal, and were part of a widespread or systematic attack directed against a civilian population, namely the Serb population of the southern portion of the Krajina region.
17. In this Amended Indictment every reference to »Croatian forces« means and includes those units of the HV, the Croatian Air Force or *Hrvatsko Ratno Zrako-*

ploustvo («the HRZ»), and units of the RH MUP that participated in Operation Storm and/or its aftermath, and also the civilian and Special Police, in the southern portion of the Krajina region.

18. The Count in the Amended Indictment in relation to murder, and the Count of persecution insofar as it relies on the acts of murder, allege the totality of these acts. The Schedule to these Counts sets forth only a small number of individual incidents for the purposes of specificity of pleading.
19. The general allegations contained in the previous paragraphs are re-alleged and incorporated into each of the related charges set out below.

CHARGES

COUNT 1 (PERSECUTIONS)

20. Between 4 August 1995 and 15 November 1995, the accused **Ante GOTOVINA**, acting individually and/or in concert with other members of the joint criminal enterprise, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, or execution of persecutions of the Krajina Serb population in the southern portion of the Krajina region.

The crime of persecutions was perpetrated through the following:

Plunder of Public or Private Property

21. Between 4 August 1995 and 15 November 1995, Croatian forces systematically plundered the property of the Krajina Serbs, including their homes, outbuildings, barns and livestock in the towns, villages and hamlets of the Municipalities of Benkovac, Donji Lapac, Drnis, Gospic, Gracac, Knin, Korenica, Obrovac, Sibenik, Sinj and Zadar.

Destruction of Property

22. Between 4 August 1995 and 15 November 1995, Croatian forces systematically set fire to or otherwise destroyed villages, homes, outbuildings and barns belonging to the Krajina Serbs, killed their livestock and spoiled their wells. Thousands of dwellings in the Municipalities of Benkovac, Donji Lapac, Drnis, Gospic, Gracac, Knin, Korenica, Obrovac, Sibenik, Sinj and Zadar were damaged or destroyed.

Deportation / Forced Displacement

23. Between 4 August 1995 and 15 November 1995, Croatian forces directed violent and intimidating acts against Krajina Serbs, including the plunder and destruction of their property, thereby forcing them to flee the southern portion of the Krajina region.
24. These acts were intended to discourage or prevent those who had already fled the area, either immediately before or during Operation Storm in anticipation of an armed conflict, from returning to their homes. The effect of these violent and

intimidating acts was a deportation and/or displacement of tens of thousands of Krajina Serbs to Bosnia and Herzegovina and Serbia.

The Prosecution alleges that the following two acts were natural and foreseeable consequences of the joint criminal enterprise and on that basis also contributed to the offence of persecutions.

Murder

25. Between 4 August 1995 and 15 November 1995, Croatian forces murdered at least 150 Krajina Serbs. Specifically referred to in this Amended Indictment are the murders of 1 person in the Benkovac Municipality, 30 persons in the Knin Municipality, and 1 person in the Korenica Municipality.

Listed in the Schedule, attached hereto, are further particulars of such murders.

Other Inhumane Acts

26. Between 4 August 1995 and 15 November 1995, large numbers of Krajina Serbs were subjected to inhumane treatment, humiliation and degradation by Croatian forces beating and assaulting them.
27. Alternatively, the accused **Ante GOTOVINA** knew or had reason to know that forces under his effective control were committing the acts described in paragraphs 21 through 26 above, or had done so, including as a result of having been so informed by representatives of the international community. The accused **Ante GOTOVINA** failed to take necessary and reasonable measures to prevent the commission of such acts or punish the perpetrators thereof.

By these acts and omissions, the accused **Ante GOTOVINA** did commit:

Count 1: a **CRIME AGAINST HUMANITY**, namely Persecutions on political, racial and religious grounds, punishable under Article 5 (h) read with Articles 7 (1) and 7 (3) of the Statute of the Tribunal.

COUNT 2 (MURDER)

28. Between 4 August 1995 and 15 November 1995, Croatian forces murdered at least 150 Krajina Serbs by means of shooting, burning or stabbing. Specifically referred to in this Amended Indictment are the murders of 1 person in the Benkovac Municipality, 30 persons in the Knin Municipality, and 1 person in the Korenica Municipality.

Listed in the Schedule, attached hereto, are further particulars of such murders.

29. Between 4 August 1995 and 15 November 1995, the accused **Ante GOTOVINA** knew or had reason to know that forces under his effective control were about to murder Krajina Serbs as described in paragraph 28 above, or had done so. The accused **Ante GOTOVINA** failed to take necessary and reasonable measures to prevent the commission of such acts or punish the perpetrators thereof.

By these acts and omissions, the accused **Ante GOTOVINA** did commit:

Count 2: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, namely Murder, as recognised by Common Article 3(1)(a) of the Geneva Conventions of 1949, punishable under Article 3 read with Article 7 (3) of the Statute of the Tribunal.

COUNT 3
(PLUNDER OF PROPERTY)

30. Between 4 August 1995 and 15 November 1995, Croatian forces systematically plundered the property of the Krajina Serbs, including their homes, outbuildings, barns and livestock, in the towns, villages and hamlets of the Municipalities of Benkovac, Donji Lapac, Drnis, Gospic, Gracac, Knin, Korenica, Obrovac, Sibenik, Sinj and Zadar.
31. The accused **Ante GOTOVINA**, acting individually and/or in concert with other members of the joint criminal enterprise, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, or execution of the acts of plunder of property.
32. Alternatively, the accused **Ante GOTOVINA** knew, or had reason to know, that forces under his effective control were about to commit the acts described in paragraph 30 above, or had done so. The accused **Ante GOTOVINA** failed to take necessary and reasonable measures to prevent the commission of such acts or punish the perpetrators thereof.

By these acts and omissions, the accused **Ante GOTOVINA** did commit:

Count 3: a **VIOLATION OF THE LAWS OR CUSTOMS OF WAR**, namely Plunder of public or private property, punishable under Article 3 (e) read with Articles 7 (1) and 7 (3) of the Statute of the Tribunal.

COUNT 4
(WANTON DESTRUCTION OF CITIES, TOWNS OR VILLAGES)

33. Between 4 August 1995 and 15 November 1995, Croatian forces systematically set fire to or otherwise destroyed villages, homes, outbuildings and barns belonging to Krajina Serbs, killed their livestock and spoiled their wells. Thousands of dwellings in the Municipalities of Benkovac, Donji Lapac, Drnis, Gospic, Gracac, Knin, Korenica, Obrovac, Sibenik, Sinj and Zadar were destroyed.
34. The accused **Ante GOTOVINA**, acting individually and/or in concert with other members of the joint criminal enterprise, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation, or execution of the acts of destruction of property.
35. Alternatively, the accused **Ante GOTOVINA** knew or had reason to know that forces under his effective control, or subordinated to him, were about to commit the acts described in paragraph 33 above, or had done so. The accused **Ante GOTOVINA** failed to take necessary and reasonable measures to prevent the commission of such acts or punish the perpetrators thereof.

By these acts and omissions, the accused **Ante GOTOVINA** did commit:

Count 4: a VIOLATION OF THE LAWS OR CUSTOMS OF WAR, namely Wanton destruction of cities, towns or villages, punishable under Article 3 (b) read with Articles 7 (1) and 7 (3) of the Statute of the Tribunal.

COUNTS 5 AND 6
(DEPORTATION AND FORCED DISPLACEMENT)

36. Between 4 August 1995 and 15 November 1995, Croatian forces directed violent and intimidating acts against Krajina Serbs, including the plunder and destruction of their property, thereby forcing them to flee the southern portion of the Krajina region.
37. These acts were intended to discourage or prevent those who had already fled the area, either immediately before or during Operation Storm in anticipation of an armed conflict, from returning to their homes. The effect of these violent and intimidating acts was the deportation and/or displacement of tens of thousands of Krajina Serbs to Bosnia and Herzegovina and Serbia.
38. The accused **Ante GOTOVINA**, acting individually and/or in concert with others, including Ivan ČERMAK, Mladen MARKAČ, and President Franjo TUDJMAN, planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of the deportation and forced displacement of the Krajina Serb population.
39. Alternatively, the accused **Ante GOTOVINA** knew or had reason to know that forces under his effective control were about to commit the acts described in paragraphs 36 and 37 above, or had done so. The accused **Ante GOTOVINA** failed to take necessary and reasonable measures to prevent the commission of such acts or punish the perpetrators thereof.

By these acts and omissions, the accused **Ante GOTOVINA** did commit:

Count 5: a CRIME AGAINST HUMANITY, namely Deportation, punishable under Article 5 (d) read with Articles 7 (1) and 7 (3) of the Statute of the Tribunal.

Count 6: a CRIME AGAINST HUMANITY, namely Other Inhumane Acts (forced displacement), punishable under Article 5 (i) read with Articles 7 (1) and 7 (3) of the Statute of the Tribunal.

COUNT 7
(OTHER INHUMANE ACTS)

40. Between 4 August 1995 and 15 November 1995, Croatian forces subjected many of the Krajina Serbs to inhumane treatment, humiliation and degradation by beating and assaulting them.
41. Between 4 August 1995 and 15 November 1995, the accused **Ante GOTOVINA** knew or had reason to know that forces under his effective control were about to commit the acts described in paragraph 40 above, or had done so. The

accused Ante GOTOVINA failed to take necessary and reasonable measures to prevent the commission of such acts or punish the perpetrators thereof.

By these acts and omissions, the accused Ante GOTOVINA did commit:

Count 7: a CRIME AGAINST HUMANITY, namely Other Inhumane Acts, punishable under Article 5 (i) read with Article 7 (3) of the Statute of the Tribunal.

STATEMENT OF THE FACTS

42. The Republic of Croatia declared its independence on 25 June 1991, by which time an armed conflict had erupted in some areas in Croatia between Croatian Serbs (Krajina Serbs) and Croatian forces. In September 1991, the Croatian Serbs and the Yugoslav People's Army (JNA) controlled about one-third of the territory of the Republic of Croatia.
43. On 19 December 1991, the Assembly of the Serbian Autonomous Region of Krajina, together with Serbs from other parts of the Republic of Croatia declared independence from Croatia and purported to form a new entity, the self-proclaimed *Republika Srpska Krajina* (the »RSK«). The »RSK« had its own military force, the *Srpska Vojska Krajine* (the Serbian Army of Krajina or SVK).
44. The Krajina region, comprising the former UNPA's Sector South and Sector North, was situated within the »RSK« and included, but was not limited to, the municipalities of Benkovac, Donji Lapac, Drnis, Gospić, Gracac, Knin, Korenica, Obrovac, Sibenik, Sinj, and Zadar.
45. In February 1992, in accordance with the Vance Plan, the United Nations Security Council established under its authority a United Nations Protection Force (»UNPROFOR«) that was to be deployed in the UNPA's in Croatia. The UNPA's were areas in Croatia where Serbs constituted the majority or a substantial minority of the population and where inter-communal tensions had already led to armed conflict. There were four UNPA's, known as Sectors North, South, East and West.
46. By 1992, the Croatian Army was formulating plans for the forcible re-taking of the territory of the »RSK.« In 1992, 1993, 1994 and 1995, Croatian forces launched military operations with this ultimate objective.
47. These operations were launched into the UNPA's or adjacent »pink zones« in the Miljevac Plateau in June 1992, the area of the Maslenica bridge in northern Dalmatia in January 1993, the Medak Pocket in September 1993, Operation Flash in Western Slavonia in May 1995 and Operation Storm in August 1995.
48. Ivan ČERMAK was born on 19 December 1949, in the Municipality of Zagreb in the Republic of Croatia, then part of the SFRY.
49. Between 1990 and 1991, Ivan ČERMAK held the position of Vice President of the Executive Board of the Croatian Democratic Union (HDZ) and also served as an advisor to President Franjo TUDJMAN.

50. In 1991, Ivan ČERMAK was appointed the Assistant Minister of Defence in the government of the Republic of Croatia, which position he held until 1993. Whilst in this position and thereafter, he held the rank of Colonel General. In 1993, he was appointed the Minister of Trade, Shipbuilding and Energy. In December 1993, Ivan ČERMAK ceased to be a Minister of the Croatian government.
51. On 5 August 1995, President Franjo TUDJMAN appointed Ivan ČERMAK the Commander of the Knin Garrison. Ivan ČERMAK established his headquarters in Knin on 5 or 6 August 1995.
52. As the Commander of the Knin Garrison, and pursuant to the authority conferred on him by President Franjo TUDJMAN, to whom he was directly responsible, Ivan ČERMAK exercised *de jure* and/or *de facto* control over some of the Croatian forces operating in the southern portion of the Krajina region during Operation Storm from the time of his appointment, and in the Operation's aftermath. In particular, Ivan ČERMAK exercised effective control over the units of the Special Police of the Ministry of the Interior of the Republic of Croatia (the »RH MUP«), and some elements of the HV including the Military Police and the civil administration, and through them, exercised territorial control over significant areas in which the crimes alleged in this Amended Indictment were committed.
53. On or about 15 November 1995, Ivan ČERMAK was succeeded as the Commander of the Knin Garrison by his Deputy.
54. Mladen MARKAČ was born on 8 May 1955, in Đurđevac, in the Municipality of Đurđevac in the Republic of Croatia, then part of the SFRY.
55. In 1981 Mladen MARKAČ graduated from the University of Zagreb, and in 1982 he completed his compulsory military service. He then joined the police force of the Ministry of the Interior of the SFRY.
56. In 1990 Mladen MARKAČ, and others, established a police unit for special tasks within the Ministry of the Interior. He was appointed Deputy Commander of the unit which, in late 1990, became the Anti-Terrorist Unit. In 1991 Mladen MARKAČ was appointed the head of the Lucko Anti-Terrorist Unit. In 1992 he was promoted to the rank of Major General (reserve).
57. On 18 February 1994 Mladen MARKAČ was appointed Commander of the RH MUP. In the aftermath of Operation Storm Mladen MARKAČ held the rank of Colonel General.
58. As Commander of the Special Police of the RH MUP, during and after Operation Storm, Mladen MARKAČ deployed, and issued orders to, the Special Police forces, and otherwise exercised control over them.

19th February 2004 Carla Del Ponte
The Hague Prosecutor
The Netherlands

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