

FIFTEEN YEARS AGO, no one would have predicted the Serb leader would die in the prisoner's dock

Milosevic trial set revolutionary precedent

PAYAM AKHAVAN

The untimely death of former Yugoslav president Slobodan Milosevic has frustrated the painstaking efforts of the International Tribunal in The Hague to bring a measure of justice for his victims.

Since there is no such thing as a posthumous judgment in criminal trials, the world will not benefit from a final verdict that authoritatively establishes his responsibility for massive atrocities against civilians.

In assessing the legacy of the Milosevic trial, however, it is important to consider the broader historical context of the struggle for human rights in the post-Nuremberg era. Against the entrenched culture of impunity that characterized international relations for so long, the fact Milosevic died as an accused man in the dock and not as an influential head of state is a revolutionary precedent.

When I first became involved in the Yugoslav conflict during the summer of 1992, the photographs of thousands of emaciated Bosnians interned in concentration camps had shocked the conscience of the world. But there was no political will to confront the architects of "ethnic cleansing" such as Milosevic, who had shamelessly exploited

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ethnic hatred and violence as an instrument of absolute power.

Instead of intervention against genocide, a UN-sponsored peace plan called for the ethnic partition of Bosnia. Ratifying the territorial gains made by atrocities was a mockery of the myriad of UN resolutions that condemned human rights violations in former Yugoslavia.

I recall seeing Milosevic at UN headquarters in Geneva, where he assumed the role of peace-maker, largely for Western consumption. He was an astute politician with an exceptional capacity for deception and manipulation. Having recently seen the unspeakable horrors unfolding in Bosnia as a UN human-rights monitor, I felt an overwhelming rage at the casual sanitization of genocide in the corridors of power.

While fashionable "clash of civilizations" theories provided a convenient explanation for the atrocities, it was apparent that the tearing apart of an ethnically mixed Bosnian society was no spontaneous outburst of tribal hatred. As with other genocides in history, it was a premeditated use of historical tensions, the construction of an "enemy," as a



A human skull lies near mass burial grounds of Muslim men killed by Serb forces following the fall of Srebrenica.

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means of political homogenization and control.

The proposal to establish an international criminal tribunal initially was ridiculed by some policy-makers as an expression of naive idealism. However, unsavoury as Milosevic, he had the power to effect a peace deal, and this, it was suggested, was more important than a misguided insistence on respect for human rights. Some went so far as to argue it was essential to give Milosevic and others, like Radovan Karadzic and Ratko Mladic, assurances of an amnesty to provide them with an incentive to end the war.

When the Yugoslav Tribunal was eventually established by the UN Security Council in May 1993, it was seen as a paper tiger, a mere pretense of concern rather than a genuine resolve to intervene against genocide. When I joined the tribunal shortly afterward, I had no illusion I was somehow following in the legacy of Nuremberg.

Against the backdrop of unabated "ethnic cleansing" that had accelerated to create a fait accompli in advance of peace negotiations, the contradictions were too great. It was like indicting the Nazi leaders for aggres-

sion while acquiescing in the annexation of Poland.

The tribunal, housed in an empty insurance building in The Hague, was a fiction. There were 11 judges paraded in front of CNN cameras to create the illusion of a judicial institution, but only one staff member in the prosecutor's office, and no prospect whatsoever of accessing much of the evidence, let alone arresting any of the accused.

As one of the judges confided to me then, it was more likely the tribunal would end in a fiasco. I recall the tremendous excite-

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ment when Dusko Tadic, a low-ranking Bosnian Serb criminal who had tortured inmates in a camp, was identified by refugees and arrested in Munich, where he was visiting friends and rela-

tives. Short of an army of occupation, this was the best we could hope for. Only the most naive in our midst - and I was not one of them - believed Milosevic would one day face justice in The Hague.

After the signing of the Dayton Peace Agreement in December 1995, NATO peacekeepers were reluctant to execute the tribunal's arrest warrants for fear they would become entangled in another Mogadishu. Once again, the political realists dismissed the importance of justice as a vital element of post-conflict peace-building. The arrest of accused persons by peacekeepers was an unprecedented recognition of the interdependence between human rights and realpolitik. By the time Milosevic moved on from Croatia and Bosnia to the war in Kosovo, it was abundantly clear appeasement under the guise of political realism had failed.

As NATO began its campaign of bombardment against Serbia-Montenegro, Milosevic expelled almost one million ethnic Albanians from this province. The tribunal had not yet indicted Milosevic, in part because investigators and prosecutors accustomed to ordinary crimes did not

appreciate the peculiarities of systematic state-sponsored crimes, and in part because proving Milosevic's place in the chain of command in the Croatian and Bosnian wars was a difficult and time-consuming task.

Kosovo changed all that. The forces responsible for the mass expulsions were directly under the command of Milosevic. When we submitted the indictment for crimes against humanity for confirmation in May 1999, we had a vague sense that history was being made. For the first time ever, a sitting head of state was being formally accused of international crimes. Few of us foresaw the momentous events of September-October 2000, when a massive campaign of civil disobedience in Serbia finally dethroned the seemingly invincible Milosevic.

Even fewer imagined this once untouchable man would be extradited to The Hague in June 2001, both because of consistent international pressure linked to a desire for regional stability, and because Milosevic's democratic foes in Serbia were more than pleased to eliminate him politically.

The trial that began in February 2002 was fraught with diffi-

culties. The 293 prosecution witnesses that eventually testified were a fraction of those initially contemplated. After all, how does one prove crimes extending over a period of almost a decade, across three countries, and involving millions of victims?

And while some have criticized the slow pace of the proceedings, the desire for efficiency must always be weighed against the requirement of impartiality and an unfettered opportunity for the accused to defend himself.

While Milosevic never recognized the tribunal's legitimacy, he did vigorously use the proceedings as a forum for political propaganda, and his martyr image among some groups in former Yugoslavia helped keep his otherwise spent political fortunes alive, though marginally.

His court appearances provided a glimpse of the diabolical genius that allowed him to wage three utterly futile wars, inflict untold suffering on the Yugoslav people, including the Serbs, and to still reconstruct himself as a saviour and victim of persecution.

Recent evidence that he took medication to neutralize his treatment for high-blood pressure to portray himself as a victim of the tribunal so he could escape to Russia is a final and fatal act of his exceptional capacity for

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manipulation. This time, he outsmarted even himself.

It is unfortunate there is no Milosevic judgment, no official historical record that can help the reconciliation process in former Yugoslavia with the truth. But we should not lose sight that in a century that countenanced the likes of Pol Pot, Idi Amin and Mengistu, the mere indictment and prosecution of Milosevic forever changed the boundaries of power and legitimacy in international affairs.

And even if the victims did not see justice, it was not lost on them - as expressed by a Bosnian newspaper - that the grand architect of "Greater Serbia" died in a 15-foot cell.

Payam Akhavan was the first war crimes prosecutor at the UN Yugoslav Tribunal and was involved in the May 1999 indictment of Slobodan Milosevic for crimes against humanity in Kosovo. He is now senior fellow at McGill University's Faculty of Law.