

Ten Years After the War in Kosovo: International Law, Kosovo and the International Criminal Tribunal for the Former Yugoslavia

By [Linda Strite Murnane](#)

Introduction



This spring, marking the tenth anniversary of the NATO-Serbia conflict over Kosovo, many paused to remember those who died in the conflicts which played out in the Balkans beginning in 1991, and specifically during the Kosovo conflict that culminated in the 1999 war (and ended ten years ago this week). This moment also presents a welcome opportunity to consider the role that

international criminal justice has played in the aftermath of “Operation Allied Force”. This Insight briefly examines how the International Criminal Tribunal for the Former Yugoslavia (ICTY) has addressed war crimes and crimes against humanity alleged to have been committed in Kosovo during the conflict and how its cases have advanced the cause of international criminal justice.

Addressing Atrocities in Kosovo through the ICTY

Established by Resolution 808 of the United Nations Security Council in 1993, in the midst of the Bosnia conflict, the ICTY has indicted more than 160 people.^[1] Fourteen indictees have been charged with crimes alleged to have occurred in Kosovo.^[2] Of these fourteen, seven were convicted, five acquitted at the trial level, one case remains at trial, and one, Slobodan Milošević, died during trial, ending the case without a judgment. Eight indictees were Serbian connected with the government or military; six were Kosovar Albanians associated with the Kosovo Liberation Army.

Cases Against Serb Officials

The best known defendant of the Tribunal was Slobodan Milošević, the former President of Serbia and of the Federal Republic of Yugoslavia. Indicted by former ICTY Prosecutor Louise Arbour in the midst of the Kosovo conflict in May 1999, Milošević eventually faced charges for crimes alleged to have occurred in Kosovo, Croatia, and Bosnia and Herzegovina. The crux of the Kosovo indictment alleged that Milošević bore responsibility for a range of crimes committed by Serb forces against Kosovar Albanians in 1998 and

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1999, including forced deportation of approximately 800,000 Kosovo Albanian civilians, sexual assault by forces of the Federal Republic of Yugoslavia and Serbia against Kosovo Albanians, murder of hundreds of men, women and children, and destruction of property through a widespread and systematic campaign against Kosovo Albanians. Arrested on April 1, 2001, after being voted out of office, Milošević was transferred to the ICTY on June 28, 2001. His trial began in February 2002, generating complete prosecution and defense cases and a significant amount of documentation and testimony. However, the trial ended without a judgment when Milošević died while in detention on March 11, 2006.

Prosecutor v. Milutinović, et al. is the most recent Kosovo case decided by the ICTY. In this case, six former officials were tried in a joint proceeding: the President of Serbia, Milan Milutinović; the Deputy Prime Minister of the Federal Republic of Yugoslavia, Nikola Šainović; the Chief of the General Staff of the Yugoslav Army (VJ), Dragoljub Ojdanić; the Commander of the Third Army of the VJ, Nebojša Pavković; the Chief of Staff of the Priština Corps of the VJ, Valdimir Lazarević; and the Head of the Serbian Ministry of Internal Affairs (MUP) Staff for Kosovo and Metohija, Sreten Lukić. The prosecutor alleged that each had participated in a joint criminal enterprise that began no later than October 1998. The alleged purpose of the joint criminal enterprise was, among other things, to modify the ethnic balance in Kosovo to ensure continued Serbian control over the province. The indictment alleged that the criminal enterprise was to be carried out through a widespread or systematic campaign of terror and violence that included deportations and forced transfers, murder and persecution of the Kosovo Albanian population between January 1 and June 20, 1999.^[3] The six accused had, at one time, also been part of the indictment against Slobodan Milošević, but the cases were later severed.^[4]

On February 26, 2009, a trial chamber convicted five of the six accused, sentencing them to terms of 15 to 22 years for their involvement in acts of deportation, and other inhumane acts, including forcible transfer, and murder and persecution on political, racial or religious grounds.^[5] Additionally, the Trial Chamber concluded that the evidence supported the existence of a joint criminal enterprise alleged in the indictment. Only Milan Milutinović, President of Serbia from December 21, 1997 until December 29, 2002 and member of the Supreme Defense Council of the Federal Republic of Yugoslavia (Serbia and Montenegro), was acquitted.^[6]

The case of the six accused was important in holding superiors accountable for their conduct during war. The mere fact that the case was tried, and that the Trial Chamber issued a judgment, was, in and of itself, an important achievement. Additionally, the judgment included significant language that further hones legal principles and doctrines in the field. The four-volume judgment defines elements of sexual assault – the first time the elements of this crime have been articulated in an international criminal law judgment.^[7] As is noted in the judgment, even the Convention on the Elimination of All Forms of Discrimination Against Women does not mention sexual assault.^[8]

The judgment is also important for its review of the NATO bombing, which was presented as a defense to the deportations and forcible displacements charges. The Trial Chamber noted that none of the Kosovo Albanians who

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testified before the Tribunal in this case indicated that they had left their homes because of the NATO bombing.^[9] The Trial Chamber also concluded that NATO bombing occurred throughout Serbia, with Belgrade suffering the most destruction, and yet people did not leave Belgrade, or other parts of the FRY, in the massive numbers in which individuals fled Kosovo. The Chamber concluded, therefore, that the NATO bombing was not the reason for the mass displacement of Kosovo Albanians from Kosovo.^[10]

The concept of criminal liability under the context of a joint criminal enterprise, discussed in the *Milutinović, et al.*, judgment and other ICTY case law, remains an issue of particular controversy among practitioners in international criminal law. In *Milutinović, et al.* the Trial Chamber concluded that there was a joint criminal enterprise, perpetrated by a campaign of widespread and systematic violence against the Kosovo Albanian population between March and June 1999, which resulted in massive displacement of persons. The intended purpose of the joint criminal enterprise, according to the Trial Chamber, was to alter the ethnic balance of Kosovo to ensure Serbian control of Kosovo. The issue may be further clarified when the Appeals Chamber passes on this aspect of the judgment.

The *Dorđević* case, alluded to above as a related case to *Milutinović, et al.*, is currently being heard at the ICTY. He is charged with deportation, other inhumane acts (forcible transfer), murder, persecution on political, racial, or religious grounds (crimes against humanity), and other violations of the laws or customs of war.^[11] His trial began on January 27, 2009.

Cases Against KLA Members

In November 2004, the Tribunal began the trial against Fatmir Limaj, Isak Musliu, and Haradin Bala. Limaj was allegedly the Kosovo Liberation Army (KLA) Commander responsible for the Lapušnik area and the KLA prison located west of Priština. Musliu was also a commander of the area and the camp, and allegedly served as a guard at the camp at times. Both Limaj and Musliu were found not guilty of charges of persecution on political, racial or religious grounds, cruel treatment, murder and rape in the judgment announced on November 30, 2005.^[12] The findings were confirmed by the Appeals Chamber in September 2007.

Bala, a guard at the KLA Lapušnik prison camp, was convicted of persecutions on political, racial and religious grounds, cruel treatment, murders and rape, and was sentenced to 13 years in prison for his role in maintenance and enforcement of inhumane conditions in the camp. He was also found guilty for aiding in the torture of one prisoner, mistreating of three prisoners, and the murder of about nine prisoners from the prison camp in the Beriša mountains. His conviction was affirmed by the Appeals Chamber on September 27, 2007.

The Tribunal again turned to crimes in Kosovo in the joint trial of Ramush Haradinaj, former commander of the Kosovo Liberation Army (KLA) (and Kosovar prime minister at the time of indictment), Idriz Balaj, former commander of a special unit of the KLA known as the “Black Eagles”, and Lahi Brahimaj, member of the KLA General Staff. The three were indicted in 2005 for acts committed by KLA soldiers who, the indictment alleged, were

perpetrating a joint criminal enterprise to secure total control over the zone of Dukagjin through the unlawful removal and mistreatment of Serb civilians, and through mistreatment of Kosovar Albanians, Kosovar Roma/Egyptian other civilians suspected of collaborating with Serbian forces, or being against the KLA. Additionally, the indictment alleged that soldiers under their command engaged in mistreatment of prisoners held at detention camps operated by the KLA. The indictments included charges of cruel treatment, torture, rape and murder.^[13] The Trial Chamber heard more than 100 witnesses during the proceeding, which began in March 2007.^[14] The judgment was rendered on April 3, 2008.^[15]

Of the three, only Brahimaj was convicted of cruel treatment and torture, violations of the laws or customs of war; he was also found to have participated in the cruel treatment and torture of a specific victim. Additionally, he was found criminally responsible for his involvement in the interrogation and, as a person in a position of authority, the infliction of serious physical suffering on another victim. The Trial Chamber sentenced Brahimaj to six years imprisonment^[16] and acquitted both Haradinaj and Balaj, finding insufficient evidence to sustain the charges against them. As with all cases before the ICTY, both the decisions to acquit and convict may be submitted on appeal, and in the case of Haradinaj, Brahimaj and Balaj, the Trial Chamber judgment is pending before the Tribunal's Appeals Chamber.

Significant in the joint trial of these three KLA leaders was the Chamber's statement in the judgment that it had encountered great difficulty in securing witnesses to testify. The Chamber noted that many witnesses cited fear of reprisal as a prominent reason not to give testimony before the Trial Chamber. The ongoing instability in Kosovo, ten years after the conflict, was cited by the Chamber as causing great difficulty in obtaining necessary testimony.^[17]

Conclusion

In all likelihood, without the ICTY, the individuals accused of crimes in Kosovo would have faced no system of accountability, domestically or internationally. The few cases may not bring justice to the full scale of crimes committed ten years ago, but they underscore that international criminal law can play a role in holding the most senior military and civilian leaders responsible for atrocities. Whether they will play a role in reconciliation and future peacemaking still remains an unfolding story.

About the Author

Linda Strite Murnane served as a Senior Legal Officer for the International Criminal Tribunal for the former Yugoslavia from 2006 - 2008. She is currently the Senior Civilian Attorney with the Defense Institute for International Legal Studies in Newport, Rhode Island. The author thanks Laurence Weiner of Negri and Teijeiro Abogados, Buenos Aires, Argentina, for assistance in preparing this Insight.

Endnotes

[1] S.C. Res. 808, U.N. Doc S/RES/808 (Feb. 22 1993), *available at* <http://www.icty.org/sections/LegalLibrary/StatuteoftheTribunal>.

[2] The fourteen include Slobodan Milošević, Fatmir Limaj, Isak Musliu, Haradin Bala, Ramush Haradinaj, Idriz Balaj, Lahi Brahimaj, Milan Milutinović, Nikolai Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Sreten Lukić, and Vlastimir Đorđević. Of these, only Đorđević is currently in the trial stage.

[3] Prosecutor v. Milutinović, et al., Case No. IT-05-87, Third Amended Joinder Indictment (June 21, 2006), *available at* <http://www.icty.org/x/cases/milutinovic/ind/en/milu-3aji060621e.pdf>.

[4] Prosecutor v. Milutinović, et al., Case No. IT-05-87, Third Amended Indictment (Sept. 5, 2002), *available at* <http://www.icty.org/x/cases/milutinovic/ind/en/milu-3ai020905e.pdf> (note that this is the Third Amended Indictment – which is distinct from the Third Amended Joinder Indictment cited in n.9. The original indictment also included Vlastimir Đorđević but, because he was not in custody of the Tribunal when the charges against the remaining Accused were ready to proceed to trial, his case too was severed and is now a separate proceeding. The original indictment also included Vljako Stojiljković, the Interior Minister for Serbia, but he died before being transferred to the custody of the Tribunal, and thus, the charges against him, too, were severed).

[5] *Id.*

[6] Prosecutor v. Milutinović, et al., Case No. IT-05-87, Judgement (Feb. 26 2009), *available at* <http://www.icty.org/x/cases/milutinovic/tjug/en/jud090226-e1of4.pdf>

[7] Although other tribunals preceding the ICTY have convicted war criminals for sexual assault, the ICTY judgment is the first to specify the elements of the offense.

[8] *Milutinović, et al., supra* note 6.

[9] Prosecutor v. Milutinović, et al., Case No. IT-05-87-T, Judgement Summary, (Feb. 26, 2009).

[10] *Id.*

[11] Prosecutor v. Vlastimir Đorđević, Case No. IT-05-87/1, Fourth Amended Indictment (July 9, 2008), *available at* <http://www.icty.org/x/cases/djordjevic/ind/en/dor-4thdai080709.pdf>

[12] Prosecutor v. Limaj, et al., Case No. IT-03-66-T (Nov. 30, 2005), *available at* <http://www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf>.

[13] Prosecutor v. Haradinaj, et al., Case No. IT-04-84-I, Indictment (Mar. 4, 2005), *available at* <http://www.icty.org/x/cases/haradinaj/ind/en/har-ii050224e.pdf>.

[14] Prosecutor v. Haradinaj, et al., Case No. IT-04-84-T, Transcript (Mar. 5, 2007), *available at* <http://www.icty.org/x/cases/haradinaj/trans/en/070305ED.htm>

[15] Prosecutor v. Haradinaj, et al., Case No. IT-04-84-T, Judgement (Apr. 3, 2008), *available at* <http://www.icty.org/x/cases/haradinaj/tjug/en/080403.pdf>.

[16] *Id.*

[17] *Id.* 7-8.

