

# **The War Crimes Trials for the Former Yugoslavia: Prospects and Problems**



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**Briefing of the  
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## **ABOUT THE ORGANIZATION (OSCE)**

The Conference on Security and Cooperation in Europe, also known as the Helsinki process, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. Since then, its membership has expanded to 55, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia. (The Federal Republic of Yugoslavia, Serbia and Montenegro, has been suspended since 1992, leaving the number of countries fully participating at 54.) As of January 1, 1995, the formal name of the Helsinki process was changed to the Organization for Security and Cooperation in Europe (OSCE).

The OSCE is engaged in standard setting in fields including military security, economic and environmental cooperation, and human rights and humanitarian concerns. In addition, it undertakes a variety of preventive diplomacy initiatives designed to prevent, manage and resolve conflict within and among the participating States.

The OSCE has its main office in Vienna, Austria, where weekly meetings of permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations and periodic consultations among Senior Officials, Ministers and Heads of State or Government are held.

## **ABOUT THE COMMISSION (CSCE)**

The Commission on Security and Cooperation in Europe (CSCE), also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance with the agreements of the OSCE.

The Commission consists of nine members from the U.S. House of Representatives, nine members from the U.S. Senate, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair are shared by the House and Senate and rotate every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

To fulfill its mandate, the Commission gathers and disseminates information on Helsinki-related topics both to the U.S. Congress and the public by convening hearings, issuing reports reflecting the views of the Commission and/or its staff, and providing information about the activities of the Helsinki process and events in OSCE participating States.

At the same time, the Commission contributes its views to the general formulation of U.S. policy on the OSCE and takes part in its execution, including through Member and staff participation on U.S. Delegations to OSCE meetings as well as on certain OSCE bodies. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from OSCE participating States.

# **THE WAR CRIMES TRIALS FOR THE FORMER YUGOSLAVIA: PROSPECTS AND PROBLEMS**

**TUESDAY, MAY 28, 1996**

COMMISSION ON SECURITY AND COOPERATION IN EUROPE  
WASHINGTON, DC

The Commission met, pursuant to adjournment, at 2:09 p.m., in room 2200, Rayburn House Office Building, Erika B. Schlager [Commission Counsel for International Law] presiding.

Ms. Schlager. My name is Erika B. Schlager; some of you may know me. I am the Counsel for International Law with the Commission on Security and Cooperation in Europe. On behalf of the Commission, I am delighted to welcome today three distinguished experts who will address several key issues that seem to take on heightened importance with each passing day.

First of all, how can the war criminals from the Yugoslav conflict be held personally and individually accountable for their actions? Second, what role should the United States play in achieving that goal. Finally, if we fail to achieve this goal, what will be the ultimate cost?

I would like to note at the outset of this meeting that, in fact, the Commission had sought to have a hearing on this issue that would have included witnesses from the Departments of State and Defense. Although the Defense Department had indicated its willingness to make Under Secretary Walter Slocombe available, the State Department was unable to provide a counterpart witness that was acceptable to the Defense Department, in effect, making a hearing impossible.

This is an outcome that the Commission very much regrets, since we would have welcomed hearing the administration's views on many of the policy questions that this subject inevitably raises, particularly regarding the potential role of IFOR in obtaining custody of indicted criminals.

Nevertheless, I believe our panel of witnesses will provide us today with a timely and full overview of the war crimes trials underway in The Hague. I am grateful that they have carved out time from their demanding schedules to be here. I would like to introduce each of our three speakers now before turning the floor over to them.

Our first speaker today is Tom Warrick, a partner in the law firm of Pierson, Semmes & Bemis. Mr. Warrick previously served as Senior Counsel to M. Cherif Bassiouni, Chairman of the U. N. Commission of Experts which preceded the International Criminal Tribunal for the Former Yugoslavia. He currently serves as Counsel for the Coalition for International Justice, a nongovernmental organization which supports the work of the International Criminal Tribunals for the Former Yugoslavia and Rwanda.

Our second speaker will be Norman Cigar. Dr. Cigar is Professor of National Security Studies at the U.S. Marine Corps School of Advanced Warfighting and the author of "Genocide in Bosnia: The Policy of Ethnic Cleansing." He is currently completing a study with

Paul Williams on “The Issue of Command Responsibility In the Case of Slobodan Milosevic.” He has previously served as a senior political military analyst for the Army’s Deputy Chief of Staff for intelligence in the Pentagon.

Our final speaker today will be Iain Guest, currently a senior fellow at the United States Institute for Peace. Mr. Guest is the author of “On Trial—the United States, War Crimes and the Former Yugoslavia.” In joining us today, he will draw on his extensive experience with human rights and refugee issues and international organizations. In particular, he has previously served as the UNHCR spokesperson in Cambodia in 1992 and the spokesperson for the U. N. Humanitarian operation in Haiti in 1994.

At the end of our time with the speakers, there will be an opportunity for questions from the floor. I would ask that when asking a question, please step up to the microphone here to do so; please limit your introductory comments to those that are absolutely necessary to make your question understood; and please identify yourself before speaking.

With that said, I open the floor to Mr. Warrick. Thank you.

Mr. Warrick. Thank you very much, Erika.

It is an honor to be here today. I must say I wish, as Erika had said, that it was in the context of seeing what those in the administration and elsewhere might be saying on this very important issue, the issue of where Bosnian policy is headed, in particular, in reference to the Yugoslavia War Crimes Tribunal.

I must say I also look forward very eagerly at hearing what the very distinguished colleagues on the panel are saying. Because what I think you’re going to find is that there is a very considerable overlap between the issues of prosecution of those responsible for war crimes, the ability to conduct successful civilian elections and repatriation, and a need to bring together the military force that exists on the ground.

What I’m going to do is to focus on five points. First, I want to talk about progress in the last year. I remember being in this room about a year ago—I must say before it was repainted—to give a summary of where things stood. There has been a fair amount of progress in that last year. The primary item is the Dayton peace agreement.

I want to talk very briefly about the Tadic trial. Then I want to talk about what I call the “wildest weekend,” the events of not this past Memorial Day weekend but the weekend just before it, in which we say hopes rise and fall several times for a resolution of one of the thorniest questions, the apprehension of Radovan Karadzic, twice indicted for war crimes, crimes against humanity and genocide.

I want to draw some attention to the fact that there seems to be a consensus that the crunch in Bosnian policy is upon us, that the next few weeks will determine not only Bosnia’s future, but, in a small way, perhaps that of the upcoming Presidential election. Because, as I hope you may agree with me, the peace process hangs in the balance.

Let me start with two slides. This is for Iain who always wants pictures at the start of every presentation.

[Slide shown]

We can summarize progress for the Yugoslavia War Crimes Tribunals with these two graphs, the first of which shows what has happened since we gathered here almost a year ago on June 12, 1995. At that point, there were 22 people under indictment by the Yugoslavia War Crimes Tribunal. Today, there are 57.

At the time, about a year ago, almost all of those indicted were Bosnian Serbs. Now

there have been people indicted who are of all ethnicities. Indeed, it is becoming very hard to keep track of ethnicities of alleged perpetrators since today Drazen Erdemovic, who is a Bosnian Croat, was formerly the subject of deferral proceedings in The Hague asking that the Federal Republic of Yugoslavia, Serbia, grant the Tribunal the ability to prosecute him for crimes committed at Srebrenica. Thus, the third person after Karadzic and Mladic indicted for Srebrenica is a Bosnian Croat.

Similarly, in the case of the Celebici Camp, a detention camp in which Serbs were the victims of atrocities equally as severe as those visited upon Muslims and Croats, although obviously at a vastly different scale, three of the four there that were indicted were Bosnian Muslims. The fourth was a Bosnian Croat. So the pattern of ethnicities and cross-ethnicities of victims and perpetrators is as mixed as the former Yugoslavia itself is.

In contrast with what has happened on the subject of indictments, those who are actually in The Hague shows a much dimmer picture. About a year ago, there was only one person in custody, Dusan Tadic, whose trial is now going on in what Court TV has perhaps rightly, and only for the moment, dubbed “the real trial of the century” after us hearing of the O. J. Simpson trial in that way.

There are now five people indicted who are in custody in The Hague, in a prison just a few blocks away from where the Tribunal is located. Even that, however, doesn't tell the entire story. Because one of those who was indicted has subsequently died, Djordje Djukic, a Bosnian Serb general in charge of logistics.

There are two who are under arrest elsewhere in Europe and are expected to be transferred to The Hague as soon as formalities are complete. There also are two—which may soon be one person—unindicted in The Hague. That last one will probably be converted to an indictment in the next couple of days.

The biggest development in the last year by far has been the Dayton peace agreement. The Dayton peace agreement gave much promise to the hope for not only peace, but also justice in the former Yugoslavia.

The question is: What has that translated into in reality? So far, at least, on the key issue of apprehension of war criminals it seems that it's nobody's job. Everyone says somebody else is responsible for it.

On the military side, the key question is the orders that were written for IFOR. The so-called “rules of engagement,” which had been worked out through the North Atlantic Council that effectively gives orders to the International Force, made it possible for IFOR to detain and transfer indicted war criminals that it comes into contact with in the course of normal operations.

Every single word in that sentence if you diagram it turns out to be significant. But what it effectively means is that somebody has to wander into a trap or a checkpoint or something in order for there actually to be an apprehension.

So far at least, it has been quite possible for people like Ratko Mladic and Radovan Karadzic to travel freely within the Bosnian Serb-held territories and, indeed, to cross U.S. supply lines without being apprehended.

On the civilian side, which is headed up by Carl Bildt, the High Representative, there were concerns at the outset that Bildt was not going to be tough enough in prosecuting war crimes or in helping the Tribunal in its work.

So far at least, he has come up with strong words, but the actions have been weak.

There are other elements of the Dayton peace agreement, incidentally, including very extensive human rights provisions. There is an International Police Task Force. But so far, their effect has not been seen in terms of actual apprehensions.

I want to focus on one event, and then talk very briefly about the Tadic trial. One event to show how fast things can turn around was on February 10th through 12th, when Bosnian Serb General Djordje Djukic and an aid, Colonel Aleksa Krsmanovic, were arrested as they wandered into a checkpoint in Sarajevo.

The focus very quickly built up on whether these people would be released, the Bosnian Serbs claiming that they had been apprehended illegally, whether they would be prosecuted by the Bosnian Government or whether, as has turned out to be the case, they were transferred to the International Criminal Tribunal in The Hague.

What this effectively did was to serve notice that the Tribunal would serve as the focal point for resolving the needs for justice in the former Yugoslavia. It was not going to be left up to the parties, each of whom would be suspicious of the other's motives. Indeed, as you may have seen in today's New York Times based on reports of seven Bosnian Muslims who were turned over by IFOR into the hands of Bosnian Serbs, there is very clearly a reason to be suspect of each side's motives.

What has happened is what are called the "new rules of the road," wherein the governments in question are supposed to defer to the Tribunal on whether particular individuals will be prosecuted or whether they must be released.

What this has done in some measure is at least to give some form of predictability and some degree of freedom of movement, at least as far as indicted war criminals are concerned.

I should say, by the way, that even this is not perfect. There still continue to be problems with people being detained or not, in many cases without legal authority.

Let me talk very briefly about the Tadic trial. If those of you with Court TV will ask questions, you can probably find that I don't have cable television and actually am probably one of the less-informed people about the Tadic trial at the moment.

Essentially, the trial is being conducted by three judges without a jury under procedures that are actually familiar enough to American audiences. There is a witness, there is examination by the lawyers from one side, and cross-examination from lawyers by the other side.

There has been a great deal of effort put into making sure that there is equality of arms between the prosecution and the defense. For example, Mark Ellis, who is in the back, organized a seminar on cross-examination techniques for the civil law experts who are counsel to Tadic on the defense side.

The trial itself has begun, first, with presenting an overall picture of ethnic cleansing in Bosnia. The reason for this is to show the widespread pattern that is an important element in proving crimes against humanity.

It's not sufficient to show, simply, that murder occurred or even that mass murder occurred. Instead, you have to show that there was a pattern, that there was "systematicity," which is I'm afraid now a word, in order to buildup all of the elements of the crime.

The trial is going to start getting in this week to witnesses who are actual victims of Tadic, and is expected to go on probably for about another four or 5 weeks. The Tribunal is going to be breaking to hear indictments and arraignments and other proceedings against

individuals, so it's not going to be continuous. But, nevertheless, the trial is expected to conclude sometime in late June or early July, and in many cases is going to set precedent for what's going to happen beyond that.

Let me talk about another political development concerning the events of 10 days ago, because, in many respects, this has shaped the crisis situation facing actually not so much the Tribunal, as the entire peace process including elections, repatriation, and everything else. It ties in, however, to what has been going on with Karadzic, in particular, whether he was going to be apprehended.

Starting about 3 weeks ago there was a very public effort by High Representative Bildt and a number of Western officials to court Bosnian Serb Prime Minister Rajko Kasagic. Kasagic is perceived as a moderate by many. Based in Banja Luka, he was seen as the best alternative to Radovan Karadzic.

On Friday, May 17th, after some maneuvering over who was eventually going to prevail, Karadzic made a power move against Kasagic. He gathered together in Pale, which is where the Bosnian Serb Parliament meets, something called the Deputies Club, where they met into the night to determine strategy.

Overnight, this is the 17th and 18th, approximately 56 of the 80 or so members of the Bosnian Serb Parliament—and the actual numbers, by the way, vary depending on who you talk to—voted to oust Kasagic by a vote of 54 to 1. This was seen, at least by many independent observers, as the triumph of Karadzic over Kasagic and Bildt.

Fortunately, or unfortunately, the announcement of it was delayed until Bildt actually showed up in Pale on the morning, on Saturday morning, where he came ostensibly to announce that he was going to engage in negotiations. He was told the negotiations were of no importance because the vote had already been taken.

Bildt then went to Belgrade, met with Milosevic into the night Saturday, and came back to Pale on Sunday morning, negotiated until about 5:00 in the morning, thought he had reached a favorable conclusion, went out, announced it to the press, only to find by the end of that very day that the entire agreement he thought he had reached had unraveled completely.

Effectively, what had happened is that Bildt had been outmaneuvered at every step of the way. What he had thought he had negotiated he did not get. Indeed, having not just failed, he failed in a very public way by believing the promises that were made and taking some of them at least at face value.

What happened then was several days worth of regrouping. By coincidence Justice Goldstone was here in Washington on Monday the 20th, met with a number of U.S. Government officials at meetings that had been arranged before, pressed very hard to try to get a commitment by the administration to take action against Karadzic.

What seems to have come out of this, however, is something rather different. What The New York Times announced on Friday was a suggestion that Karadzic would be allowed to stay in power, provided he exercised power behind the scenes.

I will tell you this, however: if you read all of the statements of all of the officials and put them together, you will find at the first level a complete denial of the story in The New York Times—statements by administration officials, by Solana, the Secretary General of NATO, denying that any such deal has been made. But, nevertheless, there are some pointers going in the other direction.

[Slide shown]

Let me show you a slide that many of you have seen before. I first used this in a briefing somewhere on February 3, 1996, when we were talking about what strategy Milosevic and the Bosnian Serbs were going to be following.

What they would be doing, so this slide predicted several months ago, is to prevent extradition to the ICTY as a primary goal, saying that they were going to prosecute their own, which to some extent they have. They would then claim that removing Karadzic from power would constitute all of the compliance that they were going to render.

So far, at least, they haven't even had to go this far. In effect, they have not been pushed by the West to what was their limit even about 4 months ago.

Similarly, on Milosevic's side, he hasn't been pushed as far as he has been able to go, either. The obstructionism is still present, he is still saying that he is relatively powerless to achieve compliance with his obligations in Dayton. In effect, he is simply able to help some things along. He has influence, but not power.

Let me put up the countervailing slide right away as to what the Tribunal is focusing on. I should say, by the way, that this is based not on any direct contacts with anyone at the Tribunal to say what their strategy is. This is simply an inference based on events.

The first focus is on apprehension, trying to get Karadzic and Mladic in The Hague, as opposed to merely out of power. Second, the Tribunal is focusing on building cases involving physical evidence, trying to gather up evidence from mass graves and other examples where there is tangible proof of crimes that have occurred.

Third, the Tribunal is going to begin what is called a "Rule 61 proceeding" against Karadzic and Mladic. I should explain what that is. Under the Tribunal's rules, trials in absentia are not permitted. What the Tribunal may do, however, after there has been an indictment but before they are able to bring people into custody, they are able to hold what is called a "Rule 61 proceeding." They can present live witnesses; they can make evidence public. The purpose of this is to build a historical record and to increase pressure on the international community to deliver results where results need to be delivered.

The Rule 61 proceeding in respect of Karadzic and Mladic, and I believe this is limited to the Srebrenica case, is expected to begin on June 27th. Just given the way the Tribunal has released its schedule, I'm hoping that there will be a decision on or around the 15th of July.

Let me get back to the political side. Richard Holbrooke, someone who, as many of you know, is not someone whose views I share completely on a number of issues, even Richard Holbrooke, I would point out, has called this "the crunch" for the Dayton peace agreement.

Is there a deal that lurks behind some of the strong words that we've heard in public? The New York Times, as I mentioned, reported last Friday that in a meeting involving Assistant Secretary of State John Kornblum and Slobodan Milosevic in Belgrade, there were statements made by Milosevic that Karadzic would simply disappear from public view, that he would no longer be seen, he would no longer make speeches, he would no longer make appearances at the Bosnian Serb Parliament.

Significantly, I want to point out that the administration has denied that it accepted such a deal, indeed, saying that it has made very strong statements to the contrary.



However, as one press report said, High Representative Carl Bildt showed much greater enthusiasm for the idea. In effect, however, this seems to be what's happened. If you follow press reports in the last few days, on Sunday Koljevic said that Karadzic would be withdrawing from public office and would be keeping a "low profile. "

There have been other statements from Milosevic in Belgrade and from other Bosnian Serb news authorities suggesting that Karadzic will somehow withdraw.

Significantly, even Carl Bildt himself says we can never be certain whether any of this will be implemented. Yet this seems to be the deal that Bildt has at least negotiated with Belgrade and, while it may be true that the United States has not accepted it or has not decided whether to accept it, certainly from the Serbian side all pointers seem to be that they think that there is a deal, whether there is in fact one or not.

A question that concerns not just the work on this Tribunal but the elections picture as a whole—I'm sorry, the Bosnia situation as a whole—is the effect of Karadzic being at large on elections.

There is a very broad consensus among a great many experts—indeed we may be able to hear some views either similarly or to the contrary from some of these speakers—that if Karadzic continues to be at large, the elections are doomed to fail.

There have again been some very strong words of hope and optimism out of the administration. But the reality of who controls the levers of power on the ground in Republica Srpska, where it is already apparent from a number of anecdotal sources that a great many people assume that Karadzic will stay in power, and therefore they will abide by that power because they have no alternative. If people see that there is no alternative, then that's exactly what will happen.

For the Clinton Administration, in particular, this has to present a very severe dilemma. Because the political cycle of the Bosnian elections is such that because they are likely to occur in September, if the schedule is adhered to, there will be about 2 weeks during the start of the U.S. election cycle when on the nightly news there will be stories of how the elections are bound to produce the partition of Bosnia. In one case, the case of Republica Srpska at least, will return power to those who are responsible, directly or indirectly, for the commission of the most horrible war crimes.

So, in effect, because of the way the U.S. election cycle will play itself out, I suggest that the decisions taken in the next few days would help decide two elections, not just one.

The one thing I do want to point out, however, is the extent to which this entire picture of gloom that you see for many elections experts is reversed completely if Karadzic is apprehended. There was a rumor on Thursday for about 2 hours that Mladic had been arrested in Belgrade.

This is after the Djukic funeral, where Mladic and another indicted war criminal, Slijivaneanin, were both videotaped at Djukic's funeral. At the time there was some talk in a report at least in one newspaper that said that Mladic had been detained on his way back from Belgrade.

The story took about 2 hours to prove false. But it was really interesting to watch and to talk to a great many people over those 2 hours on at least the hope even that something like this would have happened.

In the case of Karadzic, it is a very different picture than it might be for Mladic—in

many cases, better because of Karadzic's political influence.

The question that can only be asked in a city such as this is: Where is Washington? Because the administration has made it very clear that war crimes prosecutions are a very high priority. Yet the question is: How high a priority?

It states an obvious rule to say that inaction as much as action carries political risks. One of the things that emerged in the last several weeks leading up to the events of the wildest weekend was the appearance of a policy split between the Department of State and the Pentagon, with the State Department favoring a vigorous, more muscular approach toward trying to apprehend Radovan Karadzic.

According to The New York Times on Friday, an attempt to actually stage a snatch-and-grab operation was vetoed by Shalikhshvili last month sometime.

So with the Pentagon and the State Department split, the decision, as always, is made in the White House with a considerable amount of input from the Congress. One little thing I would point out that may have eluded the eyes of some people, but I suspect no one in this room, was a Reuters profile of Admiral Leighton Smith on May 13th in which Reuters reported:

“Subordinate officers are said to be champing at the bit for a chance to grab Radovan Karadzic and Ratko Mladic. But Smith reckons his forces would be subject to retaliation and that the sprawling civilian initiative on the Serb side of the line is preparing for elections and reconstruction would also be put at risk. ”

This sounds awfully familiar to a great many of us who have followed Bosnia. It sounds exactly like the argument that was used for why UNPROFOR wouldn't do anything. The question has to be asked, No. 1: Has IFOR gone the way of UNPROFOR? And if there is even that possibility, is there something that can or should be done to try to reverse the direction of that?

The question of apprehension of indicted war criminals is certainly the thorniest question that has to be addressed here in Washington, where I would suggest the solution is, in almost all certainty, nowhere else.

There are still ways to avoid “mission creep” and the so-called Mogadishu scenario, where many Americans lost their lives in an effort to try to arrest a Somali warlord. There is a considerable amount that the United States could be doing to provide information on the whereabouts of indicted war criminals so that others who have the legal authority to arrest can carry out the orders that the tribunal has issued.

The question here is whether and to what extent the administration and, indeed, the U.S. Government is prepared to take a more active role than it has so far in apprehending two of the war criminals most responsible for the atrocities that concern us all?

Ms. Schlager. Thank you, Tom. I would like to go next to Norman Cigar.

Mr. Cigar. Thank you.

Before I start, let me just say that since I do work for the government, that the views that I'm going to express are my own only, and do not reflect either the U.S. Government's views or those of the Marine Corps. I certainly can't either praise or condemn U.S. policy, but I can point out choices and implications.

What I would like to focus on is how IFOR may or may not fit into this. Now, in addressing the issue of war criminals today, I'm going to focus on Karadzic and Mladic. There are very good reasons for that, I think, because they are opposed to basic tenets of

the Dayton accords, are particularly significant to the success or failure of the mission, and have gained high profile in policy discussions. But what I have to say can and should be applied to all war criminals.

What I would like to look at are the present status—I'll try not to repeat what Tom has said so capably—IFOR's role, and the potential impact of this issue on IFOR's mission, and a possible course of action.

Apprehending and bringing to justice Karadzic and Mladic is declared U.S. policy. It's an objective which has been articulated and revalidated frequently. In fact, a failure to cooperate with the International Criminal Tribunal places all signatories in violation of what is a contractual obligation binding them to comply with Article IX (1) g in the Dayton agreement.

In practice, as Thomas pointed out, there has been clear reluctance, especially by IFOR, to implement this provision. Initially, in fact, the policy was that IFOR would not arrest indicted war criminals at all. That has been changed subsequently, as Tom has pointed out, and now IFOR will arrest them if these individuals run across IFOR or IFOR runs across them as part of their other duties.

The key to evaluating the significance of this is to look at the mission, I think. That always has to be kept in focus for IFOR and for everybody. What is the mission? And how will this have an impact on that mission?

IFOR's stated military objective is really to create a secure and stable environment in order to enable civilian agencies to rebuild Bosnia as a common multi-ethnic state, which is the ultimate political objective.

The military objective, as is true of any military objective, has validity only insofar as it supports that political objective. Otherwise, if the military objective is achieved but fails to support that political objective, it is essentially meaningless.

What can one use as a measure of success for IFOR then?—which will also, I think, be related to the exit strategy. The two have to be connected. At a minimum, in this case, the desired end state in that area of responsibility has to be for IFOR to be able to turn over control to a follow-on light force while maintaining the same level of security and stability for the civilian building process.

What are the implications for apprehending these individuals on that mission? Would it help or hinder that mission? Would it help or hinder achieving the military mission and, in turn, then the ultimate political objective?

It may not be easy or cost-free to apprehend Mladic and Karadzic. However, I think the moral and practical cost of not doing so and thereby of delegitimizing and removing war criminals and discrediting and deterring policies they represent would be far higher in terms of jeopardizing the success of the entire mission.

I think the flaunting of actions by indicted war criminals such as Mladic's skiing sessions, public visits, as Tom mentioned, to Belgrade, and the visit to Karadzic by a delegation of U.S. businessmen recently, or his recent reassertion of his political role can be expected, very clearly, to undermine IFOR's credibility and, I think, the very intent of Dayton.

What it will do also, as Tom mentioned, is to prevent moderates from coming to the fore in all communities, since it is very hard to argue with success. I think that's true for all politicians everywhere in Bosnia. The perceived absence of justice is going to encour-

age private revenge and the perpetuation of collective guilt, which I think will live on and on.

If you have that type of environment, stability and security, which are key measures of success and are crucial for the civilian side of the process, are really going to be put into question.

The civilian part of Dayton is hard enough—economic reconstruction, elections, etc.—under any circumstances. But I think the difficulty increases exponentially if such tasks are held hostage by people such as Karadzic and Mladic, who are very likely going to act as spoilers in order to maintain their position. I think it is very unlikely, as Tom also suggested, that the parties are really going to be serious about arresting and handing over their own war criminals. Not least because of the potential linkages that would come out in ensuing proceedings.

However, I think convincing the parties to yield indicted war criminals is going to be made even harder if key individuals such as Mladic and Karadzic are successful in evading the law. On the other hand, bringing them into custody would make it harder and more risky for all parties to refuse further cooperation with the International Tribunal.

What would the likely reaction be, the Serb reaction, to the arrest of Karadzic and Mladic? In my judgment, the Bosnian Serbs could probably be expected to create a fuss, perhaps to boycott meetings, and they'd gauge IFOR's resolve.

Their reaction, though, would be not unlike what the Bosnian government reaction was to the recent arrest of the Mujahedin. Any reaction, I think, would be likely short-lived and quickly forgotten if the influence of Karadzic and Mladic is removed.

There is no really reasonable alternative for the Bosnian Serbs apart from cooperating, in that case, with the international community. They are going to benefit from reconstruction aid that most want and really need, and there are moderates who really wish to do so.

I think that even for Milosevic, if IFOR deals with this problem it would save him the embarrassment of having to do so if the international community were to eventually force him into that position. It might be a face-saving way out.

In any event, I think any likely Serb reaction would not be mission-threatening, unlike the failure to pursue war criminals, which, on the contrary, could well be that.

Now, would a decision to apprehend these criminals represent for IFOR the dreaded "C" word associated with missions, "mission creep," as Tom mentioned? What is "mission creep?" A new initiative which represents an expansion of a mission beyond the original plan, which commanders and planners hate, which creates the risk of drawing a wary commander, legitimately perhaps, into additional and often infeasible missions.

I don't think this is a problem here. First, any plan has to retain the flexibility to change in order to compensate for flaws or unforeseen circumstances in the original plan. Any mission contains what are called specified tasks. That is, tasks that are needed to implement the plan that are spelled out.

But, beyond that, there are also implied tasks. That is, other mission-essential tasks, as in this case, which are also necessary in order to achieve the mission's ultimate objectives. For example, if the specified task is to secure a bridge, an implied task might be to also secure the road that leads to that bridge. It is a logical element. Unless you do that, your specified task has very little meaning.

And, I think there is also the possibility of going overboard as well by being overwary: “the drunk and the street lamp syndrome.” Somebody comes up a drunk under a street lamp, and asks, “What are you doing?”

“Well, I’m looking for my car key which I lost. ”

And the person asks him, “Did you lose it here?”

“No, I lost it in that parking lot down there. But it’s dark there. It’s a lot easier to look here. ”

In other words, by specifying your own mission as an easy one, you may do it. But, in the end, you may not achieve your ultimate objective.

Now, what is a potential course of action for IFOR, if the task of apprehending Karadzic and Mladic is accepted as valid? What might be the best way of carrying it out? Could the International Police Task Force do the job alone?

Unfortunately, I think the police force is still undermanned and undergunned. It has to rely on the local police to cooperate, in fact, as in recent times, which has been shown not to be always forthcoming.

Clearly, IFOR has to play a role, a central role, whether alone or in conjunction with and in support of the international police. At a minimum, IFOR could be the enabling force supporting the police with its unique capabilities—intelligence, fire power, logistics, force protection, communications—as the police force actually took its suspects into custody. Or, IFOR could take the lead.

Either way, any operation would have to be proactive, well-coordinated between the political side and the military side, with appropriately modified rules of engagement for IFOR. The effort requires preparation of the environment with things like an intensive all-source intelligence effort and, in particular, isolating the suspects both physically and politically and neutralizing their ability to move and communicate, and by crafting an information campaign—I think this is an information-starved region—based on the truth about their involvement in war crimes and (especially in the case of Karadzic) their corruption and personal enrichment to remove them from their base of support. This is something that is possible and necessary. Also, what is necessary is pressure on Slobodan Milosevic to end his support for Mladic. They are still in contact. I think that would be very helpful, indeed.

Now, all of this would set the stage for more aggressive patrolling and other actions intended to actually apprehend the suspects. I think that is a feasible way of approaching it.

Now, let me just end on the time factor. Certainly we can go into this in the question and answer time. I think there is a window of opportunity right now. It is definitely a very important factor not only for the reasons that Tom has mentioned, which are very, valid indeed, but also in military and political terms.

IFOR is at a high point. I don’t know what IFOR is going to look like in the future. But I am very sure that it is going to be a much less robust and capable force. That is almost inevitable. I think it will have less capability to undertake such operations in the future. If you are going to do it, do it now.

Conversely, I think time is very important because there is this current window. If it is not used for this purpose, the negative impact, as Tom has highlighted, is going to delay at the very least and perhaps derail the entire progress toward a viable exit strategy. This

would jeopardize IFOR's follow-on force's chances for long-term success.

So, I think that it is a very key element not only in achieving the military objective, but also in the ultimate political objective. We can come back to that in the question and answer time.

Ms. Schlager. Thank you.

Iain?

Mr. Guest. Yes. Thank you very much.

Erika has asked me to paint a slightly broader picture, which I will try and do. Two years ago, I looked at the Tribunal in a report for the Soros Foundation. The reason I undertook the study was that the Tribunal seemed to be in very bad shape. It had been set up a year before, but it didn't have a prosecutor, it didn't have any money, it had barely any staff in The Hague. It was really not taken seriously. There was a general suspicion that the Tribunal had been set up as a substitute, an alternative, to the kind of tough political action which would put an end to the ethnic cleansing that was taking place and the horrors that were being perpetrated by the Serbs. It wasn't very serious. I think that we had good reason to be very skeptical.

As you know, Richard Goldstone came on as the Tribunal prosecutor in July of '94. I think that in the last two years he has done a remarkable job. The fact that he's indicted 57 individuals, including Karadzic and Mladic, is a remarkable achievement.

It also allowed the drafters of the Dayton agreement to bar these two troublemakers from the peace tables. The future of Bosnia, the reconstruction of Bosnia, may very well depend upon whether or not IFOR can arrest Karadzic and Mladic. That, too, is testament to Goldstone's success.

So I think that the Tribunal has established itself. It's a very important player. But I think we're still entitled to ask: Is it worth it? Is it worth the money that's invested, \$40 million for 1996?

We have to answer that question not as American lawyers or human rights activists, but from the perspective of a Third World diplomat, for example, who saw the Tribunal set up in May 1993 after a tremendous amount of arm-twisting by the Security Council. We have to ask it as people who are concerned for the future of the U. N. Human Rights Center in Geneva, which doesn't have enough money. I was in Rwanda recently where human rights monitors get contracts for a month at a time. The whole U.N. system is starved of money. The United States is withholding its dues from the U.N. Here in the Tribunal, we have a "pet project of the United States," as it seems from the Third World's perspective.

So I think it is legitimate to ask the question: Is the Tribunal worth it? Can we justify this kind of expenditure, this kind of commitment, this kind of energy on one body? Has it done enough? What is its importance? What is its role?

The traditional justification for the Tribunal has always been that it's going to help countries of the former Yugoslavia heal the wounds of war. This is the same argument that you hear with countries that are in transition from dictatorship to democracy—the argument for accountability and against impunity: if you don't address these crimes head on, you are sowing the seeds for future warfare.

But I think you could turn that on its head and argue the exact reverse in the case of the Balkans. This is a part of the world where they have very long memories, indeed. In a

region where history casts such a long shadow, are we really contributing to the process of healing by selecting individuals and putting them on trial?

Several years ago, I wrote a book about the disappearances in Argentina and the efforts of democracy in Argentina to come to terms with the effect of the disappearances. I remember going back to Argentina long afterwards and finding the Mothers of the Plaza de Mayo still marching around the Plaza de Mayo with their white handkerchiefs. Once again, it showed that you have to address the wounds of the past, but you have to do it very carefully. Otherwise, you would be perpetuating a cycle of revenge.

It helps to have international involvement. I remember thinking in Argentina that one of the problems was that Alfonsín's government was left with the task of confronting a military which was still extremely powerful and well-embedded in Argentinian society. This was an opportunity for the U.N. human rights bodies to help the Argentinian democrats prepare and make the case against the generals. I think that the failure of the international community to get involved probably made it much more difficult and was one reason why the whole process of accounting in Argentina has led to the *punta final*, and probably, I think, would be considered a failure by many Argentinians.

One of the most successful examples of international involvement was the Truth Commission that was set up by the U.N. to deal with the abuses in El Salvador. Bodies like this can take some of the pressure off the protagonists. The Tribunal is the most advanced example of international involvement against impunity.

In addition, however, we have to get accountability into peace agreements.

Dayton succeeds in this respect, but the October 1991 Paris agreement on Cambodia was a failure precisely because it did not address the crimes of the Khmer Rouge. They skated over that in an interest of getting a peace agreement. Partly as a result, we still have the Khmer Rouge on the rampage in Cambodia 5 years later.

The second point is about humanitarian law. I think you could argue that humanitarian law at the moment is in very bad shape indeed after the wars in Bosnia and Rwanda. Remember that the fundamental principle of humanitarian law is that noncombatants are "hors de combat." What you have seen in Bosnia, in particular, is not simply humanitarian law being ignored, but humanitarian law being exploited, children being targeted, women being deliberately raped, civilians being "ethnically cleansed" in order to terrorize a whole population.

The War Crimes Tribunal has a very important role to play in strengthening humanitarian law. One of the interesting things about the Tribunal is that it was set up in the middle of this conflict. A lot of its supporters hoped and assumed that if it could act with vigor, it would deter the kinds of crimes that we saw happening in Bosnia. I don't think that happened. In Srebrenica, for example, thousands and thousands of people were killed after the Tribunal had issued a whole slew of indictments. Nonetheless, I do think that if these seeds can germinate, and if we can get the punishment of war criminals firmly on the international agenda, it could have a deterrent effect in future conflicts. As you know probably, the statute for the Rwanda tribunal does cover internal armed conflict, and that's also very important. Both tribunals can help to enforce the Geneva Conventions by punishing individuals responsible for "grave breaches"—the definition of war crimes.

Third, there is a very interesting link between refugees, repatriation, and war crimes, which I think we are only just beginning to see. I am just back from Rwanda where we

have 1.5 million refugees outside Rwanda and a government in Rwanda that is feeling itself under siege. This deadlock will only be unblocked if we deal with the issue of war crimes and genocide. There are 100,000 war criminals in the camps, which makes it impossible to launch any kind of sensible assistance program in these camps, and 68,000 people in jail in Rwanda. The two are linked, absolutely linked. The government will not let those people out of jail unless they get reassurance that the Hutu killers who are in the camps are going to be dealt with. So I think you could argue that you have a whole regional crisis which is dependent upon a solution to war crimes. Now, the only instrument capable of dealing with that is the Arusha tribunal.

So there are a lot of arguments that one can make for the Bosnian Tribunal and its sister in Rwanda. You could also argue that we are too far committed with the tribunals to pull back. To fail would be an absolute disaster for international law.

You could argue that if the Bosnian Tribunal and the Rwanda Tribunal fail, that there will be no permanent criminal court. You could argue that they are turning concepts like “genocide” and “crimes against humanity” from very theoretical concepts into real legal principles. I think that one can make a lot of arguments for the Tribunal, and I suspect that we are going to have to continue to make them in the months ahead. I don’t think we can take anything for granted at the moment.

That said, how do we make this Tribunal work better? This question is normally answered by statistics—the number of investigators needed, or the budget. But what is we answer by asking what do we want it to do? It’s terribly important that we arrest Karadzic and Mladic and get them to The Hague. I agree with Tom and Norman. But I think we should also look on The Hague trial as the beginning of a process. The key concept here, I think, is “parallel jurisdiction.” The Tribunal itself is only capable of hearing a very limited number of cases because it has only got one courtroom: six or seven cases a year at the most, assuming they can arrest that number. That doesn’t matter. What really matters is to use these trials to start a process, first of all, in the region; and then, second, internationally.

I think that the Nuremberg Tribunals are a good precedent. You probably know that there are two war crimes trials taking place in Europe at the moment: one is Tadic in The Hague and the other is an 82-year-old former SS officer called Erik Priebke, who is on trial in Rome on suspicion of having participated in the murder of 340 Italians in 1944.

The Nuremberg process was really quite remarkable. You can fault it, but that first trial of 23 individuals started a process, first of all, in Germany and then, second, throughout the world which continues in the Priebke trial in Rome, 50 years further on. Nuremberg triggered a process of agonizing reexamination in Germany itself, but it also did not allow the international community to forget the horrors of Naziism.

I think this is what we should be aiming for in Bosnia. We make a mistake if we look at this as being one or two individuals, one courtroom, one prison in The Hague. We have to think of an international process being unleashed here. I think you could argue, incidentally, that if Nuremberg was a success, the Tokyo Tribunal was a failure for exactly the same reasons. I am not a Japanese expert, but my reading is that the Japanese still cannot completely bury their role in the Second World War. It continues to cause in their relationship with China. I think that’s one result of not having come to terms with what Japan did in the Second World War and perhaps not having built on that trial in Tokyo, as they



did in Germany. I think also we have to understand that however successful the Tribunal is, there will be compromises. It will not be perfect. It will be partial justice. In Rwanda, for example, they are now wrestling with this problem of what to do about genocide. Maybe 100,000 individuals were involved in genocide in Rwanda, because of the nature of that killing—it was hand-to-hand, up close and personal, using machetes. How on earth do you try 100,000 people, even if you can get them into custody? You can't. The Rwandans are at the moment formulating a draft law on genocide which will make major compromises in the interest of starting prosecutions.

It is critically important that the process in the Hague is fair. I would say that it is more important that the Tadic trial is seen to be fair and that due process is seen to be followed than that 10, 15—I don't know how many—suspects are taken to The Hague.

I think lawyers would agree that the Nuremberg process was compromised by the perception that in some respects it was not fair to the defendants. Two of the charges were *ex post facto*.

Julius Streicher was condemned to death for having published an anti-Semitic newspaper. I think that the Tribunal in The Hague has leaned over backwards to be fair in drawing up its rules of procedure—in not holding trials in *absentia*, in not having the death penalty. As you probably know, the Tadic trial was postponed for several months so that the defense could have more time. All of this builds a firm, legal foundation upon which to build.

In short, it is not simply that we can't get hold of Karadzic and Mladic. It is not simply that we only have five or six or seven individuals in custody in The Hague or elsewhere. I think there are several major concerns.

If we look on the Tribunal in The Hague as starting a process, I think that its relationship with the governments in the region is very, important. I think here we have cause for concern. Bosnia obviously is cooperating, the Bosnian Government. Croatia has come around rather reluctantly. It took a lot of pressure from the United States before Croatia signed the legislation to cooperate with the Tribunal recently. I understand there are four or five indicted Croatians who the Tribunal has publicly indicted who are still free in Bosnian Croat territory. That's not very reassuring. Of course, Serbia has promised for 2 years to allow the prosecutor to set up an office in Belgrade. That has still not happened. More widely, we have 18 states now that have passed legislation to cooperate with the prosecutor.

My own government, Britain, came on board about a month ago, 18 months after they promised to sign that legislation! It wouldn't even have required an act of Parliament. How on earth can we expect the Serbians to come around and fall into line if governments like Britain that set this Tribunal up are going to be that cynical about the whole exercise? Of the eighteen states, not one is a developing country, which I think is also very worrying. Again, if we look at the Nazi precedent, many Nazi war criminals turned up in Argentina, haven't they? We need the developing countries on our side to make the Bosnian Tribunal work.

Finally, we cannot allow it to become a choice between accountability and peace in Bosnia. UNPROFOR made that mistake, and I think suffered enormously. I fear the same thing happening with IFOR. There will be no peace without accountability. But we may have to take tough decisions to ensure accountability. The president of the Tribunal, Jus-

tice Cassese, has said that if Serbia doesn't cooperate with the Tribunal the Security Council should be thinking about sanctions, and indeed they should. It was this kind of failure of will on the part of the Security Council that let the Bosnian War deteriorate to the extent that it did. I very much fear that we may slip back into the same kind of syndrome.

Why don't I leave it there, and we can move to questions?

Ms. Schlager. Thank you, gentlemen. I want to express my appreciation to each of you for giving such a thorough and insightful set of remarks on a very complicated set of issues.

Before Professor Orentlicher leaves, I would like to welcome her and note that a very good editorial that she has prepared is included in the package of clips that are made available outside the door.

Thank you, Diane, for coming.

I am going to take the moderator's privilege of asking the first question, and then I'm going to turn the microphone over to the floor. When you ask a question, again, let me remind you, please give your name and since this briefing is on the record, someone from the Commission's staff will give you a piece of paper to write down your name, so we can get the spelling right for the record.

Norman, I would like to ask you about some editorials that have been in the press lately that you may have seen, one by Edward Cody in The Washington Post and one by Bruce Fein in The Washington Times. The gist of both of these editorials has been to argue that General Djukic, who has since died from cancer, was really inappropriately indicted, that the charges against him including charges for attacks on civilians, for example, are merely the normal order of business during wartime. I am wondering if you can respond to that kind of criticism against the court.

Mr. Cigar. I think the general impression was created that Djukic was only a logistician, passing out beans and blankets and such. I think he was much more than that. He was the linchpin really in the relationship between the Bosnian Serbs and Milosevic.

Whatever aid kept coming in—support in manpower, money, arms—largely went through him. He is key in that perspective. He is also an explosives expert who was behind some of the anti-personnel shells that were fired against Sarajevo. He is a very important individual also as a source of information.

When you had the Nuremberg trials, certainly, it's not only the trigger-pullers who were held responsible. There are also others who have a lot of influence, who may be behind the scenes. So I think he is a much more important figure than he was willing to take credit for being.

«MD30»

It is a systematic process, I think, and logistics plays a very important role in that. You can't move people around, and you can't kill people without logistics.

Ms. Schlager. Would either of you others like to respond to this?

Mr. Warrick. Well, one of the things I thought was very interesting about the Cody piece was the fact that Cody at least acknowledged that every single legal expert that he talked to said, "Well, of course, Djukic is subject to being indicted," and then proceeded to walk Cody (I'm sure they did over the telephone) through each of the steps in the analysis under the various conventions under the statute of the Tribunal, why someone who did what Djukic clearly did is as criminally responsible as those who actually did pull the

lanyard and fired Djukic's own shells into the city. So that legally they were all saying exactly the same thing.

The interesting thing about what Cody was arguing, though, I thought was the “everybody does it” argument; I don't know of a single child anywhere whose mother didn't tell them that never works as an argument. It works no better for a child than it does in international law.

The thing that he failed to point out is that certainly after World War II, if not during it, the rules were laid down very clearly in a way that there is no ambiguity. The “everybody does it” argument, even if it ever existed, does not exist explicitly after 1947, 1948, and 1949. So that argument is completely gone.

The ultimate counterargument, as well, is that the “everybody does it” argument is one that we have explicitly tried to change with this Tribunal. In other words, say, you know these really are the rules of war.

Now, in 1996, you can't have the indiscriminate bombing that was perhaps technologically “necessary,” I put that word in quotes, by the way, 50 years ago, that the standard is higher for saying what is a military necessity during war, that the restrictions are very clear, and that this ought to lay down the marker for what the rules of warfare are from here forward.

Questioner. My name is Andrew Eiva, with the Bosnian Support Committee here in Washington. I have a comment at least to a question. The comment is based on the report of Tilman Zulch, a German Balkan expert, several months ago, where he pointed out that 3,000 officials of the Republika Srpska including mayors, judges, police chiefs, and so are war criminals with blood on their hands. So you have an infrastructure, a genocidal apparatus, of 3,000. If you go down to 57 indictees of the Tribunal, 6 are officials of the Republika Srpska, which means 2,994 have not yet been included.

The question would be to Mr. Iain Guest, because you have done a little bit of study of the economics, I guess, of war crimes tribunals, assessments, and so forth: Say, to try 300 of these war criminals—indict, try, investigate, the whole 9 yards—to do a good job to try 300 of the war criminals from within the Republika Srpska, how much would it cost? A little number crunching here.

Mr. Guest. Well, Tom is our man for number crunching. I have absolutely——

Questioner. I have asked Tom that question earlier.

Mr. Guest. You have?

Questioner. A friend of ours has, and he wouldn't give us an answer.

Mr. Guest. I have absolutely——

Mr. Warrick. There is a good reason for that, yes. The reason is actually the one you gave, Iain, which is that in any attempt to try the prosecute what has gone in a place like Bosnia, you will inevitably have a lot of line drawn. Here is where the judgment of the prosecutor is so crucial to the success and credibility of the Tribunal.

For example, one of the first atrocities that was investigated and indicted was Omarska, which up until Srebrenica, was the worse atrocity of the Bosnian war. Similarly, and sort of marching down the list of horribleness, if you could attempt to catalog such a list, that was the sequence of cases they walked through certainly in late '93, early '94.

The strategy then shifted starting in July 1995 (I'm trying to remember when the

Karadzic and Mladic indictments actually came out, I guess it was '95) and then proceeded through some of the indictments of Bosnian Croats. So there is a logic to it. It's not a perfect logic.

To carry out such a process would probably take something on the order of maybe 10 times what exists in The Hague. Recognize, that one of the reasons the Tadic trial is taking 2 months is because it has to lay the framework and the foundation for every other trial that will follow. So the subsequent trials will be shorter. But even assuming today that there was perfect cooperation from all parties throughout the former Yugoslavia—something 10 times what exists to take 10 years or more to go through all the cases.

That is what in the trade is called a “wild ass guess,” and I want it labeled as such. But that's the difference between where we are and where we would have to be to try to do something like that.

Questioner. So that's \$40 million?

Mr. Warrick. Yes.

Mr. Guest. Look, I might've raised a hare there by saying at the beginning that \$40 million is a lot of money. Well, it is a lot of money at the moment in the context of a United Nations which has a negative budget and when its major contributor is withholding dues. Given what they are trying to do, though, and the significance of what the Tribunal is up to, it is, I think, very little money. It depends which side of the fence you're on. I mean, it infuriated people like Tom and Diane and myself and others in the early days of the Tribunal when the U. N. simply would not provide enough money for it to get going. It was absolutely incredible.

At precisely the time of that war, when the shells were flying, when it was really important to get the prosecution off the ground, and they could have started before Goldstone came aboard; they were just being starved of money. They couldn't even hire their own people from The Hague. They had to go through all of this incredible red tape in New York, to the extent where many of us thought that this was deliberate on the part of the U. N. people in New York to dampen what could be a fairly controversial operation.

So the money has been in short supply. As Tom says, it is very, expensive to get these things off the ground. They had to interview over 20 witnesses to put the indictment together against Tadic in five or six different European countries. They had to bring a witness in from Malaysia, etc., etc., a very expensive process.

I think if we want this thing to work we have got to provide it with money. The amount of money spent on the Tribunal is peanuts compared to the amount of money that went on UNPROFOR. So let's get the thing into perspective. If we invest the money in this, and get a serious and credible process off the ground, things will start to happen. A process will start which will ensure that Karadzic does not sleep easily, even if he is not picked up by IFOR within the next two or 3 months.

Ideally he will be looking over his shoulder for the rest of his life. That's the kind of process we want to get going.

Questioner. My name is Dede Fallor. I don't wish to belabor this, but I wanted to ask you even before I heard your comment saying the numbers don't matter, why such a paltry number? You also said, Mr. Guest said, that it's really crucial for there to be any justice and have peace in the Balkans or anywhere else, for that matter, people must be accountable.

But I guess what you are saying is the numbers indicted under the War Crimes Tribunal are not important, but yet people need to be accountable, which I agree with. I just wonder, how are people in Yugoslavia going to be held accountable?

Ms. Schlager. Any volunteers?

Mr. Warrick. I'll take the numbers question and then step back for Iain to deal with the other more important questions. One of the more interesting things in the way the whole Tribunal was set up was how this ball park budget figure got "pegged." "Pegged" is a term I use very deliberately.

Initially, when the whole idea of a Tribunal was set up, one of the first questions a lot of us asked is, "Well, how serious is the United Nations going to be about this?" In many respects, when the very first budget was put together, some of the answers became clear. Some of our concerns became, apparently, justified.

The initial budget that the U. N. had put together called for \$30 million for the Tribunal, just the Yugoslavia Tribunal. It is not clear whether this was a 1-year or a 2-year figure. But when they flushed it out, they were talking about \$30 million for 2 years.

When you budget at that level, that determines everything else. I mean, it is like every other court in every other country around the world. You know how many judges you want for traffic court, for district court, for the U.S. Supreme Court, and you can piece together from that what the docket will look like—how many cases that court will be able to handle and how efficiently they will be investigated, and so forth.

Obviously, in this country we take traffic cases a lot more lightly than we do first-degree murder. Interestingly, at the international level, the level of seriousness has not gone on a similar scale. So that effectively a major war crimes case will have, in many instances, the same level of staffing of a major homicide investigation in the United States in a prosperous city. The level of magnitude set by the initial U. N. estimates has stayed more or less throughout the process.

What I think a lot of us would have liked is that for the first time the Tribunal was able to prepare a budget of its own. I immediately came up with one that was 10 times that size. That was not done. The people who were responsible for that budget are no longer with the Tribunal.

So, in some sense, maybe at some point someone will come forward with a budget to say, "To take this seriously, here is what we really need." Let me give you an example of even today where it is still a problem.

Initially, the victim and witness unit in the Tribunal was budgeted at one mid-level professional person plus two support staff to take care of all of the witnesses who needed counseling, protection, and so forth, when they came to testify for trial. Clearly when you're talking about 20 or 40 witnesses just in the Tadic case alone, that is grossly inadequate.

You have got to have, in essence, a translator for each witness or family. Many witnesses will have to bring their spouses or their minor children. They will have to be taken care of. Safety will have to be assured. At the same time, you can't put them all in a hotel somewhere because then they start talking to each other, and that creates legal problems for their testimony. The Tribunal still has not come to grips in budgetary terms with what that means.

They still do not have an adequate program, in the case of Yugoslavia, for how to deal

with that. Even though, as in the last budget cycle, even when they get almost all of what they ask for, they still aren't asking for all that they need. It is going to take another year or so, I suspect, before some of these faults become apparent and, I hope, get more realistic in their requests.

Mr. Guest. Well, I'm going to attempt an answer to your question, because obviously I left you very, unsatisfied with my comments. I think it is an extraordinarily difficult question to answer.

I mean, look at the damage that has been wrought on the Bosnians, in particular, and the Muslims by this war. The feelings one has when one opens a newspaper and you see Arkan in the uniform of a Serbian nationalist—a kind of Serbian pop star—flaunting his role, flaunting the money that his people made through rape and pillage during this war, the credible impunity that is clearly felt by most of the Serbian nationalists.

How do you get at that? It is very, difficult. But I remember Argentina. I came away thinking that Argentina would find it easier to get over the past horrors because of the fact that the Mothers of the Plaza de Mayo and the human rights groups and the relatives who disappeared had fought the good fight throughout the disappearances. Many of them have been tortured and killed as a result. This gave Argentinians reason for pride as well as shame.

Of course, that is what is lacking in Serbia at the moment. I mean, you have some people, Sonja Bizerka and others who are very outspoken. But something very profound needs to happen in Serbia for that people to accept what has happened in this war.

Clearly, the Tribunal has not contributed. Indeed, I would say that one of the Tribunal's failures has been its failure to promote and project the importance of societal change. But maybe that's not the Tribunal's job. Maybe it is for the international community to convince the Serbians.

The Bosnian Serbs, I think, are a different kettle of fish altogether. They still see themselves in the middle of a war. But Serbia, I think, is the key to this. It is the sense of impunity, the sense that there doesn't seem to be any remorse in that country. That, I think, is very worrying.

Mr. Cigar. I think there is the quantitative aspect; there is also the qualitative aspect. It is really important to discredit and delegitimize certain concepts, certain ways of acting. Denial becomes much more difficult once the truth is out there. I think that was very important in Germany.

But, also, there is the issue of collective guilt—not all Serbs are guilty, not all Croats—that has to be determined and you have to delineate responsibility. I think to bear that burden of collective guilt by future generations, is very ominous for the future stability of the region. Not all Serbs are involved, but those that are have to be shunned by the international community.

I think there is a qualitative deterrence as well. You are not going to convict everybody. You are not going to indict everybody. But leadership, I think, bears a very important responsibility for this, those people who are the most responsible are the ones who had the authority, the power to either initiate this or prevent it. There is a quality factor, even if you don't get all 300; if you get the top 20 or so, I think, some principles have to be addressed. I think that's very important that those come out.

Questioner. In the Nuremberg trials didn't they—

Ms. Schlager. Could you give us your name, please?

Questioner. Mary Mullen from the Bosnia Support Committee. In the Nuremberg trials—I went to the Nuremberg anniversary in 1991, not the one this past year, in 1995—I thought that they tried many people in one trial. They didn't seem to be trying each one individually. They seemed to be trying, like, 15 at a time. Were they or—? That's just one question. I have another one.

Mr. Guest. They tried I think it was 23 initially. Then the follow-up trials at Nuremberg by the four powers, they all held their trials. The Americans held trials in Nuremberg, follow-up trials, and then the Germans sort of took over the process. So it was kind of incremental, if you like.

Questioner. Over a period of how many years?

Ms. Schlager. Is part of your question why were they tried individually rather than collectively?

Questioner. Yes. I thought—based on films—some were tried collectively so that you could hold more people responsible for the lesser crimes. I'm not certain.

Mr. Warrick. Well, the initial trial, which was actually not done in order to hold them collectively responsible, but rather simply because these are the ones that were thought to be chiefly the architects for the entire war for all of the Holocaust and all aspects of what had happened, and so that first trial was, as Iain said, all 23.

Subsequently, there were trials of individuals. But that was after the initial one, the initial trial, that in fact is what you usually see when you see videotapes or films of the Nuremberg trial. You are seeing the initial international military Tribunal trial of major war criminals. I forget the formal name tag.

Questioner. So it's not that there were individual indictments?

Mr. Guest. Oh, yes.

Questioner. There were individual indictments. But can you try people collectively, internationally?

Mr. Warrick. Under the rules of The Hague, both the Yugoslavia and Rwanda Tribunals can hold trials together. I would imagine, for example, there will be a combined trial for Celebici. Well, there is a prospect of a combined trial for Omarska, but that's not clear.

Questioner. What about trying five indictees, can you try them together or do they have to be done separately?

Mr. Warrick. Yeah. If you're trying them for the same offenses or for the same case, I would imagine that they would be. Just simple logistics and economics would suggest you do that. The reason we don't do that in the United States is because of the perception in the case of a jury trial that this is somehow unfair, that lay jurors are not able to sort these things out as well as experts and judges.

Here all of the judges are experts or they wouldn't be there. So they are supposedly able to sort out to make sure that there is, in fact, evidence against each of the four defendants in a case, and it is not just sort of painting them all with this broad brush. So you will see, I think, combined trials.

Questioner. Well, does anyone up here have any comment on a permanent criminal court? That's just talked about in a lot of conferences I attend.

Mr. Warrick. Yes. There is, in fact, a lot of work being done on the permanent court in

various preparatory conferences that, it is hoped, will lead to a potential conference sometime in 1997. I am not the person you should address that to. But there are certainly any number of groups such as the Institute of Peace and others who are very active in that area.

Questioner. This is just a personal opinion. It may not be true at all. The High Commissioner for Human Rights of the United Nations spoke at the National Press Club last week and he seemed like he wasn't really truly in support of it as compared with a human rights court, where the human rights court they give—what is it? There is no punishment? There is just the monetary settlement? Is that what it is?

Mr. Guest. Yes. I don't know what he would have said, you know.

Questioner. Well, he was talking about the criminal court. But from what I got from him, and it might not be correct, I don't know whether he supported that. I think he seemed as though he would rather have a centralized human rights court. Is that true?

Mr. Guest. I can't comment on that, because I wasn't there.

But, Erika, do you want to sort of move the conversation to this issue of the criminal court, the permanent court?

Ms. Schlager. Well, I think that there are many people who take inspiration from the Tribunals that have been established for Rwanda and Yugoslavia and hope that they will create a favorable precedent. There are other observers, including Bruce Fein, who I mentioned, who has written that this is, in fact, negative for us. There are some people who don't like the idea of a permanent international criminal tribunal for a variety of reasons, and are looking to this experience to identify the flaws and determine whether they would be repeated. I think for our purposes, maybe the permanent international criminal tribunal issue is a little bit far afield from what our speakers have addressed today.

Questioner. OK.

Ms. Schlager. Maybe we could talk about it at another program.

Questioner. All right. I just wanted to ask about Milosevic. Do you have any comment on whether—I know I've heard Americans speak and I won't say which Americans, because I'm not sure whether they actually followed through with what they said. But they seemed to feel as though—they did blame Milosevic.

Mr. Cigar. I think there is very little doubt. In fact, a colleague of mine and I are putting together a study on responsibility, the issue of responsibility. He has both command responsibility, which is an indirect form, and also much more direct responsibility.

He had authority, both legal and actual, over many of the forces and agencies which were directly engaged in these acts. He had the power and the knowledge, both constructive knowledge and actual knowledge, of what was going on and without his involvement or the involvement of agencies subordinate to him much of this would not have happened.

I think that he bears a very great proportion of the responsibility for that. He is certainly not the only person responsible. But, you know, he certainly is the prime mover and has been until very recently. People like Arkan who really represents a household militia for Milosevic was active in Bosnia in late 1995. He couldn't get there, he couldn't supply his people without direct support from the police, the Serbian police. These are agencies that are directly subordinate to Milosevic, with not even a fig leaf of a Federal agency or the Army.

But even with the Army, Milosevic is one of the three people on the Supreme Defense



Council which really regulates Army policy. It's an interlocking system. He is the head of the government. He is also head of the ruling party.

All of these people, if you want, in Serbia are part of the party. They are all subordinate to him. It is still an ideological political party. He has multiple channels for information, multiple channels of authority, multiple channels for control. You can't abdicate command, either. So these agencies, when they act, eventually ultimate responsibility for them has to go back to one individual.

Questioner. What about Milosevic, are you saying that he—when is the Serbian election? I guess I haven't been keeping up with this. I've been involved in something else. Is there a Serbian election? Doesn't he have to call one? Is there a chance that he can get to be elected again?

Mr. Cigar. It is very hard to argue with success. If he is given success by the international community as the valid interlocutor, I think that certainly is a very important asset. But he has overall command over things like the judiciary, the police, the economy, the political party system, the military—all of those assets.

The opposition is very fragmented. He is in, I think, the catbird seat as far as elections are concerned, especially if he is accepted as the legitimate power broker by the international community.

I think things can go wrong, the economy can go wrong certainly; of course there are a lot of things that can go wrong. There are a lot of pitfalls out there for him. But the alternatives to him right now don't seem to be realistic. He has come out of it. He is a survivor.

Questioner. What are the alternatives? Will they negotiate? They have to have something? Do they have alternatives?

Mr. Cigar. Who?

Questioner. The Dayton agreement. To follow-up with the Dayton agreement—

Mr. Cigar. Not if he is replaced by somebody in the elections. If he signs it "ex-officio" because of his position, if he is replaced by somebody else, those burdens, those obligations continue with whoever would replace him. It is not that it's a personal obligation that can be jettisoned by somebody who replaces him.

Mr. Warrick. I mean, yes, I would also point out that the old cliché that of "nature abhors a vacuum" also applies in politics as well. So if Milosevic were somehow removed from the picture, I doubt that there would be no one to negotiate with. Indeed, there may actually be more opportunities for negotiation.

Ms. Schlager. OK. I think I would like to ask, Tom, one short, technical question before we close today's briefing. Tom, as you know, the Tribunal has the authority under Rule 61 to reconfirm indictments. This initiates a process that can lead to an international arrest warrant. I think six of these international arrest warrants have been issued to date. But we haven't had one for Karadzic and Mladic.

I am wondering if this was a necessary step in order to require Serbia to have arrested them when they were in Belgrade at Djukic's funeral a week ago? Do you have any ideas on why the Tribunal has not taken that step?

Mr. Warrick. The technical answer is, no, it was not required. What the Tribunal does as a legal matter when it indicts somebody is that it gives notice of the arrest warrant to countries where the person is believed likely to go.

So, for example, someone would deliver the arrest warrant of Karadzic to Sarajevo, Pale, Zagreb, and they would try to effectively in Belgrade. As a practical matter, they haven't found anyone in Belgrade to accept the arrest warrant. But, you know, service is sufficient on one trying, not actually necessarily succeeding. So to that extent, that's not a problem.

The legal obligation existed when Mladic showed up at Djukic's funeral. The real purpose, I think, of a Rule 61—well, there are two purposes. One, the narrowly technical one of the international arrest warrant means that if they try to fly to some other country outside of the former Yugoslavia they can be, and indeed are supposed to be, arrested immediately.

This makes it impossible for someone to travel internationally: no Riviera vacations, no ability to travel to conferences, and do the other things that somebody on the diplomatic tour would like to be able to do. That is largely symbolic. Because in many cases, the countries to which these people would like to travel already have agreements with the Tribunal that will have them turned over.

The real impact, I think, is as it will be with Karadzic and Mladic, the effect of showing to the world here is the evidence that we have, or at least some of the evidence that we have, against these individuals. I think it will remind everyone of the importance of righting the wrongs that these people have committed by seeing that they are brought to justice. I think that will be the major effect that it is going to have.

Ms. Schlager. Thank you for your participation, gentlemen.

[Whereupon at 3:45 p.m., the Commission adjourned.]