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# Tyranny on Trial: Personality and Courtroom Conduct of Defendants Slobodan Milošević and Saddam Hussein†

Jerrold M. Post, M.D.†† & Lara K. Panis, M.A.†††

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## Introduction

When Saddam Hussein assumes his place in the defendant's dock in Iraq for his trial later this year or early in 2006, for this second political trial of the century he will be following in the pathway of Slobodan Milošević on trial for crimes against humanity at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. For both leaders on trial, their personalities and political behavior will play key roles in determining their conduct in the courtroom and influence the outcome of the trials.

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## I. Slobodan Milošević: From Peace Maker of Dayton to Butcher of Belgrade to Defendant in International Criminal Tribunal in The Hague

The NATO alliance now faces the delicate and awkward task of creating a lasting peace in Kosovo on the basis of an agreement negotiated with an indicted international war criminal. Previous portraits of Milošević have emphasized both his cunning and ruthlessness, as well as his worldliness and charm. American media accounts of the 1995 Dayton peace negotiations noted how Milošević serenaded American negotiators, drank Johnnie Walker Scotch, cursed in colorful American epithets, waxed eloquent about his love of New York and its sights and smells, and the taste of American coffee, and became misty-eyed when difficult compromises were reached. Milošević conveyed the perception—seconded by Ambassador Richard Holbrooke—of a leader with whom the United States could reason and negotiate. Milošević's charm is rooted in deception, for his charm is malignant, that of a man whom former U.S. Ambassador Warren Zimmerman called "the slickest con man in the Balkans," and "a man of extraordinary coldness." He has also been called "an apparatchik" and has been vilified as "the Butcher of the Balkans."

Slobodan Milošević was born in 1941 in wartime Serbia, the son of a Montenegrin theologian and a Serb Communist schoolteacher, both of whom committed suicide during his young adulthood, as did his favorite uncle, a general in the Yugoslav military intelligence. This depressive genealogy has led many, wishfully, to speculate that when he was on the ropes, Milošević too would follow the path of suicide. But in fact when he is in crisis situations, his tendency is to externalize and identify enemies as the cause of his problems, and lash out at them.

Milošević's vocation began quietly, following his graduation from law school in Belgrade, and he labored in various local and state bureaucratic jobs as an administrator and international banker, revealing little of the charisma and ruthlessness which characterized his later rise to political power. His wife herself has indicated that there was no trace of ideology or nationalism in her husband.

It was only late in his career that Milošević found his political voice and became champion of Serbian nationalism. In the late 1980's he tapped into the reservoir of Serb nationalist myth to fan ethnic hatreds, and became the catalyst behind the destructive conflicts in Slovenia, Croatia, Bosnia, and Kosovo, in which hundreds of thousands died, and millions of refugees were "ethnically cleansed" or displaced from their homes. In 1987 Milošević was, according to his political mentor Ivan Stambolić, "transformed and set afire by Kosovo," a region of Yugoslavia with a long history of ethnic tension. Kosovo—ninety percent of whose residents are ethnic Albanians—is hallowed ground to the Serb people. It is the site of the mythologized 1389 battle of Kosovo Polje, where the Serbs were defeated by the Ottoman *infidel*. Many of medieval (Orthodox) Serb Christendom's holiest sites are in Kosovo. It also holds regions rich in undeveloped mineral resources. Sent to Kosovo by Stambolić in order to quell the ethnic

unrest, Milošević instead inflamed the nationalist passions of the Kosovar Serbs. In a 1987 speech in Kosovo, which helped catapult him to power, Milošević spoke eloquently to a group of disgruntled minority Serb settlers, "This is your country, your land, your fields, your gardens, your memories." "To not fight for what belongs to Serbs," he told his enthralled listeners, "would be to disgrace your ancestors and disappoint your descendants." He evoked the spirit of Prince Lazar, the hero of the battle of Kosovo Polje, who refused to yield to the overpowering might of the Ottoman invaders, vowing that it was better to die in glory than to live in shame. This was a transformational moment for the forty-six year old Milošević. His enthralled audience saw him as their champion of Serbian nationalism, a role he was to play out with eloquent zeal from that moment on.

While utilizing the language of myth to foment ethnic hatred, Milošević has always cleverly fallen back upon legalistic formalities—coupled with near-complete control of the media—in order to achieve and maximize his political standing. His tenacious defiance of NATO centered largely on legal issues of sovereignty rather than nationalist myth, although he has utilized historical symbols with great effectiveness in mobilizing public opinion in his favor and against NATO. Besides his reliance upon the Kosovo myth to seize power in the late 1980's, during the NATO bombing (including that which occurred on April 6, 1999) he cleverly revived the symbolism of the Nazi war machine's bombing of a defenseless Belgrade on April 6, 1941, when Yugoslavia refused to capitulate to the demands made by the Fascist aggressor during World War II. A masterful manipulator of images, during the NATO campaign Milošević managed to transform himself from the ethnic-cleanser of Kosovo to the martyr-hero of Belgrade, identifying himself with Prince Lazar. He adroitly manipulated both the Western media and internal Yugoslav opinion during the Kosovo crisis, skillfully exploiting the civilian casualties of the NATO bombing, calling attention to Serb civilians maimed and killed in hospitals, schools, and population centers. More contemporaneously, by calling President Clinton "Hitler" and NATO "Nazis," he was evoking the memory of the courageous stand against overwhelming odds by Serbs during World War II and identifying himself with their heroic leader Tito. During the conflict, he utilized such symbolism in awakening unified resistance behind his defiant banner.

This theme of defiant resistance was to continue in his trial proceedings in The Hague, where Milošević denied the legitimacy of the court, as he had previously denied the legitimacy of NATO. His followers in Serbia dismissed the disastrous trial in The Hague as "foreigners' justice."<sup>1</sup> Milošević immediately rejected the court's credibility, and armed with his law degree, decided to defend his own case. While the aphorism that the man who acts as his own attorney has a fool for a client is often true, Milošević was very adroit in taking advantage of his double role as both defendant and principal defense attorney. He played to his supporters

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1. Editorial, *Saddam Hussein's Trial*, WASH. POST, July 2, 2004, at A14.

back in Serbia, put his accusers on the defensive, and in general, turned the trial into an international spectacle. Milošević's extradition to The Hague in 2001 was the beginning of a century that would yield another war criminal before too long—one who may have watched from his palace the initial proceedings of Milošević's tribunal—and would soon follow in his footsteps.

As we approach the Saddam trial, there are reasons to believe that Milošević's early court appearances were carefully observed by Saddam and will be a model for his conduct in the courtroom. In order to put into context Saddam's behavior in the upcoming trial, a political personality profile is needed.

## II. Saddam is Iraq, Iraq is Saddam

To project the likely conduct of Saddam Hussein in the second trial of the (new) century, it is necessary to understand his complex psychology. It is useful to consider the three principal layers of Saddam's psychology, layers for which the architecture of his three principal residences provide an apt metaphor.

How ironic that it should have come to this: Saddam Hussein, who began life in a mud hut near Tikrit, ended his political career in a so-called "spider-hole" in the ground, beneath a mud hut near Tikrit. But considering Saddam's psychological makeup, his end was, if not inevitable, certainly fitting.

The dictator was born in 1937 to a poor peasant family near Tikrit, some 100 miles north of Baghdad, in central-northern Iraq. But the central lines of the development of his political personality were etched before he was born. His father died of an "internal disease" (probably cancer) while his mother, Sabha, was pregnant with Saddam. A few months later, during her eighth month of pregnancy, Saddam's 12-year-old brother died under the surgeon's knife. Devastated and destitute, his mother attempted suicide. A Jewish family saved her. Then she tried to abort herself, but was again prevented from doing this by her Jewish benefactors.

After Saddam, was born, on April 28, 1937, his mother would not accept her new-born son in her arms, turning away from him, strongly suggesting that she was suffering from a major depression. His care was relegated to Sabha's brother Khayrallah Talfah Msallat in Tikrit, in whose home Saddam spent much of his early childhood. At age three Saddam was finally united with his mother, who in the interim had married a distant relative, Hajj Ibrahim Hasan. His stepfather reportedly was abusive both psychologically and physically to the young Saddam.

The first several years of life are crucial to the development of healthy self-esteem, and so the failure of Saddam's mother to nurture and bond with her infant son and the subsequent abuse at the hands of his stepfather would have profoundly wounded his emerging self-esteem, impairing his capacity for empathy with others. One course in the face of such traumatizing experiences is to sink into despair, passivity and hopelessness. But

another is to etch a psychological template of compensatory grandiosity, as if to vow, "Never again, never again shall I submit to superior force." This was the developmental psychological path Saddam followed.

From his early years, Saddam, whose name means "the One who Confronts," charted his own course and would not accept limits. According to his semi-official biography, when he was just ten, Saddam was impressed by a visit from his cousin who knew how to read and write. He confronted his family with his wish to become educated, and when they turned him down since there was no school in his parents' village, he left his home in the middle of the night, making his way to his maternal uncle Khayrallah in Tikrit in order to study there. It is quite possible that in the approved biography Saddam somewhat embellished his story, but there is no mistaking the resentment against his mother and stepfather that emerges from it.

Khayrallah filled young Saddam's head with stories of his heroic relatives, including his great-grandfather and two great uncles, who gave their lives for the cause of Iraqi nationalism. He inspired Saddam with dreams of glory, predicting that one day he would follow in the path of his relatives and of the medieval heroes of the radical Arab world, Nebuchadnezzar and Saladin, who liberated Jerusalem from the Crusaders. Khayrallah tutored his young charge in his view of Arab history and the ideology of nationalism and the Ba'ath Party. Khayrallah eventually facilitated Saddam's secondary schooling in Baghdad at a school known for its teaching of an inflammatory brand of Arab nationalism. Khayrallah, who was later to become governor of Baghdad, shaped Saddam's worldview, inspiring him with a hatred of foreigners. In 1981, Saddam republished a pamphlet written by his uncle, "Three Whom God Should Not Have Created: Persians, Jews and Flies."

After officially joining the Ba'ath Party at twenty, Saddam had high ambitions to rise within the ranks, and he did, moving from street thug to strategist to leader. But in the end, no matter how grandiose a life a person like Saddam constructs—and he created for himself as lavish a life as is possible—the well of pain and insecurity caused by early wounds is unlikely to ever be filled.

In Saddam's case, his strong desire to never again be humiliated and abused fueled an intense rage. The stories of his cruelty are legion. In 1982 for example, when the war with Iran was going very badly for Iraq and Saddam wished to terminate hostilities, Khomeini, who was personally fixated on Saddam, insisted there could be no peace until the Iraqi dictator was removed from power. At a cabinet meeting, Saddam asked his ministers to candidly give their advice, and the Minister of Health suggested the leader temporarily step down, to resume the presidency after peace had been established. Saddam reportedly thanked him for his candor and then ordered his arrest. When the man's wife pleaded for her husband's return, indicating that her husband had always been loyal to Saddam, the dictator promised her that her husband would be returned. The next day, he returned her husband's body to her in a black canvas bag, chopped into pieces. Actions like this powerfully concentrated the attention of other

ministers who were unanimous in their insistence that Saddam remain in power, for it emphasized that to be seen as disloyal to Saddam is not only to risk losing one's job, but also one's life.

But his actions also deprived Saddam of the check of wise counsel from his leadership circle. This combination of limited international perspective and a sycophantic leadership circle led him repeatedly to miscalculate and ultimately led to his downfall.

Throughout his career, Saddam craved the heroic recognition his uncle had prophesied. He believed he should be ranked with history's great socialist leaders—Mao Zedong, Ho Chi Minh, Tito, and Fidel Castro. He created a cult of personality within Iraq, with statues and murals of him throughout Baghdad and the other cities and towns of Iraq.

But the international community never gave to Saddam the recognition as a world-class leader that he so craved, that is, until the summer 1990 invasion of Kuwait, which was a transformational event. He gave a guttural grunt, and oil barrel prices jumped twenty dollars a barrel, the Dow Jones stock average fell 200 points. He had the world by the throat. More importantly, radical Arabs were cheering for him, Palestinians saw him as the leader who would regain Jerusalem for them. It was a fulfillment of his uncle's prophecy. It was a fulfillment of his dreams of glory.

The magnificent palaces dotting the Iraqi landscape can be seen as the architectural model for his dreams of glory, his compensatory grandiose self, with their inlaid woods, fine marble and gold accouterments in the bathrooms. But what underlay the palaces? In January of 1991, German architectural plans revealed details of a massive bunker that had been constructed beneath the presidential palace. Built with pre-stressed concrete and steel, it was designed to withstand all but a direct nuclear blast. Bristling with weapons, fitted with sophisticated communications equipment, with a helicopter and disguised exit, the bunker had enough food and water to last for a year and a half. This was the architectural motif for the default position in his political psychology, a siege state, ready to be attacked, ready to defend.<sup>2</sup>

But the Saddam Hussein we saw initially during his capture was neither the man in the bunker, nor the palace occupant. After he was assisted out of the spider-hole, he meekly bowed his head to have a medic examine his scalp for lice, obediently opening his mouth for a dental exam. This was, briefly, the shattered self. The importance of the images of a meek, humiliated Saddam giving up without a fight to his American captors cannot be overstated. The pictures of his capture showed to the world a broken man emerging from the hole beneath the mud hut, submitting without a fight to the will of his captors.<sup>3</sup>

This is not to say that the image of a broken man would persist. Indeed, within hours, he had regained his composure, was in his characteristic defiant grandiose mode, and, identifying himself as the President of

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2. Jerrold M. Post, *Rathole under the Palace*, L.A. TIMES, Dec. 21, 2003, at M1.

3. *Id.*

Iraq, imperiously asked who was negotiating with him. It was anticipated that this psychological default position would be manifest in court, which was abundantly confirmed in the July 2004 appearance.<sup>4</sup>

While Saddam has been characterized as the “the madman of the Middle East,” our analysis demonstrates him to be a rational calculator who, however, often miscalculates. He had watched the downfall of Ceausescu of Romania in 1989 with concern, seeing how quickly the powerful leader in his grand palace was overthrown by his people and hanged in the public square. In the run-up to the 2003 war, he was enough in touch with reality to recognize that Iraq could not stand up to the military might of the Western alliance, and made provision to support an insurgency, which commenced immediately after the defeat and of course still continues. He would have watched with great interest the trial of Milošević for war crimes, and he would have been enough in touch with reality to anticipate that he too might be brought before the bar of international justice.

Thus the parallels we have seen with the style of Milošević in the first court appearance of Saddam Hussein, questioning the legitimacy of the court, playing defiantly to his radical Arab supporters and to his reputation in Arab history, are not mere coincidence but probably reflects admiration for the success of the Milošević tactics and a conscious resolve to model his courtroom conduct after the Serbian dictator.

### III. The Milošević Model of Courtroom Conduct

Milošević was arrested in April of 2001 after a dramatic exchange with Special Forces who stormed the former leader’s two-bedroom villa. With a collection of charges in hand, police arrested him on corruption abuse and tax evasion, while no mention of crimes against humanity was made. As his personal bodyguards fired weapons on the intruding police outside and loyal supporters congregated around the compound, Milošević refused to submit. Making frequent appearances to his front door as a gesture of gratitude towards his followers, he was confronted by rallying cries of “Slobo, Slobo” and “We will not let them arrest you.”<sup>5</sup> His urgency to hold on to the heroic image compelled Milošević to engage in a pathetic array of behaviors, such as pleading in front of media cameras for wider public support and threatening to kill himself and his family. Attempting to hold on to a shred of dignity, he ultimately surrendered on the condition that his personal limousine and driver escort him to jail.<sup>6</sup> A fitting end to a tragic comedy, the drawn out spectacle (lasting over twenty-four hours) signified the desperation that had befallen Milošević.<sup>7</sup> As a result, Milošević vowed to recreate his nationalist hero image on a different stage—this time in front of a world audience. He may very well have delib-

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4. *Id.*

5. *Official: Milosevic Arrested*, CNN.COM, Mar. 31, 2001, <http://archives.cnn.com/2001/WORLD/europe/03/30/milosevic.arrest.02/>.

6. *Milosevic Arrest*, ONLINE NEWSHOUR, Apr. 2, 2001, [http://www.pbs.org/news/hour/bb/europe/jan-june01/milosevic\\_04-02.html](http://www.pbs.org/news/hour/bb/europe/jan-june01/milosevic_04-02.html).

7. *Official: Milosevic Arrested*, *supra* note 5.



erately planned this drama with police to strengthen the victimization card that he would later pull out in front of the judges. The man indicted for his orchestration of genocide and crimes against humanity that killed over 200,000 would later argue that he was a victim of a politicized trial by an illegitimate court that failed to recognize his right to defend himself.<sup>8</sup>

Milošević has approached his trial the same way he has approached his rule. Denigrating the legitimacy of the courts and refusing to allow anyone to speak on his behalf, Milošević carries himself in a consistent and predictable fashion, using whatever means he can to create a platform for his political grandstanding. He does not feel intimidated by the international stature of the Hague tribunal. Instead, he scoffs at its authenticity and proceeds to shift focus from his own indictment to the illegitimacy of the ICTY. In one of his first appearances before the Hague tribunal in 2001, Milošević accused the ICTY of “international kidnapping” and exaggerated his arrest as “[t]he illegal seizure of an individual and his delivery to isolation in the prison of an illegal international criminal tribunal in a distant nation.”<sup>9</sup> Moreover, the Serbian strongman quickly dismissed the court’s appointed defense counsel, arguing that the ad hoc tribunal was not created lawfully, and thus he had no need of appointed counsel, with the following statement: “I consider this tribunal a false tribunal and indictments false indictments. It is illegal, not being appointed by the U.N. General Assembly, so I have no need to appoint counsel to an illegal organ [sic].”<sup>10</sup>

Thus far in the trial proceedings, Milošević has done quite well for himself. Able to avoid a Hague appointed defense team, he has escaped unscathed after a string of derisive comments and disrespectful conduct directed at court officials. The resignation of the first head judge, Richard May—a stern hardliner with no patience for Milošević’s infantile antics, was a gift for the defense team of one. Judge May was known for turning off Milošević’s microphone mid-sentence when testimony turned into tirade.<sup>11</sup> Lawyers assigned to his case have even walked out by the dozen, as Milošević’s puerile tricks (refusing to look at or speak to the appointed legal team) would test anyone’s patience.<sup>12</sup>

Milošević will continue to derail the proceedings because in his mind, the war crimes tribunal is motivated solely by an agenda to convict him—in

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8. Toby Sterling, *After Delays, Milosevic Opens Defense*, WASH. POST, Sept. 1, 2004, at A11.

9. Slobodan Milosevic, Statement of President Slobodan Milosevic on the Illegitimacy of the Hague Tribunal (Aug. 30, 2001), <http://www.slobodan-milosevic.org/spch-icty.htm> [hereinafter Milosevic Statement].

10. *Transcript: Milosevic in Court*, CNN.COM, July 3, 2001, <http://edition.cnn.com/2001/WORLD/europe/07/03/milosevic.hearing/>.

11. *Milosevic Defiant Over Judge Swap*, BBC NEWS, Mar. 25, 2004, <http://news.bbc.co.uk/2/hi/europe/3567045.stm>.

12. Ian Traynor, *Milosevic Lawyers Ask to be Dismissed*, THE GUARDIAN, Oct. 28, 2004, available at <http://www.guardian.co.uk/international/story/0,3604,1337388,00.html>.

his words, it is “part of a joint criminal enterprise.”<sup>13</sup> As Milošević continues this power struggle with court officials, his combative behavior seems directed at undermining the credibility of the international justice system. “The ICTY celebrates inequality in the rule of law using criminal sanctions to destroy selected leaders and governments.”<sup>14</sup> Highly politicized, there was no basis of justice involved in its creation.

Milošević masterfully exploits the victimization theme—the image of an innocent, lone leader battling the greater, corrupting institution. “The prosecution has a huge legal and media machine on its side. What do I have on my side? I only have a public telephone in my prison. That is all I have to fight a terrible libel against my country, my people, and myself.”<sup>15</sup> Entering the confrontational courtroom in 2001 already branded as a war criminal, through his own defense testimony Milošević transformed himself into a victim of “terrible fabrication,” a nationalist hero “humiliated, isolated, and silenced” for attempting to defend his own people.<sup>16</sup> Charged with sixty-six crimes under three separate indictments (Kosovo, Bosnia and Croatia), the defense team of one has masterfully invoked history.

Regarding crimes against humanity in Kosovo, he referred to this charge as an “ocean of lies” constructed by the West.<sup>17</sup> “Our defense was a heroic defense against the aggression of the NATO pact.”<sup>18</sup> Up until the NATO bombing of 1999, which Milošević asserted to be the true reason Albanians fled war torn Kosovo, he accordingly claimed the region to be peaceful with “no evidence that there was any kind of persecution of Albanians in Kosovo.”<sup>19</sup>

His speeches in the courtroom follow a predictable “distortion of history,” his version of the Balkans bloodshed.<sup>20</sup> By singling out the Serbian people as victims whom he boldly stood up to defend, Milošević attempts to remove the culpability from his actions, shifting blame outside of his circle of Serbian henchmen to the victims. Apart from Croatia’s support to ethnic Serbs, and Bosnian and Kosovar sponsorship of Muslim terrorists, Milošević charges the European and U.S. powers with devastation to the physical and symbolic underpinnings of Yugoslavia. “They [the Western powers] call themselves the ‘international community,’ but in the territory

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13. Marlise Simons, *Lessons from a ‘Textbook’ War Crimes Trial*, N.Y. TIMES, Sept. 19, 2004, at 12. The phrase was originally coined by the prosecution, who accused Milošević of being “part of a joint criminal enterprise.”

14. Milošević Statement, *supra* note 9.

15. *Milošević Hits Back at Prosecution*, ONLINE NEWSHOUR, Feb. 14, 2002, [http://www.pbs.org/newshour/updates/february02/milosevic\\_2-14.html](http://www.pbs.org/newshour/updates/february02/milosevic_2-14.html). Note that it is not Milošević the man, but rather the martyr-hero of his beleaguered nation by which he is identified.

16. *Id.*

17. *Id.*

18. *Id.*

19. Shirley Cloyes DioGuardi, *Analysis of Slobodan Milošević’s Opening Testimony*, [http://www.aacl.com/cloyes-response\\_to\\_hague\\_tribunal.html](http://www.aacl.com/cloyes-response_to_hague_tribunal.html) (last visited Oct. 11, 2005).

20. Sterling, *supra* note 8.

of Yugoslavia—Bosnia, Croatia, Kosovo—they supported a totalitarian, chauvinist elite, terrorists, Islamic fundamentalists, neo-Nazis, whose objective was an ethnically pure state. That is to say, a state without any Serbs.”<sup>21</sup>

Fully aware of how to manipulate the Western media, Milošević views the trial as an ideal forum to expose the U.S. role in the dissolution of Yugoslavia and the installation of an U.S.-backed Serbian government. Accordingly, Milošević uses the stage as a political platform to criticize the West’s double standards. “America crosses the globe to fight terrorism in Afghanistan, but to fight terrorism in the heart of your own country is considered to be a crime.”<sup>22</sup> He even goes so far as to link the ICTY with terrorism, arguing that in actuality, the Hague tribunal is “terroriz[ing] and punish[ing] those in Yugoslavia who dared to oppose NATO aggression” and defend their nation against acts of terrorism.<sup>23</sup>

As Milošević continues to play mental games with the judges, effectively delaying the hearings, his rapidly deteriorating health has recently become a major factor, placing heavy constraints on the progression of the trial. Diagnosed with a heart condition in 2003, the sixty-two year-old adamantly continues to prepare his own defense, despite his poor health record.<sup>24</sup> Perceiving his ailing health as a vulnerability, he refuses to relinquish his basic rights to self-representation, anticipating the court’s proceeding with an appointed defense council in his absence. “This is highly improper. You do not take away somebody’s right to self-defense when he is sick.”<sup>25</sup>

He continues to vigorously cross-examine the witnesses and unleash fiery political speeches and long-winded invectives, some ranging as long as five hours, suggesting his final attempts to hold onto the limelight and any remaining shreds of his heroic reputation.<sup>26</sup> With the courtroom as his center stage—the only lingering form of communication with the outside world—Milošević has seized the momentous opportunity to set the record straight. In due course, he will have to confront the next stage of his life and the reality of his deteriorating health. While it remains to be seen what bearing the illness will have on the outcome of the trial, the judges are losing patience with his disruptive antics and the constant postponement of hearings due to the defendant’s fragile state. Despite suspicions that he is feigning illness and using his poor health as an excuse, recent medical reports indicate Milošević is suffering from “dangerously high blood pressure” and is at risk of a heart attack.<sup>27</sup> Nonetheless, the defen-

21. *Id.*

22. *Milosevic Hits Back at Prosecution*, *supra* note 15.

23. *Milosevic Statement*, *supra* note 9.

24. *Ill Milosevic Puts Trial on Hold*, *THE AUSTRALIAN*, Feb. 19, 2004, available at <http://www.globalpolicy.org/intljustice/tribunals/yugo/2004/0219hold.htm>.

25. *Court to Impose Lawyer on Milosevic*, *MSNBC*, Sept. 2, 2004, <http://livevideo.msnbc.com/id/5894160/>.

26. Traynor, *supra* note 12.

27. *Milosevic War Crimes Trial Resumes after Health Scare*, *ABC ONLINE*, <http://www.abc.net.au/news/newsitems/200504/s1353108.htm> (April 25, 2005).

dant's weakening physical state may be used to his advantage to rehabilitate his case. Even if he is legitimately ill, he has very adroitly made use of his poor health to stymie the court proceedings, but at the same time, he risks losing his basic right to act in his own defense because of his illness.

By emphasizing the illegal conduct of the Hague tribunal, "a lawless act of political expediency by the United States," it begs the question of how an international court system can uphold due process of law and the presumption of innocence when there already exists a strong "compulsion to convict."<sup>28</sup>

As the stakes are high for both Milošević and the ICTY to set a precedent, there seems to be a spirited struggle over the spotlight at The Hague. With pressures mounting on both sides, Milošević must prove himself a hero and salvage what remains of his national legacy. The court risks losing credibility due to an unforeseen digression from the trial, which is now in its third year. The ICTY must cautiously assess each forthcoming move in order to construct a model case of legal credence with international legitimacy.

Any form of deadlock in the case could lead to a collapse of the first trial of the new century and have profound implications for the forthcoming trial of Saddam Hussein. While the ICTY struggles to get hold of the legal proceedings upon which Milošević has ingeniously wreaked havoc, a dangerous model has already been created. *Vis-à-vis* his conduct in front of the court and his shrewd handling of the indictments, Milošević has demonstrated to the keen observer Saddam Hussein how to navigate through the criminal court system and create an international spectacle.

#### IV. Defiant Defendant Saddam Hussein: Following in Milošević's Footsteps

A clean-shaven, well-dressed Saddam Hussein walked into the courtroom on July 1, 2004, a rather remarkable change from six months earlier. The shattered self-image of a broken man pulled from a spider-hole near Tikrit would only serve as a temporary break in Saddam's grandiose facade. His defiant behavior in front of the Iraqi judge demonstrated a return to his default position and revealed striking parallels with Milošević's conduct in court. It was as if he carried with him a mental "textbook full of lessons" derived from years of testimony by Milošević.<sup>29</sup>

As the next trial of the century unfolds on the international stage, there exists a striking similarity, which we believe is not a coincidence, between the courtroom conduct of Saddam in his first court appearance and that of Milošević during his trial. Like Slobodan, the grandiose Saddam very much enjoys and craves his role as a major actor in the international arena. However, in the case of Hussein, that desire has been apparent from the early years of his career, unlike Milošević, who was a grey apparatchik until his transformation at age forty-six. The defiant dic-

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28. Milošević Statement, *supra* note 9.

29. Simons, *supra* note 13.

tator turned what was supposed to be a brief preliminary hearing, largely administrative in nature, into his own political platform. Within twenty-six minutes, Saddam managed to exchange combative words with the judge, question the legitimacy of the court system, play up his hero image to Arab supporters, and invoke history to his defense. At one point, he even turned the table on the presiding judge, aggressively interrogating the judge on his position and credentials, and fuming at the news of the judge's appointment by the Coalition Provisional Authority.<sup>30</sup> The first court appearance demonstrates his narcissistic desires to turn the courtroom into his world stage and maintain control over the proceedings. These striking parallels with Milošević are not merely a coincidence. There is reason to believe that Saddam was actively following the Milošević trial up until his capture in December 2003, just as he has closely observed the downfall of other powerful leaders.

Unlike Milošević, Saddam, whose attendance at Cairo University's law school was only nominal, is not well versed in jurisprudence and courtroom tactics. Nevertheless, he will almost certainly overestimate his own legal brilliance. Such behavior would mirror his controlling nature as commander-in-chief of the Iraqi armed forces, even though he had no requisite training in military leadership. Furthermore, even if he does identify a principle defense attorney, it is assuredly the case that he will be actively involved in his defense strategy.

Saddam's initial statement in the courtroom was a repetition of that same, now infamous, phrase that the captured dictator first uttered when he came out of the spider-hole: "I am Saddam Hussein, the president of Iraq."<sup>31</sup> Convinced that he is still the ruler of the Iraqi people, Saddam outright denied the court's authority to strip him of his title, and rejected the legitimacy of the war in which he was captured. "I'm elected by the people of Iraq. The occupation cannot take that right away from me."<sup>32</sup> His fixation with a proper title was apparent by his frequent interruptions to correct the judge, whom he cast as a shameful and disgraceful Iraqi. In one particular instance, as the judge rattled off the preliminary war crime indictments, Saddam's intent on being honored with the proper title led him to snap back: "I did all these things as president so don't strip me of that title."<sup>33</sup> It is a striking reminder of the grandiose facade still at play and demonstrates his inability to cope with political reality. Moreover, it is an illustration of a narcissistic individual who is able to disregard and detach himself from the severity of the charges at hand, in order to make a basic point regarding the mere phrasing of his title.<sup>34</sup>

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30. Rory McCarthy, *I am Saddam Hussein, the President of Iraq*, THE GUARDIAN July 2, 2004, available at <http://www.guardian.co.uk/Iraq/Story/0,2763,1252342,00.html>.

31. *Defiant Saddam Rejects Court, Charges*, CNN.COM, July 1, 2004, <http://www.cnn.com/2004/WORLD/meast/07/01/iraq.saddam/>.

32. *Id.*

33. McCarthy, *supra* note 30.

34. *Id.*

He refused to acknowledge the accusations of the Halabja gassing attack, mocking casually that he had “heard about that on the television reports.”<sup>35</sup> But it was the charge detailing Iraq’s 1990 invasion of Kuwait that ignited a fury within, provoking a chain of ill-mannered outbursts and body language. “In Kuwait I was protecting the Iraqi people from those Kuwaiti dogs who wanted to turn Iraqi women into 10-dinar prostitutes.”<sup>36</sup> Just as Milošević presented Kosovo as “the cradle of Serbian civilization” and “an integral part of the ‘sovereign state of Serbia,’” Saddam used a similar argument for Kuwait.<sup>37</sup> “I am surprised you are charging me with this. You are Iraqi and everyone knows Kuwait is part of Iraq.”<sup>38</sup> He spoke rather defensively of the aggressive actions taken against Kuwait, asserting that it was an agent of the U.S. and Israel. However, there was more to this courtroom display of incitement and rage. Underlying the invasion of Kuwait were Saddam’s self-serving interests to achieve his destined role as the heroic Arab leader, unifying the pan-Arab nation and defending against the aggression of the West.<sup>39</sup> Saddam’s courtroom conduct thus far reveals his refusal to accept his inevitable fate and determination to instead cling to past dreams of glory. For example, when asked by the judge where he lived, the former dictator quickly replied, “I live in each Iraqi’s house,” a true testament to his grandiose self-concept.<sup>40</sup>

Saddam’s remark that “this is all a theater by Bush, the criminal, to help him with his campaign” is one indication of the type of defense testimony to come.<sup>41</sup> The courts must anticipate a shifting of blame to the Western powers for Saddam will likely employ political invectives to attack the West’s double standards. This will require careful planning and consistent limit setting by the court or Saddam will again take over as he did during his brief court appearance in July 2004.

In the case of Saddam Hussein, an Iraqi special tribunal has won out over the Milošević-style, ad-hoc international criminal court. The Iraqi people feel strongly motivated to prove to the world, that as a nation of law, Iraq is capable of carrying out justice, against even its most brutal dictators. There is a strong desire to reestablish the pride of Iraq’s glorious past, when the Hammurabi code played an important role in the development of the law—a tradition that was set aside during the Saddam Hussein years.

Both defendants have come a long way from the days of their humiliating captures. Each forced to yield to their captors; Milošević prolonged his dramatic exit while Saddam surrendered instantly. With video footage and photographic images documenting the despair of the shattered self, for

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35. *Defiant Saddam Rejects Court, Charges*, *supra* note 31.

36. McCarthy, *supra* note 30.

37. DioGuardi, *supra* note 19.

38. McCarthy, *supra* note 30.

39. Jerrold M. Post & Amatzia Baram, *Saddam is Iraq: Iraq is Saddam*, in *KNOW THY ENEMY: PROFILES OF ADVERSARY LEADERS AND THEIR STRATEGIC CULTURES* 172, 182 (Barry R. Schneider & Jerrold M. Post, eds., 2002), available at [http://www.au.af.mil/au/awc/awcgate/cpc-pubs/know\\_thy\\_enemy/postbaram2.pdf](http://www.au.af.mil/au/awc/awcgate/cpc-pubs/know_thy_enemy/postbaram2.pdf).

40. McCarthy, *supra* note 30.

41. *Defiant Saddam Rejects Court, Charges*, *supra* note 31.

Milošević and Saddam, this was but a temporary break in their grandiose facades. Defiant and unrepentant, they have returned to the international stage hoping to reinstate their heroic legacies.<sup>42</sup> Brought to trial on alleged false charges, both leaders view themselves as nationalist heroes, who in service to their countries have courageously defended their people from outside aggression. Just as Milošević claims to represent the Serbian people at the Hague tribunal, Saddam feels that his entire nation has been put on trial, not just Saddam the individual.

Serving as his own defense council, Milošević is able to misuse his role by directing statements towards his constituents, and refrain from the witness stand where he would otherwise be subject to cross-examination. While Saddam will play an active role with his defense team, there is no indication that he will be defending himself and accordingly, in terms of the structure of the proceedings, he will not have the freedom that Milošević enjoys.

As both men dismiss the inevitable reality of their fate, they cling to their past, playing to their supporters and masterfully manipulating the trial proceedings. With the Milošević model in place, Saddam will use the upcoming trial principally to seize the spotlight as his final act on the world stage is scheduled to debut in early 2006. It remains to be seen which layer of his psychology—the shattered self seen during his capture from the spider-hole, the psychological siege state, or the grandiose facade—will determine his courtroom conduct in the forthcoming trial. Based on our understanding of Saddam Hussein's political personality and the early indications from his preliminary appearance, we doubt that the meek and shattered self will again be seen, but believe a mien of grandiose defiance will be evident throughout the court proceedings.

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42. Post, *supra* note 2.