Milosevic & Aanklachten

Map 8D

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WHY MILOSEVIC WAS NOT TREATED IN MOSCOW?

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Visiting doctors

On November 4, 2005 Milosevic was examined by three doctors selected by him at his own request pursuant to Rule 30 of the Rules of Detention, as the Medical Officer of the Detention Unit, Dr Falke, states in his report of November 11, 2005. Except what he probably had in mind was Rule 31 of the Rules of Detention. Before we let the Prosecution argue that "the Accused has a settled intention to obstruct this trial and prevent it from being brought to a conclusion" (para. 10 of the interim report of 22 December 2005), let us establish once and for all that Milosevic was well within his rights.

Rule 31 Rules governing the Detention of Persons awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal ("Rules of Detention") provides the following:

A. Detainees may consult a doctor or dentist of their choice at their own expense. All such consultations shall be made by prior arrangement with the Commanding Officer as to the time and duration of the consultation and shall be subject to the same security controls as are imposed under Rule 61.

B. The Commanding Officer shall not refuse a request for such consultations without reasonable grounds.

C. Any treatment or medication recommended by such doctors or dentists shall be administered solely by the medical officer or his deputy. The medical officer shall be informed of the outcome of all consultations of doctors or dentists. He may, in his sole discretion, refuse to administer any such treatment or medication.

The three doctors, Dr Margarita Shumilina, Vukasin Andric and Florence Leclercq, delivered each their separate reports and a joint opinion on the Combined Medical Examination, both dated November 4, 2005.

Orders

In no time, the Trial Chamber was after the three visiting doctors like King Herod after the three Magi. What followed was a flurry of orders and referrals. On 11 November 2005, Dr Falke filed a brief report in which he neither addressed nor diagnosed the problems complained of by Milosevic ("noted by the visiting doctors," as the assigned counsel later pointed out in the motion). Since Shumilina had mentioned inadequate treatment, Falke might have been expected to address the situation or refute the accusation. Instead, he did nothing. By his inaction, he came close to admitting that the treatment was indeed inadequate.

The Trial Chamber understood the gravity of the situation before Dr. Falke even realized what was going on. On 11 November 2005, the Trial Chamber ordered a further report

from Falke as his original report was "unsatisfactory". There was yet no trace of the visiting doctors' reports. Instead, the Trial Chamber wanted Falke to explain why Milosevic had not appeared in court. It ordered Falke to provide a diagnosis of Milosevic's condition that rendered him unfit to attend court and distinguish between the degree of fitness necessary to attend court and conduct one's own case.

Falke's report of 14 November was the first time he mentioned the visiting doctors' report in passing, almost by accident. Falke provides the diagnosis of a Dutch treating ear, nose and throat specialist at Bronovo Hospital in The Hague. His name is not mentioned. Falke may have assumed that the Trial Chamber had got wind of the visiting doctors' reports and announced: "Contrary to the joint conclusion of the Visiting Doctors, the treating specialist concludes that it is unlikely that the vascular abnormalities have a direct relationship with the symptoms complained of".

Of course, the joint conclusion had mentioned nothing of the sort. It is an inference Falke had made of the visiting specialists' separate reports. The joint opinion only recommended six weeks of rest.

As a bonus, Falke reported that in the specialist's opinion a period of rest would have no positive effect on his symptoms. (The Trial Chamber eventually allowed Milosevic to have his six-week rest in connection with the winter recess.) According to Falke, Milosevic had stated that he was fit to stand trial, and apparently he took Milosevic's word for it. Milosevic did complain of his ear and attributed the complaint to the change of headphones, but Falke does nothing to address the problem.

On 15 November 2005, the Trial Chamber ordered for the first time expert medical reports on the visiting doctor's reports. It assigned the treating cardiologist Dr Van Dijkman and the unnamed treating ear, nose and throat specialist for the job. It is not clear what the Trial Chamber expected to learn from them. Did it except Van Dijkman to admit that Shumilina was right about the treatment being inadequate? Anyway, it wanted the Dutch specialists' opinion on Dr Shumilina's reference to inadequate treatment and the necessity of additional tests and advice concerning the length of rest period required.

On 18 November 2005, Dr Van Dijkman filed a report that addressed Professor Leclercq's report. As to the Trial Chamber's second request, Dr Van Dijkman recommended that the current trial regime should not be changed. He wrote that Leclercq's report did not add to what was already known about the patient. He obviously did not find it necessary to do anything about the problems Leclercq had pinpointed, like the "very anomalous" ECG and the "left ventricular hypertrophy" which was asymptomatic. The only thing that he admitted in Leclercq's report was the advisability of an ischemic test. Of course, Leclercq had not requested an ischemic test. The only possible reference to an ischemic test in Leclercq's report was his opinion that ischemia could not be "totally ruled out".

An ear, nose and throat specialist.named Spoelstra filed a report on November 21. He mentioned that he might arrange a hearing aid for Milosevic. However, in the next

sentence, he added that it might not be a good idea to a hearing aid after all. Instead the volume in the headphones should be adjusted properly. That was simple. The problem was that Andric had observed that the hearing threshold converged with the pain threshold, which meant that before Milosevic could hear anything the volume in the headset should have been adjusted so high that it hurt. He also added: "As regards the other psychosocial complaints mentioned, also pointed out by the three foreign colleagues, I do not have an opinion." Instead, he recommended Dr De Laat from Leiden. It is not quite clear what Spoelstra meant by the "other psychosocial complaints mentioned".

On 21 November 2005, Dr Falke filed a medical report to the Trial Chamber in which he recommended that Milosevic was not fit to attend court for the rest of the week. Just a week before Falke had reported that Milosevic was feeling fine (apart from his ear).

On the same day, on 21 November 2005, the Trial Chamber ordered a further report from Dr Van Dijkman in which he should address Shumilina's report. The Trial Chamber referred to its earlier request which had not been met. Nothing had yet been heard from the unnamed ear, nose and throat specialist. Instead, the Trial Chamber ordered Dr Van Dijkman to examine the patient and report to the Trial Chamber.

In his report of 23 November 2005, Dr Van Dijkman seems to have realized that he was supposed to comment on Shumilina's report. Apparently, he had expected the unnamed ear, nose and throat specialist to do so. However, Van Dijkman must now have realized that Spoelstra, which is likely the specialist in question, had nothing to say apart from adjusting the volume in the headset. Just as Spoelstra had referred the case to someone else, Van Dijkman said that he did not consider himself sufficiently expert to give an opinion, so instead he recommended a neuro-radiologist.

In his report of 28 November 2005, De Laat, a physicist-audiologist, in effect confirmed Andric's report. The reason may be that De Laat provided the first real diagnosis of Milosevic's hearing problem by a Dutch physician instead of giving a personal opinion.

The Trial Chamber may not have been too impressed with Van Dijkman's performance so far, so it asked him once again, on December 1, 2005, if the sitting regime of the trial was OK. The Trial chamber wanted to know "urgently" if his proposal for sufficient rest was a reference to a period of rest outside the normal sitting regime. In his previous report, 23 November 2005, Van Dijkman had said that he stongly advised provision for sufficient rest. He added: "On the other hand, it seems to me that a six week rest period is somewhat too much".

On the same day, on December 1, 2005, Dr Van Dijkman responded by explaining that the six-week rest period recommended by the visiting doctors was an "arbitrarily chosen period". He also faulted the visiting doctors for the lack of vision concerning any longer-term recommendations. A week before he had thought that even the six week rest period was too much. The visiting doctors had stated that essential diagnostic procedures could be carried out only after the six-week rest period. Elementary my dear Watson.

Dr Van Dijkman explains that in his view Milosevic was able to appear in court three days a week, prepare his defense two days a week and have a decent rest two days a week. He said that it corresponded to a normal five-day working week. He supposed that Milosevic was able to cope with the load of a normal five-day working week of an able-bodied person, even if he was in ill-health and near the age of retirement. He also adds that the winter recess would also come close to the six-week period of rest recommended by the visiting doctors. Actually, the winter recess would have been three weeks (a difference that one would not really call "close"), although the Trial Chamber eventually extended the winter recess to six weeks.

Just as Spoelstra had referred the case to Dr De Laat, who had already filed his report, Van Dijkman had recommended a neuro-radiologist. A neurological radiologist was found. Dr Aarts, a neurological radiologist, filed his report on 6 December 2005. He finally set the Trial Chamber's mind at rest concerning Shumilina's report, which had vexed the tribunal for a month. Just by reading the table of points of disagreement (a reassuring name for a document), which had been drawn up by the tribunal, the Trial Chamber could see that, in Dr Aarts's opinion, the findings did not point to a pathological condition. That was the palatable version, but it was not the whole truth. First, Aarts had only said that the high signal in the transversal sinus did not point to a pathological condition. Second, Shumilina had not said that it did.

Bonomy

Judge Bonomy did not go along with the decision of the rest of the Trial Chamber on 15 November, 2005, and issued a dissenting opinion. As we have seen, the Trial Chamber ordered 15 November 2005 expert medical reports on the visiting doctor's reports. Even if it is unclear where the Trial Chamber thought it was heading with its decision, Bonomy's dissenting opinion essentially told Milosevic to sort out his own mess that he had caused by consulting the three visiting doctors.

Falke

While the courtroom exchange between Robinson and Milosevic on that same day (the famous are-you-deaf sequence) was discretely left out of the order, Judge Bonomy chose to emphasize Milosevic's responsibility in the debacle. As he does so, Bonomy practically exculpates Falke.

Bonomy drew the attention to the communications from the Medical Officer Dr Falke. Bonomy mentions in par. 2 that on November 11, 2005 "the Accused was absent from court through illness for the first time since April. At that stage there was no explanation of the condition that might have caused him to be unfit to be in court…[T]he Trial Chamber made an Order that [Dr Falke] should report on Monday, 14 November, on the fitness of the Accused to attend court on the next court day…and, in the event of his being unfit, should specify his diagnosis and the area of specialization relevant to his diagnosed condition." According to para. 3, Dr Falke reported on 14 November that the

Accused had stated that he was fit to stand trial and to defend himself, and the following day Milosevic was present in court.

With that prelude, Bonomy sets the scene and seems to put the earlier exchange between Milosevic and Robinson in context. The Trial Chamber had not seen the reports from the visiting doctors until Milosevic drew its attention to them on November 15. Bonomy criticizes the delay, because Milosevic had had the reports since November 4. Of course, Dr Falke was equally to blame for the delay, though Bonomy never goes so far as to blame him. Milosevic may even have been under the impression that the Dr Falke had already forwarded the reports to the Trial Chamber. It is certain that Dr Falke had seen them, because in his report of November 14, Falke revealed that he had discussed their contents with the Dutch specialist. Maybe Dr Falke had waited until he could get the Dutch specialist's views to soften the damaging impact of the visiting doctors' reports, as he well might.

However, Bonomy makes it abundantly clear that in his view Milosevic is the only one to bear the blame. He mentions that when Robinson asked Milosevic what he wanted the Trial Chamber to do "arising from this report," Milosevic said: "Nothing other than asking the Trial Chamber not to ignore what it says in the doctors' report, and that means that they said quite specifically suspension of all physical and mental activities for a period of six weeks." (para. 4) Bonomy is not happy with that response at all. He may even have found it insolent.

Of course, the Trial Chamber is not to decide how Milosevic should be treated. One has to go along with Judge Bonomy in that respect. It is Dr Falke who should take the heat for the debacle, though he does not. Dr Falke had obviously been sitting on the visiting doctors' reports and would probably have continued to so if Milosevic had not drawn the Trial Chamber's attention to them.

Even if Bonomy is careful not to offend Dr Falke here, the Trial Chamber was less happy with him. The Order concerning Further Medical Report of 11 November 2005 stated that the Trial Chamber ordered a report from Dr. Falke, as his original report (also of November 11) was found to be "unsatisfactory". In particular, Dr Falke's report did not address or diagnose Milosevic's problems. In the Order, the Trial Chamber ordered Dr Falke to submit a decent report which would answer "what is the area of specialization relevant to the Accused's diagnosed condition." When it says "diagnosed", the Trial Chamber can only be referring to the visiting doctors' reports, although it does not want to admit that it was aware of them. Instead, it ends up pretending that Falke should have diagnosed Milosevic, which is something he never did. The Trial Chamber also wanted Falke to specify the diagnosis of the condition which would render Milosevic unfit to attend court on 15 November.

"Cryptic statements"

Bonomy does a masterful job covering Dr Falke's tracks. Milosevic has to pay dearly for the fact that it was he who wanted the Trial Chamber to address the visiting doctors'

reports. Bonomy attacks the roundabout way in which it was done. "It is for him, as the person conducting and in charge of his case, tendering material which is the result of investigations he has caused to be made, to say what course of action he wishes the Trial Chamber to take. All he has suggested is 'taking account of' the reports. To what end? That is for him to specify." Bonomy also says "that it is not for the Trial Chamber to divine his wishes from his cryptic statements". Milosevic has been accused of many things (Bonomy should know something about that), but this must be the first time he is accused of making cryptic statements. That rouses the suspicion that Bonomy thought it insolent of Milosevic to put his health above the good administration of the trial.

Milosevic has at least as few possibilities of influencing his treatment as does the Trial Chamber. Under different circumstances, Milosevic might have been excused for "causing investigations to be made," as Bonomy puts it, because it was his health that was at stake. Did Bonomy really expect him to provide the Trial Chamber with a diagnosis of his own as well as the prescriptions, or was he only trying to Milosevic's life even more unbearable? Milosevic was just as much a layman as Bonomy in these matters. The only thing that Milosevic could do was to persuade the Trial Chamber to order a proper evaluation of his medical situation. If Bonomy had stopped acting so stolid for a minute, he might have realized that Milosevic was right. He would also have appreciated that Milosevic's hands were tied even more in this matter than his. Milosevic did not have to provide the Trial Chamber with a blueprint of the proper conduct of the trial with all the medical information factored into it. The Trial Chamber could act on its own initiative in those matters, and in fact it should. And in fact it did, except for Bonomy's flamboyant dissenting opinion.

Even if the Trial Chamber did indeed act on its own initiative to sort out the mess Dr Falke was reluctant to address, Milosevic's court-assigned counsel Higgins and Kay heeded Bonomy's advice to submit "a Motion seeking action by the Trial Chamber in relation to the Accused's health...in writing, and should identify clearly the issues to be addressed by the Trial Chamber and the relief sought" (para. 5 of the dissenting opinion). Bonomy said in para. 8 of his dissenting opinion that if Milosevic wished the Trial Chamber to take any form of action in light of the medical reports (favorable to Milosevic), he should have presented a motion to the Trial Chamber in writing.

Andric

Bonomy notes in his dissenting opinion that Vukasin Andric had appeared as a witness for the defense. The exact dates were February 23 and 24, 2005. He was cross-examined by Nice on February 28. In the sitting of August 23, 2005, Milosevic summarized his testimony as follows: "For example, Vukasin Andric testified here. He was the secretary for health in Kosovo and he showed films about the assistance and the aid distributed to the displaced Albanians, about how efforts were made to persuade them to return home, how there was no discrimination when aid was being distributed, and so on and so forth."

In the sitting of November 15, 2005, in other words, a day before he wrote his dissenting opinion, Judge Bonomy asked Milosevic if Vukasin Andric mentioned in the reports of the visiting doctors was the same person who had given witness earlier in 2005:

JUDGE BONOMY: "Mr. Milosevic, just clarification on one thing from earlier this morning. You presented us with a number of medical reports from experts. One of these is by a Professor Vukasin Andric. Now, earlier this year we heard evidence from a Professor Vukasin Andric. Is it the same person?

THE ACCUSED: Yes, the same person, and he is a very distinguished oto-rhino-laryngologist. And it has nothing to do – the examination, ear, nose, and mouth, has nothing to do with the testimony.

JUDGE BONOMY: Thank you.

If Bonomy believed that Vukasin Andric was the same person, did he have any reason to doubt that his testimony in February 2005 had anything do with his being an ear, nose and throat specialist? He was there when Andric gave his evidence, so he should know. The only time his specialization is referred in the course of his testimony is the single sentence: "After your schooling and specialization you came back to Kosovo and Metohija to work as a doctor."

On the basis of his testimony, we know the following facts about Andric. He was born in Kosovo and Metohija, in the village of Raka Urosevac in 1950. He is a medical doctor, professor at the school of medicine at the university. He did his entire schooling in Kosovo except for university studies in Belgrade. After his schooling and specialisation, he came back to Kosovo and Metohija to work as a doctor. In October 1973, he started working in the institute of labour medicine in Pristina, in the electrical company of Kosovo. All the time after completing your university studies you worked there until to date? With the exception of a brief period in 1988, he worked all the time in Kosovo and Metohija. He became professor at the medical faculty in Kosovo in 1981. He passed all the steps from assistant professor to full-time professor, and he is still a full-time professor at the medical faculty of the university in Pristina. Throughout this time, he served as the secretary for health in Kosovo and Metohija on the government.

While the Trial Chamber in its entirety went after Shumilina, Bonomy attacks Andric, the ear, nose and throat specialist. Dr Falke's report does the trick. Bonomy notes that the unnamed ear, nose and throat specialist did not share Andric's opinion on the relationship of the hearing problem to his cardio-vascular problems. If Bonomy had not taken notice of the medical reports before he heard of them from Milosevic, how did he know that Andric had said anything of the relationship? Dr Falke's report had only talked about "the treating ear, nose and throat specialist". It was not Andric. Falke's report does not identify the three visiting doctors in any way, and it does not even specify their specializations.

That implied that Bonomy knew more than he was willing to give away. Indeed, Andric had talked of "a case of bilateral impairment of the peripheral vestibulocochlear apparatus of primarily vascular origin". How could Bonomy act on the reports (that he implicitly denied of knowing anything about until Milosevic mentioned them to the Trial Chamber) only to refer to them to curb Milosevic's rights and demand him to submit a motion in which he was supposed to spell out what specific steps should have been taken (para. 4)?

Bonomy's excuse sounds lofty enough: "The Trial Chamber's first and foremost consideration must always be to ensure a fair trial of the Accused. It should not countenance the risk that a situation could develop in which its impartiality, and hence the fairness of the trial, might be put in question." There is at least one fault with this reasoning. The question of Milosevic's health is about Milosevic, not about the Trial Chamber. Or had Bonomy already bought into the rumors that were circulating about Milosevic manipulating his own treatment? If Milosevic's health was compromised, so would the good administration of the trial, and not the other way around. Or maybe Bonomy was not at all concerned about the impending public relations disaster as he may have been about the tribunal's reputation as a unit that gives its sponsors value for their money.

Bonomy's view was that Milosevic should be treated only by doctors who had not appeared before the Trial Chamber as defense witnesses (see para. 7). He apparently does not rule out the possibility that Milosevic could be treated by prosecution witnesses, which is a scenario savored by the prosecution in its interim response of 22 December 2005, signed by Geoffrey Nice. In para. 6 of that response we read that "the Accused's medical condition has been a matter which the Trial Chamber has managed on the evidence of doctors who have been its interlocutors". The prosecution will also gravitate toward the scenario that Milosevic should be examined by its own doctors. The prosecution argues that "the Prosecution should have an equal right to have the Accused examined and to have access to his medical records". The prosecution prefaces this argument by the inconspicuous but operative little word "arguably".

Rule 31 of the Rules of Detention provides that the detainees may consult a doctor of their choice at their own expense and that the Commanding Officer shall not refuse a request for such consultations without reasonable grounds". Should the reasonable grounds for refusal include the fact that a doctor has appeared as a defense witness in a case where his client is a defendant? Does Bonomy mean that if the defendant is willing to trust his life in the hands of one of his own witnesses, the suggestion is that the witness's testimony should be trusted even if he had been a witness for someone like Milosevic? Arguably, Bonomy would never have allowed the presumption of innocence to be taken to such absurd extremes. Bonomy's logic might work the other way around: a witness who has treated the defendant may not appear as a witness, but when Andric appeared as a defense witness, nobody could have known. If Bonomy had been at his very best, he would have said that since Milosevic had paid the three visiting doctors for their services, he had bribed one of his witnesses. Some people are hard to please.

Unless Bonomy has made a point of getting even with Milosevic, he might have wanted to be more explicit in what way the treatment of Milosevic and Andric's testimony were interrelated and how their interrelation was supposed to damage the credibility of the tribunal. In a duplicitous choice of words, Bonomy called the medical examinations by the visiting doctors "investigations he has caused to be made". Why did he say investigations instead of examinations? Investigation implies an existing suspicion, and that gives Bonomy the idea that the process is adversarial. One thing is certain. No matter what happened next, Bonomy had managed to cast a shadow on Andric's testimony.

An indication that the prosecution relished Bonomy's dissenting opinion beyond due measure is the fact that in its interim response of 22 December 2005, signed by Geoffrey Nice, the prosecution states in paragraph 16 that Milosevic's medical condition is now presented as an adversarial issue. Presented by whom? The prosecution cannot be oblivious to the fact that Bonomy said in para. 5: "...in this adversarial process it is not for the Trial Chamber to divine his wishes from his cryptic statements".

The prosecution will also cling to the statement Bonomy makes in the last paragraph: "Whenever issues of health and fitness arise in a court process it is vital that the right decision is made at the end of a thorough and scrupulously objective assessment of the issues on the basis of the opinions of experts who are not involved in the trial" (para. 8). There is no doubt that the prosecution was waiting mouth open for every word Bonomy was speaking. In its interim response of 22 December 2005, signed by Geoffrey Nice, the prosecution quotes that whole sentence in para. 20.

We take it that Bonomy is no medical expert, so he should be in no position to dictate at what point the "right decision" is to be reached. The right decision does not have to be made at the end of "a thorough and scrupulously objective assessment," if the benefits of a certain treatment seem to outweigh the potential risks. Otherwise, the treatment may come too late. Ethical consideration may not weight too heavily for Bonomy, but in pharmaceutical tests, for instance, it is considered unethical to put off making a pharmaceutical product available too long. Besides, in pharmaceutical tests the objective is to save lives, whereas all Bonomy (along with the prosecution) is interested in is keeping the trial on schedule.

Bonomy has earned his place in history with his malicious punctiliousness. He pretends not to understand why Milosevic wants the Trial Chamber to take account of the reports of the visiting doctors. Even if Bonomy had chosen to demonstrate that he was not in full possession of his mental faculties on November 16, he could not have done a better job than posing the question: "All he has suggested is 'taking account of' the reports. To what end?"

Andric

The report written by Andric can hardly be called emotive. That qualification is reserved by the prosecution to Dr Bockeria at the Bakoulev Center in Moscow. For instance, Andric is the only physician who sets out Milosevic's complaints. The court's appointed

physicians never ceased talking about Milosevic's "complaints" but did not stop to enumerate them.

"Over the past three years ringing in the ears, more pronounced in the right ear. The symptoms became very intense during the past month, manifesting themselves as booming and drumming in the right ear with a distinct difference in tone color, with distortion and severe pain in the right ear, especially when he hears high-pitched sounds. Autophony has been present during the past months accompanied by hearing fatigue during protracted sound stimulation. In addition to the above symptoms, there is enduring mild or more severe vertigo accompanied by queasiness, nausea and a strong tendency to vomit."

As an ear, nose and throat specialist, Andric concluded that the "result of the physical examination of the ears, nose and throat was normal." That was borne out by the Romberg test, the modified Romberg test, and the Unterberg test. However, he performed four other tests: tympanometry, tone laminar audiometry, speech audiometry and nuclear magnetic resonance. Tympanometry was normal. The NMR excluded the presence of any intracranial expansive process, and that was the reason Andric suspected vascular origin. Tone laminar audiometry revealed bilateral sensorineural hearing impairment. Speech audiometry corroborated those results and incated bilateral intracochlear impairment, significantly greater on the right side.

Dr Andric attributed the symptoms to vascular origin: "it may be concluded that this is a case of bilateral impairment of the peripheral vestibulocochlear apparatus of primarily vascular origin." He did not expect the condition get any better: "the current condition of the cochlear apparatus is irreversible with an obvious tendency toward deterioration in the future".

He ascribed most of the blame to the "chronic acoustic irritation exacerbated by the use of earphones over a long period of several years." He did not recommend that Milosevic should not use headphones, but he stated that the pain in the right ear was the result of the convergence of the hearing threshold with the pain threshold.

Even if he did not have high hopes of Milosevic's hearing getting any better in the future he did recommend rest: "the subject must not be exposed to continuous sound stimulation for more than an hour, and will then need to have a break from listening of the same duration." Besides the rest, his recommendation consisted of medication: pentoxifilline, cinrizien and subsequently betahistine.

Andric's findings provide a basis for Shumilina's report. She seeks an explanation for "the patient's cochleovestibular disorders". Conversely, Andric accepts the vascular origin of the disorders, suggested by Shumilina. The Dutch audiologist De Laat agrees with Andric's findings.

Shumilina

Dr Margarita Shumilina had made the most critical comments on the patient's treatment so far. In a predictable turn of events, we know about as much about the institution where she works and her resume than we do of her findings. On the other hand, her findings appear in the court documents only in so far as they are flanked by Dr Aarts refutations.

While Bonomy was grilling Andric, the rest of the Trial Chamber did not waste time to take Dr Shumilina under a special scrutiny. It got hold of the Curriculum Vitae of Dr Margarita Shumilina (which it did not do in case of the other two visiting physicians). According to the curriculum vitae, she began working at the A.N Bakulev Cardiovacular Surgical Research Centre of the Russian Academy of Medical Science in 1989. She holds the position of Senior Research Fellow at the Clinical Diagnostic Department of the Institute of Coronary Surgery and Vascular Pathology at the A.N. Bakulev Cardiovascular Surgical Research Center. She is the author of 115 publications. The subjects of her studies are the pathology of peripheral arteries and veins, research into the haemodynamics and pathological physiology of the cerebrum, diagnostics and treatment methods.

In the tribunal's own documents, Dr Shumilina is known simply as an angiologist. In case the tribunal was unsure what an angiologist is, it had at its disposal a table showing points of disagreement between Margarita Shumilina and NJM Aarts. The table contains a helpful footnote, which explains that an angiologist is a specialist in the study of the anatomy of blood and lymph vascular systems, hemodynamics, diagnosis of the vascular pathology and treatment of the vascular pathology. It is then assumed that the tribunal knows what the lymph vascular systems and hemodynamics are. If it did not, what was it supposed to do with this table and the official translation of her resume it had gone to such lengths to get hold of? Obviously, it needed the court's assigned physicians to interpret its own documents.

The reason that the Trial Chamber took Shumilina under special scrutiny was the two words in her medical report: "inadequate treatment". She wrote in her report: "The presence in patient Slobodan Milosevic of an almost constant noise, over the course of two months, and of vertigo testifies to a decompensation of cerebral circulation, inadequate treatment and the necessity of additional test..."

The findings that Dr Aarts then supposedly refuted in his report of December 6, 2005 have been summarized in the table of points of disagreement between Margarita Shumilina and NJM Aarts. In fact, there are two tables. In the table that was circulated first, the first point of disagreement was that the patient's conchelovestibular disorders were the result of pathological disorders. In her report, she then went to list five different "pathological disorders" that might have contributed to the patient's cochleovestibular disorders. However, in the so-called updated table, the relevant "pathological disorders" were narrowed down to two: 1) "hypoplasia of the right vertebral artery" and 3) "stenosis or convolution of the right internal carotid artery with stenosis of the septum".

The three other disorders that were dropped from item 1 in the updated list were 2) "thoracic outlet compression syndrome", 4) arterial hypertension and arterial sclerosis,

and 5) "disorder of the cerebral venous circulation". They had there own entries already in the earlier version of the table.

That may seem a technicality, but it makes a big difference in terms of what "pathological disorders" Aarts was referring to in his refusal to accept pathological disorders. When Aarts said that the findings did not point to a pathological condition, he was addressing the last point (5), and not all five points as in the original table or the first two points, as in the updated table. In particular, by "no pathological disorder" he was referring to Shumilina's finding that there was an increase in signal intensity in the transverse sinuses. He did not suggest that none of the finding pointed to a pathological disorder.

Leclercq

Leclercq was a cardiologist, and as such the natural counterpart of Milosevic's treating cardiologist, Dr Van Dijkman. The Trial Chamber was conspicuously uninterested in finding out anything about Leclerq's background or the institution he worked for. His own report only indicates that his address was Montpellier, France. That was a word for the wise. Everybody working in the tribunal must have been expected to know the solid reputation of the University of Montpellier in the medical field. Leclercq was also from the West, so the tribunal refrained from throwing the full weight of its inquisitive powers on him, as it did in regard to Andric and Shumilina.

That does not mean that Leclercq's report was nothing short of devastating, no matter how nice a gloss Van Dijkman put on it afterwards. Milosevic's ECG was found to be "very anomalous". There was a left ventricular and atrial hypertrophy, which was confirmed in both the ECG and the ultrasound. Leclercq suspected secondary repolarization disorder (which is a possible cause of arrhythmia). The diastolic function was irregular. The blood pressure was 160/100 reclining, even on the antihypertensive medication, which he called "intensive". Leclercq stated that he did not have the results of the coronary scan and several ambulatory blood pressure readings that were supposed to have been taken earlier.

Leclercq also mentioned the auditory symptoms. It was because of them that he had been asked to give an expert opinion. Leclercq rules out a cardiac origin of the auditory symptoms. However, that does not affect Shumilina's and Andric's finding of their vascular origin. He concludes: "There is no doubt that stress can contribute to blood pressure irregularities."

Van Dijkman v. Leclercq

Van Dijkman noted in his report of November 18, 2005 the points of agreement between Leclercq and himself. The tribunal has no list of the points of disagreement between them.

Leclercq remarked that he had no new suggestions regarding adjustment of the medicinal treatment, which Van Dijkman thought was "of interest". In fact, Leclercq did not say he had no suggestions. He did have a suggestion: he said that no changes should be made to the antihypertension treatment. That is different from Van Dijkman's view that he had "no new suggestions regarding adjustment of the medicinal treatment". The difference is that, in Van Dijkman's interpretation, it was possible that adjustments were somehow necessary but Leclercq did not know what adjustments would be needed.

That is significant because that was exactly what Van Dijkman did: he changed the medication. He suggested that "the patient should stop taking beta-blockers for a few days". Beta-blockers were the antihypertensive medicines Milosevic was taking, as Van Dijkman confirms when he says that he was "not in favour of reducing anti-hypertension medication during stress of the trial".

Van Dijkman's reason, strangely enough, is that "there are not many reasons not to carry out an ischemic test". In other words, an ischemic test should be carried out because there are few reasons not to. What does he mean? Was there some cogent reason to carry out an ischemic test if some considerations might have dissuaded him?

Or does Dr Van Dijkman's recommendation simply suppose that Leclercq had suspected ischemia and he was expected to carry out an ischemia test? On the contrary, Leclercq came very close to ruling out ischemia altogether as the explanation for the negative T-waves in all precordials. Instead he suspected secondary repolarization disorder. Van Dijkman does not mention the repolarization disorder at all.

He does rule out atherosclerosis which Leclercq does suspect (the difference being that Van Dijkman speaks of coronary atherosclerosis, which was not indicated by a heart catheterization in the past, whereas Leclercq talked of atherosclerosis of the neck or intracranial vessels).

Van Dijkman stresses that Milosevic had no anginal complaints to date, whereas Leclercq spoke of "the disorders the patient is now complaining of". So, did Milosevic have complaints or not? The operative word here is asymptomatic. Leclercq said that the pronounced left ventricular hypertrophy was asymptomatic, in other words without symptoms, which means that Milosevic had no complaints even if his condition was serious. Van Dijkman preferred to discuss the problems that were asymptomatic, whereas Leclercq did not ignore the problems that were not. By so doing, Van Dijkman was patently neglecting problems that did not have any symptoms.

Aside from the tug-of-war between Leclercq and Van Dijkman, a tantalizing bit of information is disclosed in another of Van Dijkman's reports. We may speculate that Dr Van Dijkman's reasons for the ischemic test must relate to the necessity of stopping the beta-blockers for a few days. The most important beta-blocker was metoprolol. Van Dijkman's report was dated Friday, November 18 and he said that the test could be carried out next week. On Wednesday, November 23, Van Dijkman writes that Dr Falke and Van Dijkman had the idea to check out the concentration of metoprolol. We know

that four blood tests were carried out between November 20 and December 16, 2005. The readings of the prescribed medicine were too low each of those four times, which fed the rumor that Milosevic was not taking the prescribed medication. If the patient had stopped taking the beta-blockers, like metoprolol, as Van Dijkman had written in his report, the concentration of the metoprolol was sure to turn out low. That was all the tribunal needed.

"The treating ear, nose and throat specialist," Spoelstra and De Laat

In the case of Shumilina and Leclercq, it is clear who had been assigned to respond to their reports. In the case of Dr Vukasin Andric, it was a lot less certain. That had probably less to do with the objections Bonomy raised about Andric than with the fact that an unnamed "treating ear, nose and throat specialist" had (according to Falke) had had voiced a wholesale rebuttal of the three visiting physicians' reports. Andric's report could then be subsumed in that wholesale rebuttal. One particular problem with Andric's report could not be solved so easily, however. The problem was that Andric's report was basically confirmed by a Dutch specialist, Dr De Laat, later.

Anonymous

In his report of November 14, 2005, Dr Falke referred to the reports of the Visiting Doctors. He mentioned that he had discussed them with the Dutch treating ear, nose and throat specialist at the Bronovo Hospital in The Hague.

According to this anonymous ear, nose and throat specialist, "following thorough diagnostics (MRI and audiograms) there are no pathological findings which could explain the complaints of the patient." (That blank diagnosis "no pathological findings" was later ascribed to Leclercq, although he had very little to do with it.) In fact, the anonymous specialist did not necessarily refute Andric's report. Andric had concluded that the "result of the physical examination of the ears, nose and throat was normal," though in speech audiometry he found that the hearing was impaired especially on the right side. On the other hand, the anonymous Dutch ear, nose and throat specialist reportedly said that Milosevic's hearing loss was "commensurate with someone of his age". Here the falling-out with Andric begins. Andric had found that the pain in the right ear was the result of the convergence of the hearing threshold with the pain threshold, which was hardly commensurate with anybody's age.

As a bonus, the ear, nose and throat specialist also commented on other fields which were only marginally connection with his specialty, although we only Dr Falke's word for it. It is worth remembering that the medical officer Falke is a general practitioner, so it is possible that a lot of what the specialist reportedly said was Falke's own thoughts like the statement that "the treating specialist concludes that it is unlikely that the vascular abnormalities have a direct relationship with the symptoms complained of." The Trial Chamber had requested Falke to give a diagnosis, had it not? If he does not give it here, then where did he give it?

One could point out the operative words in the same quote, like "unlikely" and "direct relationship". Despite such uncertainties, Dr Falke's report then chose to attack the recommendation of a six-week period of rest head on. In regard to Milosevic's rest periods, the report said: "Indeed, he has had short rest periods in the recent past and they have not reduced the symptoms complained of." If Falke had been fair to the visiting doctors' reports, he would have noted that the joint recommendation had not held up the six-week period as a panacea. The visiting doctors had only said that a six-week rest would "probably reduce - or at least - stabilize - the symptoms". The visiting doctors also concluded quite explicitly that the duration of the rest period should be "at least" six weeks.

If that observation in Dr Falke's report had anything to do with Andric's report, it referred to his recommendation that "the subject must not be exposed to continuous sound stimulation for more than an hour, and will then need to have a break from listening of the same duration." However, did it logically follow that if short periods of rest had had no positive effects, neither would long periods of rest?

Spoelstra

The ear, nose and throat specialist was not named. The only treating ear, nose and throat specialist at the Bronovo Hospital we know by name is Spoelstra, who made an appearance with his real name on November 21, 2005.

Spoelstra did not offer any kind of diagnosis. Contrary to the report by the unnamed ear, nose and throat specialist, Spoelstra did not arrive in his report of November 21, 2005 at any conclusion concerning the link between vascular abnormalities and the symptoms complained of. He denied he had any comments on the conclusions made by the Visiting Doctors, while on the other hand, the unnamed ear, nose and throat specialist was supposed to have refuted them a week before: "As regards the other psychosocial complaints mentioned, also pointed out by the three foreign colleagues..." Was Dr Falke putting his own conclusion to somebody else's mouth, or had Spoelstra changed his mind?

It may not have been clear even to Spoelstra what exactly he was expected to comment on. At least he did the only sensible thing to do in such circumstances: he referred the matter to an audiologist, Dr De Laat from the Leiden University Medical Center. He noted: "As regards the other psychosocial complaints mentioned, also pointed out by the three foreign colleagues, I do not have an opinion, since I do not think that I am enough of an expert in that field. For this reason, I suggest you contact an audiologist, namely Mr. De Laat, employed at the LUMC."

Spoelstra's only recommendation was: "I could solve the problem of the patient with a hearing aid, possibly two. Bearing in mind that I suppose that he uses headphones during the trial, it seems to me that it would be better to proceed without a hearing aid, but rather with properly adjusted volume in the headphones."

He did not mention what diagnosis his recommendation is based on, if any. Was it Andric's? Neither did he did take into account Andric's observation that the hearing threshold converged with the pain threshold, let alone Andric's recommendation that the subject must not be exposed to continuous sound stimulation for than an hour.

De Laat

De Laat saw Milosevic on November. His report is dated November 28, 2005. In the first paragraph of his report, he wrote: "Mr Milosevic has been diagnosed with a hearing disability, including a noise /exposure/ anamnesis". What does he mean when he says that Milosevic was diagnosed? By who? Could it be Andric (again)? If so, he obviously agreed with Andric's diagnosis.

De Laat mentions that an audiogram and BERA tests were performed. The results with the graphs were enclosed with his report. They confirmed Andric's findings. De Laat observed perceptive hearing loss on both sides, more so on the right.

De Laat contradicted the unnamed ear, nose and throat specialist. There was indeed a perceptive hearing loss on both sides, which also confirmed Andric's findings. De Laat was against using the headphones (recommended by Spoelstra): "we think it would be extremely sensible to refrain from using the headphones".

On the other hand, De Laat concurred with Andric, who had said that this was a case of bilateral impairment of ...primarily vascular origin. De Laat stated that even if the noise exposure was partly to blame, "it is probable that the cardiovascular situation is also connected to the hearing loss. We cannot be sure of this." Not only did he concur with Andric but he contradicted on this point what the ear, nose and throat specialist had said.

De Laat did disagree with Andric on the recommendation. Andric's recommendation would have brought the trial to a halt in practice. De Laat agreed there was a perceptive hearing loss but considered that with different technical arrangements Mr. Milosevic could continue with the trial, as the Parker report states in para. 63. Neither did he prescribe any medication. On the other hand, both De Laat and Andric agreed that the headphones were bad for him, contrary to what Spoelstra had suggested.

Shumilina v. Aarts

In his report of December 6, 2005, Aarts had investigated the MRI's and his findings are paraded against Shumilina in the table showing the points of disagreement between them.

The surprise is that Aarts did not refute the findings, at least not in such a categorical manner that has been suggested in the table. We have seen that the conclusion that the finding did not point to a pathological disorder did not originate from Aarts but the unnamed ear, nose and throat specialist (though more likely the general Dr Falke).

The first objection that Aarts did raise (the findings do not point to a pathological condition) did not address the point that the table shows. It was meant to address point 5 on Shumilina's report, not points 1 and 2, as the (updated) table suggests. Point 3 (thoracic outlet compression syndrome) is then supposedly dismissed with the Aarts's (unpersuasive) argument that the MRI did not show the neck. Point 4 (arterial sclerosis) was refuted with the claim that the artherosclerosis was normal in view of Milosevic's age, which would admittedly, if true, have meant that the disorder was not strictly speaking pathological (though it might have been part of geriatrics). Point 5 (disorder of the cerebral venous circulation) was also dismissed with a reference to Milosevic's age.

The table then shows that, in Aarts's view, the vascular loop is connected to a perceptive loss of hearing, not to tinnitus or vertigo. However, it was Aarts himself who found the vascular loop. If that finding had any bearing on Shumilina's finding, the vascular loop must refer to the decompensation of cerebral circulation, which, according to Shumilina, accounted for the tinnitus and vertigo. Whatever the truth and relevance in Aarts's statement, he did not go as far as to deny that Milosevic was in fact suffering from a perceptive loss of hearing. It was good that he did not, because the loss of hearing had already been confirmed by De Laat.

Aarts did not address the fundamental question what might have caused the cochleovestibular disorders, which was Shumilina's preoccupation in her report He just discussed the structure of the inner ear and stated that the appearance of a smaller vertebral artery on the right side, as opposed to the left, had been known to occur and was by no means an indication of compression (point 2).

Shumilina answered all points raised by Aarts on December 14, 2005. She did not have to defend her points 1 and 2, since they were in reality not criticized by Aarts even if the table suggested they were. Instead, she questioned Aarts' criticism of her point 3. Aarts had said that the MRI did not show the neck, but she answered that the thoracic outlet compression syndrome was diagnosed, not with MRI, but with the ultrasonic dopplerography. As to his criticism of her point 4, Shumilina replied that Milosevic was too young for his artheriosclerosis to be normal. As to his criticism of her point 5, Shumilina responded that the MRI indicated venous blood flow rate reduction, which suggested venous congestion.

Request for provisional release of 20 December 2005 or "Motion"

In his dissenting opinion of November 16, 2005 Judge Bonomy had expressed his view that Milosevic should have submitted a written request in regard to the measures he wanted the tribunal to take in relation to his health. The majority of the Trial Chamber chose another route and tried to tease a diagnosis out of the Dutch physicians on its own. That approach was not working too well.

But by early December, the defense must have realized that the court's appointed physicians were not going anywhere with their medical reports, so instead it did

something unexpected. It took Bonomy's advice. In light of the inactivity of the court's appointed physicians, Bonomy's dissenting must have appeared a lot less obnoxious now than it had about a month earlier. So, it did file a motion. Besides, in the sitting of 12 December 2005, Judge Robinson gave Milosevic the same kind of advice. If Milosevic's wish was to get treated in Moscow, it was in fact an application for provisional release and should, as such, have been made in writing. That was what the Assigned Counsel did on 20 December, 2005.

The Assigned Counsel made two requests in its request for provisional release. It is crucial to bear that in mind. After shuffling paper to and fro for a couple of months, the Trial Chamber seems to have forgotten that there were actually two requests it should have addressed.

The first was the following: "The Assigned Counsel request the provisional release of the Accused for the purposes of his attendance and treatment at the Bakoulev Medical Centre pursuant to conditions as deemed necessary by the Trial Chamber."

The Bakoulev Center had not been singled out in the medical reports. The first time it was mentioned was by Shumilina, who works there. The date of Shumilina's relevant communication was her email to the assigned counsel Gillian Higgins of December 19, 2005. The real impetus for the choice of the Bakoulev Center was the fax that his brother Borislav Milosevic had sent on December 12. In it, Professor Bockeria had indicated his willingness and ability to receive Milosevic in the Bakoulev Center.

The second was the following: "In the alternative, in the event that the Trial Chamber is not satisfied as to the current medical condition of the Accused, the Assigned Counsel request the Trial Chamber to hear evidence from the relevant specialists in order to determine (a) the nature of the Accused's condition and (b) the most appropriate method of treatment."

In the alternative request, the assigned counsel submitted that the Trial Chamber might have chosen to hear evidence from "the relevant specialists". That can only refer to the specialist who had already examined Milosevic. In a rather strange turn of events, the prosecution later insisted on having its "own" medical experts examine Milosevic.

The request for provisional release was submitted after the six-week period of rest had already begun. No doubt the matter was urgent. That was a signal for the prosecution to start playing time, which meant that Milosevic would not get his rest period in Moscow as he had hoped. Indeed, the Trial Chamber would be unable to reach a decision on the request until February 23, which was one month after the six-week period of rest had ended. The Trial Chamber had done a good job messing up its own trial schedule. It is true that the Trial Chamber eventually rejected the request, so in that respect nothing was really lost by waiting two months for the decision. The question is rather, why did it take so long to take such a simple decision?

Amidst all its arguments that it puts forward in support of its requests, the Assigned counsel make one patently political submission under the heading "potential regional conflict": "The geographical location of the Accused would be remote from the territories of the former Yugoslavia and there would be no risk of conflict arising in the host country, nor interaction with alleged victims." Truth be told, the other arguments are not really that legal either: The request discusses the possibility of absconding, interference with justice, return to the jurisdiction and interests of justice. Interests of justice, in particular, is an open invitation for the Trial Chamber to use its discretion, which does not bode well for the defendant.

A less discretional point is the principle of equality of treatment, which includes the presumption of innocence. Those who have wondered why the Trial Chamber does not take the presumption of innocence seriously get the answer here. One likely reason has already been touched on: the potential of regional conflict, if Milosevic were released even provisionally. While equality and presumption of innocence are legal concepts and one would expect the Trial Chamber given them more weight than any considerations of political expedience, the reality is different. In its further interim response to the request for provisional release of January 20, 2006, the prosecution has no scruples to reprint an article it has found on the Internet which highlights the political risk that releasing Milosevic even in Russia would cause: "Any and all medical background notwithstanding, this decision is rather political and implies the far-reaching consequences." That cannot have left the Trial Chamber indifferent, considering how poorly its decision is supported by any legal arguments.

The last fairly legal point (there are only two by this count) is the period of time the Accused has been on trial. We know that Bonomy cherished his own interpretation of a fair trial which curbed the defendant's rights. The assigned counsel saw the matter in a different light. They suggested that given Milosevic's age, ill-health and length of the trial to date, it would be appropriate for a relatively short period of time to be devoted to the restoration of his health. They named the Bakoulev Center. The prosecution pretended to have not clue why the Assigned Counsel have singled out Bakoulev, even if Milosevic had just been offered a place there, but the answer should be obvious. As the motion states in para. 2: "The reason for this application is to enable the Accused to be admitted for medical treatment for a defined period at the "specialist Bakoulev Scientific Center for Cardiovascular Surgery in Moscow…" Yes, the Bakoulev Center was in Moscow.

Instead of only seeing the fact that Bakoulev Center is in Moscow, the prosecution and the Trial Chamber might have paid attention to the fact that the medical treatment would be for a defined period and a relatively short period of time, as spelled out by the had of the Center, Professor Bockeria. As the Assigned Counsel point out in para. 15, the requisite period of treatment would have been "not less than 1.5 – 2 months." That was a quote from Bockeria's letter. Despite the phrase "not less" the Trial Chamber might have seen how short the period was. The period of 1.5 months was in fact so long that it corresponded to the recommended period of rest of 6 weeks (which had already started).

So why would the Bakoulev the best, if not the only, viable option, which in the prosecution's view it should be before any idea of releasing Milosevic could be entertained? Because in order not to mess up with the trial schedule too badly, the head of the Bakoulev Center had already arranged a place for Milosevic and assured that Milosevic would be treated there within 2 months. What other hospital could have done that? Instead of getting obsessed with the little phrases like "not less" and "long time", tt is a testimony to the Bakoulev Center that Bockeria's letter had called two months a "long time".

Prosecution interim response of 22 December 2005, signed by Geoffrey Nice

The prosecution needed no more than 2 days to file its interim response. In all, the prosecution did not file only one but two interim responses and a notice of intention to file an interim response. Clearly, the prosecution was aware that the matter hinged on the latest observations that the prosecution had to offer. Suddenly, the prosecution must have realized that its position was not clear even to itself so it made a plea that the tribunal should make clear how far the prosecution could go to influence the Trial Chamber's decision. As the assigned counsel later note in footnote 3 of its second addendum of 18 January 2006, the prosecution's interim response exceeded the standard page limit for the filing of briefs and motions.

"Unclear locus"

In para. 6 the prosecution states that it is unable to provide a fully formulated Response to this application. Does it not understand that other parties were just as unable to provide any fully formulated response to anything? Bonomy had castigated Milosevic for having made a poorly formulated request to take account of the visiting doctors' reports.

What does the prosecution mean by locus when it says that its locus on the application is unclear in para. 6? When it says "its locus" it probably means the locus of the prosecution, and when it says "locus" it probably means position. But if its position was not clear even to itself, how can it say that it maintains its prior position on the medical issue, namely that its locus was unclear? It seems to defy logic that the prosecution was so firm on a question that is, by its own admission, unclear to it.

That suggests that the Trial Chamber should not have granted the Prosecution its request. If the locus was unclear, why did it think it had the right to file an interim response every time the Assigned Counsel complemented its request? A month before, Bonomy had given Milosevic a hard time for the cryptic statements Milosevic had supposedly made. In a typically desultory reasoning, Nice criticized the visiting doctors of second-guessing in para. 15, even if his statements leave the door wide open for second-guessing. Well, Nice could easily answer that everybody was doing cryptic statements these days, so why should he be treated any differently? By the way, "second-guessing" was an expression that was launched by the former presiding judge Richard May in the sitting of September 30, 2003, as the prosecution mentions in footnote 4 of its further interim response of 20

January 2006 and yes, he did say: "We cannot have a party second guessing the Court's doctors. It's quite out of all proportion and propriety."

And indeed the Trial Chamber did not accommodate the prosecution's request. Or that is the impression the Trial Chamber would us have. Maybe it did. It did not take the trouble of how determine how Milosevic should be examined and by whom but it knew that the prosecution would not raise an objection to that. Instead, it just turned down the request altogether, which was much more convenient not only for the Trial Chamber but for the prosecution as well.

In other words, judging by the outcome, the prosecution's locus was anything but unclear. Its wishes were the Trial Chamber's command. Any "unclear locus" (which is as unclear an expression as one has encountered in the Prosecution's long and tortuous submissions), was then interpreted in the favor of the prosecution with catastrophic results for Milosevic. Never mind the presumption of innocence and all the friendly stuff in the Statute.

Medical evidence

Geoffrey Nice writes that the Accused was examined by a group of specialists instructed by him, who made unsolicited recommendations as to the future conduct of the trial in a joint report filed subsequently with the Chamber (par. 8).

He must be referring to the sentence in the joint opinion that stated: "Accordingly, the patient should be prescribed a period of rest, i.e. the suspension of all physical and mental activities a minimum period of 6 weeks, which will probably reduce - or at least stabilize – all symptoms." First, the recommendation said that he should be prescribed a period of rest, not how the trial should be conducted. Neither did the prescription come from them. Second, the recommendation was not unsolicited. It was requested by Milosevic. Third, the Trial Chamber had already arranged for Milosevic to have his period of rest of 6 weeks, starting from December 12, 2005 (as the Parker report confirms in par. 94). That was 10 days before Nice wrote the interim response.

Nice refers to that decision. He notes that Milosevic's application to extend the allotted time for presentation of his defense and adjourning trial to 23 January 2006 "demonstrated a strategy, moving now with greater momentum in light of the Trial Chamber's Order of 12 December, aimed at preventing this trial from being brought to a timely conclusion." Is it the Trial Chamber or the accused that Nice is criticizing here? And what does he mean by "timely conclusion"? If the trial had ended in summer 2006, it would have lasted more than four years. Whatever "strategy" Milosevic may have had, the prosecution had a strategy of its own: to wreck his health. In December 2006 it did not really matter if the trial went any slower or any faster, because both options would damage his health just as surely. Nice even doubted if the trial would be brought to a conclusion at all, for which he of course blamed Milosevic, who would "prevent it from being brought to a conclusion". (par. 10). Not just a "timely conclusion" but simply "a conclusion".

Nice realizes that it is necessary to find out what the true medical position was (para. 11.1). At least ostensibly. By "the true medical position" he means Milosevic's medical condition, what treatment he required and what the outcome of any treatment may be. The "medical position" is a curious expression which suggests that Milosevic's health was a matter of perspective. Matter-of-factly Nice criticizes the "series of incomplete reports filed by treating doctors and other specialist". That statement could be construed as meaning that the doctors should quibble with each other about the true nature of the problem. However, Nice's urgency is selective. Although he does not even refer to the visiting doctors here, there is no doubt it was the visiting doctors that he meant (par. 11.1). It was them who were second-guessing the court's appointed doctors, not the other way around. On the other hand, Nice is only too quick to bypass the court's appointed doctors himself when he argues that Milosevic should have been examined by the prosecution's doctors.

Even if Nice criticized the six-week period of rest, he conceded that the trial should go ahead as scheduled on 23 January, after the six-week rest period was over, and so that Assigned Counsel may prepare to call witness in the Accused's absence (para. 12). Nice is back to the old stratagem of making the Assigned Counsel, Gillian Higgins and Steven Kay, conduct the trial on Milosevic's half. Indeed, Higgins and Kay were still Milosevic's assigned counsel, just waiting to be unleashed, even if Milosevic had been given back his right to conduct his defense. Judging by the suggestion that he submits, Nice may not have been dissatisfied at all with the expectation that Milosevic's treatment would not coincide with the period of rest after all. Any excuse to get Milosevic out was good enough.

Nice criticized the visiting doctors for second-guessing the court's appointed specialists and provided reports of their own (para. 15). In fact, the visiting doctors (or Milosevic's own doctors, as Nice called them) did not refer to the court's appointed specialists in any way. Shumilina mentioned "inadequate treatment" in her report, and that is when all hell broke lose. Nice also notes that they have provided reports of their own, but it would have been remarkable if they had not. It was the court's appointed specialist who second-guessed the visiting doctors' conclusions, not the other way around. It must not be forgotten that the disagreements between them have been exaggerated.

"The Accused has attempted to take this matter out of the Chamber's hands," Nice thunders in para. 16. One would think that medical matters out of the Chamber's hands. All the Trial Chamber could do was to order the accused to have a medical examination, but the rest was in the hands of some higher power. It seems that it is Nice who is trying to take the matter out of the Chamber's hands. In particular, it is not clear what he means when he says that Milosevic's condition is presented as an adversarial issue. It would seem that Nice wants to perpetuate the series of incomplete reports, even if he had criticized the length of the paper trail so far. Adversiality would have meant that reports could always be shown to be incomplete. On the premise that the visiting doctors were "Milosevic's own doctors", Nice makes the rather self-conscious demand that Milosevic should have been examined by the "Prosecution's own medical experts". It is clear that

they would be adversarial, in other words making a point of criticizing their colleagues' reports. The endless series of adversarial reports which Nice wanted to perpetuate would have made sure that Milosevic would not have been treated at all.

Before brandishing adversiality as a trump card the prosecution should have kept in mind that it in a properly adversarial process the prosecution has the burden of proof: instead of torpedoing the medical reports that have already been written, it had the burden to prove where the reports were wrong. If it could not prove it, they were supposed to be right. In short, it should have given a better material reason for choosing its own doctors than making a point of exercising a right just for the sake of exercising a right which it was not even certain it had despite the case law of Strugar and Kovacevic that it paraded in para. 18.

Instead, the prosecution fails to avail itself of the medical reports that the court assigned physicians had written on the visiting doctors' reports (who were supposedly second-guessing them). If the prosecution did not trust the court-appointed physicians, why did it expect Milosevic to do so? Why did it want to push the court's appointed physicians aside? It is not satisfied with the medical experts because it knows that in an adversarial process it would have the burden of proof. The prosecution confuses two things. Even if the prosecution purports that the prosecution does not have the burden of proof in regard to guarantees (para. 24), we are not talking about guarantees here. The prosecution still has the burden of proof in any adversarial issue concerning the medical reports.

Even if it had been granted its wish, the prosecution could have used its own medical doctors to refute the medical reports even without requesting the Trial Chamber for "facilities" to conduct an "independent" examination of Milosevic. Milosevic had invited the visiting doctors at his own expense, as it says in the Rules of Detention.

Nice refers to Strugar and Kovacevic cases in support of its claim that it is entitled to have an Accused examined by medical experts of its own choosing (par. 18). Medical experts instructed by both sides have been called on applications for provisional release (par. 19). However, when he quotes Bonomy in par. 20, Nice inadvertently admits that the experts should not be involved in the trial. The prosecution even admits adding the parentheses around the crucial passage: "on the basis of the opinions of experts who are not involved in the trial". That phrase is quote from Bonomy's dissenting opinion and, as we have noted, Bonomy's authority in these matters is suspect: "Whenever issues of health and fitness arise in a court process it is vital that the right decision is made at the end of a thorough and scrupulously objective assessment of the issues (on the basis of the opinions of experts who are not involved in the trial)".

In fact, in par. 21 Nice criticizes the medical reports only in so far as they suggest Milosevic should go to Moscow, even if he had pretended to find fault with the incompleteness of the medical reports in general. However, Moscow had not been mentioned in the visiting doctors' medical reports. Nice was only on the lookout for things he could disagree on. Shumilina suggested that Milosevic should get "ethiopathogenic treatment in a specialized hospital". The prosecution must have

assumed that such ethiopathogenic treatment could not be received in Holland, so it is obvious the prosecution itself that made the conclusion they are now criticizing. Nice must have meant that the request for provisional release did not reflect the visiting doctors' reports, but he could never have admitted that because it would have suggested that he trusted the visiting doctors' opinion in some matters.

Nice also notes that "If he wishes to be treated by specialists from Russia, then there may be no good reason why they may not treat him, alongside Dutch specialists, in The Hague" (para. 21). Amazingly, the Trial Chamber quotes this half-baked argument in full in its decision of 23 February 2006. Milosevic's wishes certainly did not count.

Just to place the burden of proof where it belongs, we might ask: Would there have been any good reason why the prosecution's own experts could not have examined him in Russia? In other words, why is the prosecution against having Milosevic examined by his own doctors first where they could work best? They certainly not work alongside the Dutch physicians. In fact, Nice had just criticized them for second-guessing the opinions of the court's appointed doctors. If the prosecution was so interested in recommendations, why did it call the recommendations by the visiting doctors "unsolicited" in para. 8? What does he mean by unsolicited? Milosevic had asked for the recommendations so they could not be unsolicited. Bonomy criticizes Milosevic for not bringing the report to the tribunal's attention earlier, so he did not treat them as unsolicited, on the contrary, although he did object to Andric's participation in the process.

There is must be a profound reason for calling the reports unsolicited. The prosecution's intention in this case, as in so many others, is obviously to reverse the burden of proof to the detriment of the defense. In other words, if Milosevic came up with "unsolicited" material, it was not for the prosecution to prove them wrong but for Milosevic to prove them right.

However, Nice's job is to address the request for provisional release and not the medical reports. If Bonomy found himself unable to comment on them outright, how could Nice? The distinction does not matter much to Nice. Instead, he starts second-guessing the visiting doctors' opinions. He notes that "there is no reason to believe that once in Russia, the Accused might not then be found unfit to travel for the purposes of return." (par. 26). The prosecution thus admits (by way of a triple negation) that it knows that Milosevic is such a poor condition he might be unfit to return. If Nice had been willing to be more fair to Milosevic, it should have concluded that Milosevic was in such a poor condition that he might be unfit to even go to Moscow. Actually it does not even say that he might be unfit to travel back. It says that he might be "found" unfit to travel back, which suggests that the doctors would use their discretion for some ulterior motives. But Nice does not say that exactly either. Indeed, this is an indication that the prosecution understands how serious Milosevic's condition is. In that light, was Milosevic even fit to stand trial, no matter what Falke said? Besides, of Nice wanted the trial to go on even with his absence, why could it not be continued in his absence if he was unfit to travel back?

Then, in an apparent non sequitur, Nice lashes out against Milosevic in par. 28. Milosevic has done all he can to thwart the proper function of this trial. He refers to his initial appearance on July 3, 2001, that is, four and a half years before. Then in par. 29 he quotes Milosevic as saying: "Of course I have no intention of declaring my views on your administrative issues". Does that suppose that Milosevic would not come back? In his personal guarantee of December 20, he had promised that he would not only come back but he would be back in time. He undertook to "return to the ICTY at such time and on such date as the Trial Chamber may order and to comply strictly with any further order of the Trial Chamber that may vary the terms or, or terminate, my provisional release". Milosevic had stated his intention twice. He had already expressed his wish to spend the (at that point three-week) winter recess at the Bakoulev Center in Moscow to Judge Robinson on December 12, 2005. He promised to come back after the recess: "It would not affect your programme in any way, because I would be back here again before this is resumed in accordance with your programme".

Nice contrasts Milosevic's position with that of Ojdanic, who surrendered to the tribunal voluntarily in par. 36. It should be noted that Ojdanic surrendered after Milosevic had been transferred, that they were in the same initial indictment and that Ojdanic did do his best to challenge the legality of the tribunal in his attack on the corner stone of the criminal culpability in the tribunal: joint criminal enterprise.

Nice adds that "in the event that guarantees are provided by the Russian Federation, the Prosecution will argue that they do not provide sufficient assurance to the Trial Chamber that the authorities of the Russian Federation will arrest the Accused if he violates any of the conditions of his release." (par. 36). In making such a blanket objection, Nice seems to have assumed that the burden of proof rested on the defense. Not only did Nice not know if Russia would give guarantees, but neither did he know what those guarantees would be, whether there would be any conditions to his release, what those conditions would be and if indeed he would be released. When Nice quoted Rule 52, he did not quote part C which provides that even if conditions may be required, they were not necessary. To make that silence more deafening, the Assigned Counsel had pointed out in para. 11 of its request that according to the tribunal's case law the guarantees were not required for provisional release.

Burden of proof

The prosecution argues that it has no evidentiary burden to demonstrate that provisional release is inappropriate in para. 24. It refers to the Appeals Chamber's decision on Fatimar Limaj's request for Provisional release, 31 October 2003, para. 40. As this decision pertains to the interpretation of Rule 65 of the Rules of Procedure and Evidence, it could conceivably reverse the burden of proof in the whole proceedings. Where the reversal of the burden of proof stops is anything but clear.

The Limaj decision, which is referred to by the prosecution, does lay bare the prosecution's unbridled belief in its own powers. According to para. 39 of the same decision, the prosecution had argued that it was well established in the settled

jurisprudence of this International Tribunal that the burden of proof rested on the accused. That attitude is evident in the proceedings at hand.

Incredibly, the Rules of Procedure and Evidence have nothing to say in the matter. For all we knew, the burden of proof could indeed be permanently placed on the accused. Has the tribunal really gone so far as to place the burden of proof in all matters on the Accused? The only provision that keeps that from happening is the presumption of innocence in Art. 21(3) of the Statute. The accused shall be presumed innocent until proved guilty according to the provisions of the present statute. If the presumption of innocence means anything at all, it means that the burden of proof is on the prosecution.

Russia

Russia gets its share. In par. 38 the Prosecution then cites some indictees who had fled to Russia. For instance, The Office of the Prosecutor believed that Vlastimir Djordjevic was in Russia, but he has not been arrested. Also, the Office of the Prosecutor had clear intelligence information about Zelenovic's location but Russia was unable to locate him. If the prosecutor's intelligence information matter were so reliable, Karadzic and Mladic should have been transferred by NATO to The Hague long before Milosevic was even indicted. Among the success stories, the prosecution discusses other indictees, like Gojko Jankovic, Vujadin Popovic and Sredoje Lukic. It mentions that they were brought to The Hague from Russia only with the assistance of the Serb and Bosnian Serb authorities.

One cannot help wondering what the prosecution would say if Milosevic had requested for provisional release in Serbia. Strugar and Vukacevic, who had been mentioned in para. 18, did go to Serbia or Montenegro. In light of what the prosecution says here, its confidence in the Serbian authorities seems to overweigh the distrust it has in the Russian authorities. It is a pity that the Assigned Counsel had given that point away in its motion when it said that flying to Russia would not cause a regional conflict: "The geographical location of the Accused would be remote from the territories of the former Yugoslavia and there would be no risk of conflict arising in the host country, nor interaction with alleged victims." It would have been fun to see how the prosecution would have used some pseudo-legal argument to wriggle out of the provisional release in Serbia. Its arguments would probably have been opposite to the ones it now presents.

In par. 39 Prosecution says that Zelenovic was not as high level as Milosevic. It seems to suppose that it would be easier for Milosevic to go hiding. The Assigned Counsel had already pointed out in par. 18 of its request that the opposite was more likely: "The Accused is instantly recognizable and well-known. He was 64 years of age and suffering from ill-health. The likelihood of him "going on the run" is an unrealistic proposition". The assigned counsel had also evoked the principle of equality of treatment: "The Accused is entitled to equal treatment before the Tribunal and is presumed to be innocent." If the prosecution had gone by the book, it should not have mattered if Zelenovic was "as high level as Milosevic" or not.

If Milosevic's brother Borislav, who is in Moscow and has constantly appeared in the media in support of his brother and is very critical of the tribunal (para. 40), is any indication, as the prosecution seems to suggest, Slobodan Milosevic would not have gone hiding at all. Not only does the prosecution seem to be saying that Milosevic had to pay for the criticism that his brother had voiced (why else bring up the subject in the first place?), but also that it did not matter if Milosevic went hiding in Russia or not, because he was not going to Russia at all. If he had gone there, he would probably appear in the media as well.

The prosecution also mentions that Milosevic's wife and son are reportedly in Russia, although his brother has never confirmed that information. Are his wife and son wanted by the tribunal too? Or does Nice simply want to imply that Milosevic might want to stay in Russia because his family is there? The tribunal might have wanted to think about that before it denied Milosevic the visits by his family members. Besides, the tribunal did have the uncanny ability to find Milosevic's family when it stated that Milosevic's family had been informed of his death.

In any case, the indictees that the prosecution mentions in no way suggest that Russia had the habit of breaking the condition of provisional release, because there had been no cases of provisional release to Russia before this (as para. 13 of the second addendum later points out). Neither would there.

First addendum to the request for Provisional Release of 22 December 2005

(not available)

Preliminary Order on Request for Provisional Release of 11 January 2005

In its preliminary order on the request for provisional release, the Trial Chamber notes "the importance of these guarantees to the determination of the Motion". The Trial Chamber says that the guarantees mattered a lot. It does not address the point that the assigned counsel had raised. The assigned counsel had submitted in para. 11 of the Request for Provisional Release that the jurisprudence at the Tribunal reflected the position that they were not a "requirement for a grant of provisional release".

Second Addendum to Request for Provisional Release of 18 January 2006

The guarantees from Russia arrived. The assigned counsel also provided the personal undertakings, which were signed by Milosevic on December 20. The assigned counsel submitted that the guarantees of Russia were unequivocal and demonstrated a firm intention to cooperate with the ICTY (para. 14).

The guarantees of Russia were the following. It is easy to use one's imagination and think of other guarantees which it might be nice to include in the list and argue that as long as some point had not been addressed, the guarantees were not acceptable. That was how the prosecution approach the list later on when it was its turn to file an interim response.

1) To admit Milosevic to Russia for the purpose of receiving medical treatment at the Bakoulev Center in Moscow, for the duration of such treatment and in accordance with the orders of the Trial Chamber.
2) To provide security for Milosevic during his temporary stay in Russia at the Bakoulev Center in Moscow.
3) To abide by all conditions set by the Trial Chamber for the provisional release of Milosevic in respect of his transit, arrival and stay in Russia for the purpose of medical treatment.
4) To abide by any order of the Trial Chamber varying the terms of provisional release.
5) If required, to regularly submit written reports to the Trial Chamber concerning Milosevic's compliance with the conditions set by the Trial Chamber.
6) To return Milosevic to the custody of the ICTY at such time and on such date as ordered by the Trial Chamber.

All was there. The three preemptive obligations left no doubt as to Russia's willingness to see the matter to a satisfying conclusion to all parties. Russia was willing to abide by all conditions set by the Trial Chamber. It was prepared to abide by any order the Trial Chamber might give to modify the terms of Milosevic's provisional release. Russia was prepared to submit written reports.

It is simply unacceptable that the Trial Chamber decided as a matter of course that it was not satisfied with the guarantees. What kind of scenario did it have in mind? Did it really expect the Russian government to default on its obligations under the critical of the international community? Before such a commitment by a sovereign state could be turned down, a certain amount of diplomacy would not have been a bad idea. The tribunal displayed none. As the prosecution noted in its Notice of Intention to File Further Response of 19 January, the Chief Prosecutor represented the tribunal to the outside world, the Trial Chamber had to settle for whatever struck Carla del Ponte's fancy. That was the problem with the guarantees: the phrase "the Trial Chamber" should have been replaced with "Carla del Ponte" or at least "the prosecution" because it was they who decided the matter.

That list should have been all that was required at that stage. Russia understood that some technical and financial matters remained to take care of, but it provided that it would facilitate all necessary communications with the ICTY and Holland to that effect. In its next interim response, the prosecution wanted more information on the security at the Bakoulev Center, and it could not wait until the release had been granted. Instead, it was about to use the uncertainty to stall the process a bit further and arrange an oral hearing where it could cross-examine the head of the Center, Dr Bockeria, in regard to no less technical a matter than the security measures (para. 26 of the futher interim response of 20 January 2006). If it was true that Russia had had certain reservations in regard to the tribunal in the past, the prosecution's response was presumably not designed to bridge the differences but rather to widen them. In a word, the prosecution was not going to let Milosevic go. It is so determined that it seems incoherent to even ask why it would not let

Milosevic go, if a medical treatment in Moscow promised to restore his health and assure the smooth running of the trial.

At this stage, the assigned counsel responded to the issues raised earlier by the Prosecution. It noted that the only matter outstanding was the provision of guarantees from Russia, which did not affect the substantive merits of the application (para. 7). The Prosecution had also maintained that the timing of the application was intended to have maximum disruptive effect on the proceedings. The assigned counsel reply that the application arises as a result of the continuing deterioration in Milosevic's health (para. 9). The Prosecution had again insisted that the trial should be carried on in absentia, but the assigned counsel had ICTY jurisprudence to back up their claim that a trial in absentia would be unfair (para. 10). The prosecution had also argued that Milosevic would not return to The Hague after the treatment. "There is no evidence to suggest that the Accused would not return to the ICTY", say the assigned counsel, careful enough to use the double negative to indicate that the burden of proof was on the prosecution (no matter what the prosecution had argued) (para. 11). The assigned counsel reply that to "withhold the medical treatment offered to the accused and to thereby potentially damage his health while in the custody of the Tribunal, would constitute a breach of his basic human rights" (para. 11). However, in the same paragraph they say that the application "arises due to the failure of the local doctors to identify and treat his condition." That hardly needed elaborating any more, but it was something the prosecution could relish later.

The prosecution had criticized the guarantees from Russia as insufficient even before Russia had given any guarantees, as the assigned counsel point out in para. 12. The examples that the prosecution had given of indictees in Russia have little to do with the current case because they did not deal with a provisional release (para. 13). The personal undertaking signed by Milosevic should have been enough: The prosecution obviously did not know of its existence on December 22, 2005. It had just said that "no such personal guarantees from this Accused could now ever be credible". The assigned counsel rejected that and submitted "that the signed statement evinces a clear intention to abide by all conditions which may be made by the Trial Chamber" (para. 15).

The criticism that the Prosecution leveled at the Russian guarantees even before they had been given show the attenuation of the connection between the prosecution's criticisms and the facts. Just because the burden of proof was not on the prosecution (in its view), did not mean that it could criticize something even before it existed just as a matter of principle.

Prosecution's Notice of Intention to File Further Response of 19 January 2006

The Prosecution wasted no time to respond. It did so the following day, and all it said was that it would file a further response the following day.

"The Prosecution notes that it will be unable in this limited time frame to assess and express any opinion about the sufficiency of the guarantees from the Russian Federation".

If there is a message in this submission it is that if the Trial Chamber were fair to the prosecution, it would not take account of the guarantees. In the footnote the prosecution stated: "Sufficiency of a state guarantee is a matter for consideration by the Prosecutor herself rather than just by those conducting a trial, who do not have regular contact with states and their representatives." One might add that, if one goes strictly by the book, it is for the Trial Chamber, not "the Prosecutor herself" to consider the sufficiency of a state guarantee.

The prosecution also noted, once again, "that its locus on this application remains unclear". Why did it have to keep repeating that? In every submission the prosecution had filed after the assigned counsel submitted their request, the prosecution had said the same thing about the locus without getting any clearer what it meant by that.

Prosecution further interim response of 20 January 2006, signed by Carla del Ponte

Even if it could be argued that the prosecution must make things as hard for the accused as possible, there has to be a limit. That limit may be called by many names, like "good faith" or "interest of justice". No matter which name one chooses, the prosecution's interim report of January 20, 2006 simply went too far.

Medical condition

The prosecution did not really want the doctors to carry out any more tests, because the reports the court's appointed doctors had come up with so far did not provide a definitive diagnosis of Milosevic's problem. The risk was too great that Milosevic's complaints would have been found to be real. Further medical tests were an option for the prosecution only if it could be certain that the physicians would be on their side, and there is no shortage of circumstantial evidence how persuasive the prosecution could be when it wanted.

The blood tests which were carried out on January 16 under controlled circumstances were the first occasion for the tribunal to reach a diagnosis of its own. The trouble was that the tests were requested by Milosevic, and even if we do not know the exact results for sure, we may assume that they must have proved that Milosevic had not taken any non-prescribed medication as the rumor would have it. The prosecution did not refer to the tests in its further interim response. It is not clear if the results of the test were known to the prosecution at that point. Instead, the prosecution seemed to relish the obscurity that shrouded past: "The Accused has, in the past, been known not to avail himself of the treatment prescribed..." (para. 22)

The prosecution seemed to imply that the Russian doctors came up with phony diagnoses to help Milosevic escape. Otherwise, the prosecution's request to quiz Bockeria on the security systems of his hospital (para. 16) would have been "out all proportion and propriety," to quote Richard May's words in footnote 4. The security systems certainly did not have anything to do with the medical care that the hospital was able to provide,

even if the medical condition was the issue that the prosecution pretended to be discussing in this passage.

But like it or not, the visiting doctors' reports were the only diagnoses that the tribunal had. Van Dijkman's and Aarts's responses to them could not stand as independent diagnoses but only as comments on their some else's diagnoses. Therefore, the visiting doctors' medical reports are turned against themselves.

Bakoulev

The discussion of Milosevic's medical condition boils down to the question of credentials of the Bakoulev Center, where Milosevic wanted to be treated. The tribunal had recently been in contact with two of the doctors working there: Dr Shumilina and Professor Bockeria. Dr Shumilina was known for being one of the three visiting doctors. Since she was the only one of the three visiting doctors that was actually working at the Bakoulev Center, the prosecution became obsessed with her medical achievements so far.

Instead of getting the credentials, the prosecution examined if the doctors had provided enough credentials for themselves. If they had, they should not have, because they were partial. If they had not, they should have, because otherwise the application was incomplete. If the doctors had come up with a diagnosis they should not have, because all that the diagnosis was good for was to act an excuse for further tests. If the doctors did not come up with a diagnosis, they should have, because otherwise they did not know what they were talking about.

If the prosecution was so critical of the Bakoulev center, it should have had the burden of proof to demonstrate that Milosevic could not be treated there, at least not for the complaints he had. Instead, the prosecution supposed that Shumilina should have demonstrated that the Bakoulev Center was actually one of its kind in the whole world. It perpetrated a multiple reversal of legal and evidentiary burdens, not that it cared. First, the prosecution assumed the legal burden to argue that the legal burden should have actually rested on the defense in so far as the uniqueness of the Bakoulev Center was concerned. Then it supposed that the defense should also have had the evidentiary burden to show that it really was unique in the world. It is getting difficult to keep track what the prosecution was going with all this.

Dr Shumilina did not state anywhere that Milosevic was only able to undergo the diagnostic treatment recommended, or any other treatment, in the Bakoulev Scientific Centre. She merely said: "Bakoulev Scientific Center is one of the biggest hospitals for cardiovascular interventional and surgical activities." That was a quote from Shumilina's email message to the Assigned Counsel Gillian Higgins on December 19, 2005. Because so had not said that the Bakoulev was the only option, the prosecution argues that she should have. And if she had, she should not have because her partiality showed that she was wrong and lacked judgment.

If the prosecution wanted to play games, why couldn't others play games too? Could a patient be admitted for treatment in a hospital only if that hospital was the only one that performed a certain kind of treatment? Shumilina had refrained from saying many things, which is not necessarily to her discredit. The reason the tribunal was picking on her must be that she had said too much in her exchanges with Aarts. In any case, not only did she not say that that Milosevic was able to be treated only at the Bakoulev Center. Actually she did not state in so many words that Milosevic was able to get treatment in Bakoulev at all. That was not decision, which shows that she did not lack judgment. She just said that the Bakoulev Center was one of the biggest hospitals. So how can we be certain that the Bakoulev Center was able to perform the measures that Shumilina had in mind? Does the prosecution deduct from that statement the obligation that Shumilina should have said that the Bakoulev Center was the only proper hospital and prove it too?

The prosecution, i.e. Carla del Ponte, made it impossible for Milosevic to get treated anywhere. Never before had the self-declared reversal the burden of proof served it so well. Instead of proving Shumilina wrong, the prosecution was just throwing stuff at Shumilina and arguing that she should have said this or that and if she did, she should not have.

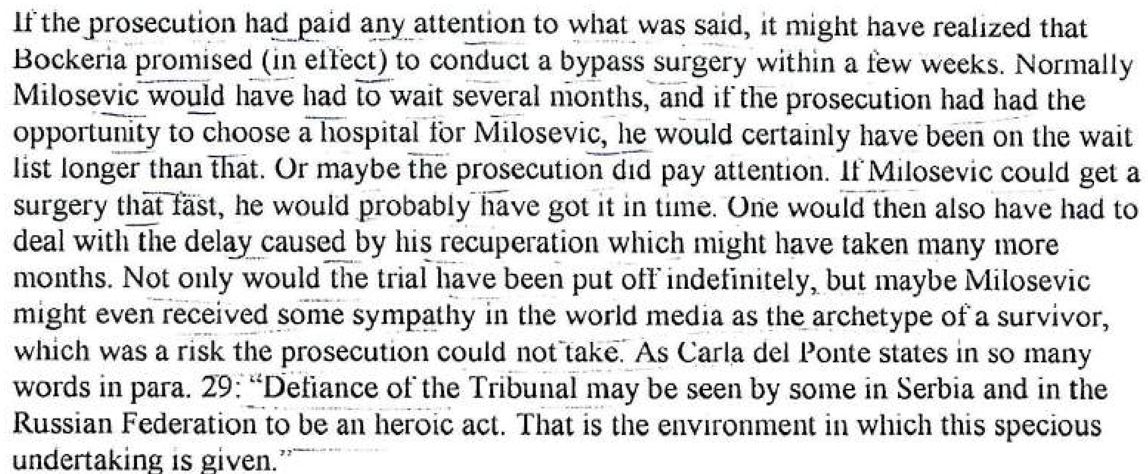
Shumilina had done a diagnosis. She called it discreetly a "preliminary conclusion". The prosecution did not take the hint. She should not have done a diagnosis, but if she did, the conclusion should not have been preliminary but definitive. If one reads attentively para. 14, that is exactly the gist of the prosecutions argument: "Dr. Shumilinar makes recommendations as to diagnostic treatment. She is not able to say with any degree of certainty what treatment may be required following diagnosis. At best, she opines that certain treatment may be necessary. Dr. Shumilina has examined the Accused once…She felt able, after this examination, to recommend … that the Accused 'should be prescribed a period of rest…' Dr. Shumilina does not anywhere state that the Accused is only able to undergo the diagnostic treatments recommended, or any other treatment, in the Bakoulev Scientific Center. She merely says: 'Bakoulev Scientific Center is one of the biggest hospital for cardiovascular interventional and surgical activities.'"

Even if the joint opinion of 4 November 2005 had two other signatories, it is Shumilina that the prosecution is interested in. She worked in the Bakoulev Center. Milosevic wanted to go to the Bakoulev Center, and the prosecution's job was to stop him.

Then is Professor Bockeria's turn. All the prosecution cares about Bockeria is that he works in the Bakoulev Center too. That means that his opinion was not worth anything. Unlike Shumilina, Bockeria had not examined the patient. The prosecution is quick to point that out: "Dr. Bockeria has not examined the Accused. As such, his letter, insofar as it purports to be a medical opinion on the Accused's condition, is of minimal, if any, evidential weight" (para. 12). Thank you very much! The only question was to what extent Bockeria's letter purported to be a medical opinion. He mentioned two Bakoulev doctors who had examined Milosevic: Elena Golukhova and Margarita Shumilina. Was his own medical opinion required if he had not even examined the patient? The letter mentioned a third doctor, who had examined Milosevic, even if he did not work in the

Bakoulev Center: Mijailovic. The existence and even relevance of all the three doctors is later attested in the Parker report of May 2006.

In other words, insofar as Bockeria's letter purported to be a medical opinion, it should not have, insofar as it really was a medical opinion, it was wrong, and insofar as it was not, it should have. The prosecution did not address any material points Bockeria might have raised. Instead, the prosecution criticized the "emotive" style of Bockeria's letter in para. 15. It drew the conclusion that it was "of minimal evidential value for the reasons stated above". Bockeria had spoken of his "physician's and human being duty" in his letter dated December 12, 2005. And so on. Who understands the reasoning in regard to Shumilina, understand the reasoning in regard to Bockeria.


If the prosecution had paid any attention to what was said, it might have realized that Bockeria promised (in effect) to conduct a bypass surgery within a few weeks. Normally Milosevic would have had to wait several months, and if the prosecution had had the opportunity to choose a hospital for Milosevic, he would certainly have been on the wait list longer than that. Or maybe the prosecution did pay attention. If Milosevic could get a surgery that fast, he would probably have got it in time. One would then also have had to deal with the delay caused by his recuperation which might have taken many more months. Not only would the trial have been put off indefinitely, but maybe Milosevic might even received some sympathy in the world media as the archetype of a survivor, which was a risk the prosecution could not take. As Carla del Ponte states in so many words in para. 29: "Defiance of the Tribunal may be seen by some in Serbia and in the Russian Federation to be an heroic act. That is the environment in which this specious undertaking is given."

In actual fact, Bockeria and Shumilina did not single the Center out any more than was natural for anybody who worked there. That should not have been difficult to understand, but it is difficult to understand why the prosecution had such a problem with their reasons for choosing Bakoulev Center, if the prosecution was not dead against Milosevic being treated anywhere. Does the choice of a hospital where the doctor works make his or her choice suspicious?

The Bakoulev center did not make the request for provisional release, neither did it conclude that Milosevic should be treated there and nowhere else. It was Milosevic who made the request, and it was Milosevic who chose the Bakoulev center as his destination of choice. He said he trusted the persons there (as the Assigned Counsel pointed out in para. 16 of the motion). As he well might: Golukhova had examined him in 2003 for the first time, and her findings were reviewed in para. 50 of the Parker report. Either the tribunal would have respected Milosevic's wishes or it wouldn't have. It was a pointless exercise for the prosecution to go on bickering about what kind of image the persons working at the Bakoulev center had portrayed of their institution, because Milosevic was convinced of their competence, and that was ultimately what mattered the most.

If the prosecution had as interested in the interests of justice as the assigned counsel had been, it should have borne in mind the basic truth that the interests of justice dictated that

the accused stayed alive at least till the end of the trial. As the assigned counsel had submitted in para. 18 of the request for provisional release of December 20: "It is in the interests of justice and the smooth running of the trial that the Accused receives appropriate treatment for his current condition without undue delay." They could have added: "...and that the Accused stays alive."

Burden of proof

As amazing as it may seem, we don't know for certain if the prosecution really cared about the interests of justice and all that. In its first interim response it seemed to have a very ambiguous attitude to them. It said: "Recognition of the Accused's right to a fair trial, of the presumption of innocence, and of the standard and burden of proof, do not exclude a finding at this stage that the Accused has a settled intention to obstruct this trial and prevent it from being brought to a conclusion" (para. 10 of the interim response of 22 December 2005"). It arrogated the right to arrive at a finding, and not just any finding, but "a finding at this stage," i.e. two days after the request, in an interim response and less three months before his death.

The prosecution plays all kinds of supposedly subtle games to reverse the burden of proof. In para. 12, the prosecution stated: "Assigned Counsel submit, in summary, that the Accused reasonably requires treatment in Moscow." If you put it like that, the burden of proof is reversed. The defense would have to prove that it was indeed reasonable. In reality, the assigned counsel were careful not to reverse the burden of proof. Instead of saying that its request was reasonable, it stated that its request was not unreasonable: "It is not unreasonable for Accused to express his wish as to where he should be treated and by whom, given his declared trust in the medical specialists at the Center." (para. 16 of the motion). That was a subtle difference, but it did affect the burden of proof. In other words, if the prosecution did not think that the request was not unreasonable, it was up to it to prove that it was. Now it only concluded: "The application is manifestly unreasonable and made on insufficient evidence" (para. 21).

In para. 24 of its interim response of 22 December 2005, the prosecution had argued that the burden of proof was on the accused. It had limited the application of that principle to Rule 65, but considering how extensively Rule 65 could be applied, it was evidently going for a definitive reversal of the burden of proof. It had earlier argued that Milosevic intended to keep the trial from coming to a conclusion, and in the prosecution's view that must have meant that he had no procedural rights. In its further interim response, the prosecution did not seem willing to waste any time discussing at length the burden of proof. Instead, it just assumed that the burden of proof had been reversed. That was very clear in its discussion of the proportionality of relief sought (para. 20 and following).

The reversed burden of proof is mentioned in passing in its discussion of the oral hearing on guarantees in para. 23 and following. It already assumed that the burden had been reversed: "If the Chamber is not satisfied that the Accused has satisfied the burden of proving that the preconditions for release under Rule 65 are met..." (para. 25). Not only

is the evidentiary burden reversed. The phrase "preconditions for release" could be extended as far as the prosecution saw fit.

The prosecution further argued that the oral hearing should take place only if the Trial Chamber was satisfied that the accused would appear for trial. If the Trial Chamber was not satisfied, then there was no need for an oral hearing (para. 25). If the Trial Chamber was satisfied, the oral hearing was not only possible but necessary (para. 26). Gone was the observation made by the assigned counsel in its motion that guarantees were not required for a grant of provisional release, even if it had been established in the tribunal's case law (para. 11 of the request).

But was there a need for an oral hearing if the Trial Chamber was already satisfied? If it was to be more than a mere formality, then the oral hearing was to have the sole purpose of undermining the satisfaction that the Trial Chamber might have acquired by then. But how could the Trial Chamber say it was satisfied if it knew that the prosecution was waiting for the opportunity to undermine it in the oral hearing? If the oral hearing did not have that sole function, what function did it have, in the prosecution's view? It made sense that the Trial Chamber could make up its mind only after the oral hearing had been held, which suggested that the oral hearing must take place in all cases and before the Trial Chamber knew if it was satisfied. If the hearing was possible and necessary only in cases where the Trial Chamber was satisfied, the stage was set for the prosecution's winning formula: all it thought it had to do was raise an objection and expect the defense to prove it wrong.

Political considerations

The prosecution did not pass unnoticed any detour that it could find to deny the provisional release. The interim report was a legal disaster and should have been thrown out of court for that reason alone. On the other hand, in its rampage the prosecution was getting closer and closer to putting its cards on the table. In its further interim response it produced an article from an English website for the Russian daily newspaper Kommersant. The prosecution quoted some passages from it in footnote 19. In annex A the article is reprinted in full, and that is where things get more interesting.

The article stated: "Any and all medical background notwithstanding, this decision is rather political and implies the far-reaching consequences, said sources close to the Kremlin community." It should be noted that those sources are not referring to any decision that the Kremlin might make because the decision was not theirs to make. Rather, the article started out by saying that "the Hague tribunal is expected to decide on giving the go-ahead" for Milosevic. The same article even made the following bold assertion: "So, the question is not in rendering some medical help to the former president." (par. 27)

Those who have been arguing for years that the tribunal is a political organ can rest their case. The legal argument had revolved around the reliability of guarantees. The Kommersant article proved that the medical help was not even the issue. It stated, with

the tribunal's endorsement, that the decision on the request for provisional release was "political".

Decision on Request for Provisional Release of 23 February 2006

The Trial Chamber rejected the appeal for two simple reasons:

First, the Trial Chamber accepted the submission by the Prosecution that if the Accused wished to be treated by specialists who were not from the Netherlands, such physicians could come to the Netherlands to treat him (par. 17). That is interesting, in view of Nice's remarks that the visiting doctors had offered "unsolicited" recommendations and had had the audacity to "second-guess" the court-approved specialists. The foreign doctors would have had no say in the Netherlands. They would also have had to work alongside the Dutch physicians, with which the relationship would have been strained afterwards. Remarkably, the Trial Chamber quoted the Prosecution's submission verbatim.

Second, the Trial Chamber was not "satisfied" that it was more likely than not that the Accused, if released, would return for the continuation of his trial" (par. 18). There must have been many reasons for the Trial Chamber to decide why Milosevic would not return. Not all of the reason could have to do with his desire to abscond. It was possible on the medical grounds (which the prosecution had pretended not to notice). The Prosecution had submitted that Milosevic might be found unfit to travel back, and that finding could not have been related merely to the possibility of absconding.

The Trial Chamber's remark that Milosevic might face the possibility of life imprisonment sounded malicious in view of the fact that he died in detention three weeks later. What did a life sentence mean anyway? If Milosevic died before the trial was even finished, did that make it any less of a life sentence? After all, the length of the life sentence depended on the length of the time that the person managed to live.

If the presumption of innocence had been more than a PR trick, the tribunal would not have denied medical treatment on the grounds that Milosevic might have faced life imprisonment. How did it know? In its eyes, Milosevic should still have been presumed innocent.

All talk about balance of probabilities and burden of proof aside, there has to be more to the tribunal's conclusion on such flimsy grounds. The Trial Chamber comes to them. It said in para. 7: "Although certain allegations have been made during this period, the Trial Chamber has made no conclusions that are adverse to the Accused on the basis of the information received." That is a reference to the allegations that Milosevic had manipulated his own treatment. Even if the Trial Chamber had supposedly made no conclusions from the allegations, it certainly had made a note of the allegations. The question is: where did it draw the line? If the allegations had been unimportant, why mention them in the decision?

DIT IS DIAMETRAAL TEGENOVERGESTELD AAN DE BEVINDINGEN VAN HET PARKER-RAPPORT DAT MILOSEVIC ZIJN EIGEN GEZONDHEID MANIPULEERDE!

Obviously, it did not need that information to make a conclusion that would be adverse to the Accused, because it was doing such a good job without it. Otherwise, it would be hard to believe that the two simple reasons the Trial Chamber cited for rejecting the motion would been so conclusive. One must not forget that, in the Parker report, the tribunal accepted the allegation that Milosevic had indeed manipulated his health.

Quite remarkably, the Trial Chamber did not consider the guarantees, even if it found the guarantees important as long as they had not arrived. One possible explanation, if it can be called that, is that the prosecution had indicated in its intention to file on January 19 that it would have no time to evaluate them in only one day. Another possible explanation was that the Assigned Counsel had argued in its motion that the guarantees were not a requirement for a grant of provisional release. In the Trial Chamber's eyes, that must have meant that they had no bearing on the decision on the request for provisional release. How the Trial Chamber could have reasoned that once the guarantees were obtained they suddenly lost their importance is a mystery.

There was no need for an oral hearing either. The prosecution had found a grateful audience for its observations about the oral hearing being unnecessary if the Trial Chamber was not satisfied that the guarantees were sufficient. Possibly the Trial Chamber confused the oral hearing that the prosecution had discussed under the heading "Oral Hearing on Guarantees" in its further interim report with the evidentiary hearing that the Assigned Counsel had requested for determining Milosevic's true medical situation. Why else would the Trial Chamber have left both of them unaddressed in its decision?

It is difficult to say what the Trial Chamber meant by the "importance of these guarantees" in its preliminary order of 11 January. It eventually rejected the Request for Provisional Release on the grounds that "notwithstanding the guarantees of the Russian Federation ... the Trial Chamber is not satisfied ... that it is more likely than not that the Accused, if released, would return for the continuation of his trial" (para. 18 of the Decision of 23 February 2006). No reason is given. The Trial Chamber was not "satisfied". That was all.

Appeal

The Assigned Counsel filed a motion for expedited appeal against the decision on March 2, 2006. That was nine days before Milosevic's death.

As if the Trial Chamber had forgotten about the fact, the Assigned Counsel reminded it that it had sought specific alternative relief in the form of an evidentiary hearing due to the conflicting medical diagnosis and consequent issues concerning the most appropriate treatment and its location (para. 22). The appeal continued in footnote 28 that evidentiary hearings had been held in a number of cases at the ICTY in order to determine the precise medical condition of a detainee, for example, in the Prosecutor v. Talic, in which the Trial Chamber held an evidentiary hearing in order to receive testimony from Dr. Falke, who determined that Mr. Talic had a carcinoma and had "several months maximum" to

live. The Trial Chamber decided to obtain a second opinion and, through the intervention of the Registrar, appointed two leading experts to examine and report on Mr. Talic's condition. The Trial Chamber proceeded to a second evidentiary hearing in which the two medical experts testified in closed session. Evidentiary hearings in the context of provisional release on medical grounds were been held in The Prosecutor v. Stanisic and The Prosecutor v. Dukic.

In footnote 34, the Assigned Counsel quoted the decision by the European Court of Human Rights in the case Mouisel v. France, Application No. 67263/01 [2002] ECHR 740 (14 November 2002), at para. 45: [T]he Applicant's illness was progressing and [...] the prison was scarcerly equipped to deal with it, yet no special measures were taken by the prison authorities. Such measures could have included admitting the applicant to hospital or transferring him to any other institution where he could be monitored and kept under supervision, particularly at night." The European Court found a violation of Article 3 of the European Convention on Human Rights on the basis that the national authorities did not take sufficient care of the applicant's health to ensure that he did not suffer treatment contrary to Article 3 of the Convention.

One could almost hear the prosecution licking its lips when it read that. In its judgment in Naletilic, the European Court of Human Rights had decided that alleged human rights violations by the tribunal were none of its business. That entailed many things, one of which was the inapplicability of the ECHR case law in regard to a prisoner's medical care.

For good measure, the Assigned Counsel quoted the tribunal's Rules of Detention in footnote 39. The Judges had already shown themselves to be only dimly aware of the Rules of Detention, so the power of the argument is uncertain. That does not mean that the Assigned Counsel did not do a good job. The preamble of the Rules of Detention state: "The primary principles on which these Rules of Detention rest reflect the overriding requirements of humanity, respect for human dignity and the presumption of innocence".

That may not have been the most convincing argument in the Appeals Chamber's eyes, where the case was going, but then the Assigned Counsel arrived at the tribunal's case law further down in footnote 39. The above-mentioned principles had been recognized in the Prosecutor v. Blaskic, Decision on Motion of the Defence seeking Modification of the Conditions of Detention of General Blaskic of February 9, 2002 and in The Prosecutor v. Brdjanin and Talic, Decision on the Motion for Provisional Release of the Accused Momir Talic, of September 20, 2002.

The assigned counsel also pinpointed the fundamental problem of the proceedings in para. 11: "The party challenging a decision on provisional release bears the burden of showing that the Trial Chamber committed a discernible error." That is ironic. The party challenging a decision on provisional release bore the burden of proof. Now the defense found itself in the unenviable position where it had to prove that the Trial Chamber had

reversed the burden of proof, which was the second ground in the assigned counsel's appeal (para. 26 and following)

Allegations concerning the manipulation of treatment by Milosevic

Carla del Ponte mentioned the suspicion that Milosevic had been manipulating his own treatment in para. 22. of her interim report of January 20. The Trial Chamber mentioned in its decision that it did not heed such allegations. Sure it did. The Parker report on Milosevic's death made the most of all those allegations to let the tribunal off the hook.

The same allegations had been smoldering for a long time until they finally erupted in January 2006. On October 14, 2004, the chief of the Detention Unit, Tim McFadden, had complained about the privileged facilities that Milosevic had for preparing his defense. The underlying reason was that the privileged status of Milosevic's communication was from 17 September 2003. It was granted because at that time Milosevic was representing himself before the tribunal. Even if Milosevic had continued representing himself ever since, McFadden argued that since the appointment of the Court assigned counsel (Higgins and Kay were still his assigned counsel), Milosevic's regime of detention should not have been privileged. In particular, that privileged status should not extend to his legal associates. McFadden wrote in para. 6: "It is important to note that instances of actual abuse are difficult to establish due to the 'privileged setting' which must be guaranteed". Was he saying that Milosevic was abusing the privileged setting because the privileged setting made it impossible for the Detention Unit to establish if he had actually been abusing it?

McFadden highlighted various episodes that had caused concern: Milosevic had stopped making personal phone calls, which could only mean that he must have been using the business telephone for private purposes. McFadden also mentioned the ouzo bottle that the Greek President had intended for Milosevic but had declared it at the entrance, where it had been confiscated. McFadden did not mention that the ouzo bottle had been declared. At any rate, he said that he got so suspicious about things that Milosevic's office was searched (in Milosevic's presence), and it was at that time that large quantities of non-prescribed drugs were also discovered. Never mind that they were not intended to Milosevic (they were in an envelope belonging to one of Milosevic's legal associates). The tribunal had its trump card. It now "realized" that Milosevic was taking non-prescribed drugs. McFadden explained that the drugs would have been fatal if taken in doses far less than the quantities found (thus assuming that Milosevic had planned to take those drugs, and not only that, but he planned to take them all at once). McFadden finally arrived at the "reasonable implication" that the drugs were deliberately smuggled into the Detention Unit. McFadden also mentioned that the medical reports ordered by the Trial Chamber (August 2004) had indicated that Milosevic was not taking the prescribed blood pressure medication and that traces of non-prescribed drugs were found in blood tests. McFadden then drew the conclusion: "it has become increasingly difficult for the UNDU to ensure the safety and security of Mr. Milosevic or the safety of his visitors." That was all the tribunal wanted to hear. Whatever would happen to Milosevic, it would be his own fault and the tribunal could take no responsibility.

On 31 August, 2004, McFadden then wrote another internal memorandum which had the appetizing title: "Explanation of Medication Regime and Import Export Procedures at UNDU in connection with Medical Reports Filed in the Milosevic Case". McFadden stated that the guard administering the medicines could not say for certain that the detainee swallowed the medicine. McFadden recommended that Milosevic should sign a document stating that the staff were not longer in a position to take responsibility for his health condition and that any consequences would be the result of his actions. McFadden also mentioned that it was the standard procedure in custodial institutions. If he had insisted on the analogies between the national custodial institutions and the UN Detention Unit, the Naletilic case of the European Court of Human Rights, which afforded in practice the ICTY and UNDU officials immunity from accusations of human rights violations would have been seriously undermined. McFadden stopped in time. He admitted that "it has not arrived at this stage yet but the situation is being monitored very closely and if the suspicion is proved to be reality then he will be asked to sign such a disclaimer."

That was in 2004. Registrar Hans Holthuis happened to unearth the relevant correspondence on December 20, 2005, the same day that assigned counsel filed the request for provisional release. Holthuis referred to a document that the Deputy Registrar John Hocking had written on October 26, 2004. In it, Hocking had highlighted "a number of events which raise concern that the provisions of this privileged setting to the Accused in the UNDU may be abused." Holthuis then stated as a fact that Milosevic had been taking non-prescribed drugs. He also noted that there had been "previous instances when non-prescribed drugs have been found in the possession of the Accused". By possession, Holthuis meant that things were found in Milosevic's office.

He mentioned the instance in August 2004 (the ouzo and the medication for one of the legal associates) and another during a routine cell inspection in the week of 29 November to 3 December 2004. These incidents ring a bell. The Parker report stated in para. 106 that a bottle of whisky and a medication belonging to one of Milosevic's legal associates (Misa) was found in Milosevic's office on July 9, 2004. Only, the approximate date was off by one month. It is also possible that the ouzo and the bottle of whisky got mixed up somewhere along the way as the story was told. The medication that Holthuis said was found "during a routine cell inspection" is reminiscent of para. 82 of the Parker report. It stated that Prilazid Plus was found "during a regular inspection of the cell of Mr Milosevic" on February 1, 2006. Only, the incident that Holthuis had in mind took place in late 2004.

Even if the "medical officer", i.e. Falke, had not reacted to the visiting doctors' reports concerning the deteriorating state of Milosevic's health a month before, he did provide McFadden with information about Milosevic's manipulation of his health. McFadden relayed the information to Holthuis. In his report of December 19, 2005, McFadden wrote that the medical officer had intimated to him that the "tests" revealed that Milosevic was not taking his medication as prescribed and that he was also taking some other medication that has not been prescribed by the medical team. It would be interesting to

know what tests he was talking about. As we have seen, Falke and Van Dijkman had decided to measure Milosevic's metoprolol levels after cutting his metoprolol dosage in late November 2005. McFadden did not forget to mention that the situation is life-threatening.

Leniency

The Detention Unit did not want to take any responsibility. But did the tribunal have any responsibility for the death of its detainees in the first place? That is a strange question that becomes especially poignant in light of the recent developments.

In para. 7 of the Request for Provisional Release the Assigned Counsel underlined the importance of leniency: "In the Prosecutor v. Jokic, the Trial Chamber stated that "A measure in public international law is proportional only when 1) it is suitable, 2) necessary and when 3) its degree and scope remain in a reasonable relationship to the envisaged target. Procedural measures should never be capricious or excessive. If it is sufficient to use a more lenient measure, it must be applied."

The prosecution pretended not to know the meaning of the word "lenient". It even criticized the "emotive" style of Bockeria's letter in para. 15 of its interim response of 20 January 2006. Bockeria had spoken of his "physician's and human being duty" in his letter dated December 12, 2005. Now, that was emotive. If speaking of professional and human duty (like the Hippocratic oath) was emotive and the prosecution was not emotive, what became of the professionalism and humanitarianism of the prosecution?

As to its own indifferent approach, the prosecution was able to sweep a lot of dirt under the rug. It even submitted that there was insufficient evidence that Milosevic's present treatment was anything other than appropriate (para. 21 of the further interim report of 20 January 2006). The Trial Chamber may have suppressed a smile when it read the passage and tried not to think of Falke's sluggishness in addressing the visiting doctors' reports.

The discourse is reflects an unstated assumption that the tribunal is not moved by any legal norms that prohibit "willfully causing great suffering or serious injury to body or health". It may even question if there are such norms. But is it? And are there?

Yes, there are four such provisions: Geneva Convention 1 art. 50, Geneva Convention 2 art. 51, Geneva Convention 3 art. 130 and Geneva Convention 4 article 147. It is true that those provisions are about prisoners of war, but it is safe to assume that what is required for prisoners of war is also required for detainees in peacetime in the UN Detention Unit. Those provisions are called "grave breaches" of Geneva Conventions. In fact, the ICTY should know them very well. If the gravity of the violations in itself is not enough to deter the ICTY from infringing on them, it should bear in mind that according to the ICTY statute, the ICTY had the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Convention, including wilfully causing great suffering or serious injury to body or health (Art. 2c of the ICTY Statute).

CONCLUSION

The reports filed by Drs. Margarita Shumilina, Vukasin Andric and Florence Leclercq on November 4, 2005 counted 8 pages, including the joint recommendation. In an apparent display of powerlessness, the tribunal was able to multiply the ensuing paper trail to about 300 pages in three months without taking any action in the meantime, unless it could assume it was for Milosevic's detriment. One thing did happen, though. That thing is in stark contrast to the court-appointed physicians' inability or at least unwillingness to lift a finger to address the issues raised by the visiting physicians on their own initiative. Buried in the middle of the abundance of paper is one likely explanation for Milosevic's low metoprolol levels which became an issue in 2006.

According to his report of November 18, 2005, Dr Van Dijkman decided to carry out an ischemic test on Milosevic, which meant that Milosevic had to stop taking beta-blockers (including metoprolol). He ostensibly followed Leclercq's advice, although Leclercq had practically ruled out ischemia. The following week, Dr Van Dijkman reported that Dr Falke and he had decided to measure the metoprolol levels in Milosevic's blood. Did he not expect that the metoprolol levels would be abnormally low if Milosevic had stopped taking metoprolol? Falke then informed the chief of the detention unit McFadden of its finding in December 2005. McFadden told the Registrar Holthuis. Holthuis told everybody else.

The tribunal will never admit it contributed to Milosevic's death in any way, but as long as it remains silent on the basic question whether it had the duty to keep him, it is tempting to suppose that it did. The detention unit staff were only too eager to pretend that Milosevic was undermining his own treatment and that the tribunal could not be responsible for what would happen to him. The tribunal could add (as the Parker report in effect did) that since death is an inevitable part of our existence, the tribunal cannot be expected to make every effort to alter the unalterable course of events that makes our life what it is. It might even have quoted some old expression like "Am I my brother's keeper?" without fully realizing how apt its quip would have been.

Even if the prosecution does not exactly excel in legal reasoning (apart from recycling the tribunal jurisprudence), it is the very ineptitude of its reasoning that the Trial Chamber finds so hard to resist. The main problem is the chronic reversal of the legal and evidentiary burdens. The shocking truth is that the only provision which keeps the burden of proof from being reversed to the defendant's detriment altogether is the presumption of innocence, which is enshrined in the Statute (and in the preamble of the Rules of Detention). It does not take long before one is struck by the suspicion that the provision in the Statute is only the friendly face of the tribunal and the reality is diametrically opposite.

The prosecution's legal arguments are almost too trivial to refute. However, that does not take away the fact that it is worth one's while to keep an eye on it at all times. Every once in a while, the prosecution is inadvertent enough to indicate what it is really up to. As the material submitted by the prosecution in this case proves, the decision about the

provisional release was never about medical care. It was all about politics. Once the tribunal had made its intentions known, the Trial Chamber was willing to swallow any errant reasoning which was obscure enough to be part of the tribunal's case law.

Sagittarius

Van: "Jonathan Widell" <widell@bellnet.ca>
Aan: "branko rakic"
CC: "Sagittarius" <sagitar@hetnet.nl>
Verzonden: zaterdag 1 juli 2006 17:11
Bijlage: Moscow.doc
Onderwerp: Treatment in Moscow

Dear Mr Rakic,

Here is the updated version of the Moscow article. I am going to send it further to the Serbianna webmaster on Tuesday. I am still waiting for the comments from Patrick Barriot. The new version takes account of the 125 pages that the Dutch TV station KRO has included in Milosevic's medical file on its website. I have sharpened the conclusion and pointed the finger at Falke's negligence.

Some of the documents are really hard to read. For instance, the appeal only has every second page, so one has to guess the rest.

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----- Original Message -----
From: branko rakic
To: Jonathan Widell
Sent: Friday, June 23, 2006 12:52 AM
Subject: Fwd: Re: Medical Report by Dr. Uges

This is extremely important!!!
On 7 March we received a report of Dr Touw (or rather a letter of Touw to Falke) in which he sais that at the request of Falke furtehr examined the blood sample taken on 12 January and that he found rifampicine in President Milosevic's blood (when Touw says "we" in that report it is clear that he means "my laboratory"). His report was accompanied by a letter of Falke and an internal memorandum of the deputy registrar. In those document there's no mention of Dr Uges.
So I was very much surprised when I saw in the media just after President Milosevic's death that Dr Uges claims that he had found rifampicine two weeks befor President Milosevic died and that he hed informed the Registry about it.
So asked my assistent to write a letter to the Registry on my behalf and to ask them to give us Dr Uges's report about rifampicine. One month later I asked for it once again and this time I got the information from the Registry "that the Registry is not aware of any report by Dr. Uges other than the one dated on January 24, 2006." And in the January 24 report there's no mention of rifampicine.
So they practically informed me that Uges had lied. And the story about the cooperation of the triangle Falke-Touw-Uges from Parker's report is quite stupid and in contradiction also with the documentation from January.
Fimally, it shouldn't be forgotten that Uges is a person of trust for the Tribunal. It shows clearly from his appointment as "independent expert" in January and from the 24 January report which he did as "independent expert".

What is important is the correspondance and especially the answer of the Registry. The empty attachment is unimportant (it used to be an interview with Uges which appeared in NYT a few days after President Milosevic's death; the text disappeared, but as I said, it is not important - that text and several other texts on

Sagittarius

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Aan: "branko rakic"
CC: "Sagittarius" <sagitar@hetnet.nl>
Verzonden: zaterdag 1 juli 2006 17:11
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Van: "Ian Johnson" <i-johnson@lineone.net>
Aan: <Undisclosed-Recipient:;>
Verzonden: vrijdag 28 juli 2006 19:07
Onderwerp: CDSM: [icdsm-italia] J. Widell on previous attempts to kill

From: ICDSM-Italia **Subject:** [icdsm-italia] J. Widell on previous attempts to kill Milosevic

http://serbianna.com/blogs/widell/

Jonathan Widell

So here's to you Mr Tomlinson

July 15th, 2006

Did NATO try to kill Milosevic? "Yeah, right," you might say, and ask who killed the Kennedy's when after all it was you and me. But wait a minute. If somebody had asked the same question on April 22, 1999, the reaction would have been quite different. Only a fool could have denied that NATO did try to kill him then. In case you have forgotten, April 22, 1999 was when NATO sent a missile in Milosevic's bedroom. The time was 3.10 a.m. As it turned out, Milosevic was not in his bedroom at that time.

The truly amazing thing is how fast we forget. And in case you have forgotten, NATO was bombing Belgrade at that time. In 1999, NATO was doing all kinds of nasty things which it dismissed as collateral damage, like the bombing of the Chinese Embassy. According to Human Rights Watch, NATO killed 500 civilians in its air war against Yugoslavia. Others have put the figure at 2500.

When the Canadian participation in the US-led attack on Iraq was being discussed, the Canadian Minister of Justice Irwin Cotler told the Canadian Parliament that the attack on Iraq had not been authorized by the Security Council, unlike the Kosovo war. Actually what he said was that the "preponderance of members of the Security Council" supported a resolution authorizing an intervention in Kosovo but it was torpedoed by the Russian veto. According to Cotler, the resolution was deemed to have legitimacy anyway because the "preponderance of members of the Security Council" supported it (Commons Debates, April 3, 2003 at 5126). That was absolutely (almost) right, except that there was no resolution for the Security Council to pass and therefore nothing for the Russians to veto. The reason there was no proposal was the much-touted "certainty" of the Western powers that Russia would veto such a resolution so there was no point in preparing a proposal. But how could the preponderance of members of the Security Council support something that did not exist? How could something that did not exist have legitimacy? NATO was acting on its own. That's how fast we forget. Maybe the point was that the Russians are bad, and that is something we have never been allowed to forget.

NATO might have dismissed the missile attack in Milosevic's bedroom as a harmless prank it thought Milosevic might enjoy. In fact, NATO did explain that the attack was nothing personal. But NATO cannot deny that it thought of killing Milosevic, and had it known where Milosevic was on April 22, 1999, it would certainly have killed him then and there. But was NATO really acting on a whim? Killing Milosevic seems to have been a long-term priority in some circles. The year before the bombing started, in 1998, the ex-M16 agent Richard Tomlinson wrote a letter to John Wadham, head of the civil rights organisation *Liberty* and also Tomlinson's solicitor. In his letter he stated that M16, the British Intelligence Service, planned the assassination of Milosevic as early as 1992. Here is the letter:

Dear Sir,
I would like to bring to your attention a proposal by M16 to assassinate President Milosevic of Serbia. My motive in doing this is to draw to your attention the casual and cavalier attitude that many M16 officers have to British and international law. The officer who wrote this proposal clearly could (and in my view, should) be charged with conspiracy to murder. He will no doubt escape unpunished, like many other M16 officers who routinely break the law. This lack of legal accountability of M16 officers needs to be addressed urgently.
From March 1992 until September 1993 I worked in the East European controllerate of M16 under the staff designation of UKA/7. My role was to carry out natural cover operations (undercover as a businessman or journalist etc) in eastern Europe. The Balkan war was in its early stages at this time, and so my responsibilities were increasingly directed to this arena. My work thus involved frequent contact with the officer responsible for developing and targeting operations in the Balkans. At the time, this was Nicholas Fishwick, who worked under the staff designation of P4/OPS. We would frequently meet in

on the 11th floor of Century House to discuss proposed and ongoing operations that I was involved in and, indeed, ther operations which I was not myself involved in.
g one such meeting in the summer of 1992 Nick Fishwick casually mentioned that he was working on a proposal to assinate President Milosevic of Serbia. I laughed, and dismissed his claim as an idle boast as I (naively) thought that M16 ould never contemplate such an operation. Fishwick insisted that it was true, and appeared somewhat offended that I did not believe him. However, I still presumed that he was just pulling my leg, and thought nothing more of the incident
A few days later, I called in again to Fishwick's office. After a few moments of conversation, he triumphantly pulled out a document from a file on his desk, tossed it over to me, and suggested I read it. To my astonishment, it was indeed a proposal to assassinate President Milosevic of Serbia.
The minute was approximately 2 pages long, and had a yellow minute card attached to it which signified that it was an accountable document rather than a draft proposal. It was entitled "The need to assassinate President Milosevic of Serbia". In the distribution list in the margin were P4 (Head of Balkan operations, then Maurice Kendwrick-Piercey), SBO1/T (Security officer responsible for eastern European operations, then John Ridd), C/CEE (Controller of east European operations, then Richard Fletcher or possibly Andrew Fulton), MODA/SO (The SAS liaison officer attached to M16, then Major Glynne Evans), and H/SECT (the private secretary to Sir Colin McColl, then Alan Petty).
The first page of the document was a political "justification" to assassinate President Milosevic. Fishwick's justification was basically that there was evidence that Milosevic was providing arms and support to President Radovan Karadzic in the breakaway republic of Bosnian Serbia.
The remainder of the document proposed three methods to assassinate Milosevic. The first method was to train and equip a Serbian paramilitary opposition group to assassinate Milosevic in Serbia. Fishwick argued that this method would have the advantage of deniability, but the disadvantage that control of the operation would be low and the chances of success unpredictable. The second method was to use the Increment (a small cell of the SAS and SBS which is especially selected and trained to carry out operations exclusively for M15/M16) to infiltrate Serbia and attack Milosevic either with a bomb or sniper ambush. Fishwick argued that this would plan would be the most reliable, but would be undeniable if it went wrong. Fishwick's third proposal was to kill Milosevic in a staged car crash, possibly during one of his visits to the ICFY (International Conference on the Former Yugoslavia) in Geneva, Switzerland. Fishwick even provided a suggestion about how this could be done, such as by disorientating Milosevic's chauffeur using a blinding strobe light as the cavalcade passed through one of Geneva's motorway tunnels.
There was no doubt in my mind when I read Fishwick's proposal that he was entirely serious about pursuing his plan. Fishwick was an ambitious and serious officer, who would not frivolise his career by making such a proposal in jest or merely to impress me. However, I heard no more about the progress of this proposal, and did not expect to, as I was not on its distribution list.
I ask you to investigate this matter fully. I believe that legal action should be taken against Fishwick, to show other M16 officers that they should not assume that they can murder and carry out other illegal acts with impunity.

Truth is stranger than fiction. The amazing thing is that Richard Tomlinson is a real person. Nobody has even tried to deny that. The British Foreign Secretary Robin Cook did not deny Tomlinson's existence either. Instead, he said Tomlinson had an "irrational, deep-seated sense of grievance" against his former employer.

Tomlinson may have had a grievance but ironically, judging by the government's reaction, Tomlinson knew what he was talking about. After being dismissed without warning in 1995, Tomlinson started writing a book. He was arrested in 1997, after showing a synopsis of his book to an Australian publisher. He was convicted for breaking the Official Secrets Act. After his release, he fled Britain. He said that M16 used false pretences to persuade the French intelligence service to arrest and beat him in Paris in August 1998. He was detained for 38 hours, and his computer equipment was illegally taken from him. The equipment was not returned until six months later. After being released, Tomlinson decided to leave France for his native New Zealand, but "a few days after my arrival, M16 persuaded the New Zealand Intelligence Service to again detain and search me in Auckland. More computer equipment was confiscated from me, and again was not returned until six months later."

Tomlinson then decided to move to Australia, but was denied a visa by the authorities. He claims this was again due to intervention by M16. As a New Zealand citizen, he would normally not require a visa for Australia. Tomlinson then moved to Switzerland. In 2001 he published his book *The Big Breach* that exposed M16 to contemporary operations and included claims that M16 had planned to assassinate former Serb leader Slobodan Milosevic in 1992.

Tomlinson's revelations were connected to the inquiry into the deaths of Princess Diana and Dodi al Fayed in 1997. He suggested that their car crash was staged in imitation of the M16 plans to have Milosevic killed in a car accident. The following is an excerpt from a sworn and testified statement that he made on May 12, 1999 to the enquiry into the deaths of the Princess of Wales, Dodi al Fayed, and Henri Paul:

[I]n 1992, as the civil war in the former Yugoslavia became increasingly topical, I started to work primarily on operations in Serbia. During this time, I became acquainted with Dr Nicholas Bernard Frank FISHWICK, born 1958, the M16 officer who at the time was in charge of planning Balkan operations. During one meeting with DR Fishwick, he casually showed to me a three-page document that on closer inspection turned out to be an outline plan to assassinate the Serbian leader President Slobodan Milosevic. The plan was fully typed, and attached to a yellow "minute board", signifying that this was a formal

...untable document. It will therefore still be in existence. Fishwick had annotated that the document be circulated to ...owing senior M16 officers: Maurice KENDWRICK-PIERCEY, then head of Balkan operations, John RIDDE, then ...ecurity officer for Balkan operations, the SAS liaison officer to M16 (designation MODA/SO, but I have forgotten his ...me), the head of the Eastern European Controllerate (then Richard FLETCHER) and finally Alan PETTY, the personal ...ecretary to the then Chief of M16, Colin Mc COLL.

As we know, Milosevic died in the United Nations detention unit in The Hague in March 2006. His death did not follow any of the plans discussed by Tomlinson, although an attempt had been made on his life in the missile attack in 1999 (which would suggest that the attempt was inspired by the proposal that he should be killed by a bomb). However, there were originally three different plans, so would it have been impossible to add one or two more?
But Milosevic died in the UN detention center in The Hague. Was M16 active in the tribunal? William Spring (CANA, London, UK) suggested it was. He addressed the following letter to Judge Richard May, who was at the time the presiding judge in the Milosevic trial:

It is vital to get to the truth about the 1999 NATO war on Yugoslavia.
It may be that as a lawyer you don't have any regard for the truth, by which I mean you don't regard its pursuit as a priority.
But as a contemporary historian, and as a concerned citizen, worried at the waste of UK taxpayers' money spent funding your illicit judicial forum, I do.
My point is you have disqualified yourself by prejudice and bias from any further conduct of this case.
I have made a formal complaint to the Lord Chancellor about your conduct of the trial.
I refer as well to the failure of The Tribunal to provide medical facilities for the prisoner, nor access to family, nor access to lawyers, nor access to potential witnesses, such as myself, nor access to advisers, nor access to telephones and fax machines, nor access to the Internet, nor even access to a computer.
You give him inedible meals and you deny him exercise.
You are engaged in torture.
You sneer at the prisoner - you generally seek to demean him, you inflict indignities and gratuitous humiliation upon him.
I believe you and the other UK officials at the Court, including Steven Kay, the M16 agent drafted in so the prosecution can also take over the defence, all of you have systematically conspired to deny the prisoner a fair trial, both on account of the numerous rulings you have made against him, and those you have not, particularly in respect to the conditions of his unlawful detention. [...]"

That may sound far-fetched, but Spring did manage to pinpoint some developments which proved fatal later, like the failure to provide medical facilities to Milosevic. He called the treatment of Milosevic torture, which was again heard after his death. Whatever the truth in this matter, the British overrepresentation in the Milosevic trial defied all laws of probability. After Judge May died of brain cancer in July 2004, his replacement, Iain Bonomy, came from Scotland.

All this crazy talk does not come from people who hate the tribunal. Michael P. Scharf served as Attorney Adviser for U.N. Affairs at the State Department during the Administrations of President Bush (the elder) and President Clinton. He should know something about the ICTY as well. He wrote in 1999 ("Indicted For War Crimes, Then What?" *Washington Post*, Oct. 3, 1999):

From the beginning, the Security Council's motives in creating the tribunal were questionable. During the negotiations to establish the court–talks in which I participated on behalf of the U.S. government–it became clear that several of the Security Council's permanent members considered the tribunal a potential impediment to a negotiated peace settlement. Russia, in particular, worked behind the scenes to try to ensure that the tribunal would be no more than a Potemkin court. The United States's motives were also less than pure. America's chief Balkans negotiator at the time, Richard Holbrooke, has acknowledged that the tribunal was widely perceived within the government as little more than a public relations device and as a potentially useful policy tool. The thinking in Washington was that even if only low-level perpetrators in the Balkans were tried, the tribunal's existence and its indictments would deflect criticism that the major powers did not do enough to halt the bloodshed there. Indictments also would serve to isolate offending leaders diplomatically, strengthen the hand of their domestic rivals and fortify the international political will to employ economic sanctions or use force. Indeed, while the United States and Britain initially thought an indictment of Milosevic might interfere with the prospects of peace, it later became a useful tool in their efforts to demonize the Serbian leader and maintain public support for NATO's bombing campaign against Serbia, which was still underway when the indictment was handed down.

According to Scharf, the tribunal was used as a propaganda tool against Milosevic. That had been so "from the beginning". Scharf did not say that anybody wanted to kill him, at least not in the tribunal, but at the time Scharf wrote that, Milosevic had already been indicted.
Five years later, at the time Milosevic was scheduled to begin his defense, Scharf returned to the same theme ("Making A Spectacle of Himself," Michael P. Scharf, *Washington Post*, Aug. 29, 2004):

In creating the Yugoslavia tribunal statute, the U.N. Security Council set three objectives: first, to educate the Serbian people, who were long misled by Milosevic's propaganda, about the acts of aggression, war crimes and crimes against humanity committed by his regime; second, to facilitate national reconciliation by pinning prime responsibility on Milosevic

top leaders and disclosing the ways in which the Milosevic regime had induced ordinary Serbs to commit es; and third, to promote political catharsis while enabling Serbia's newly elected leaders to distance themselves from epressive policies of the past. [Trial Judge Richard] May's decision to allow Milosevic to represent himself has iously undercut these aims.
Scharf wrote that part of the second objective of the tribunal was to pin prime responsibility on Milosevic. Scharf also repeated his claim that the tribunal had Milosevic in its sights when it was created in 1993. Since the ICTY was not built in a day, the plans must have gone further back than that, and that is where things get murky. The MI6 plan to kill Milosevic dated from 1992.

Scharf was not saying that the original plan was to transfer Milosevic to The Hague, although pinning the blame on him might have implied that. However, after Milosevic had been transferred to The Hague, former assistant Secretary of State John Shattuck wrote that the plan to get him in The Hague went back to the 1995 Dayton agreement. He wrote that if the 1995 Dayton agreement "prolonged Milosevic's rule ... it also sealed his fate." By signing the Dayton agreement, Milosevic reputedly recognized the tribunal. When he was arrested in 2001, "the trap that had been set in 1995 at last slammed shut," wrote Shattuck. It has been observed that if the allegations of Milosevic's war crimes in Bosnia and Croatia had been true, he would have been indicted in 1995. A lot more bloodshed was needed before Milosevic could be indicted. How much was Milosevic's own life worth after that?

The strange thing is that Richard Tomlinson was held for questioning after Princess Diana died, even if the connection between her death and the 1992 plans to assassinate Milosevic was tangential at best. Milosevic himself died under the Western authorities' watchful eye nine years later. Where are the arrests now?

Sagittarius

Van: "Ian Johnson" <i-johnson@lineone.net>
Aan: <Undisclosed-Recipient:;>
Verzonden: woensdag 16 augustus 2006 21:04
Onderwerp: CDSM: Milosevic Family Letter to the

Please see below the open letter sent by Marko Milosevic to the ICTY and the United Nations.

This is an open letter and is to be distributed to
The President of the ICTY
The Chairman of the Security Council of the OUN
The Secretary General of the OUN
It represents an official reaction of the family of Slobodan Milosevic to the report of ICTY concerning the causes of his death.

Mr. Parker,

I received your report concerning the causes of my father's sudden and untimely death. Unfortunately, it is exactly as I expected it would be, and as I warned your deputy, the French judge with whom I spoke in The Hague, that it should not be.

First of all, I must note that your investigation was not initiated because of "media speculation that Slobodan Milosevic had been poisoned" as you put it. Your report's continuous justifications before media are both inadequate and insulting.

Although illegal, the ICTY owes explanations to the family of the deceased, the Security Council as the organ which founded ICTY, the General Assembly, the Secretary General, and to the public.

Secondly, neither we the family, nor the expert team of pathologists, which was familiar with my father's health and was given the findings of the Dutch team, ever alleged the possibility of poisoning. To the contrary, I accepted the diagnosis of a heart attack (infarction) from the moment I heard it in The Hague. I warned both your deputy and the Dutch prosecutor not to vulgarize the investigation by setting-up a "straw man" accusation such as a violent murder or poisoning. The lines you have chosen to describe the "scene of crime" are naïve, vulgar and insulting. The report itself, if made by an independent institution, would have been at the very least disappointing. But, since it's being issued by the Tribunal, the very institution which had a monopoly over my father's health during his time in UN custody, it is shocking. It contains an unexpected number of contradictions. Its contents and conclusions are absolutely unacceptable to the sane mind.

Even if we had suspicions of poisoning, it would be pointless to try and prove them in conditions where the only possible culprit is the investigator. It is as if an accused committed a crime, leads the investigation, and comes to the expected conclusion that he is innocent. An accused may defend himself, but it is quite unusual that the accused himself leads the investigation, as was the case with your investigation and your report.

Should I mention the fact that the autopsy was conducted without the presence of the independent expert team sent by our family, even though we insisted on it? Or that the Russian doctors were denied the access to the body and the tissue samples? Or that we have been denied his blood samples? Now it happens that the Dutch medical institutions and doctors, which have already been gravely compromised in the eyes of the public through their involvement with the ICTY Prosecution in numerous manipulations with my father's health, medical treatment, and respective diagnosis, were the only ones to manage the toxicology tests and announce their results?! Here I must remind you of my father's letter addressed to the Russian Minister of Foreign Affairs, in which he wrote just hours before his death that he suspected he was being poisoned in the UNDU. So here we have a situation where we are witnessing numerous speculations regarding his blood samples, he expresses his worry about it, then he suddenly dies. Now comes this

mysterious autopsy conducted by the very same people that he accused in his last hours, and they conclude that there was no poisoning. How credible does this sound even to you Mr. Parker? It is a pity that I am not in a position to ask Ms. Del Ponte an even simpler question – if he was ill, then why he wasn't he given medical treatment when he asked for it? And if he wasn't ill, then why did he die?

I understand that the you have set-up this straw-man accusation of poisoning, and now by finding that there was no poisoning you assert that the ICTY has been relieved of all responsibility for my father's death. Nevertheless, an unquestionable truth remains before the public, the image of my father addressing your so-called "trial chamber" and asking to be allowed medical treatment, and the "presiding judge" responding that he will not listen to him.

The question isn't whether or not my father was murdered or poisoned. The point is that a former head of state, being held in UN custody, was gravely ill and constantly complaining of his medical condition. His health condition was assessed many times by medical experts as be dire. He was denied adequate (if any) medical treatment, and then he died. At the same time those who denied him treatment were undeniably aware of what the consequences would be. He asked for provisional release to receive medical treatment. Dr. Shumilina warned on November 6th that his condition was so critical that he could die at any moment. Although you claim in your report (among many other contradictions, which I will not quote by number in this letter) that there was no suggestion by my father's doctors that cardiac surgery was needed, even in your own report, in paragraph 65., you write:

(«On 20 December 2005 a formal motion was filed seeking Mr. Miloševic's provisional release to enable medical treatment at the Bakoulev Scientific Centre for Cardiovascular Surgery in Moscow. In addition to the reports of the three visiting doctors from November, a further email of Dr Shumilina dated 19 December 2005 to an assigned counsel for Mr. Miloševic was relied on. In this email Dr Shumilina recommended the following additional tests: a complex ultrasonic of the vascular pathology, especially brachiocephal arteries and veins; echocardiography and stress echocardiography; Holter monitoring and daily monitoring of the blood pressure; "estimation" of the homeostasis: investigation of the brachiocephal and coronary vessels with contrast media; and PEI (position-emission imaging) of the brain and of the heart. ***Her email also indicated that endovascular or surgical decompression of the right vertebral artery, the stenting of brachiocephal or cardial arteries, carotid endarterectomy, or even bypass surgery may be necessary to perform.»)***

-

The guaranties had been granted, and the ICTY ignored all of it. Obviously deliberately for they were aware of all the facts, both general and subtle. So he died.

The Tribunal, and everyone in charge, has committed a deliberate murder. They condemned him to death on February 24th when they rejected his request for provisional release, ignoring everything: his health condition, his rights, and the warnings of his doctors, which unlike the jail physician hired by the ICTY, had both – unquestionable competence and expertise, as well as his confidence. Ignoring even the guarantees of The Russian Federation (by the explanation that those guarantees lacked credibility, it seems that the Tribunal has given itself the mandate to evaluate the credibility of even the Security Council's permanent member states). The ruling handed down on February 24th came into effect on March 11th. That is the fact and the truth. Any other speculation is just evasive political maneuvering.

The statements and opinions of the ICTY Prosecution and the Dutch doctors have been completely disqualified. The Dutch doctors are going to be criminally prosecuted before the courts of their country. Ms Del Ponte was so keen to qualify my father as a guilty even though the trial had not been completed as to insist on his "suicide" before the autopsy had even taken place. In such circumstances, both the Dutch doctors and the entire Office of the Prosecutor lack any credibility for matters concerning my father, from responsibility for the crimes he was accused of to the circumstances of his death.

It is obvious that even without poisoning, murder, or anything similar, but with heart failure which you consider to be a "natural" death that the ICTY and the UN who created it bears the sole responsibility for my father's death.

That "court" had already committed a series of violations against my father. It violated every rule and regulation known

31-8-06

o modern civilization, both East and West. It failed to even comply with its own statute and rules. It ignored the guaranties given by permanent members of the UN Security Council, the very organ which created the ICTY. And finally, it deliberately led my father to his "natural" death.

As if that wasn't enough, you produced this grotesque "investigation" which found that "he was not murdered"! With all this, it is clear that the Organization of United Nations will have to take the responsibility for the death of former President of Federative Republic of Yugoslavia and that the ICTY will have to be disbanded, as I told your deputy four months ago. I do not accept the explanations offered in your report. I find it visibly tuned to suit the ICTY Prosecutor's Office, and most importantly it is obvious that it was produced to relieve the ICTY of responsibility, not to show the truth or bring justice.

I expect the superior organs of the Organization of the United Nations to reject your report and reconsider the legitimacy of ICTY, as well as the behavior and performance of its staff. I also expect that, for the sake of the integrity and credibility of OUN, that the ICTY will be brought to end.

Marko Milosevic
July 17, 2006

Sagittarius

Van: <crveno@yubc.net>
Aan: <sagitar@hetnet.nl>
Verzonden: vrijdag 22 september 2006
Onderwerp: Team to defend V. Seselj

Dear Mr. Steijnen,

My name is Elena Talijan. I am from Belgrade, Serbia.
I am a head of team of investigators which is operating within the Defense Team of Vojislav Seselj.
Bearing in mind your understanding of Milosevic's case, I assume that you are familiar with Seselj’s case as well.
International Criminal Tribunal for the former Yugoslavia pressed charges against Mr. Seselj and he has been waiting in temporary arrest for the trial to begin for four years now. He made a decision to represent himself before the court. Mr. Seselj is an excellent lawyer, he has a PhD in Law and he possesses an abundant law-related knowledge. He is also a well - educated person in general terms. He is absolutely capable and ready to represent himself. However, the Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia made a decision on August 21, 2006 to impose a Counsel to Vojislav Seselj and thus violated Seselj’s inviolable right to self - representation. The Trial Chamber I gave the Counsel they enforced upon him the exclusive right to file submissions. Mr. Seselj is also deprived of any right to address the court.

The Defense Team of Vojislav Seselj is gathering opinions and positions of experts, authorities, lawyers, professors, about Tribunal’s violating Seselj’s right to self - representation. Our intention is to publish that material.
If you are willing and have time to give us your opinion,
we will be very grateful.
If it is not too inconsiderate, we would like to ask you for a one more favor - to forward our request to your colleagues, friends, and to help us to expand our work.

Sincerely yours,

Elena Talijan,
crveno@yubc.net ;
Mobile phone,
Serbia: 063/374-306

http://webmail.yubc.net

Sagittarius

Van: "R. Despotovic" <despot@tiscali.nl>
Aan: "Sagittarius" <sagitar@hetnet.nl>; "Jenny Ligtenberg"
Verzonden: vrijdag 22 september 2006 21:57
Onderwerp: Fw: (1) Foul Play at Hague; (2) Did Saudi Terrorist Fund Izetbegovic?

----- Original Message -----
From: Yugoslav Reports
To: despot@wish.net
Sent: Friday, September 22, 2006 1:49 AM
Subject: (1) Foul Play at Hague; (2) Did Saudi Terrorist Fund Izetbegovic?

Yugoslav Reports * 21 September 2006

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I - Despite Evidence of Foul Play, Prosecutors Plan Not to Reopen Inquiry into Krajina Serb Leader Milan Babic's Death in Hague Tribunal Prison
Associated Press

II - Did Accused Saudi Terrorist Paymaster Fund Alija Izetbegovic?
Adnkronos International (AKI)

Despite Evidence of Foul Play, Prosecutors Plan Not to Reopen Inquiry into Krajina Serb Leader Milan Babic's Death in Hague Tribunal Prison

Source: "Prosecutors will not reopen investigation into death in U.N. custody of senior Croatian Serb," Associated Press Worldstream, September 14, 2006 Thursday, 11:39 AM GMT, INTERNATIONAL NEWS, 458 words, By MIKE CORDER, Associated Press Writer, THE HAGUE Netherlands

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THE HAGUE Netherlands --

Dutch forensic experts can't explain why a mark on the neck of wartime Croatian Serb leader Milan Babic was not as wide as the belt he used to hang himself in his U.N. cell, but prosecutors say they have no plans to reopen investigations into his death.

In a supplementary report into Babic's suicide obtained Thursday by The Associated Press, [Hague Tribunal] Judge Kevin Parker said there would be no new Dutch probe, and said in his opinion the U.N. war crimes tribunal also did not need to take further action in Babic's death.

Babic was found March 5 [2006] hanging by his belt in a cell of the U.N. [Hague Tribunal] detention unit with a plastic garbage bin liner over his head. An autopsy ruled he also suffered a heart attack. It was not clear if the heart attack or hanging killed him.

In an earlier report published in June, [Hague Tribunal Judge] Parker concluded that no criminal activity led to Babic's death. The judge also published a suicide note Babic wrote to his wife found tucked into the cover of his Bible.

"Find peace for yourself and don't mourn me. I need peace," Babic wrote before signing "Your Milan" followed by the date and the words: "Let the [sic!] God forgive me."

Parker said in his June report that no one, including Babic's family, his attorneys and U.N. [Tribunal] staff, had noticed signs suggesting he might take his life.

In a report requested by Dutch prosecutors in The Hague, the Netherlands Forensic Institute said it was "exceptionally uncommon" that a mark left on Babic's neck was narrower than his belt but added, "it is not considered to be completely impossible."

Generally in a hanging, they would expect the mark to be roughly the same width or slightly wider than the belt.

They said one possible explanation was the treatment of the

corpse to ensure it did not decompose too quickly.

The report said products such as embalming fluid could cause the skin to shrink, and it wasn't clear whether the damaged skin on Babic's neck had been treated with such a product "to prevent the onset of decay."

At the time of his death, Babic was serving a 13-year prison sentence after striking a plea agreement with tribunal prosecutors in which he promised to cooperate in other trials. He had been summoned back from a prison outside the Netherlands, and had been testifying for several weeks before he took his life.

Babic's death came just a week before former Yugoslav President Slobodan Milosevic died in the same detention unit, sparking theories in Serbia they may somehow have been killed.

Milosevic's widow Mirjana Markovic said her husband was "killed by The Hague tribunal." Authorities ruled he died of a heart attack. Other theories at the time of Milosevic's death were that he was poisoned or deliberately took unprescribed medication in an effort to be transferred to Russia for treatment.

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Emperor's Clothes * www.tenc.net
Yugoslav Reports * http://emperors-clothes.com/yr/index.htm

I - Despite Evidence of Foul Play, Prosecutors Plan Not to Reopen Inquiry into Krajina Serb Leader Milan Babic's Death in Hague Tribunal Prison
Associated Press

II - Did Accused Saudi Terrorist Paymaster Fund Alija Izetbegovic?
Adnkronos International (AKI)

Despite Evidence of Foul Play, Prosecutors Plan Not to Reopen Inquiry into Krajina Serb Leader Milan Babic's Death in Hague Tribunal Prison

Sagittarius

Van: "Ian Johnson" <i-johnson@lineone.net>
Aan: <Undisclosed-Recipient:;>
Verzonden: dinsdag 21 november 2006 23:47
Onderwerp: CDSM: Letter to Kofi Annan from ICDSM

Rome 27th August 2006.

To the attention of Mr. Kofi Annan, UN Secretary General, Esq.

Respectable Secretary General

Although we are perfectly aware that the serious problems afflicting peoples and countries on this planet require all your attention and efforts, we turn to you knowing that our appeal, as Partisans in the Resistance against Nazi-fascism, will not leave you unmoved.

As you very well know, we have fought against injustice and racism in the name of Peace and cooperation among countries of all continents, always respecting the different national realities.

It's injustice, Mister General Secretary, that still raises our militant indignation!

We would like to talk about Mr. Slobodan Milosevic, the Yugoslav President. Let's avoid any comment on his arrest: if the so called ICTY had followed the same procedure, many other Heads of State should have been – and should be – held responsible for massacres, genocides, assaults on defenceless peoples, pollution, sea destruction and much more.

We now demand your authoritative intervention so that all those responsible for FAILURE TO ASSIST will answer in court for their behaviour which caused the untimely and avoidable death of Mr. Slobodan Milosevic.

It was murder, Mr. Secretary General, and we reserve the right to institute a civil action against the above mentioned killers. We cannot – and do not want to – shirk our duty to cast light upon the deplorable practise of "failure to assist", which is considered a crime by all civil, penal and moral codes in the world.

We believe that the Milosevic family, together with millions of citizens who esteemed and mourned him in Yugoslavia, in Serbia and all over the world, deserve al least an honest clarification and an appropriate sentence passed on to all those responsible.

Thanking you for your kind attention, we hopefully await your just and necessary intervention.

Our best regards

ICDSM President

Mrs. Miriam Pellegrini Ferri

Sagittarius

Van: "Ian Johnson" <i-johnson@lineone.net>
Aan: <Undisclosed-Recipient:;>
Verzonden: donderdag 23 november 2006 21:49
Onderwerp: CDSM: Serbian Court Jumps to its Master's
MAKFAX

Region

Serbian Court raises charges against 38 Milosevic's aides

Belgrade, 17:37

A Belgrade's Court raised charges against 38 persons for obstructing apprehension of the former Serbian President Slobodan Milosevic in March 2001.

The President of the non-parliamentary Serbian Party of Socialists, Sinisa Vucinic, and President of the "Sloboda" Association, Bogoljub Bjelica, are included in the list of those charged.

The indictment accuses the defendants of having obstructed Milosevic's arrest at "Peace" residence located in Belgrade's district of Dedinje.

Milosevic was arrested on 31 March 2001 after several-hour siege, upon charges of financial frauds.

A month later, he was transferred to The Hague detention center, where he died in March 2006, several months ahead of the estimated completion date of his trial for war crimes committed in former Yugoslavia

Sagittarius

Van: "Ian Johnson" <i-johnson@lineone.net>
Aan: <Undisclosed-Recipient:;>
Verzonden: maandag 15 januari 2007 19:42
Onderwerp: CDSM: New Book - Travesty - by John

TRAVESTY
The Trial of Slobodan Milosevic and the Corruption of International Justice
John Laughland

ISBN: 9780745326351 Paperback
Price: £14.99 / $24.95 / €22.00

ISBN: 9780745326368 Hardback
Price: £50.00 / $90.00 / €75.00

Publication Date: December 2006

Pages: 232pp **Size:** DEMY (215x135mm)

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Description.

A passionate critique of Milosevic's trial and the PR machine at the heart of international justice -

'Study this story. ... The truth is hard to find, but in John Laughland we are fortunate to have a man blessed with the freedom to seek all facts, and the desire to find the truth.' Ramsey Clark, from the Foreword

Slobodan Milosevic died in prison in 2006 during a four-year marathon trial at The Hague for war crimes. John Laughland was one of the last Western journalists to meet him. He followed the trial from the beginning and wrote extensively on it, challenging the legitimacy of the Yugoslav Tribunal and the hypocrisy of 'international justice' in the Guardian and The Spectator.

In this short and readable book Laughland gives a full account of the trial – the longest criminal trial in history – from the moment the indictment was issued at the height of NATO's attack on Yugoslavia to the day of Milosevic's mysterious death in custody.

Sagittarius

Van: "Ian Johnson" <i-johnson@lineone.net>
Aan: <Undisclosed-Recipient:;>
Verzonden: vrijdag 19 januari 2007 0:01
Onderwerp: CDSM: Blair's other illegal war - Neil

http://commentisfree.guardian.co.uk/neil_clark/2007/01/blairs_earlier_illegal_war.html

Blair's other illegal war

Before the invasion of Iraq the PM also played a key role in an act of international aggression against Yugoslavia - and a dangerous precedent was set.

Neil Clark

January 18, 2007
Pop the champagne corks! Get out the cigars! At last! Tony Blair is standing trial for war crimes. Well, at least on Channel 4 he is, anyway.
But as pleasing as it is to see Blair - or rather Robert Lindsay portraying Blair - in the dock, why is the British PM only being charged with starting one illegal conflict?

Four years before "shock and awe" was unleashed on Baghdad, Blair played a key role in another act of international aggression which, like the Iraq war, was also based on a fraudulent prospectus.

The 1999 attack on Yugoslavia was in clear breach of international law. Only the UN security council can authorise military action against a sovereign state, and the UN security council was not consulted. The attack was also in breach of Nato's own charter, which only allowed the use of force when a member state was attacked.

The stated casus belli was that Yugoslavia, in Blair's own words, was "set on a Hitler-style genocide equivalent to the extermination of the Jews in world war two" against the ethnic Albanian population in the province of Kosovo.

There was no evidence to back this assertion up at the time, and there certainly isn't any today. Over 100 prosecution witnesses were called at the trial of Milosevic at The Hague: not a single one testified that the former Yugoslav president had ordered genocide, or in fact had ordered any crimes or violence against the civilian population of Kosovo whatsoever. On the contrary, a Muslim captain in the Yugoslav army testified that no one in his unit had ever committed systematic harassment of Albanian civilians in Kosovo, and that he had never heard of any other unit doing so either, while the former head of security in the Yugoslav army, General Geza Farkas (an ethnic Hungarian), testified that all Yugoslav soldiers in Kosovo had been handed a document explaining international humanitarian law, and that they were ordered to disobey any orders which violated it.

In reality, the "Kosovan crisis" was as contrived as the Iraqi "WMD crisis" of four years later. The west encouraged a terrorist group, the KLA, to provoke the Yugoslav authorities, and when the anti-terrorist response from Belgrade came, the US and Britain were ready to produce a document at the Rambouillet "peace" conference, which as defence minister Lord Gilbert has conceded, was deliberately designed to be rejected by the Yugoslavs.

Why was it all done? The rump Yugoslavia was targeted not for "humanitarian" reasons - as many on the liberal-left still mistakenly believe - but simply because it stood in the way. You don't have to take my word for it - here's George Kenney of the US state department. "In post-cold war Europe no place remained for a large, independent-minded socialist state that resisted globalisation."

The illegal war against Yugoslavia may not have led to as much bloodshed and carnage as the Iraq conflict, but its importance should not be underestimated. For the first time since Warsaw Pact tanks rolled into Czechoslovakia in 1968, a European state, which threatened no other, had been attacked.
A dangerous precedent - that of riding roughshod over international law - had been set.
Just how dangerous, we would all see four years later.

29-1-07

Van: "Sagittarius" <sagitar@hetnet.nl>
Aan: "guido cramer"
Verzonden: maandag 29 januari 2007 14:50
Onderwerp: Re:

Geachte heer Cramer,

Helaas zult u het moeten doen met wat ik al geschreven heb.Ik heb geen gelegenheid om nader over e.e.a. met wie dan ook in schriftelijk debat te treden> Daartoe ontbreekt mij te enen male de tijd, nu uw vragen immers ook zo gedetailleerd zijn dat een nader daarop in gaan nogal wat plaatsruimte en tijd zou vergen.

Wel wijs ik u op nog een nieuw pas verschenen boek over dit onderwerp, dat uitvoerig ingaat op het proces:

TRAVESTY, The Trial of Slobodan Milosevic and de Corruption of International Justice van John Laughland, ISBN 9780745326351

Met vriendelijke groet,

N. Steijnen
----- Original Message -----
From: "guido cramer" <guidoarnhem@hotmail.com>
To: <sagitar@hetnet.nl>
Sent: Saturday, January 13, 2007 11:33 AM

\> geachte meneer steijnen,
\>
\> ik heb uw betoog over het joegoslavie-tribunaal gelezen. u meent dat er
\> sprake is van van een zeer nauwe band tussen het joegoslavie-tribunaal en
de
\> NAVO. zou u mij deze onderlinge relatie kunnen verduidelijken?
\> ik onderzoek op dit moment voor een schoolopdracht het
\> joegoslavie-tribunaal. ik heb uw betoog meerdere malen gelezen, en ik denk
\> dat u zeer overtuigend bewijs heeft, kunt u uw aanklacht tegen het
tribunaal
\> jegens objectiviteit en onafhankelijkheid nader verklaren?
\>
\> u zegt dat het tribunaal een grove fout heeft gemaakt door Slobodan
\> Milosevic het recht te ontnemen zichzelf te verdedigen. ik ben niet zo
thuis
\> in de rechten van de aangeklaagde, maar ik heb begrip voor uw mening. aan
de
\> andere kant, het proces tegen Milosevic is meerdere malen stil gelegd
wegens
\> gezondheidsproblemen bij de heer Milosevic. kunt u dan verklaren waarom
het
\> tribunaal een fuot heeft begaan?
\>
\> zou ik u bovendien nog enkele vragencmogen stellen?
\>
\> het feit dat het tribunaal de navo-bombardementen afwimpelt en de
\> beschuldiging van niet objectief en niet onafhankelijk te zijn. kunt u dit

> zeggen aan de hand van slechts eerdergenoemde argument?
>
> Is een periode van 5 jaar om belastend bewijsmateriaal tegen Slobodan
> Milosevic te vinden lang?
> Milosevic is in 1999 aangeklaagd voor oorlogsmisdaden, 19 februari 2004,
> bijna 5 jaar later dus, had het tribunaal zijn belastend bewijsmateriaal
> gereed. is dit uitzonderlijk lang? VN-waarnemers en dergelijke mochten nl
> Servie niet betreden. pas toen de NAO in 1999 daar bombardeerde,
corrigeert
> u mij als nodig is. het was dus erg moeilijk om bewijmateriaal te vinden
>
>
> Ik hoop dat u tijd kunt vinden in de komende dagen om mijn mail te
> beantwoorden
>
> hartelijk dank
>
> mvg
>
> Guido Cramer
>
> guidoarnhem@hotmail.com
>
> ____
> Windows Live Mail: Kies je eigen kleur, indeling en contacten!
> http://imagine-windowslive.com/mail/launch/default.aspx?Locale=nl-nl
>

Sagittarius

Van: "Ian Johnson" <i-
Aan: <Undisclosed-Recipient:;>
Verzonden: vrijdag 2 februari 2007 19:19
Onderwerp: CDSM: Excerpt from Neil Clark's Blog

neilclark66.blogspot.com

Excerpt from Neil Cark's blog 1st Feb 2007:

The Truth about Slobo

An excellent review by Anthony Daniels of "Travesty", Dr John Laughland's new book on the show-trial of Slobodan Milosevic, appears in the new edition of The Spectator.

"No evidence worthy of the name was ever produced against Milosevic, despite huge expenditure and despite the arbitrary extensions of time the prosecution was granted in the hope that something really damning would turn up to prove its case. Nothing ever did. Does anyone doubt that, had there been knock-down evidence against Milosevic, it would not have been trumpeted around the world? In the event, many of the prosecution's star witnesses gave evidence that exculpated Milosevic entirely."

Yet despite all of this, pro-war writers continue to talk of Milosevic's 'genocidal aggression'. (Oliver Kamm, a man who will need no introduction to readers of this blog, makes the claim regularly, while Nick Cohen, in his recently published pamphlet 'What's Left', berates sections of the left for siding with Milosevic's democratically elected Yugoslavian government instead of championing the cause of radical Islamic separatists linked to bin Laden.

It is time all those who continue to make unsubtantiated claims regarding Milosevic's 'crimes' either shut up or produce evidence . As Anthony Daniels says, after four years at The Hague, no evidence of any note was produced against Milosevic. If Messrs Kamm and Cohen do possess proof of Slobo's 'genocidal aggression', or his ordering of war crimes, then the very least they can do is to make it public.

UPDATE: On the subject of Cohen, here's an extract from a sales-pitch for his new book he made yesterday on the Guardian's Comment is Free website:

Journalists wondered whether the Americans were puffing up Zarqawi's role in the violence - as a foreigner he was a convenient enemy - but they couldn't deny the ferocity of the terror. Like Stalin, Pol Pot and Slobodan Milosevic, they went for the professors and technicians who could make a democratic Iraq work.

If like me, you are curious as to which 'professors and technicians' Slobodan Milosevic 'went for', Cohen can be contacted at nick@nickcohen.net.

4-2-07

Sagittarius

Van: "Ian Johnson" <i-johnson@lineone.net>
Aan: <Undisclosed-Recipient:;>
Verzonden: vrijdag 2 februari 2007 21:16
Onderwerp: CDSM: Proposed EU legislation - an attack on historical

Our last CDSM post highlighted our friend Neil Clark's blog (see neilclark66.blogspot.com) and his 1st February 2007 piece attacking the unsubstantiated claims regarding President Milosevic's alleged 'war crimes' and asking for the accusers to produce any evidence of such.
This was a quite reasonable request considering that no evidence of note has ever been forthcoming and indeed has proved a task that was beyond the capabilities of the heavily funded Hague tribunal with its 1300 prosecution staff, was beyond all the western security agencies, and beyond all the western governments.
What Neil Clark was doing was fighting to establish a true and accurate historical analysis of the Balkans wars against the existing 'official' version as written by the New World Order and its hacks.
However, if newly proposed EU legislation comes into effect then anyone challenging the 'official' version of this conflict could be jailed for three years!
This new legislation is politically driven and designed to overcome the obvious problem of proving what the western leaders claim.

It clearly has implications for all of us. IJ & CK

Here is the Daily Telegraph article on the proposed EU legislation.

http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/02/02/weu02.xml

EU plans far-reaching 'genocide denial' law

By Bruno Waterfield
02/02/2007

People who question the official history of recent conflicts in Africa and the Balkans could be jailed for up to three years for "genocide denial", under proposed EU legislation.
Germany, current holder of the EU's rotating presidency, will table new legislation to outlaw "racism and xenophobia" this spring.
Included in the draft EU directive are plans to outlaw Holocaust denial, creating an offence that does not exist in British law.
But the proposals, seen by The Daily Telegraph, go much further and would criminalise those who question the extent of war crimes that have taken place in the past 20 years.
The legislation will trigger a major row across Europe over free speech and academic freedom.
Deborah Lipstadt, the professor of Modern Jewish and Holocaust Studies at Emory University, Atlanta, believes the German proposals are misplaced. "I adhere to that pesky little thing called free speech and I am very concerned when governments restrict it," she said yesterday.
How will we determine precisely what is denial? Will history be decided by historians or in a courtroom?"
Berlin's draft EU directive extends the idea of Holocaust denial to the "gross minimisation of genocide out of racist and xenophobic motives", to include crimes dealt with by the International Criminal Court.
The ICC was set up in 2002 following international outcry about war crimes and alleged genocides in the former Yugoslavia and in Africa. It was felt that the courts in those countries were either unable or unwilling to ensure justice was done.
The draft text states: "Each member state shall take the measures necessary to ensure that the following intentional conduct is punishable: 'publicly condoning, denying or grossly trivialising of crimes of genocide, crimes against humanity and war crimes as defined in'... the Statute of the ICC."
General Lewis MacKenzie, the former commander of UN peacekeepers in Bosnia, courted controversy two years ago by questioning the numbers killed at Srebrenica in 1995.
He took issue with the official definition of the massacre as genocide and highlighted "serious doubt" over the estimate of 8,000 Bosnian fatalities. "The math just doesn't support the scale of 8,000 killed," he wrote.
Balkans human rights activists have branded Gen MacKenzie an "outspoken Srebrenica genocide denier" and, if approved, the EU legislation could see similar comments investigated by the police or prosecuted in the courts after complaints from war crimes investigators or campaigners.
A German government spokesman said: "Whether a specific historic crime falls within these definitions would be

decided by a court in each case."
If agreed by EU member states, the legislation is likely to declare open season for human rights activists and organisations seeking to establish a body of genocide denial law in Europe's courts.
European Commission officials insist that the legislation is necessary: "racism and xenophobia can manifest themselves in the form of genocide denial so that it is very important to take strong action".
But the legislation faces stiff opposition from academics who fear it would stifle debate over some of the biggest issues in contemporary international relations.
Prof Lipstadt has an international reputation for challenging Holocaust denial.
She was sued unsuccessfully for libel in 2000 by David Irving, the British historian, after exposing his misrepresentation of historical evidence and association with Right-wing extremists. But she does not believe denying the Holocaust or genocide should be a crime.
"The Holocaust has the dubious distinction of being the best documented genocide in history," she said.
"When you pass these kinds of laws it suggests to the uninformed bystander that you don't have the evidence to prove your case."
The professor is also worried by broad-brush definitions of genocide denial, particularly applied to recent conflicts that are still being researched and investigated.
Even without the threat of prosecution, there is concern that academics will try to avoid controversy by ignoring or even suppressing research that challenges genocide claims or numbers of those killed.
David Chandler, the professor of international relations at the University of Westminster's Centre for the Study of Democracy, fears that the draft law could inhibit his work.
"My work teaching and training researchers, and academic work more broadly, is focused upon encouraging critical thinking. Measures like this make academic debate and discussion more difficult," he said.
Prof Chandler also worries that the legislators will close down democratic debate on foreign policy. "Genocide claims and war crimes tribunals are highly political and are often linked to controversial Western military interventions. Should this be unquestioned? Is it right for judges to settle such arguments?" he asked.
Norman Stone, the professor of history at Turkey's KoÃ§ University, argues that any attempt to legislate against genocide denial is "quite absurd".
"I am dead against this kind of thing," he said. "We can not have EU or international legal bodies blundering in and telling us what we can and can not say."

Sagittarius

Van: "Ian Johnson" <i-
Aan: <Undisclosed-Recipient:;>
Verzonden: zaterdag 3 februari 2007 11:48
Onderwerp: CDSM: Virtually a kangaroo court

http://www.spectator.co.uk/the-magazine/books/27707/virtually-a-kangaroo-court.thtml

Virtually a kangaroo court

Anthony Daniels

Travesty: The Trial of Slobodan Milosevic and the Corruption of International Justice

John Laughland
Pluto Press, 214pp, £14.99, ISBN 0745326368
Buy this book at Amazon.co.uk

When Slobodan Milosevic died, more than four years into his trial for war crimes, newspapers around the world said that he had cheated justice. It would have been more accurate to say that he had cheated injustice. Had he lived, the judges would have been faced with an unpleasant dilemma: either to find him not guilty, thus casting a lurid light upon the past activities of their employers, the powers that had brought the tribunal into being in the first place, or to find him guilty and to sentence him to a long prison term on evidence that would not have justified a fine for illegal parking.

As John Laughland shows in this short, lucid and well-written book, the International Criminal Tribunal for the Former Yugoslavia in The Hague was little more than a kangaroo court, though without the very real advantages of that kind of legal establishment, namely speed and economy. The trial of Milosevic cost about $60 million, and the transcript ran to 50,000 pages. These facts alone irresistibly bring to mind Einstein's remark when he was told that 100 Aryan scientists had signed a letter condemning his theory of relativity: if they were right, he said, one would have been enough.

The tribunal made up its own rules as it went along, and then broke them if they proved inconvenient to the prosecution. The judges were men plucked from well-merited obscurity into the world limelight. It allowed the merest tittle-tattle, of the I-heard-it-from-Smith-who-had-it-from-Jones variety, as evidence. When the presiding judge, Sir Richard May, fell ill and resigned four years after the trial started (he may not even have been compos mentis at the end of his reign), the trial was not stopped, as the court's procedure required, but another judge was drafted in who could not possibly have mastered the evidence, if for no other reason that, in the adversarial system, it is not only the verbal, but the non-verbal communication of the witnesses that is taken into account.

Milosevic was, at a very late date, refused the right, fundamental according to conventions on human rights, to defend himself, though he had a degree in law and had demonstrated, with an intelligence and grasp of the issues far superior to that of his accusers, that he was well able to do so. To force counsel upon him towards the end of the trial was little short of denying him the right to a defence, again in violation of the court's own rules.

I think Laughland is mistaken when he says that the 'joint criminal enterprise', part of the indictment against Milosevic, was an inherently trumped-up charge. A man who orders another to murder and supplies him with the gun to do it cannot hide behind the fact that he did not himself pull the trigger. However, the tribunal played fast and loose with the concept of joint criminal enterprise.

For the charge to stick, there must be evidence of the quality that would convict on any other charge, and the court played fast and loose with the very concept of joint criminal enterprise. This is the basic point of the book: no evidence worthy of the name was ever produced against Milosevic, despite huge expenditure and despite the arbitrary extensions of time the prosecution was granted in the hope that something really damning would turn up to prove its case. Nothing ever did. Does anyone doubt that, had there been knock-down evidence against Milosevic, it would not have been trumpeted around the world? In the event, many of the prosecution's star witnesses gave evidence that exculpated Milosevic entirely.

I think this is a very important book — far more important than its immediate subject matter might suggest — because it exposes the very odd, unpleasant, combination of unctuous self-righteousness on the one hand and lack of scruple on the other of the current Western political classes, of all political stripes, which itself is a reflection of a deep malaise in society. It is a spiritual sickness that extends far beyond The Hague tribunal: it has entered the fabric of our daily lives.

Advocatenkantoor Steijnen, Olof & Stelling
Couwenhoven 52-05
3703 ER Zeist
tel. 030-6956867
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Zeist, 4 februari 2007

betreft: de moord op Milosevic

Geachte heer Veltman,

In onze gezamenlijke strijd voor de waarheid inzake de manier waarop de voormalige president van Joegoslavië mr. Milosevic, alsmede het voormalige Joegoslavië, door de westerse grootmachten werd bejegend, leidend tot zijn uiteindelijke dood, heb ik het bijgaande gepubliceerd in het boek "Het Joegoslavië Tribunaal - De vermoorde onschuld van Slobodan Milosevic".

Dit boek, dat ook in andere talen en andere landen is verschenen, is van de hand van de publicist Robin de Ruiter. Ik kreeg van hem ook enkele present-exemplaren, gelet op onze samenwerking. Mocht u belangstelling hebben voor dit boek als geheel, wilt u mij dat dan laten weten, dan stuur ik ook u een present-exemplaar.

Voor wat uw zoektocht verder oplevert, houd ik mij aanbevolen. De eerstvolgende stap die ik nu wil zetten is, om in overleg met zijn familie en directe nabestaanden, verdere juridische aktie te ondernemen.

hoogachtend,

N.M.P. Steijnen

Van: "R Despotovic" <despot@tiscali.nl>
Aan: "Nico en Neeltje" <nico.s@slobodan-milosevic.org>; "Jenny Ligtenberg"
Verzonden: dinsdag 13 februari 2007 17:43
Onderwerp: Fw: Travesty: The Trial of Slobodan Milosevic and the Corruption of International Justice

---- Original Message ----
From: nebojsa
To: nebojsa
Sent: Thursday, February 08, 2007 11:50 AM
Subject: Travesty: The Trial of Slobodan Milosevic and the Corruption of International Justice

http://www.lewrockwell.com/orig6/laughland3.html

February 7, 2007

Travesty: The Trial of Slobodan Milosevic and the Corruption of International Justice

by John Laughland
by John Laughland

This is the introduction to John Laughland's new book, Travesty: The Trial of Slobodan Milosevic and the Corruption of International Justice.

Introduction

When the indictment against Slobodan Miloševic, President of the Federal Republic of Yugoslavia, was announced by the International Criminal Tribunal for the former Yugoslavia in The Hague on Thursday, 27th May 1999, it created an instant sensation around the world. The indictment was published two months after NATO, the world's most powerful military alliance, had started raining down bombs on the small state of Yugoslavia on 24th March 1999. The bombing campaign was to last until early June. The world's television screens had been filled with highly emotive pictures of refugees fleeing into Macedonia and Albania, and the Western media had been saturated with NATO's war propaganda about atrocities being committed against the civilian ethnic Albanian population of the Southern Serbian province of Kosovo. The first indictment in history by an international tribunal of a sitting head of state for war crimes and crimes against humanity greatly bolstered NATO's cause.

Miloševic was in fact only one of five Yugoslav leaders to be indicted. Since he was the President, and since he seemed to be the central figure in the Balkan wars which had started to rage in 1991, his indictment and subsequent trial attracted the most attention. However, the fact that the indictment named many of the leading political and military officials in Yugoslavia emphasised its unique constitutional importance. Just as the declared purpose of NATO's bombing campaign was to overturn the existing international system – to abolish national sovereignty as the cornerstone of international law, and henceforth to allow military attacks on states which were said to be abusing universal human rights – so the criminal condemnation of the entire war policy of the Yugoslav state by the ICTY Prosecutor, and the approval of that indictment by the ICTY judges, were clear signals that international law would no longer be based on the principle of state sovereignty. NATO's war and the indictment of Slobodan Miloševic were therefore ideologically linked at the deepest possible level. In fact, they were two sides of the same coin – a state of affairs conveniently emphasised by the fact that, during the bombing, the ICTY web site helpfully carried a link to NATO on its home page.

The unprecedented indictment was eventually to lead to a trial which was itself unique by almost every measure. The Miloševic trial was the longest criminal trial in history, having lasted for four years from February 2002 until Miloševic's death in his cell on the morning of Saturday, 11th March 2006. Its duration contrasts with the Nuremberg trial of twenty leading Nazis, which lasted just ten months from 20th November 1945 to 30th September 1946. By the end of the trial, the transcripts ran to just under 50,000 pages and nearly 300 witnesses had testified. The Filings, exhibits, documentation, DVDs and videos presented at the trial ran to a total of more than 1.2 million pages.[1] If a person sat down and tried to read all this material, reading at a rate of one page a minute, eight hours a day, 365 days a year, it would take him over seven years to accomplish his task. In other words, it is an impossible task: the total amount of material submitted in the Miloševic trial has never been read by any single individual and the trial was therefore Kafkaesque in the true sense of the term. The cost of the trial was concomitantly enormous. The budget of the International Criminal Tribunal for the former Yugoslavia runs at nearly US$300 million a year. There are no official figures for the cost of specific trials but one estimate is that 20% of the ICTY's costs went on the Miloševic trial, or some $20–$30 million a year for six years.

The trial was attended by some of the world's most powerful people and many of the major players in the Yugoslav wars. The Presidents of Croatia and Slovenia, the former President of the Federal Republic of Yugoslavia (Miloševic's predecessor), former Prime Ministers of Yugoslavia and of the Soviet Union, the Chief of Staff of the Russian army, the former Supreme Commander of NATO, the High Representative of Bosnia-Herzegovina, and the EU's special envoy during the Balkan wars all came to testify: most of their appearances in The Hague were ignored by the world's media. Tony Blair, the British Prime Minister, and Gerhard Schröder, the former German Chancellor, were also called to attend for cross-examination by Miloševic, but they refused to do so and the ICTY judges refused to issue subpoenas to force them to testify. The Presiding judge, Sir Richard May (who had stood as Labour Party candidate against Margaret Thatcher in the constituency of Finchley at the General Election of 1979 which brought Thatcher's Conservative government to power) died two years into the proceedings; instead of being allowed to collapse, the trial continued.

Miloševic himself died in custody, the seventh defendant at the ICTY to have died either in The Hague or shortly after release. He had been in poor health throughout and yet, instead of releasing him on compassionate grounds as the British authorities had done to General Pinochet (after having detained him for months on the basis of an arrest warrant issued by a Spanish magistrate), the ICTY judges used his illness as an excuse for taking the unprecedented decision to impose a defence lawyer on their most famous defendant. This means that, in international law, a sick man can now be convicted on the basis of a trial at which he has been 'represented' by a lawyer whom he has in fact not appointed and whom he does not instruct. He can even be tried *in absentia*, as Miloševic himself was. As the ICTY itself admitted, there is no precedent anywhere in national or international law for such measures. Staff at the ICTY added insult to injury when they alleged, after his death, that Miloševic had deliberately damaged his own health by taking medicine which had not been prescribed.

In spite of the fact that the trial cast light on some of the most interesting and widely-discussed events of the end of the 20th century, the proceedings were effectively ignored by the world's media. Indeed, many members of the public had forgotten that Miloševic was even still on trial when he died in March 2006. The only partial exceptions to this media silence came when the Prosecution announced that some 'star witness' was due to appear, or that some 'smoking gun' piece of evidence was due to emerge. In fact, neither of these ever did. On the contrary, many of the Prosecution witnesses backfired. Whereas supporters of international criminal justice had written excitedly at the beginning of the trial that it was to be 'the world's most closely watched criminal proceeding since the trial of O. J. Simpson,'[2] in fact the media quickly lost interest after the initial thrill of more atrocity propaganda had worn off, and when the trial revealed that the facts involved were far more nuanced. During the trial, most of the world's mainstream media behaved as indulgently towards The Hague Tribunal as had human rights activists from the *Ligue des droits de l'homme* who observed the Moscow show trials in the 1930s and reported back that they were models of due process.

Today's *journalistes engagés*, so quick to issue moral condemnations when they are of people whom

everyone loves to hate, seem never to question the procedures and philosophy of the ICTY or of 'international justice' in general. In fact, the rules and procedures of the ICTY are heavily stacked against the Defence and in favour of the Prosecution. The Tribunal is not subject to any meaningful control and, the author of its own rules of evidence, it often bends the law and established procedure to obtain convictions. The underlying assumption often seems to be that 'justice' means a guilty verdict at all costs. In the brave new world of so-called international law, indeed, it has become a banality for Western leaders to demonise the leaders of enemy states, often in order to obscure the atrocities committed by the West itself on their territory. This has led many people in the West to think that they know that Miloševic was guilty as charged, or that he was an evil man, even when they are ignorant about the most basic facts concerning the former Yugoslavia, its wars and the NATO attacks of 1999.

This book argues that the trial was inherently political, and that the political nature of the indictment made a fair trial impossible. The very fact that the trial lasted for four years is itself indication of an unfair trial: compare it to the guidelines laid down by the Lord Chief Justice for England and Wales in March 2005, which say that even the most complex criminal trials should last between three and six months, but no longer.[3] There is unfortunately nothing new about the judicial process being abused to further political goals. All revolutionary forces in modern history have sought to legitimise their regimes with a symbolic murder in the form of a trial and execution of the leader of the old regime. The mere appearance in court of a former king is enough to show that a new regime is in power. Such trials are anvils on which a new political order is supposed to be forged – and they are seldom models of due process. This is why the Miloševic trial's pedigree lies in the great revolutionary trials of the past, organised as it was to emphasise the dawn of a New World Order in international law. NATO and the Western states needed the Miloševic trial to prove that they had torn up the existing rules of the international system and replaced it with a new globalist regime, in which the rights and duties of states had given way to a universal regime of 'human rights.'

History shows that such show trials in fact corrupt the criminal justice system. The destruction of lawfulness, especially if carried out in the name of morality, is a matter of the greatest concern to all of those who are interested in that precious jewel of Western civilisation, the rule of law. For, as Charles Stuart said as he was led to the gallows, 'If power without law may make laws, I do not know what subject he is in England that can be sure of his life or any thing that he calls his own.' The subsequent dictatorship of Oliver Cromwell proved him right. In our own day, the 'war on terror' has shown how an aggressive stance in foreign policy leads quickly to an attack on civil liberties at home. If a culture of condemnation is allowed to pass for 'justice,' then it will not be long before innocent people are judicially lynched in domestic courts as well. This is why a lawyer representing a defendant at The Hague tribunal, who struggled against its destruction of established legal principles, wrote in 1999, 'We are fighting here the battles which were fought to establish the principles enunciated in Magna Carta and the American Constitution. Yet the stakes are much higher this time. For if we fail we will lose the whole world, since there will be nowhere else to hide.'[4]

Notes

1. Figures given by assigned counsel, Steven Kay, Trial Chamber, 29th November 2005, Miloševic trial transcript p. 46701.
2. Michael P. Scharf and William A. Schabas, Slobodan Miloševic On Trial: A Companion, Continuum, New York and London, 2002, p. 3.
3. 'Control and Management of Heavy Fraud and Other Complex Criminal Cases, A Protocol issued by the Lord Chief Justice of England and Wales,' 22nd March 2005.
4. Private correspondence with the author.

February 7, 2007

John Laughland's [send him mail] next book is A History of Political Trials from Charles I to Saddam Hussein *(Peter Lang).*

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Sagittarius

Van: "Ian Johnson" <i-
Aan: <Undisclosed-Recipient:;>
Verzonden: maandag 19 februari 2007 22:45
Onderwerp: CDSM: The BBC School of

THE BBC SCHOOL OF FALSIFICATION

BBC documentary 'Storyville: Milosevic on Trial' – A Review.

This two-part documentary broadcast on the 12th and 14th February 2007, follows other BBC programmes on Yugoslavia such as the BBC Correspondent programme 'Mass Killings in Kosovo' 2002, 'The Fall of Milosevic' in 2003, 'The Real Slobodan Milosevic' shown in 2004, and the airing of the risible, made for TV movie 'The Hunt for Justice – the Louise Arbour Story' made in 2005. Not forgetting the infamous 'Death of Yugoslavia', a BBC documentary heavily relied on by the Prosecution at The Hague Tribunal, which was eventually exposed by Milosevic as having incorrect subtitles.

Despite these numerous documentaries all have a consistent thread running through them, all take an anti-Milosevic, anti-Serb and anti-Yugoslavia approach. And most importantly, all fall in line with British government propaganda.

This should come as no surprise to those conversant with the workings of the British media, and the BBC in particular.

There is an infamous incident involving the BBC that took place during the miners' strike of 1984/85. The main BBC television news showed footage of miners' pickets charging at the police, yet in reality the police, batons raised, had charged into the miners, the BBC had simply reversed the film. At a later date, when the propaganda damage to the miners had been done, the BBC apologised and blamed the error on a 'technical problem.'

More recently of course is the example of Iraq's non-existent 'weapons of mass destruction' whereby the BBC uncritically relayed government press releases as if they were independently verified facts, precipitating the unlawful invasion and occupation of a sovereign country at a cost of many thousands of lives, British, American and Iraqi.

Such a role as the propaganda arm, and at times actual partner, of the British government has been performed by the BBC since its inception.

"In August 1953, a coup covertly organised by MI6 and the CIA overthrew Iran's popular, nationalist government under Mohamed Musaddiq, and installed the Shah in power. The Shah subsequently used widespread repression and torture to institute a dictatorship. The signal for the coup scenario to begin had been arranged with the BBC; the latter agreed to begin its Persian language news broadcast not with the usual 'it is now midnight in London', but instead with 'it is now exactly midnight'." (Web of Deceit' Mark Curtis Vintage 2003).

In his book 'Web of Deceit' author Mark Curtis touches on the role of the media and in particular the BBC, and his comments are worth noting:

"The framing of discussion on issues is critical in setting the boundaries of debate. The (BBC) programme 'Question Time' is a microcosm of how the media works here,,,(I)t is acceptable for 'Question Time' panellists to criticise each other from within the elite consensus but not for anyone to criticise all of them from outside that consensus.

'Question Time' highlights that a major aspect of the ideological system is restricting debate to the best way of managing the existing system and excluding – or marginalising – the possibility of alternatives... ....In foreign policy, the choice has simply been

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presented as whether Labour or Conservative should manage the same set of policies within the single ideology... ... .The evidence is overwhelming that BBC and commercial television news report on Britain's foreign policy in ways that resemble straightforward state propaganda organs."

Domestically the credibility status of the BBC is such that when the broadcasting giant gives, for instance, a figure for the numbers in attendance at an anti-war demonstration, people as a rule just double the BBC figure to come up with a more accurate assessment.

Similarly in industrial disputes, the people fighting for their jobs or a living wage know from bitter experience how the BBC will report their dispute.

It comes as no surprise therefore to find that the BBC's latest offering on the Balkans, a documentary in the Storyville series 'Milosevic on Trial' follows the same bias as their previous output.

The documentary boasts from the start that it has 2000 hours of court footage from the Milosevic trial at the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Hague, together with extensive behind the scenes footage. To the observant viewer this should immediately be cause for concern.

If the ICTY was allowing a film crew such access then it must have been doubly sure that the end result was assured, that it would not raise difficult questions, such as the ICTYs dubious legality, and would cast the Tribunal in a favourable light, otherwise they would not dare risk such an intrusion into the workings of this western funded court.

In Nick Fraser, the Storyville series commissioning editor, they had indeed no reason to worry. Fraser had already commissioned the 2002 documentary, the quaintly titled 'Milosevic: How to be a Dictator' (which is a strange title for a person who has won three undisputed elections), and had commissioned Team Production of Denmark and its director Michael Christoffersen for this new task.

Christtoffersen already had on his CV the film 'Genocide: The Judgement' made in 1999 at the ICTYs sister tribunal in Rwanda from which he apparently obtained glowing references and is currently working on a film about the trial of Saddam Hussein, again with the apparent support of the occupying regime.

Fraser's comments on the Storyville website really give the game away as to the complete lack of objectivity in the making of the 'Milosevic on Trial' documentary. He states:

"On one side Slobodan Milosevic- nationalist, communist politician, thug; on the other side suave British QC Geoffrey Nice."

"The best thing to do for him (Milosevic) is to die before the judgement can be passed... .and that is exactly what he does.'

In regard to the first sentence above, a very astute blog contributor suggested that an alternative description (and a more accurate one) would be:

"On one side Milosevic- statesman, pragmatic politician, man of principle; on the other side personal injuries specialist-sometimes referred to as ambulance chasing- British QC Sir Geoffrey Nice who left the Hague under a cloud following allegations of sexual harassment.'

(The above description of Mr Nice is obviously inspired by the news reports that surrounded his departure from the ICTY in April 2006 and his subsequent knighthood from the British government in January this year).

In regard to Fraser's shameful second sentence, any further comment would be superfluous.

As to the contents of the documentary itself, they prove to be merely regurgitation of old and much discredited western propaganda. Such is the media's contempt for the truth however, that stories long since exposed as having no foundation in reality, are aired once again as if they had never been refuted nor

challenged in the intervening years. It is very tempting therefore to simply dismiss the contents of this documentary out of hand. However we have a responsibility to the historical record to once again tackle this insidious propaganda.

The BBC documentary approached the difficult problem of presenting damning evidence against Mr Milosevic in a rather unsubtle manner. Their strategy was to show selective snippets of witness testimony and then via narration, more often than not from Prosecution QC Geoffrey Nice, explain the significance of it to the viewer. This approach has the effect of shaping the viewers perception of events and particularly of never showing the whole story, rather like the dial-up connection to the Internet when the picture slowly downloads and as you see part of it it can appear different than when you see the picture fully downloaded. In essence the documentary's task was to prevent the disclosure of the full picture.

The snippet shown from the testimony of Rade Markovic is a case in point.

RADE MARKOVIC.

'Milosevic on Trial' showed excerpts from the testimony of Rade Markovic, former head of the Department of State Security of the Serbian Ministry of the Interior. Mr Markovic was a prosecution witness and the excerpts pertained to the command structures existent in the Federal Republic of Yugoslavia. The Prosecution was apparently trying to establish if any orders had come down the chain of command that could assist with the indictment against Mr Milosevic. After a brief extract of testimony was shown, the narration intimated that it was satisfactory evidence for the Prosecution. Yet here are brief excerpts from the actual trial transcripts of the cross-examination of Mr Markovic on 26th July 2002, which is unambiguous:

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16 Cross-examined by Mr. Milosevic:

17 Q. [Interpretation] Radomir, you read countless reports which, along

18 a variety of lines, were submitted by members of the state security sector

19 and which, through respective administrations, were all funneled to the

20 central headquarters; is that correct?

21 A. Yes.

22 Q. Since heads of state security services of every country are

23 usually the best-informed people in that country, and especially in view

24 of all those reports, did you ever get any kind of report or have you ever

25 heard of an order to forcibly expel Albanians from Kosovo?

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1 A. I never got such a report, nor I --

2 JUDGE MAY: I'm going to interrupt you, for this reason: That both

3 you and the accused speak the same language. Everything has got to be

4 interpreted. So would you pause between his question and your answer.

5 And Mr. Milosevic, will you remember to do the same, kindly.

6 Yes. If you'd give your answer.

7 A. No, I never heard of such an order, nor have I seen such an order,

8 nor was it contained in the reports I received. Nobody, therefore, ever

9 ordered for Albanians from Kosovo to be expelled.

10 Q. Did you receive any information which would point to such a thing,

11 to the existence of an order, a plan, a decision, a suggestion, or a de

12 facto influence that Albanians from Kosovo were to be expelled?

13 A. No, I never heard of such a suggestion. I know of no plan or

14 design or instruction to expel Albanians from Kosovo.

And:

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14 Q. Is it true that whenever there was a suspicion or it was obvious

15 that a member of the police or the army had committed any sort of criminal

16 offence, there was no discussion at all? Legal measures were taken

17 immediately, in accordance with the law, criminal reports were filed and

18 went through the due process?

19 A. I believe that over 200 such criminal reports were actually filed

20 against members of the service, and they were prosecuted. It is also

21 known from reports of the army of Yugoslavia that they did the same thing,

22 and the number of their own criminal reports was close to ours, if not

23 higher.

The above two extracts, from a witness for the prosecution, is testimony to the fact that not only was there no policy to expel civilians from Kosovo but on the contrary, any police or army personnel responsible for committing any sort of criminal offence were prosecuted accordingly. You would never have gathered this from the BBC documentary though.

However this was not the most revealing thing about the testimony of Mr Markovic. Again the extracts below are taken from actual trial transcripts.

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7 Q. Let me just take a look here at my notes.

8 First of all, I would like to continue along the following lines:

9 I mentioned your interview with two committees of the parliament of

10 Yugoslavia, the assembly of Yugoslavia. Is it correct that you were

11 arrested only so that by exerting pressure against you, they could accuse

12 me?

13 A. Yes. That's why they arrested me.

14 Q. Here, when you talked to two committees of the parliament of

15 Yugoslavia, you say: "They asked me to accuse Slobodan Milosevic and to

16 admit to criminal acts and to say that I was instructed by Slobodan

17 Milosevic thereof."

18 Is that correct?

19 A. That's correct. I was told that in that case I would not be the

20 one who would be held accountable but that I could choose a country where

21 I would live and that I could get a new identity and that it was

22 indispensable to accuse you so that you would be tried in the country.

And:

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15 After having spent four months in detention, I was taken out, and

16 that's when I had this meeting with the head of state security, Goran

17 Petrovic, and Zoran Mijatovic, his deputy, and the Ministry of the

18 Interior of the Republic of Serbia, Mr. Mihajlovic. They did say that in

19 court, and you have a record of that. They accepted that we did talk

20 outside the prison premises. They claimed that that was at my request.

21 Q. Was it at your request?

22 A. Had it been at my request, then they certainly would have had a

23 proper order from the investigating judge and then they would not have

24 taken me out for dinner.

25 Q. Is it true that they offered on that occasion to you certain

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1 protective measures? They told you you would be in prison for six months

2 and would be tried if you don't agree to charge me falsely, to level false

3 allegations against me? Is that true or not?

4 A. They spoke to me about the difficult position I was in. They

5 warned me against the possible consequences and offered me an option in

6 the form of accusing Milosevic, as the person who issued orders for those

7 criminal offences, which would relieve me of liability before a criminal

8 court.

9 Q. Is it true that they offered you a new identity, money, and

10 sustenance for you and your family only so that you would falsely accuse

11 me? Is that correct?

12 A. Yes, that's correct.

13 Q. Do you know that in 1998 -- sorry. 1988, the General Assembly of

14 the United Nations adopted by consensus a declaration against torture, and

15 that such treatment that you were subjected to is explicitly forbidden by

16 this declaration, as well as forcing --

17 MR. NICE: Your Honour -- [Previous translation continues]

18 MR. MILOSEVIC: [Interpretation]

19 Q. -- statements from detainees, extortion and such things?

20 JUDGE MAY: This doesn't appear to have any relevance to the

21 evidence the witness has given here, none at all. He's been agreeing with

22 you, he's been agreeing to the matters you've put to him, and we're not

23 certainly going to litigate here what happened in Yugoslavia when he was

24 arrested. What we're concerned with, as you know, is events in Kosovo.

25 THE ACCUSED: [Interpretation] Mr. May, the conduct of a puppet

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1 regime in Belgrade is completely identical to the false indictment --

2 JUDGE MAY: Precisely the sort of point which we're not going to

3 consider. Now, have you got any more relevant questions for this witness?

4 Or we'll move on.

It would seem from the above that Judge May deemed it irrelevant that a witness had been tortured in jail, bribed and offered a new life in a foreign country if he would give false testimony against President Milosevic. And the BBC documentary crew had all this testimony on film yet decided the torturing of witnesses in the 'trial of the century' was not worth a single second of commentary in their 'objective'

documentary. So much for crusading journalism and the fearless search for truth and justice.

GENERAL OBRAD STEVANOVIC.

Serbia's former assistant interior minister General Obrad Stevanovic is the Defence witness who's testimony, the documentary claimed, backfired on Mr Milosevic. The Prosecution stated that Gen Stevanovic's books and documents, which the Defence handed over to them, included by mistake his personal diary which contained an entry regarding the 'cleaning up of the terrain', which the Prosecution insisted was a reference to a conspiracy to hide evidence of crimes committed by the police and army. The documentary made great play on this discovery and the mistake by the Defence, and again ensured that this small nugget of information was isolated from a fuller, more detailed picture.

It is perfectly in order for a documentary to bring attention to any significant Prosecution claims, and although it would of course be impossible to broadcast the entire witness statement, it is also beholden on the documentary makers to make known to their viewers the Defence response to any apparently significant evidence presented. Otherwise you are cherry picking and in fact distorting the reality of the trial testimony.

If the Storyville production team had allowed even a few minutes broadcast of the Defence response the viewers would have realised that contrary to the documentary's assertion that the Defence had mistakenly handed over Gen Stevanovic's personal diary, they would have found that the said notebook was actually seized by the Prosecution in 2000 when they investigated Gen. Stevanovic. Therefore the Defence knew that the diary was in the possession of the Prosecution and far from being surprised they were very confident that its contents would be a useful exhibit for Mr Milosevic. And that is how it turned out because it confirmed his case that the police acted lawfully, and it confirmed various points that he had made in his Defence case relating to particular events such as the NATO bombing of the Dubrava Prison.

Moreover as the notebook was a contemporaneous record written for the private use of the witness there could be no accusation that it was written for political purposes.

In regard to the passage in the diary focused on by Mr Nice the diary entry contained the following comments:

"They work perfidiously on that issue. – They will justify the aggression with evidence of crimes – Clean-up – – – The clean-up of the terrain is the most important" and this was the passage that the Prosecution claimed meant there was a conspiracy to hide evidence of crimes.
That is the part the documentary showed. The following is the response which they did not broadcast: Gen. Stevanovic explained that the text had a more straightforward meaning and described how the passages the Prosecution had highlighted were references to the activities of the Kosovo Liberation Army (KLA). He said that the terrain needed to be cleaned-up so that the KLA could not create mass-graves and stage atrocities out of their war casualties, and then palm them off as evidence of mass killings that would serve to justify the NATO aggression.

Indeed the KLA has a history of 'rearranging' its war dead to create the false impression of a massacre. A notorious case in point is Racak, and Gen. Stevanovic added that they did the same thing at Pusto Selo and Izbica.

Obviously Stevanovic diary passage was not referring to the police's activity. Nobody ever classifies their own activity as "perfidious" or uses the word "they" to refer to themselves.

Furthermore, in connection with the notebook, Mr Milosevic presented a copy leaflet that the KLA distributed to Kosovo-Albanians during the war. The leaflet instructed the Albanian population to leave Kosovo and travel in large groups towards Macedonia and Albania. The witness had written the text of a

similar leaflet into his notebook, and during the cross-examination Mr. Nice had tried to present that text as if the witness was concocting a plan to expel the Albanians from Kosovo.

(Synopsis of Stevanovic testimony on slobodan-milosevic.org).

Amusingly, as the documentary wrongly implied that the Defence team didn't know what they had handed over to the Prosecution, it is interesting to note that on 25th November 2002 it was the Prosecution that had to admit to the Tribunal that they had not kept track of what it was submitting as evidence. Needless to say this fact didn't make it into the documentary either.

FREEZER TRUCKS AND SNUFF VIDEOS.

The BBC film, 'Milosevic on Trial' regurgitated two already discredited stories. One was the Freezer Truck Story whereby Western propaganda had claimed that Mr Milosevic had ordered a cover-up of the alleged atrocities in Kosovo and was removing the evidence, but unfortunately for him a truck carrying Albanian bodies from Kosovo had crashed into the Danube. The second was the video shown at the 'trial' purporting to show, according to Prosecutor Nice, the execution of prisoners by forces under Milosevic's control. We will briefly recap here our previous response to these two stories.

What links the freezer truck story and the video together, apart from their fictional qualities, is that both originate from a certain Natasa Kandic and her 'Humanitarian Law Center.'

In his article 'The Fabrication and Dissemination of Deception' from 2001 Gilles d'Aymery notes the following:

"Many news reports of atrocities and "genocide" allegedly committed by the Serbs and widely disseminated in the Western main media have originated with a little known NGO in Belgrade, Serbia, the Humanitarian Law Center (HLC). The story of the refrigerated truck filled with corpses that was purportedly dumped in the [river] Danube in April 1999 is a good example. The HLC was created in 1992 by Natasa Kandic, its present Executive Director. It has been funded by George Soros as well as the National Endowment for Democracy and this year the Ford Foundation provided HLC with a $80,000 grant.

For those not aware George Soros also contributes funds to the ICTY itself.

For those not aware the National Endowment for Democracy is a US government agency founded in 1983 to take over functions that were once the responsibility of the CIA.

Here are some details of Kandic's record of reliability.

The New York Times of January 26, 2004 published a report commenting on the resignation of USA Today correspondent Jack Kelley over an article he had written in 1999.

The Times report commented:

"In the article, Mr. Kelley wrote about a Yugoslav Army notebook that had a typed order to "cleanse" a Kosovo village, although he did not identify the person who showed him the notebook. He added that United Nations investigators considered this "the strongest and most direct evidence linking the government of Yugoslav President Slobodan Milosevic to 'ethnic cleansing' in Kosovo."

Announcing Kelley's resignation, the USA Today issue of 13th January 2004 stated that they had concluded a seven-month investigation into *"whether Kelley might have embellished or fabricated stories."*

According to the New York Times Kelley had claimed as his source for the story, *"A human rights advocate"* and

confirmed that source *as "The rights advocate, Natasa Kandic, the executive director of the Humanitarian Law Center in Belgrade"*

On 30th April 2001, what later became known as 'the freezer truck hoax' broke in the western press through Associated Press who under the headline, "Rights Activist Says Yugoslav Army, Police Destroyed Evidence Of Kosovo Atrocities." stated:

"... [Natasa] Kandic [from the Humanitarian Law Center]... cited a report in a local magazine in the eastern Serbian Negotin region, describing how on the night of April 6, 1999, a refrigerated trailer truck was lifted out of the Danube near Kladovo, at the border with Romania"

The vehicle bore license plates from Pec, a western Kosovo city, and allegedly contained 50 bodies. According to Kandic's center, the bodies were subsequently transferred to a truck with Belgrade plates and driven away."

And the piece continued:

"'Our investigations produced witnesses who can testify that many people were killed, their bodies buried only to be dug up again and later moved to another place,' said Natasa Kandic of the Humanitarian Law Center, a leading human rights watchdog organization in Yugoslavia"

The point of this story was to claim that Mr Milosevic had ordered a cover-up of the alleged atrocities in Kosovo and was removing the evidence, but unfortunately for him a truck carrying Albanian bodies from Kosovo had crashed into the Danube.

This story was very timely for Nato and the new Serbian government because at the time Nato was demanding the transfer of Mr Milosevic to the ICTY and as the Independent newspaper commented approvingly, *"The bodies are the evidence the international war crimes tribunal in The Hague needs to prove its charge of crimes against humanity against Mr Milosevic."*

The story was published worldwide and the BBC even presented a 45-minute documentary on it, on the 27th January 2002 as part of their holocaust memorial season.

However subsequent investigations into this story revealed the following:

The local magazine quoted in the AP article was Timocka Kriminala Revija (criminal review) owned by Dragan Vitomirovic.

Timocka published two articles about a refrigerator truck full of bodies.

The first article, dated 15th September 1999, stated that the truck contained dead Kurds and that the licence plates were Swiss.

However, the second story, published 1st May 2001 the one that Natasa Kandic presented to the world and the source of the allegations against Slobodan Milosevic, the dead Kurds had become the dead Albanians and the Swiss licence plates had become Kosovo license plates.

It further transpired that Dragan Vitomirovic had a brother with a record of smuggling illegal aliens across the Romanian border and moreover, had been encouraged to write the second article by Interior Minister Mihajlovic, a member of the newly installed Nato backed Serbian government.

In regard to Kandic's claim that, *"Our investigations produced witnesses who can testify that many people were killed, their bodies buried only to be dug up again and later moved to another place"* it is important to note the following:

Police officer Captain Dragan Karleusa, who was appointed to investigate the allegations, appeared in July 2002 as a prosecution witness at The Hague against Mr Milosevic and admitted that not a single witness deposition had ever been taken. (Trial transcript).

Given that as of July 2002 the investigating officers had not taken a single witness deposition and had not a shred of evidence to substantiate the allegation, how was it possible for the BBC to broadcast six months earlier, on the 27th January 2002, their 'factual' documentary programme 'Mass Killings in Kosovo'?

Noting the above examples of the work of Kandic's Humanitarian Law Center it is laughable, if not tragic, to hear Hague Prosecutor Geoffrey Nice along with the mainstream media describe this HLC as *"a very reliable human rights organisation."* One wonders what an unreliable one would be like!

Let us just recap for a moment and reflect on Kandic's history.

She sided with Nato as the bombs dropped on her own people and it was she who berated Serbian journalists for not showing respect to their Nato masters, claiming they pay their wages. It was she who was named as the source for the USA article originally printed in 1999 which forced the resignation of Jack Kelley after an investigation that USA Today held to determine, *"whether Kelley might have embellished or fabricated stories."*

In 2001 it was she who supplied The Hague with the Freezer Truck Story, second version, the rewritten second version naturally. Also, at The Hague in 2005 Prosecutor Nice was forced to drop his character assassination attempt against a defence witness as his one and only source was an article written by Kandic.

You would think that given this history any self-respecting media, be it newspaper or television, when confronted by a new allegation from this same source, would immediately realise that some corroborating evidence would be needed before publication. One would like to think that the editor's thoughts would be something like this: "Oh dear, it's that fairy tale queen again. Hold the presses while I get this checked and double checked."

However in June 2005 this *'very reliable human rights organisation'* was at it again, riding to the rescue of a desperate, not to say disastrous, prosecution case with a story instantly embraced by a subservient media.

On Wednesday 1st June 2005 the Prosecution in the Slobodan Milosevic case at The Hague introduced a video tape, apparently showing the execution of six people by a 'Serbian unit' known as the 'Scorpions' which it is claimed occurred in 1995. The 'Scorpions', the Prosecution alleges, were under the command of the Serbian Ministry of Internal Affairs (MUP), which oversaw state security and policing in Serbia. The tape was then broadcast on Serbian television. The tape was supplied by...Natasa Kandic.

Yet The Hague court already had prior knowledge of the so-called 'Scorpion' unit, and knew they were not under the command of the MUP.

Milan Milanovic, the Deputy Defense Minister of the Republic of Serbian Krajina (RSK) testified as a prosecution witness at The Hague on October 14, 2003 where he confirmed the unit was subordinated to the command of the Army of the Republic of Serbian Krajina.

They used them initially in 1992 as security guards for the Krajina Petroleum Industries oil company.

Furthermore, a viewing of the video in full would reveal that this was the case. The Prosecution showed a few minutes of the two-hour long video, whereas a full viewing would indeed confirm by the insignia on their vehicles that Milanovic's testimony was correct. Therefore there is no connection with this, essentially mercenary unit, to the Belgrade government whatsoever.

The Prosecution should have learned that lesson from the testimony of their own witness, Milanovic, in 2003, yet they chose not to heed the satirical maxim, "If at first you don't succeed give up, it's no use making a complete fool of yourself."

We are dealing here, once again, with a complete red herring. Of course it is the first blast of media propaganda that will be embedded in people's minds, and not the later refutations. As James Harff, director

of Ruder Finn the Washington based PR firm, boasted, "Speed is vital, it is the first assertion that really counts. All future denials are entirely ineffective."

Despite this Mr Milosevic made some telling points about the videotape. While stating that if the tape was authentic, this was indeed an 'horrific' act, he noted however that the video had some technical irregularities which gave rise for concern and pointed out that although the Prosecution is linking this tape with Srebrenica and claiming the killings took place in Trnovo, the two places are more that 160km apart, and that there was nothing on the tape to suggest a link, nor anything on the tape to confirm where it was actually filmed.

In regard to the 'discovery' of this video and its showing at The Hague, it should be noted that the Prosecution case concluded the previous year, yet the Prosecution was allowed to present it six months later, and furthermore, present it without disclosing its existence to the Defence, thus breaking all legal norms and even breaking the Hague Tribunal's own rules of procedure. Moreover, when Mr Milosevic questioned the tape's authenticity Prosecutor Nice responded that witnesses would be presented who would testify to the video's authenticity.

No witnesses were ever produced and the videotape was never submitted as an exhibit at the Milosevic trial.

OBJECTIVE REPORTING?

The Storyville documentary was keen to offer the misleading claim that the length of the trial was entirely due to the combined effect of President Milosevic's time wasting, feigning of illness and his insistence on cross-examining every single prosecution witness.

First. Is the BBC documentary berating Mr Milosevic for the audacity of exercising his legal right to actually cross-examine each prosecution witness? Of course we can fully understand why the Prosecution much preferred its witnesses not to face cross-examination. One benefit of this for the Prosecution would have been to save it from embarrassment on the occasions when cross-examination revealed that the Prosecution's own witness had not written the statement submitted to the court and indeed did not even agree with it! Here are but two examples:

Slobodan Milosevic: 'Mr Samardzic... all I'm doing is asking you to explain your statement, because you say on page 5, the penultimate paragraph... ' (Milosevic quotes from the statement.)

Witness Nikola Samardzic: ' I did not say that. Whatever is written there, I did not put it that way. I am presenting here before the Tribunal matters as I recall them. Now, if this was put into my mouth, I don't think that is in order." (Trial transcript 10 October 2002, p 11391).

On the 23 July 2003 in response to Mr Milosevic's suggestion that nearly all the written statement was wrong the witness replied:

" That's right... it is my conviction that I didn't say that in that way... I say quite plainly that there are errors of such a nature that I couldn't under any circumstances sign such a statement... ." (Trial transcript , 23 July 2003, p 24792).

One way for the Prosecution to avoid such public embarrassments as the above was the tactic of using the ICTYs rule 92bis which together with Rule 89 (f) meant that witness statements could be admitted as evidence without the witness appearing for cross-examination. This was a practice the Prosecution made widespread use of.

Second. Anyone with an ounce of knowledge about the workings of the ICTY would already realise that the responsibility for the excessive length of the trial rested firmly on the shoulders of the Prosecution. As author John Laughland explains in his book 'Travesty –the Trial of Slobodan Milosevic & the Corruption of

International Justice' – the Prosecution had employed what he termed as a 'scatter-gun approach' and elaborates thus:

"The scope of the Prosecution case was therefore massive. In spite of instructions not to do so, the Prosecution flooded the Tribunal with far more material than any individual could ever have read. On one occasion, indeed, the Prosecution admitted that it had not kept track of what it was submitting as evidence." (Trial transcript 25 November 2002, p 13411).

Mr Laughland also noted the following regarding the total material submitted at the trial:

" If a person sat down and tried to read all this material, reading at a rate of one page a minute, eight hours a day, 365 days a year, it would take him over seven years to accomplish his task." (ibid).

Third. As for the charge that Mr Milosevic 'feigned illness', this must really be the documentary's idea of a sick joke. How can such an accusation be made when the prisoner actually died because of the criminal negligence of the ICTY?

Over the preceding years a host of medical specialists had testified about his ill- health and warned the Tribunal of the consequences of its indifference. It was the ICTY which denied him the right of access to the requested specialist treatment he needed, that eventually resulted in Mr Milosevic's death.

One of the most revealing aspects of the Milosevic trial, was the fact that on the one hand you had the accused who, although facing the gravest charges any individual could face, battled daily to keep all the trial proceedings, all the evidence and all the testimonies open and available for public scrutiny. Yet on the other hand you had a Prosecution, abetted by the Tribunal judges themselves, that used countless procedural rules, many of their own creation, to prevent a full public accounting. This cult of secrecy involved the use of anonymous witnesses, hearsay evidence, written statements only (even some from people who were dead!), secret witnesses, redacting of trial transcripts and closed sessions.

Hearsay evidence and evidence submitted in written form only, meant that the original witness could never be cross-examined.

Close session testimony is of course not available for public scrutiny, and the word 'redacting' is the Tribunals euphemism for the word 'censoring'.

MORE SELECTIVE SNIPPETS.

The documentary gave some air time to the testimony of former Supreme Commander of NATO, General Wesley Clarke yet omitted to mention that the ICTY had let the United States government censor the transcript of his trial testimony before releasing it to the public.

Moreover Judge May had refused to let Mr Milosevic question General Clarke on the 1999 NATO bombing of Yugoslavia. The BBC omitted to mention this also.

Further, the documentary gave air time to the testimony of Milan Babic, the former president of the Serb Republic of Krajina, and a bitter political opponent of Milosevic. The programme suggested that his evidence was a positive result for the Prosecution, yet omitted to mention that much of his testimony was originally given in closed session as 'anonymous witness C-061'. Why would the Prosecution originally want Babic's testimony to be given in closed session if it was so positive for them? The answer has to be that there was already *speculation that Milan Babic had been given privileged treatment in exchange for his testimony against other defendants* and any testimony known to have come from Babic would therefore be compromised, hence his use as an 'anonymous witness'.

Interestingly the real identity of anonymous witness C-061 was disclosed by Judge May when he accidentally stated the real surname of the witness while the court was in open session.

"Doh!" As the cartoon character Homer Simpson might have exclaimed.

Milan Babic was found dead after he reportedly committed suicide on March 5th 2006 while in the ICTY detention unit in The Hague, Netherlands. (Italics –Milan Babic –Wikipedia).

In February 2004 Judge Richard May resigned on health grounds. In many jurisdictions this would result in a mistrial being announced since any replacement could not possibly be conversant with the vast amount of trial evidence already produced. However the ICTY had changed its own rules of procedure which now enabled it to impose a replacement Judge on the trial despite the non-agreement of the accused. This was in contravention of its original rules and although mention of the change of Judges was made in the documentary, the legal implications surrounding it, and the changing of the Tribunal's own rules, were never mentioned.

It is therefore difficult to disagree with John Laughland's observation that,

" The Tribunal is not subject to any meaningful control and, as the author of its own rules of evidence, it often bends the law and established procedure to obtain convictions. The underlying assumption often seems to be that 'justice' means a guilty verdict at all costs. (Travesty –The Trial of Slobodan Milosevic & the Corruption of International Justice. Pluto Press 2007).

Although the resignation of Judge Richard May caused some comment in the media, his original appointment as the presiding judge at the Milosevic trial did not.

This media control and restriction of debate and discussion into defined areas, is an example of the way the media works, as touched upon above by author Mark Curtis.

At the time of May's appointment no mainstream media raised the question about the possible bias of a British Judge. Yet Richard May was much more than just a British Judge, he was a Labour Party activist, moreover he stood on behalf of the Labour Party in the General Election of 1979 and it was a Labour government who participated in the 78 day bombing of Yugoslavia.

To clarify the significance of this imagine that instead of Richard May being appointed as presiding Judge, the position was instead given to a Yugoslav Judge who was a member of Milosevic's party, the Socialist Party of Serbia. Such an appointment would be treated in the British media as beyond belief and totally unacceptable, for how could you have a trial with any objectivity under such circumstances? Yet that, in reverse, is exactly what happened, and the media, including the BBC, uttered not one word in protest.

People not conversant with the history of the break-up of Yugoslavia may well ask why the truth about the Western aggression against Yugoslavia and the truth about the subsequent ICTY 'trials' is so important?

"If a culture of condemnation is allowed to pass for 'justice' then it will not be long before innocent people are judicially lynched in domestic courts as well. This is why a lawyer representing a defendant at the Hague Tribunal, who struggled against its destruction of established legal principles, wrote in 1999, ' We are fighting here the battles which were fought to establish the principles enunciated in Magna Carta and the American Constitution. Yet the stakes are much higher this time. For if we fail we will lose the whole world, since there will be nowhere else to hide. '" (ibid p 6).

In an objective court and with an objective media it would immediately be seen that the charges levelled against Slobodan Milosevic do not square with reality.

The grave charges of genocide and ethnic cleansing cannot be squared with the following:

The wars in Bosnia and Croatia created thousands of refugees. According to Sam Younger who was the Director General of the British Red Cross, there were 500,000 refugees from Bosnia and Croatia and a further 230,000 from Kosovo, from all ethnic groups.

Where did those refugees go? To where did they flee for safety?

According to the British Red Cross they fled to...Milosevic's Serbia, where they were given refuge.

Younger notes that: *"Even before the Kosovo crisis, Yugoslavia had the largest number of refugees following the conflicts in Bosnia and Croatia: There were 500,000 identified refugees. The Kosovo crisis then saw a further 230,000 people displaced into Serbia, which receives very little media attention or funding, and whose civilian population has suffered hugely from the effects of sanctions and recent armed conflicts." (Sam Younger. Director General British Red Cross 1st Dec. 1999).*

Is that any way to conduct a genocide by giving refuge to the very people you are supposed to be exterminating?

Moreover, at the time of the Bosnia conflict there were more Muslims living peacefully in Serbia than there were Muslims living in Bosnia.

Again, is that any way to commit genocide by living peacefully with other ethnic groups?

In addition to this the ICTY have in their possession a mass of documents and sworn testimonies to confirm that the Milosevic government and the Yugoslav authorities took all available steps to prevent any possible crimes against civilians.

For instance, General Gojovic, who was the head of the Legal Directorate at the Yugoslav Defence Ministry during the 1999 Kosovo war, testified in March 2005 that war crimes were severely punished by the Yugoslav Army.

He exhibited a large file of documents laying out the work of the Yugoslav military justice system. These documents detailed the type of crime committed, whether this be robbery or a more serious offence, the files identified the soldiers who committed the crimes, and the relevant action taken by the Yugoslav courts as of 2001.

Further, the ICTY also have in their possession copies of the orders from the Yugoslav Supreme Command that instructed soldiers to abide by the Geneva Conventions.

Also, during General Gojovic's testimony Slobodan Milosevic exhibited numerous pamphlets containing codes of conduct that were distributed to the personnel of the Yugoslav Army, which clearly stated that all personnel were ordered to respect civilians, treat enemy prisoners humanely and observe the laws of war.

The absurdity of the charges laid against the Yugoslav leaders is obvious.

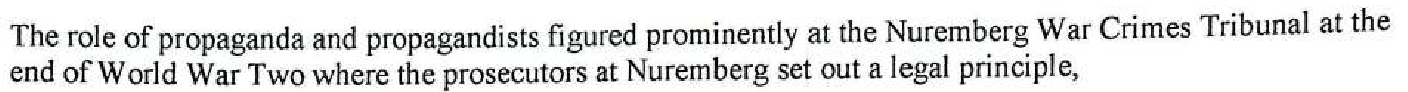
In reference to the charge that Milosevic 'planned' to create a 'Greater Serbia' it was eventually admitted by Prosecutor Geoffrey Nice that Milosevic had never used the term 'Greater Serbia'. (Trial transcript 25 August 2005).

This striking revelation was not reported in the Western media, and certainly never mentioned in the BBC documentary.

HISTORICAL TRUTH

The ICTY is a political tool. It is a creation of the United States and its function is to justify the NATO aggression and to punish the victims of that aggression. The real guilt of the Yugoslav prisoners is that they defied NATO and fought for the independence of their country. Moreover, the ICTY exists to serve as a warning to anyone who thinks of trying to resist US foreign policy in the future.

The struggle to establish historical truth is ongoing and it is plain given the history of the BBC that rather than assist in this struggle their primary function is to protect the major powers and distort the historical record. However the BBC and the mainstream British media, who, together with the ICTY, refuse to address the ultimate war crime perpetrated by NATO and the Western powers, that of launching a war of aggression, would do well to remember the ruling which came out of the Nuremberg War Crimes trial.



The role of propaganda and propagandists figured prominently at the Nuremberg War Crimes Tribunal at the end of World War Two where the prosecutors at Nuremberg set out a legal principle,

'That planning and launching an aggressive war constituted a criminal act and that those who helped prepare such a war through their propaganda efforts were as guilty as those who drew up the battle plans or manufactured the munitions.'

Hans Fritzsche, as head of the German News Service was put on trial at Nuremberg. The Prosecutor, Drexel Sprecher said:

"The basic method of the Nazi propagandistic activity lay in the false presentation of facts. The dissemination of provocative lies and the systematic deception of public opinion were as necessary to the Hitlerites for the realisation of their plans as were the production of armaments and the drafting of military plans. Without propaganda, founded on the total eclipse of the freedom of the press and of speech, it would not have been possible for German Fascism to realise its aggressive intentions, to lay the groundwork and then to put to practice the war crimes and the crimes against humanity. In the propaganda system of the Hitler State it was the daily press and the radio that were the most important weapons." (Nuremberg Tribunal 1945).

Ian Johnson

February 2007.

Internationaal Gerechtshof bepaalt maandag of Servië genocide pleegde

Ex-Joegoslavië houdt de adem in

24-2-2007

Achtergrond

- Eerste keer dat een staat wordt aangeklaagd wegens genocide.
- Dat Bosnië de zaak wint, staat lang niet vast.

Van onze verslaggeefster
Charlotte Huisman

AMSTERDAM Een groep overlevenden van de massamoord in Srebrenica houdt maandag een wake voor het Internationaal Gerechtshof in Den Haag. Zij zijn niet de enigen die veel belang hechten aan de uitspraak die het Hof die dag gaat doen over de beladen vraag: heeft Servië zich in de jaren negentig wel of niet schuldig gemaakt aan genocide in Bosnië?

Ruim elf jaar is de oorlog al voorbij, maar Bosnië – lees: het Moslimdeel van het land – hecht veel waarde aan het proces over de genocide-vraag. Niet vanwege de beweerde miljarden euro's aan smartengeld die Bosnië dan van Servië zou eisen, benadrukt het Bosnische pleitersteam. Het gaat, zeggen de pleiters, om een principieel punt, namelijk het vaststellen van de geschiedenis van het voormalige Joegoslavië. Er is geen concreet bedrag geëist als schadevergoeding.

Bosnië diende in maart 1993 de klacht tegen Joegoslavië in met het doel de etnische zuiveringen door Bosnische Serviërs een halt toe te roepen. Precies een jaar geleden, na dertien jaar juridisch getouwtrek, begon de genocidezaak Bosnië-Herzegovina tegen Servië-Montenegro, juridisch de 'opvolger' van Joegoslavië.

Servië, dat op alle mogelijke manieren heeft geprobeerd het proces te laten afblazen, waarschuwt bij voorbaat dat Bosnië niet met vuur moet spelen door veel geld te gaan eisen. 'Een veroordeling zal leiden tot de stigmatisering van de Servische bevolking en zal langdurige historische consequenties hebben', hield Radovan Stojanovic, hoofd van het Servische pleitersteam, de rechters voor. 'Het zal de relaties tussen Servië en Bosnië verslechteren en de verzoening vertragen.'

Montenegro, dat vorig jaar na een referendum uit het staatsverband met Servië stapte, vindt dat het nieuwe land Montenegro niet hoeft mee te betalen als Bosnië wint. Ook hierover zullen de rechters zich maandag uitspreken.

Kroatië kijkt vanaf de zijlijn geïnteresseerd toe: dat land heeft in een zaak met dezelfde strekking tegen Servië een schadevergoeding van 24 miljard euro geëist.

In Bosnië, dat bestaat uit de Moslim-Kroatische Federatie en de Republiek Srpska, leidt de naderende uitspraak bij voorbaat tot controverse. Het zijn de voortvluchtige voormalige leiders van de Bosnische Serviërs, Radovan Karadzic en generaal Ratko Mladic, die door het Joegoslavië-Tribunaal zijn aangeklaagd voor genocide in Bosnië. Premier Milorad Dodik van de republiek Srpska zei dat zijn deel van Bosnië de uitspraak zal negeren.

> 'Een veroordeling zal de relaties tussen Servië en Bosnië verslechteren'

Het is voor het eerst dat een staat een andere staat heeft gedaagd met als juridische basis de genocideconventie, het internationale verdrag uit 1948 dat als doel heeft een herhaling van de holocaust te voorkomen. Tot nog toe zijn alleen individuen voor deze zwaarst mogelijke aanklacht veroordeeld.

Maar of Bosnië de zaak gaat winnen?

Het Joegoslavië-Tribunaal oordeelde in een aantal individuele zaken dat genocide is gepleegd in Bosnië.

Bewezen is ook dat Servië de Bosnische Serviërs financieel en logistiek steunde bij etnische zuiveringen. Maar, is de strekking van de Servische verdediging, er is geen enkel bewijs dat de Servische staat en de Servische bevolking de intentie hadden de Bosnische Moslims uit te roeien.

In de zaak tegen de voormalige Servische president Slobodan Milosevic bleek hoe lastig het was te bewijzen dat hij, als lid van een criminele organisatie, zich had schuldig gemaakt aan genocide. Milosevic overleed vorig jaar voordat het Tribunaal tot een uitspraak in zijn zaak kon komen.

De Servische krant *Blic* citeert een anonieme bron bij het Internationaal Gerechtshof, volgens wie de rechters het door het Bosnische pleitersteam gepresenteerde materiaal ontoereikend vinden als bewijs dat Servië genocide op staatsniveau had gepland.

Maar ook het Servische verdedigingsteam is zich bewust van hun zwakke punt. Servië had sterker gestaan als het de wegens genocide aangeklaagde generaal Mladic aan het Joegoslavië-Tribunaal had uitgeleverd.

Internationaal Gerechtshof oordeelt:

Servië pleegde geen genocide in Bosnië

Door een onzer redacteuren

2007

DEN HAAG, 26 FEBR. Servië heeft tijdens de oorlog in Bosnië (1992-1995) geen genocide gepleegd; wel was sprake van genocide in het Bosnische Srebrenica. Dat heeft het Internationaal Gerechtshof vandaag bepaald.

Het Internationaal Gerechtshof bepaalde dat schuld voor de genocide in Srebrenica, in juli 1995, niet kan worden gelegd bij Servische staatsorganen, maar dat Servië niet heeft voldaan aan de verplichting, de gruwelen van Srebrenica te voorkomen. Servië werd veroordeeld tot het uitleveren van schuldige individuen en tot samenwerking met het Joegoslavië-tribunaal; compensatie hoeft Servië niet te betalen.

Het hof deed vandaag uitspraak over een klacht die in 1993 door Bosnië was ingebracht tegen het toenmalige Joegoslavië. Het was de eerste keer dat de hoogste rechterlijke instantie van de VN antwoord moest geven op de vraag of een land als zodanig – en niet slechts zijn politieke en militaire leiders – genocide heeft gepleegd. Dat er in Srebrenica genocide is gepleegd stond al vast sinds het Joegoslavië-tribunaal het bloedbad als genocide kenschetste, maar de vraag of de hele oorlog genocidaal van karakter was daarmee niet beantwoord.

Het Joegoslavië-tribunaal kan overigens niet vaststellen of een land genocide heeft gepleegd: het berecht alleen personen.

Volgens Bosnië wekte de nationalistische ideologie van het regime van de toenmalige Joegoslavische leider Slobodan Miloševic genocidale haat op, gaven de financiële en militaire hulp van Belgrado de Bosnische Serviërs de instrumenten om die genocide uit te voeren en namen Joegoslavische legerofficieren actief deel aan genocidale acties.

Om de klacht toegewezen te krijgen moesten de Bosniërs bewijzen dat de acties van het toenmalige Joegoslavië de intentie – de „bijzondere opzet" – hadden de Bosnische moslims uit te roeien. Het bewijs daarvoor is volgens het Hof niet geleverd.

Servië eiste dat het Hof de Bosnische eis zou verwerpen met het argument dat Servisch geweld is gepleegd door milities waar Belgrado geen controle over had, en dat de oorlog een conflict was tussen etnische groepen.

In Belgrado maakte men zich zorgen over de uitspraak van vandaag, omdat het isolement van het land nog zou worden versterkt als Servië als een genocidaal land te boek was komen te staan. In dat geval kon Bosnië ook miljarden schadevergoeding eisen. In Bosnië vreesden de Bosnische Serviërs dat een uitspraak in het nadeel van Servië zou leiden tot etnische spanningen en tot het besef dat de Servische Republiek in Bosnië een genocidale schepping is.

Lees de gehele uitspraak en relevante dossiers op nrc.nl/genocide

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'Vrijspraak' voor Servië

vervolg van pagina 1

Het ICJ houdt de regering in Belgrado wel voor dat daar duidelijk een aanzienlijk risico was op volkenmoord. Het Milosevic-bewind „deed niets" om genocide te voorkomen. Dat is een verplichting krachtens de Genocideconventie. Daarbij maakt het niet uit dat er geen bewijs is geleverd dat Belgrado het drama rond Srebrenica had kunnen voorkomen. Het gaat om de verplichting iets te ondernemen. Ook blijft Servië de conventie schenden door onvoldoende mee te werken met het Joegoslavië-Tribunaal. Het ICJ droeg Servië op genocideverdachten als de Bosnisch-Servische oud-legerleider Ratko Mladic uit te leveren aan het tribunaal.

Beide partijen toonden zich na afloop tevreden over de uitspraak. De Amsterdamse advocaat Phon van den Biesen, die al jaren optreedt als plaatsvervangend delegatieleider van Bosnië, toonde zich tevreden dat nu „is vastgesteld dat de misdrijven en moordpartijen hebben plaatsgevonden", ook al zijn die juridisch niet gekwalificeerd als genocide.

De Servische delegatieleider, ambassadeur Radoslav Stojanovic, toonde zich blij dat Servië is „vrijgesproken van de zwaarst mogelijke aanklacht". De Servische delegatie verzekerde zich ervoor in te zullen spannen Mladic naar Den Haag te krijgen.

Overlevenden van Srebrenica hebben teleurgesteld gereageerd op de uitspraak. „Dit brengt mij aan het huilen. Dit is geen vonnis, geen oplossing. Dit is een ramp voor ons volk", aldus de 60-jarige Bosnische moslima Fatija Suljic, die haar man en drie zoons heeft verloren bij de volkenmoord.

De Nederlandse regering liet gisteren via een woordvoeder van het ministerie van Buitenlandse Zaken weten dat ze deze uitspraak, die het belang van het genocideverbod en van het genocideverdrag onderstreept, verwelkomt. Ze hoopt dat de uitspraak de partijen helpt het verleden een plaats te geven en zich te richten op constructieve samenwerking met elkaar en met de internationale gemeenschap, alus de woordvoerder. (ANP)

Servië reageert opgelucht op vonnis

BELGRADO/SARAJEVO, 27 FEBR. In Servië en in de Servische Republiek in Bosnië is met opluchting gereageerd op het vonnis van het Internationaal Gerechtshof, gisteren, waarin werd vastgesteld dat Servië niet schuldig is aan genocide tijdens de oorlog in Bosnië. In Bosnië reageerden leiders van de moslims en Kroaten teleurgesteld.

In Belgrado legden de diverse leiders in hun reactie verschillende accenten. De nationalistische premier Vojišlav Kostunica vond het belangrijkste dat Servië „is bevrijd van de ernstige beschuldiging dat het genocide heeft gepleegd". Vervolgens bepleitte hij bestraffing van al diegenen die oorlogsmisdaden hebben gepleegd, omdat zonder die bestraffing geen verzoening mogelijk is.

President Boris Tadic legde in zijn reactie het accent vooral bij wat hij noemde „het harde onderdeel" van het vonnis van het Internationaal Gerechtshof: Servië had de genocide van Srebrenica in juli 1995 moeten voorkomen. Tadic riep het parlement op in een gemeenschappelijke verklaring het bloedbad van Srebrenica te veroordelen. *Het parlement heeft dat in 2005 al eens willen doen, maar er* werd toen geen overeenstemming bereikt over de tekst. Tadic zei gisteren ook dat Servië de samenwerking met het Joegoslavië-tribunaal moet „voltooien", wil het „dramatische politieke en economische consequenties" vermijden.

In Bosnië gaven gisteren alle drie de leden van het Bosnische staatspresidium een reactie op de uitspraak van het Internationaal Gerechtshof. Haris Silajdzic, die in het staatspresidium de moslims vertegenwoordigt, zag in het oordeel van het Internationaal Gerechtshof een bevestiging van zijn oordeel dat de Servische Republiek moet worden opgeheven. Hij zei dat Bosnië „de resultaten van de genocide" moet elimineren, door „de resoluties uit de grondwet te schrappen die het resultaat waren van genocide". Het Servische lid van het staatspresidium, Nebojša Radmanovic, zei te vrezen dat het vonnis de etnische spanning in Bosnië zal vergroten. „Het vertrouwen moet niet met klachten en vonnissen worden vergroot, maar op andere wijze", zo zei hij.

Het Kroatische lid van het staatspresidium, Zeljko Komsic, was „teleurgesteld" door het vonnis in Den Haag. Hij zei niet te weten of het feit dat Servië niet wegens genocide is veroordeeld te wijten was aan gebrek aan bewijs of „een verkeerde inschatting" van het Internationaal Gerechtshof. Komsic zei het vonnis te respecteren, maar, zo voegde hij daaraan toe, „ik weet wat ik mijn kind zal leren" over de oorlog in Bosnië.

De premier van de Servische Republiek, Milorad Dodik, zei dat – anders dan het Hof gisteren oordeelde – in Srebrenica geen genocide heeft plaatsgevonden, alleen „een vreselijke misdaad" waarvan de daders moeten worden gestraft. Volgens hem heeft het Hof de beoordeling van 'Srebrenica' als genocide gewoon overgenomen van het Joegoslavië-tribunaal, dat al eerder vaststelde dat in Srebrenica genocide is gepleegd. (VIP)

Bosnië versus Servië: arbitrage à la carte

Uitspraak van Internationaal Gerechtshof belangrijk voor definitie van genocide

Bosnië heeft volgens het Internationaal Gerechtshof niet bewezen dat Servië genocide pleegde in de oorlog in Bosnië. En een andere aanklacht was er niet. De uitspraak werpt nieuw licht op de omschrijving van genocide.

Door onze redacteur
FOLKERT JENSMA

DEN HAAG, 27 FEBR. Het vonnis is even dik als de Gouden Gids. Maar dat kan ook omdat het in Frans en Engels is, de zittingen twee maanden duurden, het rechterlijk overleg tien maanden en de hele zaak veertien jaar. Bosnië versus Servië voor het Internationale Gerechtshof in Den Haag is een historische zaak, waarin voor het eerst het VN-verdrag over genocide is toegepast. Uitslag: in Bosnië vond strikt juridisch geen genocide plaats, behalve in juli 1995 in de VN-enclave Srebrenica. En daarvoor draagt Servië alleen een afgeleide verantwoordelijkheid. Het had op basis van het verdrag een juridische inspanningsverplichting om die genocide te helpen voorkomen, maar heeft dat niet gedaan.

In de ophef rondom de uitspraak 'Servië pleegde geen genocide' verdwijnt al gauw uit beeld wat Servië wél te verwijten valt. Het Internationaal Gerechtshof zegt dat er substantieel bewijs is dat de gruwelen in Bosnië beschouwd kunnen worden als oorlogsmisdaden of misdaden tegen de menselijkheid. Alleen was het Hof niet bevoegd om Servië daarvoor te veroordelen. *Het ging in deze procedure alleen over genocide volgens de strenge definitie van het betreffende VN-verdrag.*

Hier wreekt zich dat het Internationale Hof meer een gezelschap scheidsrechters is, waar landen op vrijwillige basis, steeds op grond van aparte verdragen hun geschillen aan kunnen voorleggen. Het Hof is een VN-instelling die in zo'n 300 verdragen wordt aangewezen als beslissende instantie. Letterlijk arbitrage à la carte. Alleen bevoegd in strikt omschreven rechtsgebieden, meestal grensgeschillen. Ook gaat het nog wel eens om grondstoffen of visserijrechten. Als het Hof dus geen genocide bewezen acht, kan er niet zoals in een normaal strafproces worden uitgeweken naar een andere delictsomschrijving. Die staat immers niet in dit ene verdrag. Daardoor kan een uitspraak als deze ook het rechtsgevoel nooit bevredigen: genocide is de zwaarste categorie en tevens de enige. In deze procedure is alleen om de jackpot gespeeld.

NIEUWSANALYSE

Omdat er in het volkenrecht nog nooit over de juridische verantwoordelijkheid voor 'genocide' van een land is geoordeeld is ieder juridisch accent in het vonnis interessant. Onmiddellijk valt het grote belang op dat het Hof aan 'specifieke opzet' bij genocide toekent. Om te kunnen veroordelen moeten de daders het speciaal hebben gemunt op een positief definieerbare groep. De bedoeling om die ene groep te vernietigen moet overtuigend en waterdicht worden bewezen.

Dat zou het 'Wannsee-vereiste' genoemd kunnen worden, naar de conferentie waarop het Hitler-regime schriftelijk de vernietiging van de Europese joden voorbereidde. In Srebrenica was er volgens het Hof ook sprake van zo'n specifieke opzet, zij het dat die beperkt bleef tot de staf van het Bosnisch-Servische leger van Ratko Mladic.

De overige moorden in Bosnië voldeden niet aan dat criterium. Dat waren 'gewone' misdaden. Het Hof noemt de moslims wel 'systematische slachtoffers' van mishandeling, verkrachting en foltering. „Maar het is niet bewezen dat die gruwelijkheden werden begaan met de specifieke bedoeling de beschermde groep geheel of gedeeltelijk te vernietigen." In heel Bosnië vielen tussen 1992 en 1995 zeker 100.000 doden. Alleen bij de 8.000 slachtoffers van Srebrenica is derhalve met voorbedachte rade, georganiseerd overleg en besloten over de moord op een afgebakende groep.

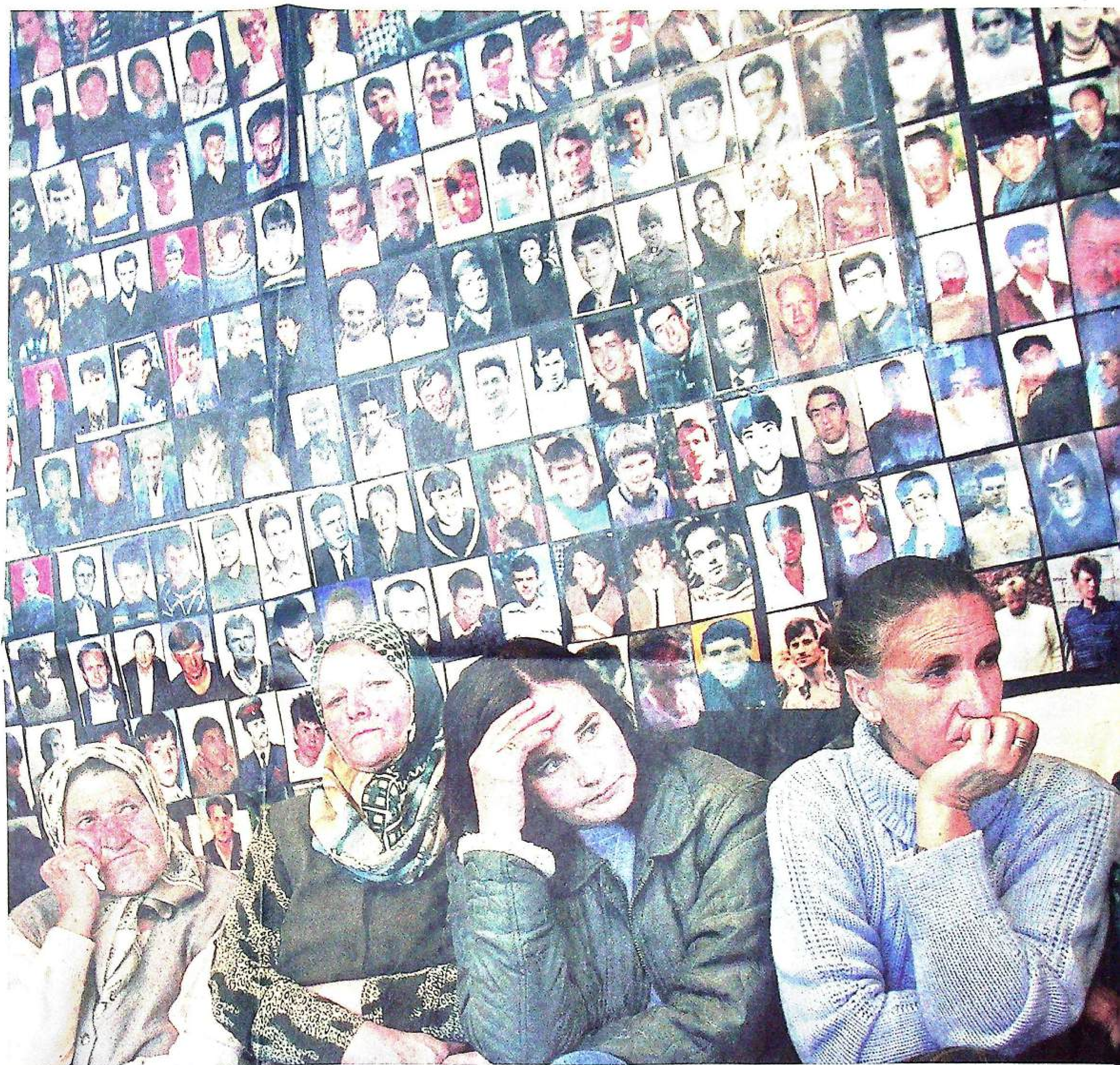
Dat Servië Mladic steunde met militairen en materieel is volgens het Hof op zichzelf niet voldoende om Belgrado ook juridisch aansprakelijk te houden voor de genocide bij Srebrenica. Het Hof vond ook dat er geen bewijs was om van medeplichtigheid, aanzetten tot of samenzwering tot genocide van Servië te concluderen. Voor een rechtstreekse aansprakelijkheid moest aangetoond worden dat Mladic' leger uit de Servische Republiek in Bosnië beschouwd kon worden als een staatsorgaan van Servië. Dat was niet aannemelijk. Voor medeplichtigheid, samenzwering of 'aanzetten tot' moest duidelijk zijn dat Belgrado rechtstreekse instructies gaf of de regie had. Ook dat kon niet aangetoond worden.

Maar vooral speelde een rol dat Belgrado niet wist wat er zich binnen de staf van Mladic in de bossen rondom Srebrenica in die dagen precies afspeelde. Om medeplichtig te kunnen zijn aan specifieke opzet tot genocide is 'medeweten' een strikt vereiste.

Het Hof rekent het de Servische overheid wel zwaar aan dat ze een 'ernstig risico op genocide' kon vermoeden. Servië kon Mladic afremmen, maar heeft dat niet gedaan. En daarmee komt Servië in strijd met de plicht uit het VN-verdrag om genocide te voorkomen.

Een belangrijke opsteker voor Servië is dat het nu geen miljarden aan schadelo[...] hoeft te betalen. Het Hof acht [...] melijk niet bewezen dat de genocide [...] echt voorkomen zou zijn als Servië [...] vloed op Mladic had uitgeoefend. Ju[...] disch draait het hier om het onderscheid tussen een inspanningsverplichting ('al[...] doen wat in je vermogen ligt') en een [re]sultaatsverplichting ('het resultaat bes[...] over de vraag of aan de plicht is voldaan.

Genocide voorkomen is dus volgens [...] Hof niet hetzelfde als genocide verhinde[ren]. Je best doen is genoeg. Als een la[nd] dat niet heeft gedaan krijgt het, zoals [...] dit geval, een officieel 'dictum' aan [...] broek: een verklaring dat Servië zich [...] aan deze verplichting uit het VN-verd[rag] heeft gehouden. En dat het zo snel m[...] lijk Mladic moet uitleveren. Die symb[...] sche én politieke verklaring sterkt [...] Joegoslavië-tribunaal.



In het Bosnische Tuzla volgen vrouwen uit Srebrenica, tegen een achtergrond van foto's van vermisten, de uitspraak van het Internationaal Gerechtshof op de tv. (Foto Reute[...]

Internationaal Gerechtshof: 'Srebrenica' niet het werk van Servische staat

- **Het Internationaal Gerechtshof in Den Haag heeft gisteren uitspraak gedaan in een zaak die Bosnië in 1993 aanhangig maakte tegen het toenmalige Joegoslavië. De hoogste rechterlijke instantie van de VN moest voor het eerst antwoord geven op de vraag, of een land – en niet slechts zijn politieke en militaire leiders – genocide heeft gepleegd. De conclusies:**
- **Servië heeft in de oorlog in Bosnië (1992-1995) geen genocide gepleegd.**
- **Er was in juli 1995 wel sprake van genocide in Srebrenica, de door Nederlandse VN-militairen bewaakte enclave.**
- **'Srebrenica' – de massamoord op 8.000 moslim-mannen – was echter niet het werk van de Servische staatsorganen, maar van Bosnisch-Servische militairen ter plaatse. Servië als zodanig is daarom niet schuldig aan genocide.**
- **Servië heeft wél verzuimd om de genocide in Srebrenica te voorkomen.**
- **Servië hoeft geen schadeloosstelling te betalen.**

Het VN-verdrag tegen genocide is te lezen op: www.unhchr.ch/html/menu3/b/p_genoci.htm

• Overlevenden van Srebrenica zitten aan de buis gekluisterd. De vrouwen waren verbijsterd over het vonnis dat het Internationale Gerechtshof gisteren velde over de Servische rol bij het bloedbad waar zij hun mannen en zonen verloren. FOTO: AP

Grote gevolgen door vonnis

27-2-2007

SERVIË OPGELUCHT NA UITSPRAAK HOF

door Hans Kuitert

DEN HAAG, dinsdag

Servië reageerde gisteren opgelucht over het afwijzen van de genocideklacht die Bosnië al in 1993 tegen Belgrado had ingediend bij het Internationaal Gerechtshof in Den Haag. In Bosnië werd het vonnis met afgrijzen begroet.

Het uit vijftien rechters bestaande hof oordeelde dat er in de moslimenclave Srebrenica in juli 1995 een genocide heeft plaatsgevonden, maar stelde Servië noch Servische staatsdienaren daarvoor verantwoordelijk. Wel was het hof van mening dat Servië meer had kunnen doen om de genocide te verhinderen. Servië wordt ook gesommeerd de Bosnische Serviërs Ratko Mladic en Radovan Karadzic uit te leveren aan het speciale Joegoslavië Tribunaal. Servië hoeft Bosnië niet schadeloos te stellen.

• Geert-Jan Knoops

Koppeling

Internationaal strafrechtadvocaat Geert-Jan Knoops noemde het vonnis gisteren 'opmerkelijk'. „Er is volgens het Hof geen koppeling te leggen met de persoonlijke strafrechterlijke verantwoordelijkheid van personen verbonden aan staatsorganen en de staat. Het vonnis zegt dat de genocide in Srebrenica niet onder controle stond van Servië.''

„Zou Milosevic nog hebben geleefd en zijn zaak nog niet zijn afgerond, dan zou deze uitspraak een belangrijk verweer zijn geweest", aldus Knoops.

„Dit kan de verdediging in de kaart spelen voor wie nog voor Srebrenica terecht moet staan", meent Knoops. „Dit is een tegenslag voor de aanklagers van het tribunaal, die in een aantal zaken op genocide hebben ingezet."

Het Hof vindt ook dat Servië niet heeft samengespannen of aangezet tot genocide. Het hof beschouwt Servië niet als medeplichtig aan de genocide in Srebrenica.

Knoops: „Het hof oordeelt overigens, zoals eerder het VN-tribunaal, dat er een genocide heeft plaatsgevonden in Srebrenica, maar dat dit elders in Bosnië niet overtuigend bewezen is."

Het Internationale Gerechthof behandelt geschillen tussen landen. Daarbij is in deze zaak „zeer zorgvuldig naar heel veel bewijsmateriaal gekeken dat is ingebracht door Bosnië en door Servië. Ik sluit niet uit dat daarbij nieuw materiaal is, dat nog niet bekend was tijdens processen voor het tribunaal. Een veroordeelde kan een revisie van zijn zaak vragen als er nieuwe feiten bekend worden. De uitspraak van het Hof is geen nieuw feit, maar die nieuwe feiten zouden wel in de bewijslast kunnen zitten. Dat moet bestudeerd worden. Het is goed mogelijk dat een proces moet worden heropend."

Verhinderen

Naast de strafrechtelijke gevolgen van het vonnis is er ook de constatering van het Hof dat Servië redelijke maatregelen had moeten nemen om de genocide in Srebrenica te verhinderen. „Dat is echter een vaststelling zonder strafrechtelijke implicaties.''

Liesbeth Zegveld, advocaat van een groep overlevenden van Srebrenica die schadevergoeding eist van Nederland, is niet ontevreden over het vonnis. „De slachtoffers zijn teleurgesteld. Maar de relatie tussen Servië en genocide is vastgesteld, al had dat wel steviger gekund

„Het Hof zegt dat het zeer waarschijnlijk was dat er genocide zou plaatsvinden en Servië had iets moeten doen. Servië zegt dat men geen enkel signaal daarover had, iets dat Nederland ook steeds zegt." Zegveld ziet het vonnis van het hof als een steuntje in de rug.

'VRIJSPRAAK' SERVIË

'Geen schuld aan genocide in Srebrenica'

DEN HAAG — Na de val van Srebrenica is in 1995 wel genocide gepleegd door het Bosnisch-Servische leger. Maar er is geen bewijs dat de autoriteiten in Belgrado meededen aan de planning en uitvoering van die volkenmoord op duizenden Bosnische moslims.

Veroordeling tot torenhoge schadevergoeding is daarmee van de baan. Wel heeft toenmalig Joegoslavië op andere, minder zwaarwegende punten de Genocideconventie geschonden.

Dit stelde het Internationaal Gerechtshof (ICJ) gisteren in zijn uitspraak inzake de klacht die Bosnië in 1993 indiende tegen Joegoslavië. De door moslims gedomineerde regering-Izetbegovic probeerde destijds via de hoogste VN-rechters te bereiken dat de leiders in Belgrado, waar Slobodan Milosevic toen de sterke man was, geen steun meer zouden verlenen aan het beleid van „etnische zuiveringen" van de Serviërs in Bosnië-Herzegovina.

Die sloten toen etnische moslims en Kroaten op in kampen en gingen over tot deportaties. Het ICJ acht bewezen dat de Bosnische Serviërs financiële en militaire steun kregen vanuit Belgrado. Daardoor zou sprake kunnen zijn van oorlogsmisdaden of misdaden tegen de menselijkheid. Maar dit betrof deze zaak niet.

Bosnië had als enige basis voor de bevoegdheid van het ICJ de Genocideconventie ingeroepen, die het opzettelijk geheel of gedeeltelijk uitroeien van bevolkingsgroepen zoals de Bosnische moslims verbiedt. Het was de eerste keer dat een staat een andere staat voor de VN-rechters in het Vredespaleis daagde op basis van een schending van de Genocideconventie.

De rechters achten genocide in of rond Srebrenica bewezen, elders in Bosnië niet. Deporteren heeft niet automatisch de bedoeling uit te roeien. Het ICJ heeft zijn conclusie inzake Srebrenica mede gebaseerd op het vonnis van het Joegoslavië-Tribunaal in de zaak-Krstic en op het rapport van het Nederlands Instituut voor Oorlogsdocumentatie (NIOD). Voor een eventuele veroordeling van Servië hoefde het ICJ dus alleen naar de gebeurtenissen van Srebrenica te kijken, waar zo'n 8000 moslimmannen en -jongens zijn gedood door het Bosnisch-Servische leger en politie.

Het ICJ sluit zich aan bij de conclusie van het Joegoslavië-Tribunaal dat de genocide pas is gepland na 11 juli 1995. De datum viel de enclave Srebrenica, die het Nederlandse VN-bataljon Dutchbat niet kon beschermen. Er is geen bewijs dat Belgrado daaraan heeft meegewerkt. *Zie verder pagina 7*

Pag. 12/13

Geen genocide

DE VN-RECHTERS van het Internationale Gerechtshof hebben gisteren de juridische aansprakelijkheid voor landen bij genocide zeer strikt geïnterpreteerd. Servië, zo oordeelden zij, heeft tijdens de oorlog in Bosnië geen volkenmoord gepleegd. Het hoogste tribunaal in de wereld neemt alleen genocide door landen aan als sprake was van specifieke opzet om een bijzondere en definieerbare groep te vernietigen. De uitspraak heeft behalve juridische ook politieke betekenis. Grootschalige schadevergoeding is uitgesloten en Servië kan zich hiermee beter op een toekomst in Europa richten.

Als model voor de uitspraak lijkt de Wannseeconferentie uit 1942 te staan, over het 'Joodse vraagstuk': een ordelijke bijeenkomst met schriftelijk verslag waaruit onomstotelijk de misdadige bedoeling van de nazi's kon worden afgeleid een bevolkingsgroep te vermoorden. Het argument van Bosnië-Herzegovina, de aanklagende partij, dat aansprakelijkheid voor genocide ook mag worden afgeleid uit een palet van gedragingen door een land, is verworpen. Als voorbeeld werden oorlogshandelingen en politieke verklaringen aangevoerd. Voor een eerste uitspraak op nieuw terrein is het verstandig bij strenge interpretatie van de vereisten voor het delict te beginnen. Dicht bij de daad, liefst op de plaats delict.

Onder de flagrante schendingen van het recht in de oorlog in Bosnië bleek het hof in één geval wel tot genocide te kunnen concluderen: de vooropgezette moord op de moslimmannen in de VN-enclave Srebrenica. Daar, in de zomer van 1995, besloot generaal Ratko Mladic, bevelhebber van de Bosnisch-Servische troepen in de eerste helft van de jaren negentig, om een religieus-etnisch onderscheiden groep medemensen te vermoorden. De aansprakelijkheid van Belgrado blijft beperkt tot het schenden van de verdragsverplichting zich in te spannen deze genocide te beletten. Van feitelijk medeplegen, samenzweren of aanzetten tot de wandaden in Srebrenica door Servië is onvoldoende gebleken. Belgrado wist niet precies wat Mladic van plan was, maar kon het alleen vermoeden. En dat is niet genoeg.

DE UITSPRAAK stelt Servië politiek in staat twee belangrijke stappen te nemen: parlementaire veroordeling van het bloedbad bij Srebrenica en volledige samenwerking met het Joegoslavië-tribunaal. Dit laatste onder meer om twee hoofdrolspelers op te pakken die nog vrij rondlopen: Mladic en voormalig politiek leider Radovan Karadzic.

Maar het genuanceerde vonnis heeft eerst en vooral juridische betekenis. Moreel biedt een besluit dat zich juridisch moest beperken tot de vraag 'genocide ja/nee' en 'wie wist er precies van' onvoldoende genoegdoening voor de slachtoffers. Het recht vraagt bij verantwoordelijkheid voor genocide om precisie en onomstotelijk bewijs. Wraakzucht en vermoord worden uit willekeur zijn en blijven 'gewone' misdaden. De afstand tussen de nabestaanden en het Internationale Gerechtshof zal niet overbrugd kunnen worden. De internationale rechtsorde is gebrekkig: de rechtspraak is vrijwillig, het vonnis symbolisch, de reikwijdte beperkt tot de kwestie waaraan de lidstaten zich bij verdrag wilden committeren. Maar een alternatief is er niet. Of het moest een gewapend conflict zijn: nieuwe moorden om de vorige te vergelden. Het is vooruitgang dat landen ervoor kiezen dergelijke kwesties door arbitrage te laten beoordelen.

Servië niet direct verantwoordelijk voor genocide

Het Internationale Gerechtshof in Den Haag acht Servië niet direct verantwoordelijk voor genocide in Bosnië tijdens de oorlog van 1992-1995.

Servië heeft de massamoord op Bosnische moslims uit Srebenica niet voorkomen, maar het Internationale Gerechtshof acht het land niet rechtstreeks verantwoordelijk voor dat bloedbad.

Het hof besloot gisteren dat het zich bevoegd achtte een oordeel te vellen over de vraag of Servië zich tijdens de oorlog in Bosnië van 1992-95 schuldig heeft gemaakt aan genocide. Servië had de jurisdictie van het hof aangevochten. Het Internationale Gerechtshof mag alleen conflicten tussen VN-lidstaten behandelen.

Lidmaatschap opgeschort

Joegoslavië's lidmaatschap werd in 1992 door de VN-Veiligheidsraad opgeschort en in 2001 werd het resterende deel van Joegoslavië, inmiddels omgedoopt tot Servië-Montenegro, weer tot de Verenigde Naties toegelaten. Maar rechter Rosalyn Higgins zei dat Servië ook tijdens de oorlog verplicht was zich te houden aan de VN-conventie tegen genocide van 1948. Ook zei zij dat Montenegro, dat zich vorig jaar van Servië afscheidde, geen deel meer uitmaakt van de rechtszaak en dat de 'juridische identiteit' van het voormalig Joegoslavië alleen bij Servië berust.

Teleurstelling

- **Overlevenden van Srebrenica hebben teleurgesteld gereageerd op de uitspraak.**
- **"Dit brengt mij aan het huilen. Dit is geen vonnis, geen oplossing. Dit is een ramp voor ons volk", aldus de 60-jarige Bosnische moslima Fatija Suljic, die haar man en drie zoons heeft verloren.**
- **Het driekoppige staatspresidium van Bosnië-Herzegovina vreest voor gewelddadige rellen en maande tot rust.**

Zuiveringsoperatie

Bosnië stapte in 1993 naar het Internationale Gerechtshof om Servië aan te klagen. Het stelt dat de regering in Belgrado onder de toenmalige Joegoslavische president Slobodan Milosevic de Bosnische Serviërs heeft bewapend, gefinancierd en aangezet tot de campagne van etnische zuivering in Bosnië in een poging een "Groot-Servië" te vormen en dat die zuiveringsoperatie neerkwam op genocide.

Servië zegt dat het niet verantwoordelijk is voor de daden van de Bosnische Serviërs, dat het een conflict tussen etnische groepen betrof en dat het niet de bedoeling was de moslimpopulatie in Bosnië geheel of gedeeltelijk te vernietigen, zoals de definitie van genocide luidt.

Milosevic

Het Joegoslaviëtribunaal, dat aanklachten tegen personen behandelt, heeft vastgesteld dat op zijn minst de massamoord door de Bosnische Serviërs op moslimmannen en -jongens uit Srebrenica als genocide moet worden aangemerkt. AP

Sagittarius

Van: "R Despotovic" <despot@tiscali.nl>
Aan: "Nico en Neeltje" <nico.s@slobodan-milosevic.org>; "Jenny Ligtenberg"
Verzonden: woensdag 28 februari 2007 23:56
Onderwerp: Slobodan Milosevic

The ruling of the International Court of Justice raised the possibility that Slobodan Milosevic, the former Serbian President, would have been found innocent of at least one charge against him, which involved the genocide at Srebrenica.

Slobodan Milosevic

NZ Herald, 28 February 2007

BELGRADE, Serbia — The United Nations's highest court blamed Serbia yesterday for failing to stop the massacre of 8,000 Bosnian Muslims at Srebrenica. But in an historic ruling, it cleared the Serbian state of direct responsibility for genocide during the Balkans war of the 1990s.

Fourteen years after the Bosnian government issued a writ alleging genocide against Belgrade, the president of the International Court of Justice in the Hague spent nearly three hours reading out a judgment that dismayed Bosnian Muslims.

The British president of the court, Rosalyn Higgins, said the judges concluded by a 13–2 vote that the slaughter of Islamic men and boys in July 1995 — the worst incident of its type in Europe since World War II — was an act of genocide.

But it decided it could not be proved that the Serbian state deliberately intended to "destroy in whole or in part" the population of Bosnian Muslims — a critical element in the 1948 Genocide Convention. In the first case where an entire nation was being held to judicial account for genocide, the judges found that Serbia, though it supported the Bosnian Serbs, fell short of having effective control over the Bosnian army and the paramilitary units that carried out the massacre.

It also rejected Bosnia's claim for monetary reparation. "Financial compensation is not the appropriate form of reparation for the breach of the obligation to prevent genocide," the judgment said.

However, it specifically demanded that Serbia hand over for trial the military commander who oversaw the Bosnian Serb onslaught at Srebrenica, General Ratko Mladic, to the International Criminal Tribunal for the former Yugoslavia, which has so far found four Serbs guilty of genocide.

The ruling raised the possibility that the former Serbian president, Slobodan Milosevic, would have been found innocent of at least one charge against him, which involved the genocide at Srebrenica. He died in the United Nations's jail in the Hague last March.'

The Daily Telegraph
February 27, 2007

Servische Bosniërs bieden excuses aan

1-3-2007

Van onze correspondent

BANAJ LUKA, donderdag

De regering van de Republika Sprska, de Servische entiteit binnen Bosnië, heeft gisteren officieel zijn excuses aangeboden voor de oorlogsmisdaden die zijn begaan tegen de niet-Serviërs van Bosnië in de jaren 1992-1995. Met name verontschuldigt ze zich tegenover de nabestaanden van de vermoorde moslims.

Bovendien heeft de regering de vroegere president van de Republika Sprska, Radovan Karadzic, en generaal Ratko Mladic, die verantwoordelijk is voor de moord op 8000 moslims in de enclave Šbrenenica, opgeroepen zich in het belang van alle Serviërs over te geven aan het Joegoslavië Tribunaal.

De excuses van de Servische Bosniërs komen twee dagen nadat het Internationaal Gerechtshof in Den Haag de slachting van de 8000 moslims in Srebrenica als genocide betitelde. Ook stelde het hof dat Servië hier niet direct voor verantwoordelijk was.

De president van Servië, Boris Tadic, stelde deze week voor dat het parlement in Belgrado de slachting van Srebrenica moet veroordelen, omdat Servië weliswaar niet direct verantwoordelijk is, maar niets heeft gedaan om de tragedie te vermijden. Het nieuwe Servië zou volgens de Europees gezinde Tadic een concrete daad moeten verrichten om de ernst van de tragedie te erkennen.

'Kroatië laat aanklacht Servië vallen'

1-3-2007

ZAGREB Kroatië laat zijn genocide-aanklacht tegen Servië bij het Internationaal Gerechtshof in Den Haag mogelijk vallen. Dat heeft Ivan Simonovic, een Kroatische gezant bij het hof, woensdag gezegd. Kroatië zal volgens hem proberen tot een schikking te komen met Servië en zal de rechtszaak alleen doorzetten als dat mislukt.

Net als Bosnië heeft Kroatië Servië aangeklaagd voor genocide in de oorlog in de jaren negentig. Het Internationaal Gerechtshof sprak Servië maandag vrij van genocide in Bosnië. Hierdoor hebben velen in Kroatië het vertrouwen in hun eigen rechtszaak verloren. Kroatië was van plan miljarden schadevergoeding te eisen. Servië steunde begin jaren negentig de Serviërs in Kroatië die zich met geweld verzetten tegen de Kroatische onafhankelijkheid van Joegoslavië.

De regering van Republiek Srpska, het Servische deel van Bosnië, heeft woensdag naar aanleiding van de uitspraak van het Internationaal Gerechtshof spijt betuigd voor de misdaden die in de oorlog in Bosnië (1992-1995) zijn gepleegd tegen niet-Serviërs. AP

Van: "Ian Johnson" <i-johnson@lineone.net>
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Verzonden: maandag 5 maart 2007 18:56
Onderwerp: CDSM: Lies of the vigilantes - John

http://www.guardian.co.uk/commentisfree/story/0,,2023025,00.html

Lies of the vigilantes

The Srebrenica ruling punctures the false claims that underpin the doctrine of intervention

John Laughland
Wednesday February 28, 2007
The Guardian

Slobodan Milosevic was posthumously exonerated on Monday when the international court of justice ruled that Serbia was not responsible for the 1995 massacre at Srebrenica. The former president of Serbia had always argued that neither Yugoslavia nor Serbia had command of the Bosnian Serb army, and this has now been upheld by the world court in The Hague. By implication, Serbia cannot be held responsible for any other war crimes attributed to the Bosnian Serbs.

The allegations against Milosevic over Bosnia and Croatia were cooked up in 2001, two years after an earlier indictment had been issued against him by the separate international criminal tribunal for the former Yugoslavia (ICTY) at the height of Nato's attack on Yugoslavia in 1999. Notwithstanding the atrocities on all sides in Kosovo, Nato claims that Serbia was pursuing genocide turned out to be war propaganda, so the ICTY prosecutor decided to bolster a weak case by trying to "get" Milosevic for Bosnia as well. It took two years and 300 witnesses, but the prosecution never managed to produce conclusive evidence against its star defendant, and its central case has now been conclusively blown out of the water.

The international court of justice (ICJ) did condemn Serbia on Monday for failing to act to prevent Srebrenica, on the basis that Belgrade failed to use its influence over the Bosnian Serb army. But this is small beer compared to the original allegations. Serbia's innocence of the central charge is reflected in the court's ruling that Serbia should not pay Bosnia any reparations - supplying an armed force is not the same as controlling it. Yugoslavia had no troops in Bosnia and greater guilt over the killings surely lies with those countries that did, notably the Dutch battalion in Srebrenica itself. Moreover, during the Bosnian war, senior western figures famously fraternised with the Bosnian Serb leaders now indicted for genocide, including the US general Wesley Clark and our own John Reid. Should they also be condemned for failing to use their influence?

However, Monday's ruling is about far more than Milosevic. Ever since the end of the cold war, the US and its allies have acted like vigilantes, claiming the right to bomb other countries in the name of humanity. The Kosovo war was the most important action taken on this basis and, as such, the curtain-raiser for Iraq. Fought, like the Iraq war, without UN approval, it was waged partly because the international community felt it should have intervened more robustly against Yugoslavia over Bosnia. It now turns out that Serbia was not in control in Bosnia after all. The ruling therefore punctures a decade-and-a-half of lies in support of the doctrine of military and judicial interventionism.

The ICJ, indeed, operates on a radically different philosophy of international relations than that which inspires the ICTY. Unlike the ICTY, the ICJ is not a criminal court and claims no power of constraint over states. Its jurisprudence is based on the anti-war sovereignty-based philosophy of the Nuremberg trial and the UN charter. In the international system, born out of the second world war, war is illegal except in a very restricted cases. States have no right to attack other states, not even on human rights abuse claims. This position is based on the understanding that there are no war crimes without war, and that war always makes things worse.

Mere anarchy was loosed upon the world when the cold war ended and the US sought to create a unipolar world system by destroying the old one. After the 1991 Iraq war, the US and Britain claimed the right to bomb Iraq to protect the Kurds and Shias, which they did for 12 years. Nato bombed the Bosnian Serbs in 1995 and Yugoslavia in 1999. The ICTY, created in 1993, operates on the basis of this doctrine of interventionism, which has come to its ghastly conclusion in the bloodbaths of Iraq and Afghanistan.

Created and controlled by the Great Powers, the ICTY, like its sister courts for Rwanda and the new international criminal court, corrupts the judicial process for political ends, the most important of which is to support the US's supposed right to act as the world's policeman. The new ICC, created by Britain, also seems to operate on the basis that white men do not commit war crimes: its prosecutors are currently investigating two local wars in Africa while turning a blind eye to Iraq. Only when that hideous strength which flows from the hypocrisy of interventionism is sapped, will the world stand any chance of returning to lawfulness and peace.

• John Laughland is the author of Travesty: the Trial of Slobodan Milosevic and the Corruption of International Justice

7-3-2007 (DOSSIER SERVIERS/MEDIA)

DAT HET ICTY ALTYD TEN ONRECHTE VAN DE FICTIE IS UITGEGAAN DAT HET GEEN BURGEROORLOG WAS, MAAR EEN DOOR SERVIE GEINSTIGEERDE OORLOG, WAARAAN DOOR DE IGH-UITSPRAAK INZ. BOSNIE/SERVIË NU EEN EIND IS GEKOMEN, IS NEERGELEGD IN EEN ART. IN DE NRC VAN 1 MAART 2007 IN DOSSIER DENKLACHT

DULACH I

Vrijspraak Servië maakt einde aan juridische fictie

Een betere toekomst van de Balkan loopt niet langs gerechtelijke uitspraken. Daarom is de vrijspraak voor Servië verheugend, zegt Raymond van den Boogaard.

1-3-2007

Dat het Internationale Hof van Justitie maandag de staat Servië niet schuldig heeft verklaard aan genocide in Bosnië-Herzegovina, en de Bosnische aanspraken op herstelbetalingen heeft afgewezen, is verheugend: de uitspraak breekt met de juridische fictie dat de oorlog in ex-Joegoslavië geen burgeroorlog was, maar een door Servië geïnstigeerde oorlog tussen staten.

Deze fictie – die het uitgangspunt is van de strafzaken voor het Haagse Tribunaal – heeft altijd gewrongen. Juist de opdeling van Joegoslavië in verschillende staten was immers de inzet van het conflict. Het was, begin jaren negentig, één politieke elite die ertoe overging om in Joegoslavië de excommunistische boedel niet langs de weg van onderhandelingen, maar met geweld op te delen, daarbij gebruikmakend van archaïsche etnische tegenstellingen.

Sommige Europese landen, zoals Duitsland, dragen een zware verantwoordelijkheid door in een vroeg stadium aan te dringen op erkenning van Slovenië en Kroatië. Dit beloonde degenen die met de wapenen tot afscheiding overgingen. Het was een perfide politiek: iedereen kon weten dat de 'democratische' schaamlap – erkenning als onafhankelijke staat na een referendum – in Bosnië-Herzegovina macabere gevolgen zou hebben.

Prompt ontstond een burgeroorlog tussen drie partijen: de Bosnisch-Servische die zich tegen afscheiding van Joegoslavië verzette, de moslim-oorlogspartij en de Kroatische oorlogspartij. De Bosnische oorlog was, meer nog dan de Kroatische en de korte Sloveense, een afgrijselijk conflict, waarin door alle partijen ernstige misdaden zijn gepleegd.

> Door alle partijen werden misdaden gepleegd

De vraag of sommige oorlogspartijen meer verantwoordelijkheid dragen voor het gebeurde, is geen juridische maar een politieke. Ik zou zeggen dat het beeld van een Servische oorlogspartij die onder leiding van Milosevic van meet af aan uit zou zijn geweest op een gewelddadige ontknoping, veel te maken heeft met de perceptie van Servië als een minder 'beschaafd' of minder 'Europees' land dan Slovenië of Kroatië. Dergelijke opvattingen zijn als oorlogspropaganda te kwalificeren. Aan de andere kant heeft de opstelling van Milosevic in de jaren vóór de oorlog zeker bijgedragen tot een klimaat, waarin onderhandelen over de toekomst van Joegoslavië geen zin leek te hebben.

Dit zijn echter politieke appreciaties, waarover het oordeel niet in de rechtszaal thuishoort. Dat was al gebleken tijdens het proces tegen Milosevic in Den Haag.

De voormalige oorlogspartijen moeten hun tijd niet langer verdoen met het oprakelen van oude frustraties. Uit het drama van de oorlog is namelijk een ander drama voortgekomen: Balkanlanden die zonder burgeroorlog vermoedelijk al jaren deel hadden uitgemaakt van de EU, bestaan nu uit verarmde staten, waarvan sommige een soort internationaal protectoraat zijn.

Het ware beter als voor het laatste onopgeloste conflict, in Kosovo, zo spoedig mogelijk een oplossing door onderhandelingen wordt gevonden. In ieder geval loopt de weg naar een betere toekomst niet langs – in gerechtelijke uitspraken – gestolde rancune en herstelbetalingen.

Raymond van den Boogaard is redacteur van NRC Handelsblad.

Van: "Ian Johnson" <i-
Aan: <Undisclosed-Recipient:;>
Verzonden: dinsdag 6 maart 2007 0:22
Onderwerp: CDSM: World Court ruling

Ruling of the International Court of Justice - the World Court in The Hague, on Monday 26th February 2007:

"Serbia has not committed genocide, through its organs or persons whose acts engage its responsibility under customary international law. Serbia has not conspired to commit genocide, nor incited the commission of genocide. Serbia has not been complicit in genocide, in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide."

Sagittarius

Van: "R Despotovic" <despot@tiscali.nl>
Aan: "Nico en Neeltje" <nico.s@slobodan-milosevic.org>; "Jenny Ligtenberg"
Verzonden: zondag 11 maart 2007 2:45
Onderwerp: Milosevic admirers mark first death anniversary

Anniversary of Milosevic's death marked

By MISHA SAVIC
ASSOCIATED PRESS WRITER

Saturday, March 10, 2007 · Last updated 4:36 a.m. PT

Supporters of Slobodan Milosevic line up at the former president's grave in Pozarevac, Saturday, March 10, 2007. Admirers of late president Slobodan Milosevic marked the first anniversary of his death with wreaths speeches on Saturday, even as Serbia continues to grapple with consequences of his ruinous rule. (AP Photo/Darko Vojinovic)

A Milosevic supporter cry atop the former president's grave in Pozarevac, Saturday, March 10, 2007. Hundreds gathered to mark the first anniversary of Milosevic's death. Milosevic's lifeless body was found March 11, 2006 in his jail cell, just weeks before an expected end of his trial for alleged war crimes, including genocide, during the wars in Croatia, Bosnia and Kosovo.

BELGRADE, Serbia -- Admirers of late president Slobodan Milosevic marked the first anniversary of his death with wreaths and speeches on Saturday, even as Serbia continues to grapple with consequences of his ruinous rule.

Officials of the formerly Milosevic-led Socialist Party gathered at his grave in the eastern town of Pozarevac, praising the man who led Serbia through several wars and ended up facing the U.N. war crimes court for the former Yugoslavia in The Hague.

"Milosevic was an honorable man who worked for the benefit of Serbia and its people," said supporter Bogoljub Bjelica.

Milosevic's lifeless body was found the morning of March 11 in his jail cell and the exact time of death was never determined.

He died just weeks before an expected end of his trial for alleged war crimes, including genocide, during the wars in Croatia, Bosnia and Kosovo. He had been extradited to the international tribunal by pro-democracy parties that ousted him in 2000.

"Milosevic's policies led Serbia to a horrible situation. We're still dealing with the devastating effects of his legacy," said Jelena Markovic, spokeswoman for the Democratic Party of the current President Boris Tadic.

As Milosevic's unrepentant supporters glorified the ex-president, Tadic was busy dealing with one of the effects of his rule - attending U.N.-mediated talks in Vienna, Austria, with the representatives of ethnic Albanian separatists from Kosovo, the southern province whose secession Milosevic tried to prevent with brutal force.

Milosevic's campaign in Kosovo took Serbia to war with NATO in 1999, when the alliance bombed the country for 78 days and turned the province into an international protectorate.

In the ongoing talks on Kosovo's future, the ethnic Albanians insist on full independence while Serbian officials offer only broad autonomy for the province.

Milosevic's 1990s war efforts in Bosnia and Croatia turned Serbia into an international pariah, under sanctions, impoverished and isolated.

"Some consequences of Milosevic's regime have been rectified ... but the most difficult issues we still face is Kosovo and The Hague court," Markovic said, referring to the U.N. tribunal's demand for the extradition of Gen. Ratko Mladic, the wartime Bosnian Serb commander who was supported by Milosevic.

Serbia's possible membership in the European Union and NATO remains blocked until Mladic is handed over. The government in Belgrade claims it cannot located the elusive ex-commander.

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Loyalists pay respects for Milosevic

By correspondents in Serbia

March 10, 2007 09:51pm

LOYAL supporters and party faithful paid their respects to the former Serbian strongman Slobodan Milosevic yesterday on the first anniversary of his death in custody.

Hundreds laid flowers and lit candles at Milosevic's tomb within the compound of his family home in Pozarevac, an industrial town 70km east of Belgrade.

"You lived for Serbia, Serbia lives for you," read one message in a book of condolences outside the front of the walled family residence.

"Dear Slobo, you are our hero and you'll always be so," read another message.

Among the first to visit was Milica Gajic, the wife of Milosevic's son Marko. She and her son were the only members of the family present as Marko, his sister Marija and their mother, Mira Markovic are all

...-imposed exile abroad.

Milosevic's successor as head of the Socialist Party of Serbia, Ivica Dacic, laid a wreath on the marble tombstone, followed by a group of senior officials of the Serbian Radical Party, which was close to the late president in the 1990s.

"A year after the death of Slobodan Milosevic, it's clear that principles he fought for are correct," Mr Dacic said, adding that one of these was to keep the breakaway southern province of Kosovo a part of Serbia.

His comments come on the day talks were being held in Vienna that are likely to lead to the ethnic Albanian majority province being granted a form of independence in the near future.

Milosevic rose to power by championing the Serb minority in Kosovo and its key place in Serb history that dates back to the Middle Ages.

But a two-year bloody crackdown on ethnic Albanian rebels and the mass expulsion of Kosovo Albanians during an 11 week NATO bombing campaign saw the withdrawal of Serb forces and with it control of the province.

His regime eventually crumbled in a popular uprising on October 5, 2000. Within months he was handed over to the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague.

He died aged 64 on March 11, just weeks before the end of his long-running trial for his role in the wars that tore apart the former Yugoslavia.

Ahead of yesterday's ceremony, the SPS published a newspaper death notice that said Milosevic "passed away tragically while defending Serbia" and that it was "proud" to have inherited his legacy.

But Milosevic opponents said the consequences of the Milosevic regime were tragic for Serbia and its people.

"Due to Milosevic's policies, Serbia has found itself in an unenviable international position and faced with a problem how to defend a part of its territory," the Democratic Party of Serbian President Boris Tadic said.

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Milosevic Loyalists Pay Tribute

Supporters marking the first anniversary of the death of Serbian strongman Slobodan Milosevic praised his Kosovo policy.

javno.hr

Milosevic loyalists said that the reformers who ousted him would be to blame for the loss of the province.

The Saturday memorial coincided with a final meeting in Vienna on the fate of Kosovo, run by the United Nations since NATO expelled Serbian troops in 1999 to stop them from driving out the 90 percent Albanian majority.

A Western-backed plan by U.N. envoy Martti Ahtisaari sets the province on the path to independence, which Serb leaders reject. Milosevic's supporters said the late President had only "fought to preserve the country".

"Those who have been criticising Milosevic for years over Kosovo ... have now adopted his

stance, they do not accept its independence," said Ivica Dacic, Milosevic's successor as head of the once-powerful Socialist Party.

Milosevic was ousted in 2000 and sent to the U.N. tribunal in the Hague to answer charges of war crimes during the Yugoslav wars of the 1990s. He was found dead of heart failure in his cell at the court's detention unit on March 11, at age 64.

At the memorial, hundreds of supporters queued to leave flowers on the grave in the grounds of the Milosevic estate, some kissing the simple wooden cross bearing his name.

Many said he had been proven right.

"**He's only been gone for a year and they are defending Kosovo with his ideas**, " said Ljiljana Pavlovic, 55.

Added Jovan Djordjevic, an ethnic Serb from Kosovo who fled to Serbia after the NATO intervention: "**If Milosevic were alive, Kosovo would be resolved honestly, honourably**."

They said Serbia's new rulers had bowed too much to Western pressure, with disastrous consequences, and blamed current Prime Minister Vojislav Kostunica, the leader of the anti-Milosevic opposition in 2000.

Kostunica has become increasingly hardline in rejecting Kosovo's independence, saying that snatching territory from a democratic country is "a crime against international law".

"These people have backtracked in every way concerning Kosovo and now we are close to losing 15 percent of our territory," said Milomir Stojicic, a teacher from south Serbia.

Milosevic's party now has low support among Serbs, but the ideals at the heart of his 12-year regime have survived in the policies of the Radicals, currently Serbia's most popular party.

In the memorial book outside the Milosevic estate, one mourner called him a "**hero of the Serb people who will live forever in our hearts**". Another bid farewell "**to you and the country that no longer exists**".

No virus found in this incoming message.
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Version: 7.5.446 / Virus Database: 268.18.8/717 - Release Date: 10-3-2007 14:25

Sagittarius

Van: "Ian Johnson" <i-johnson@lineone.net>
Aan: <Undisclosed-Recipient:;>
Verzonden: maandag 12 maart 2007 23:06
Onderwerp: CDSM: A Victim of the West's Propaganda - Neil

ON THE ANNIVERSARY OF THE DEATH OF PRESIDENT MILOSEVIC AT THE HANDS OF THE ICTY, NEIL WRITES:

A VICTIM OF THE WEST'S PROPAGANDA – Neil Clark 12th March 2007.

"If you tell a lie big enough and keep repeating it, people will eventually come to believe it. The lie can be maintained only for such time as the State can shield the people from the political, economic and/or military consequences of the lie. It thus becomes vitally important for the State to use all of its powers to repress dissent, for the truth is the mortal enemy of the lie, and thus by extension, the truth is the greatest enemy of the State". It's worth remembering the words of Dr Joseph Goebbels, the Nazi Minister of Propaganda around the first anniversary of the death of Slobodan Milosevic at The Hague.

The 'official version' of the Milosevic story, brought to you by CNN, BBC, Newsweek and other media outlets of the New World Order, was that Slobo (aka 'The Butcher of the Balkans'), rose to power by whipping up dormant Serb nationalism and through his maniacal desire to create a 'Greater Serbia' provoked the break-up of Yugoslavia and the decade of bloodshed which ensued. Not content with starting wars with Slovenia, Croatia and Bosnia, the genocidal Slobo then turned his attention to the hapless Kosovan Albanians and started to carry out a systematic programme of 'ethnic cleansing' on a scale unseen in Europe since the days of the Third Reich. Slobo would have succeeded in his evil designs had it not been for the timely intervention of NATO, whose humanitarian bombing campaign, defeated the wicked dictator and restored peace to Kosovo. The following year, the wicked dictator was toppled by a popular uprising of his own people and then sent to The Hague to be held toaccount for his many crimes. Unfortunately, before the guilty sentence could be passed', 'The Butcher' died, cheating justice.
There's just one thing wrong with the above version of events.
It's bullshit.
Not a single aspect of the narrative- the narrative we have heard ad nauseum in the west for the past decade and a half - is true.

Milosevic, the 'aggressive nationalist', was in fact a lifelong socialist who never once made a racist speech. The 1989 Kosovo Polje address where it was claimed that Milosevic incited ethnic hatred, was a call for socialist unity: you can read the speech in full in English at http://www.swans.com/library/art8/smilos01.html

Milosevic the 'dictator' was a politician who won three democratic election victories in a country where 21 political parties and a well-financed opposition media freely operated. Even Adam Lebor, Milosevic's far from sympathetic biographer, concedes that to call Milosevic a 'dictator' is 'incorrect'.

Milosevic 'the serial warmonger', started no wars. He wasn't even in charge of Yugoslavia when Slovenia and Croatia, at the encouragement of Germany, illegally broke away from the Yugoslav Federation, while the war in Bosnia was caused by the US ambassador Warren Zimmerman's last-minute intervention to persuade the Bosnian Muslim leader Alija Izetbegovic to renege from the 1992 Lisbon agreement, which provided for the peaceful division of the republic. As for Kosovo, we already have British defence minister Lord Gilbert's admission that at the Rambouillet 'peace' conference the west deliberately produced a document whose terms were so onerous that they knew the Yugoslav delegation would not be able to sign. The hostilities in Kosovo were triggered by the US's funding and arming of the terrorist Kosovan Liberation Army, in a deliberate attempt to provoke a civil war, which would then give NATO the pretext to occupy the rump Yugoslavia.
As for bringing peace to Kosovo, Western intervention did the opposite: since 1999 more than 200,000 Serbs, Roma, Jews and other minorities have been ethnically cleansed from the province by the KLA, under the watchful eye of western forces.

The fall from power of Milosevic in October 2000 was not a demonstration of 'people power', but an undemocratic coup d'état, orchestrated and funded by the U.S., who bankrolled the anti-socialist opposition to the tune of $70m. And as for Milosevic 'cheating justice' at The Hague, over 300 prosecution witnesses appeared at the trial and not a single one testified that he had ordered war crimes or other such atrocities. Justice was certainly denied by Milosevic's death - but not in the way the New World Order would like us to believe.

The more one considers the facts, the more clear it is that Milosevic was the victim of the most cynical demonisation campaign of recent times. Why was it done?

The problem with Milosevic from the NWO's perspective, was not that he was a war-mongering nationalist hell-bent on destroying Yugoslavia, but that he wasn't. The West wanted the Federal Republic of Yugoslavia broken up into as many separate parts as possible: in the words of George Kenney of the US State Department "in post-cold war Europe no place remained for a large, independent-minded socialist state that resisted globalisation." Milosevic stood in the way of Western

economic and military hegemony in the Balkans and for doing so he paid the ultimate price.

But though Milosevic is dead, the warmongering forces that destroyed both him and his country are still at large, with the rich pickings of the Iranian economy now in their sights. Eight years ago Slobo was 'The New Hitler', now it's the turn of President Ahmadinejad. The reality is that when it comes to the use of Nazi propaganda techniques in order to dupe the public into supporting illegal wars of conquest, the real successors of Adolf and co are not those accused, but those doing the accusing.

En met een brede grijns verlaat Vojislav Seselj de rechtszaal

Zo won't ook!   14-3-2007

Reportage

Ultranationalistische Servische politicus is tevreden met nieuwe rechter.

Van onze verslaggeefster
Charlotte Huisman

DEN HAAG Zijn buik is iets minder omvangrijk dan voor zijn bijna vier weken durende hongerstaking die eindigde op 8 december. Maar de ultranationalistische Servische politicus Vojislav Seselj (52), aangeklaagd wegens oorlogsmisdaden, lijkt dinsdag voor het eerst tevreden over de gang van zaken in het Joegoslavië-Tribunaal.

De lastigste verdachte van het VN-Hof die hoofdaanklaagster Carla Del Ponte een 'hoer' heeft genoemd, is mak als een lammetje tijdens de hoorzitting voorafgaande aan de herstart van zijn proces. De reden: een nieuwe hem toegewezen rechter, Jean-Claude Antonetti, die niet alleen minstens zo breedsprakig is als de verdachte, maar hem ook op bijna alle punten gelijk geeft. Seselj diende eerder wrakingsverzoeken in tegen twaalf tribunaalrechters.

Antonetti ziet het anders dan zijn voorgangers met wie de verdachte overhoop lag, onder meer over zijn eis zijn eigen verdediging te voeren. 'Seselj heeft goed meegewerkt met het Tribunaal door zich in februari 2003 zelf over te geven. Ik vind dat Seselj het recht heeft zichzelf te verdedigen, en dat hem niet tegen zijn zin een advocaat had mogen worden toegewezen.' Tegen de verdachte: 'U stond toen met uw rug tegen de muur, u vond dat uw rechten waren geschonden, en de enige uitweg was voor u die hongerstaking.'

Seselj: 'Ik sta perplex. Voor het eerst in vier jaar hoor ik een zinnige rechter. Als ik correct wordt behandeld, reageer ik correct. Zo niet: dan vergelijk ik iemand met Hitler, wat anders kan ik doen? Ik weet toch al dat ik wordt veroordeeld, omdat Serviërs hier niet worden vrijgesproken.'

Aanklager Daniel Saxon heeft Seselj, nog steeds de leider van de grootste partij van Servië, de ultranationalistische Radicale Partij, onder meer aangeklaagd voor het werven en opruien van Servische paramilitaire bendes die vanaf 1991 etnische zuiveringen uitvoerden in Bosnië en Kroatië. Hij zegt: 'Rechter, u stelt dat de verdachte zich redelijk normaal heeft gedragen. De aanklagers zien het anders. Zijn beledigingen...'

'Laten we dit vuurtje niet opnieuw aanwakkeren, we beginnen vanaf nul'

Antonetti onderbreekt hem. 'Laten we dit vuurtje niet opnieuw aanwakkeren, we beginnen dit proces vanaf nul. Seselj heeft zich al vanaf vier uur 's middags heel netjes gedragen. Hij wil gewoon dat wij zijn rechten respecteren.' Tegen Seselj: 'Wanneer bent u klaar voor uw proces?'

Seselj: 'Elke redelijke datum is al gepasseerd. In uw land, Frankrijk, en ook in mijn land, Servië, is het onmogelijk dat iemand vier jaar op zijn proces wacht. Daarom: zo snel mogelijk. Maar niet meer dan drie zittingsdagen per week.'

Antonetti: Drie dagen per week lijkt me prima, net als de voormalige Servische president Milosevic, die ook zijn eigen verdediging voerde en net als u kampt met gezondheidsproblemen.'

Seselj: 'Er is een tumor in mijn lever ontdekt, maar die zou niet kwaadaardig zijn. Het wordt nog verder onderzocht.'

Antonetti: 'Ik begreep dat het Tribunaal een appartement heeft geregeld voor uw juridische adviseurs?'

Seselj: 'Maar over de betaling van mijn adviseurs ben ik nog niet tot overeenstemming gekomen met het Tribunaal. Het zijn drie Servische parlementsleden die voor deze klus ontslag moeten nemen. Ze willen trouwens niet van die jurken aan.'

Antonetti: 'Ze mogen gewoon burgerkleding dragen. Ik hoop dat die geldkwestie wordt opgelost.'

En met een brede grijns verlaat Seselj na de zitting de rechtszaal.

Sagittarius

Van: "Ian Johnson" <i-
Aan: <Undisclosed-Recipient:;>
Verzonden: maandag 12 maart 2007 21:51
Onderwerp: CDSM: John Laughland Book Launch

Subject: Fw: John Laughland Book Launch

Dear Friends,

Please come to a debate on international justice on 20th March at 6.30pm (see below). This is the launch of my book, on the Milosevic trial and the Hague tribunal. You need to e-mail the Policy Exchange to reserve places in advance.

Kind regards,

John Laughland

Policy Exchange
in association with the Democracy Movement and Federal Union

Tuesday March 20th, 6.30pm

'International Justice: Best Hope for Mankind or Unaccountable Power?'

John Laughland (author *Travesty: The Trial of Slobodan Milosovic and the Corruption of International Justice*)

Mark Littlewood (Federal Union and Liberal Democrats)

For seat reservation email: **events@policyexchange.org.uk** (entry to this event will be restricted to those who have reserved places)

Policy Exchange, Clutha House, 10 Storey's Gate, London SW1
(next to Westminster Central Methodist Hall, nearest tube stations: Westminster and St.Jame's Park)

Sagittarius

Van: "R Despotovic" <despot@tiscali.nl>
Aan: "Andy Wilcoxson" <andywilcoxson@comcast.net>; "Nico Varkevisser" <nico.v@slobodan-milosevic.org>; "Nico en Neeltje" <nico.s@slobodan-milosevic.org>
Verzonden: maandag 12 maart 2007 22:44
Onderwerp: Slobodan Milosevic's Last Waltz

http://www.nytimes.com/2007/03/12/opinion/12wedgwood.html?_r=1&oref=slogin

Op-Ed Contributor

Slobodan Milosevic's Last Waltz

By RUTH WEDGWOOD
Published: March 12, 2007

New York Times, Washington

EVEN from the grave, Slobodan Milosevic roils the international system. When he was alive, his violence in the Balkans required NATO to intervene twice. He swaggered on the stage of the Dayton peace negotiations. And even after he was bundled off to a United Nations court to stand trial on charges of genocide, war crimes and crimes against humanity, Mr. Milosevic tried to convert his criminal defense into a political rant to be shown nightly on Serbian television. The trial meandered for four years, and both the presiding judge and Mr. Milosevic died before a final verdict could be returned.

the skeleton's waltz has turned one more time around the dance floor. This round brings us ruling of the International Court of Justice, in a civil suit that should never have been brought if s result was to be so meager.

In 1993, Bosnia sued Serbia in the International Court of Justice, sometimes known as the World Court, for planning, abetting and committing genocide in the Bosnian conflict. Bosnia argued that the Serbian militias' sniping and bombardment of civilian enclaves, torture and assassination of detainees, and ultimately, slaughter of more than 7,000 Muslim men and boys at Srebrenica, amounted to genocide.

Last month, the court dismissed Bosnia's case on almost all counts. The judges sitting in Andrew Carnegie's peace palace in The Hague held that the Serbian campaign of violence and ethnic cleansing against Bosnian Muslims could not constitute genocide. The only actionable instance of genocide, said the court, was the wholesale execution of prisoners at Srebrenica in 1995, and even there, Serbia was not adequately implicated in the crime's commission.

This is a remarkable result. It's true that Srebrenica woke the West from its stupor and brought NATO military action. But the ethnic conflagration had already raged for three years, with countless acts of nationalist violence aimed at expelling Muslims from the north, south and east of Bosnia. Yet the International Court of Justice shrinks from recognition, failing to explain why the deliberate slaughter of civilians in the riverside town of Brcko in 1992, or the torture and execution of Muslim civilians in Foca, were legally different in kind from the Srebrenica murders.

The court does lay one misdemeanor at Serbia's doorstep: Belgrade failed to take steps to "prevent" the genocide at Srebrenica. For this, the court says, no damages are due. But that passive fault fails to account for Belgrade's robust program of financing, equipping and supporting criminal militias like Arkan's Tigers and the Gray Wolves, as well as the forces that specialized in leveling Muslim villages.

The court's judgment has broad implications. It amounts to a posthumous acquittal of Mr. Milosevic for genocide in Bosnia. Though he planned to divide the country in two, in a scheme devised with Croatia's president, Franjo Tudjman, and engineered the strategy of violent ethnic cleansing, the court concluded that this did not amount to a campaign to destroy the ethnic group of Bosnian Muslims in whole or in part, for he was just pushing their reduced numbers somewhere else. As a law student might suppose, it will take years of study to understand how that could be true.

Worse yet, by saying that only the Srebrenica massacre amounted to genocide, the International Court of Justice limits the charges that can be effectively brought against the Bosnian Serb leaders Radovan Karadzic and Ratko Mladic, if Belgrade at last allows them to be arrested.

It is hard to say why the court did not step back from these dire consequences. But there were both technical missteps and political snares in its judgment.

First, the World Court rejected the standard of vicarious liability used in the United Nations criminal tribunal for the former Yugoslavia. In applying the Geneva Conventions to the Bosnian fighting, the criminal court early concluded that Belgrade's support was enough to make major portions of the conflict into an international war.

But the International Court of Justice chides the United Nations criminal court for offering an opinion on an issue of "general" international law like state responsibility and, despite more than 10 years of settled criminal case law, rejects the criminal court's conclusion. This sibling rivalry between international courts has been gently called "fragmentation." It does not bode well for any coherent jurisprudence.

The World Court also insists that unless Belgrade gave "direct orders" for particular operations or

Bosnian Serbs were "completely dependent" on Belgrade, there is no liability at all. This will be surprise to scholars of ordinary tort law, who are accustomed to supposing that responsibility for wrongdoing can be shared.

Though the court claims to be acting on the basis of a 1986 decision in a case pitting the United States against Nicaragua, the law has moved on since then. Indeed, the court's lackadaisical standard is at odds with United Nations Security Council Resolution 1373, passed in the wake of Sept. 11, which says that no state has a right to provide any intelligence, logistics or financing to terrorist activities.

Second, the International Court of Justice applies the demands of criminal proof to a civil case. The judges insist that even for civil liability, proof against Belgrade has to be "fully conclusive" and "incontrovertible," with a level of certainty "beyond any doubt." This standard is well known when the jail door will shut, but it exceeds the demands of civil liability. And in trying to meet this standard, the court declines to draw any adverse inference against Belgrade, even though the documents it turned over to the court were heavily redacted.

Third, the International Court of Justice has a small jurisdictional embarrassment. After the NATO military intervention in Kosovo, Serbia went to the United Nations war crimes prosecutor to complain about NATO's war fighting methods. The prosecutor concluded that there was no basis for a criminal investigation of NATO. Serbia then sued various NATO states in the International Court of Justice. These suits were dismissed on the ground that Yugoslavia was no longer a member of the United Nations and hence had no plaintiff's right of access to the court.

But reasons cut both ways, argued Belgrade, and disqualification as a plaintiff could also protect Serbia as a defendant in Bosnia's civil action. Lingering doubts about jurisdiction may have diminished the court's willingness to make more rigorous findings of liability in the Bosnian genocide case.

To be sure, the International Court of Justice has held that the Genocide Convention requires Serbia to surrender criminal suspects like Mr. Karadzic and General Mladic, who are wanted by the United Nations war crimes tribunal. But this is a redundant finding, for the legal authority of the Security Council already requires that surrender. It is not a substitute for clarity about Serbia's role.

It is all to the good that Serbia may soon rejoin Europe. But it does not facilitate that reunion to disguise what happened in the past.

Ruth Wedgwood is a professor of international law at the School of Advanced International Studies at Johns Hopkins University.

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Van: "Ian Johnson" <i-johnson@lineone.net>
Aan: <Undisclosed-Recipient:;>
Verzonden: dinsdag 13 maart 2007 1:32
Onderwerp: CDSM: Human Rights Watch in Service to the War Party (1 of 4

Dear All,
Because of its length we are sending this article out over four emails. IJ.

Yugoslavia: Human Rights Watch in Service to the War Party.

A Review of "Weighing the Evidence: Lessons from the Slobodan Milosevic Trial" (Human Rights Watch, December, 2006)

by Edward S. Herman and David Peterson and George Szamuely; February 25, 2007

Part 1: Introduction: The Role and Biases of Human Rights Watch

Human Rights Watch (HRW) came into existence in 1978 as the U.S. Helsinki Watch Committee. Early documents affirmed that its purpose was to "monitor domestic and international compliance with the human rights provisions of the Helsinki Final Act."[1] But though a private U.S.-based organization whose vice chairman once stated "You can't complain about other countries unless you put your own house in order,"[2] its main focus was on Moscow . Thus its literature also affirmed that founding the Committee "was intended as a gesture of moral support for the activities of the beleaguered Helsinki monitors in the Soviet bloc," and its early work was well geared to advance the U.S. government's policy of weakening the Soviet Union and loosening its ties to Eastern Europe.[3] While the organization has broadened its horizons and grown enormously since its $400,000 seed money from the Ford Foundation, it has never sloughed off its close link to the Western establishment, as evidenced by its leadership's affiliations,[4] its funding,[5] and its role over the years. Because of its institutional commitment to human rights and its broad purview, however, HRW has done a great deal of valuable work, as for example in helping to document the character and effects of the Reagan era wars across Central America, where its Americas Watch reports on the U.S. support for the Nicaragua Contras, the Salvadoran army and death squads, and Guatemalan state terror were eye-opening and led to intense hostility on the part of the Reaganites and Wall Street Journal editors.[6]

But despite these and countless other constructive efforts, the organization has at critical times and in critical theaters thrown its support behind the U.S. government's agenda, sometimes even serving as a virtual public relations arm of the foreign policy establishment. Since the early 1990s this tendency has been especially marked in the organization's focus on and treatment of some of the major contests in which the U.S. government itself has been engaged—perhaps none more clearly than Iraq and the Balkans. Here, its deep bias is well-illustrated in a March 2002 op-ed by HRW's executive director, Kenneth Roth, published in the Wall Street Journal under the title "Indict Saddam."[7] The first thing to note about this commentary is its timing. It was published at a time when the United States and Britain were clearly planning an assault on Iraq with a "shock and awe" bombing campaign and ground invasion in violation of the UN Charter. But Roth doesn't warn against launching an unprovoked war—though wars of aggression had been judged by the Nuremberg Tribunal to be the "supreme international crime" that "contains within itself the accumulated evil of the whole."[8] On the contrary, Roth's focus was on Saddam's crimes, and provided a valuable public relations gift to U.S. and British leaders, diverting attention from and putting an apologetic gloss on their prospective supreme international crime.

Three years earlier, when the NATO powers had begun the bombing of Yugoslavia on March 24, 1999, HRW said nothing critical about that action; as we shall see, it focused mainly on the crimes of the target country then under attack. In a 1998 commentary for the International Herald Tribune, Fred Abrahams, an HRW researcher whose major focus has been Kosovo, urged regime-change for Yugoslavia , either through President Slobodan Milosevic's indictment or a U.S. war to affect the same outcome. "At what point will the Clinton administration decide that they have seen enough?" Abrahams asked. "[T]he international community's failure to punish Milosevic for crimes in Croatia and Bosnia sent the message that he would be allowed to get away with such crimes again. It is now obvious that the man who started these conflicts cannot be trusted to stop them."[9] This line also served the United States and other NATO powers well, and both cases show a clear adaptation of HRW definitions of human rights and choice of worthy victims to the needs of the Western powers and institutions that nurture the organization. (In Part 3, we deal with the mind-boggling misrepresentation of history in Abrahams' statement about Milosevic's unwillingness to stop these wars—in fact, Milosevic signed-on to every major peace proposal 1992-1995, whereas Abrahams' favorite state regularly sabotaged them.)

Roth's "Indict Saddam" st arts as follows: "The Bush administration's frustration with a decade of porous sanctions against Iraq has led to active consideration of military action. Yet one alternative has yet to be seriously tried—indicting Saddam Hussein for his many atrocities, particularly the 1988 genocide against Iraqi Kurds." This clearly implies that the sanctions imposed on Iraq were ineffective ("porous") and that the administration's alleged frustration on that account was real and well grounded, establishment claims that were false and misleading and that an unbiased analyst might have had some doubts about at the time. We may note also the lack of concern with the "active consideration of military action."

But equally important, Roth ignores the devastating sanctions imposed on Iraq by the United States and Britain via the UN for over a decade, which prevented the repair of Iraq's sanitation facilities, water purification and agricultural irrigation systems, all of which had been deliberately destroyed in the 1991 bombing war.[10] Through their power to magnify hardship, malnutrition, and disease, this form of economic and political warfare "may well have been a necessary cause of the deaths of more people in Iraq than have been slain by all so-called weapons of mass destruction throughout history," John and Karl Mueller write in their aptly titled "Sanctions of Mass Destruction."[11] This would seem to constitute first-order war criminality, and with a million fatalities should be worth great attention from a human rights group. But as Madeleine Albright once told CBS TV's 60 Minutes, the price of half-a-million Iraqi children's deaths was "worth it,"[12] and Roth and HRW looked the other way. HRW never produced a major report on the sanctions. It never called attention to U.S. and British responsibility for this death-dealing policy. And though HRW did point out that the deliberate starvation of civilian populations is a war crime, it never suggested that U.S. and U.K. officials were guilty of these war crimes. And of course it never called for any tribunals to try the responsible parties.[13]

Also of interest is the fact that in this same Wall Street Journal commentary, Roth describes in detail Saddam Hussein's crimes against the Kurds, which he repeatedly calls "genocide," whereas the number of Iraqis killed by Western sanctions were between five and ten times the number of Kurds killed by Baghdad forces, but don't get mentioned, let alone described as victims of "genocide."[14] Roth asserts that bringing Saddam to justice for his treatment of the Kurds ran into difficulties because France and Russia each had "extensive business interests" in Iraq , and China was worried about comparisons with their treatment of Tibetans. Nowhere does Roth mention the U.S. business dealings with Saddam, loans to his regime, supplying it with helicopters, intelligence and chemical weapons, and the Reagan administration's protection of Saddam from Security Council actions. Instead, paralleling HRW's condemnation and delegitimization of Belgrade during 1998-1999, by this stage in early 2002, it was the condemnation and delegitimization of the Iraqi regime that had become of paramount importance to Roth. Although he noted that bringing indictments against Saddam "would not guarantee his ouster," Roth added that they "would certainly help build consensus that he is unfit to govern, and thus that something must be done to end his rule."

The word "genocide" has also never been applied by Roth or HRW to the enormous death toll caused by the U.S. invasion and occupation of Iraq, 2003-2007, although the numbers of civilians that have died as a consequence of that UN Charter violation now exceed the Kurd "genocide" attributed to Saddam by a multiple that may have reached six or more.[15] But HRW has shown little interest in these totals, and when the British medical journal Lancet published an estimate of some 100,000 Iraqi civilian deaths for the first 18 months following the March 2003 invasion, HRW senior military analyst (and former Pentagon intelligence analyst) Marc E. Garlasco quickly dismissed the findings as "inflated" and the methods used as "prone to inflation due to overcounting."[16] Subsequently, Garlasco admitted to not having read the report when he offered his initial assessment about it to the press.[17] Roth and HRW have shown no qualms over using the word "genocide" frequently in reference to Serb conduct in Bosnia and Herzegovina as well as in Kosovo, although there also the number of victims falls far short of the numbers in Iraq, whether from the "sanctions of mass destruction" or the invasion-occupation of 2003-2007.[18] Once again, this word usage is well geared to the support of U.S. and NATO policy.

In all these cases the HRW focus has been on methods of fighting and their impact on civilians. As noted, this bypasses any possible challenge to cross-border attacks that constitute the "supreme international crime," which HRW takes as a given (with exceptions as described below). It may be argued, however, that if a war itself is illegal, then any military or civilian killings that follow from this crime cannot be defended on grounds that they are the unavoidable consequence of war; [19] but this is not the philosophy of HRW, which ignores that basic illegality. Instead, HRW has repeatedly stated that it "does not make judgments about the decision whether to go to war—about whether a war complies with international law against aggression. We care deeply about the humanitarian consequences of war, but we avoid judgments on the legality of war itself because they tend to compromise the neutrality needed to monitor most effectively how the war is waged...."[20]

But this is a disingenuous evasion on multiple grounds. The decision to go to war is the one that assures there will be both military and civilian casualties, as was stressed by the Nuremberg Tribunal in explaining its own focus on the "supreme international crime," and for that reason alone an unbiased human rights organization would not ignore it. Given that HRW's own state is the one that has been carrying out serial wars in violation of the UN Charter, the exclusion of this primary cause of human rights violations in itself compromises any neutrality the organization may claim to observe.

What is more, there is evidence that HRW leaders have been pleased with these aggressions. We will show later that it urged them on in the case of the Balkans wars, and Roth's piece "Indict Saddam" was a form of public relations support for the prospective attack on Iraq . Roth even celebrates the breakdown of international law against aggression, allegedly in the interest of "human rights." He stated that "We will remember 1999 as the year in which sovereignty gave way in places where crimes against humanity were being committed."[21] Of course, it is the U.S. and British leadership which determines when "crimes against humanity" are committed, but Roth has faith that these leaders are the proper deciders and that the sacrifice of a basic principle of international law is thus justified. This is an only slightly veiled defense of recent U.S. aggressions, and so the alleged refusal by HRW to make judgments about decisions to go to war is in fact a form of apologetics for aggressive war.

HRW's professed neutrality is disingenuous for yet another reason: The organization has never applied it to the armed conflicts within the former Yugoslavia . There, HRW has treated the conflicts and their impact upon civilian populations as the direct consequences of cross-border aggression, and has held the ethnic Serb leadership in Belgrade to be uniquely responsible for them. The entire first half of HRW's Weighing the Evidence is devoted to a summary of the Office of the Prosecutor's evidence that Belgrade provided financial, material, and personnel support to ethnic Serb combatants in Croatia and Bosnia-Herzegovina—

treating this support as clear-cut violations of the international law against aggression: "[H]ow Belgrade orchestrated the vicious wars in Bosnia, Croatia and Kosovo," as Weighing the Evidence author Sara Darehshori put it.[22] HRW has never done the same in other theaters of armed conflict where it maintains an interest—say, documenting how Washington's financial and material support "orchestrates" Israel's 40-year-old military occupation of the Palestinian Territories or Israel's cross-border attacks into Lebanon; and as already noted, U.S. crimes of aggression are treated with "neutrality." But HRW-style neutrality disappears when it is dealing with U.S. targets such as Serbia, where HRW widens its human rights concerns beyond mere methods of combat to include "who started it" and the "accumulated evil of the whole."

In a closely related double standard—and point of illogic—throughout their coverage of the Balkans conflicts, and in close accord with the position of the International Criminal Tribunal for the Former Yugoslavia (ICTY or Tribunal), Roth and HRW demanded that the villains (Serbs) must be brought to justice if a true peace is to prevail.[23] This was allegedly required to help deter future villainy and because the victims need the consolation of justice. But this principle should clearly apply to villains who commit the "supreme international crime," and it was precisely such villains who were tried at Nuremberg . Wouldn't we want "justice" brought to aggressors to teach potential aggressors that such behavior doesn't pay? And isn't such justice necessary to bring peace of mind to the victims of aggression so that true peace can prevail? The point doesn't arise for Roth and HRW, who not only are completely oblivious to this double standard, but in their Balkans efforts have worked closely with the perpetrators of the supreme crime in allegedly bringing justice to the lesser criminals. Here again it is clear that Roth and HRW are not neutral, but, having internalized the perspectives of the Western powers, they serve aggression when carried out under the right auspices.

HRW not only overlooks the rule of law as regards aggression, it has never addressed the massive abuses of the judicial process in the politicized work of the ICTY,[24] apparently because it is serving the same cause as HRW. In another illustration of its cavalier attitude toward legality, HRW boasts that it "helped pressure the Yugoslav government to turn Milosevic and his cohorts over to the tribunal," in complete disregard of the fact that this was done by a kidnapping and in straightforward violation of the Yugoslav constitution and rulings of Yugoslav courts.[25]

Among other forms of bias, HRW accepts the NATO-friendly view that civilian deaths from high-tech warfare such as in aerial bombings and missile strikes are not prima facie "deliberate" as are face-to-face and low-tech killings of civilians. HRW holds that while the former may involve war crimes if not carried out carefully, the latter are war crimes per se. But this distinction is invalid, as bombs dropped from on high on or near civilian facilities are extremely likely to kill and injure civilians, even if the individuals killed were not specifically targeted; and this known high probability makes those killings deliberate for all intents and purposes. [26] Suicide bombers also sometimes target military personnel and do not always just attack civilians. Given that the actual civilian casualty totals of hi-tech bombings and other weaponry are usually far greater than those of suicide bombers and other face-to-face killings,[27] this HRW bias places the protection of U.S. and NATO methods of warfare ahead of human rights.

Another form of bias is the HRW tendency to offer low counts of U.S. and NATO victims, and high counts for victims of U.S. and NATO targets. A study by Marc Herold reveals a pattern in which HRW "reports figures which are about one-third those of other reputable sources." Herold points out that in the case of the NATO attack on Yugoslavia, HRW estimated 500 civilian deaths in Serbia, whereas other credible sources ran to 1,200-1,500 (and the Serbian official estimate was 1,800); and for Afghanistan, HRW estimated that at least 1,000 civilians were killed whereas Herold's own studies yielded a total between 3,000-4,000. Herold also shows that in the specific case of a U.S. massacre at Chowkar-Karez in Afghanistan, HRW's thinly based estimate of 25-35 dead was markedly below the figure of 90 reported in the media of Britain, India, Qatar and Egypt.[28]

On the other side of the ledger, Richard Dicker, the director of HRW's International Justice Program (IJP) and a consultant on Weighing the Evidence, asserted that "hundreds of thousands killed and millions [were] forced from their homes in the four wars [Milosevic] lost while asserting Serbian nationalism."[29] Dicker's inflated rhetoric was not meant to be exact; nor did it need to be, and his "hundreds of thousands" killed has been drastically deflated by establishment sources, but without explicit acknowledgement by Dicker or HRW. In dealing with Serbia's exquisitely demonized "strongman," this human rights lawyer knew that just about any charge could be made to stick, whether at the ICTY or before the court of public opinion. In a more subtle display of numbers-bias, HRW's World Report 2007 says that in February 2006, staff at the Sarajevo-based Research and Documentation Center (RDC) "were threatened through an anonymous phone call and warned to stop their analysis on war-related deaths." The motive was the "center's downward revision of the number of wartime casualties," which HRW stresses "has drawn criticism from Bosnian Muslims, the war's principal victims."[30] In fact, the RDC has found documentable totals of war-related deaths on all sides to be in the area of 100,000.[31] Thus HRW's use of the phrase "downward revision" mischaracterizes the RDC's work, as it understates the dramatic reduction by one-half to two-thirds of the much higher estimates of 200,000 to 300,000 that have been in circulation since late 1992, while HRW never once gives the specific number in the revised estimate that shows Dicker to have been guilty of inflation (and raises questions about HRW's massive attention to an alleged "genocide" in Bosnia).

Another revealing form of bias has been HRW's regular denial that the United States commits war crimes. Writing in late 2002, Kenneth Roth stated that "In recent wars, U.S. forces have made mistakes and even violated humanitarian law but have not committed war crimes."[32] He admitted that the use of cluster bombs where substantial civilian casualties are "foreseeable" might be deemed by some court to be a war crime, but he himself declared that none were committed—a remarkable claim given that

Roth and HRW have hardly examined all uses of cluster bombs and determined that in each of those cases civilian deaths were not "foreseeable." This is the language of crude apologetics. Furthermore, there is the matter of the use of depleted uranium, a civilian-deadly weapon regularly employed by his country, which Roth ignores.

Michael Mandel has pointed out that during the war against Yugoslavia, "NATO convicted itself out of its own mouth," its leaders repeatedly acknowledging the goal of breaking civilian morale, and targeting bridges, schools, factories, livestock, crops, power grids, media centers, religious buildings, including early Christian and medieval churches, chemical plants, and fertilizer factories. [33] Only a U.S.-war apologist could claim that this objective and these targets did not point to intentionality as well as reveal war crimes. Amnesty International had no trouble finding and naming plenty of war crimes.[34]

There are other forms of bias in HRW's work, such as an underplaying of really major crimes and a false even-handedness in cases where the preferred side does vastly more deadly and destructive things, as in case of Israel in Lebanon and Gaza, or the United States in Iraq, with the massive use of cluster bombs, the almost complete destruction of sizable cities like Fallujah, hospital bombings, and the use of phosphorus bombs as well as depleted uranium. Roth did castigate the Israelis for their July 30 airstrikes on the Lebanese village of Qana, saying and writing that the "IDF effectively turned southern Lebanon into a free-fire zone," and for its use of cluster bombs.[35] But HRW's treatment of Israel or the United States in Iraq has never come near the passionate intensity shown by their on-the-ground investigations and search for witnesses, their acceptance of contestable evidence, and their furious condemnations of Serb behavior in Bosnia and Kosovo and calls for punishment.

And in contrast with their treatment of the Serbs, when dealing with Israel and the United States , HRW has gone to great pains to provide "balance" in even-handedly condemning Hezbollah, the Gaza Palestinians and Hamas, and the Iraqi resistance. In the case of Hezbollah and Israel , HRW even compared their missile attacks in terms that were unfavorable to Hezbollah, whose missiles HRW alleges deliberately targeted civilians, whereas Israel simply was not careful enough. HRW ignored the fact of a major "supreme international crime," the volume of bombings and ordnance deployed, and the number of casualties, and it imputed an intent to Hezbollah fighters for which HRW had no supportive evidence.[36] This parallels the apologetics in the HRW contrast between unintended civilian casualties from high level bombing versus the "deliberate" killing of civilians in close-quarters combat.

In sum, HRW has done a great deal of valuable work on human rights, enough to frequently arouse the ire of U.S. and U.S. client state officials and their intellectual and media supporters. But like the Christian missionaries of earlier empires, HRW has also performed yeoman service in the advancement of U.S. foreign policy. Hans Köchler says that "Human rights have become an instrument of power politics in an environment in which no checks and balances exist to restrain the arbitrary use of power." And in his view, "In the war against Yugoslavia in 1999, NATO acted as the 'Holy Alliance' of our times, trying to justify with moral principles a campaign of war that was in complete contradiction to the UN Charter and to international law in general."[37] HRW has been a servant of this new Holy Alliance.

In the beginning, as the U.S. Helsinki Watch Committee, it did this by helping to publicize Soviet wrongdoing in Western capitals. Later, and during the current and the last decade in particular, it has made three principal contributions to U.S. policy interests. First and most notably, HRW has refused to challenge U.S. wars and interventions as such, taking them as givens and dealing only with second-order human rights phenomena within the theaters under attack. This refusal dates back to the Golden Age of the 1980s, when under challenge over their handling of the Contra war against Nicaragua and the Sandinista government's response to it, the group's leaders avowed that "Americas Watch takes no position on the military conflict as such," emphasizing that "we condemn the human rights violations committed by the insurgents as we condemn those committed by the government."[38] Second, HRW has tended to underplay and undercount U.S. and "allied" human rights violations. At worst, it has found U.S. warmakers responsible for very narrow mistakes and oversights, for taking insufficient precautions in their methods of violence, for using proscribed munitions, and for causing "needless deaths."[39] Third, and the most important from the standpoint of how atrocities are recorded and publicized, HRW has placed the targets of U.S. wars under the most demanding of human rights microscopes, invariably finding their political leadership guilty of serious crimes and calling for their removal and/or punishment. [40]

Even when HRW applies its microscope to U.S. conduct, as in the related cases of the prisoner of war camp at Guantanamo Bay, Abu Ghraib, and "rendition" to foreign states,[41] it never calls for the prosecution of the political leadership responsible for these practices, much less treat this conduct as something more grave than bad publicity, tarnishing America's image abroad. Thus HRW began 2007 with a PR campaign calling for Guantanamo 's closure. But although HRW labeled Guantanamo a "shameful blight on US respect for human rights,"[42] and Kenneth Roth called it "utterly counterproductive," a "symbol of the Bush Administration's lawlessness when it comes to fighting terrorism," a "tool for terrorist recruiters," and a "disaster for America's standing in the world and a disaster for the effectiveness of the fight against terrorism,"[43] no mention was made of the direct chain-of-command that runs from the White House to Guantanamo. Nor of the fact that Guantanamo is but one node in a network of similar U.S. practices that circle the globe—the reality of which is a U.S. Gulag.[44] Instead, early 2007 found HRW adopting the posture that Guantanamo is yet another "mistake," and chiding Washington on grounds that its larger objectives in the so-called "war on terror" would be better served were it to shut the camp down.

Throughout HRW's work runs the presumption that the United States is the global lawgiver, with special rights that call for special

treatment, including in particular the non-reciprocal right to interfere in the sovereign affairs of other states and peoples, militarily if its leadership so decides. And this remains equally true whether HRW is documenting Washington's "mistakes" across various theaters of war or, as we show below, HRW is decrying what it called Slobodan Milosevic's "coordinated and systematic" campaigns to terrorize, kill, and expel ethnic non-Serbs from the territories he sought to dominate.[45] Can one imagine HRW referring to George Bush's "coordinated and systematic" campaign to organize a global torture gulag? Or calling a Serb, an Iraqi, or a Sudanese action "unproductive" and a "tool for recruiters against U.S. imperialism"?

Van: "Ian Johnson" <i-johnson@lineone.net>
Aan: <Undisclosed-Recipient:;>
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Part 2: HRW as a Campaigner for the NATO Wars in the Balkans

From the very beginning of the contests over the fate of the Socialist Federal Republic of Yugoslavia (SFRY), HRW challenged its territorial integrity and supported the dismemberment of the unitary state, a militarized response to the armed conflicts that ensued, and most vocally of all, the meting out of "justice" to the wrongdoers. In a commentary in the November 10, 1990 New York Times, Helsinki Watch Executive Director Jeri Laber and Kenneth Anderson urged SFRY's breakup and the provision of Western aid to any breakaway republics that might "protect the rights of all their citizens."[46] These authors failed to give the slightest weight to the fact that the declarations of independence within the breakaway republics were contrary to both federal and republican constitutions, not to mention international law—including the Helsinki Final Act.[47]

Most important, Laber and Anderson were blind to the fact that pressures for independence within the republics and provinces expressed a surge of nationalism, rather than any concern for the rights of "all their citizens." Writing about the Republic of Bosnia and Herzegovina , Robert Hayden observed that "the free elections that marked the end of Communism, in November 1990,... [were] essentially an ethnic census. Given the chance to vote as Bosnians, the population of Bosnia and Herzegovina chose instead to vote, overwhelmingly, as Muslims, Serbs, and Croats."[48] Obviously, this did not bode well for the rights of minorities. In a letter responding to Laber and Anderson's call for the dismemberment of the SFRY, Hayden pointed out that "Those who would break up the country are strong nationalists, not likely to treat minorities within their own borders well." Instead, it was only the unified federal state of Yugoslavia that provided protection for minorities—and very possibly would have continued to do so, had it not been attacked, delegitimized, and dissolved. "It seems truly bizarre," Hayden noted presciently, "that 'human rights' activists so cavalierly advocate policies that are likely to turn Yugoslavia into the Lebanon of Europe."[49]

Hayden's warning was vindicated by history. The kind of recommendations made by Laber and Anderson , and more important but similar pressures from foreign states, most notably Germany and the United States , proved immensely destructive of human rights. However, although damaging to human rights, HRW's policies were closely aligned with those of the U.S. government and George Soros, both major drivers of the neoliberal restructuring of Eastern Europe following the collapse of the Soviet bloc, with Soros himself deeply interested in the Balkans, helping to found and to fund media organizations in Kosovo and elsewhere that focus on the Balkans, as well as a major contributor to HRW.[50] Both of these state and non-governmental actors steadily supported the dismemberment of a semi-socialist Yugoslavia and its transformation into mini-states that in turn would be Western clients and open to foreign investment.[51]

The formation of the ICTY, created and effectively controlled by the United States and its allies,[52] has played a vital role in this process as well, and there has been a long tacit mutual support and commonalty of policy and practice among these parties.

An important mechanism of dismantlement of Yugoslavia was to make the Serbs the unique arch-villains and to forestall settlement in the alleged interest of "justice."[53] This demonization was strictly politically based—the villainy was broadly based, as many analysts and participants have noted,[54] but the critics of demonization could make no headway against the winds of power and propaganda, to which HRW was a major contributor. It was Milosevic and the Serb drive for a "Greater Serbia" that allegedly explained all,[55] even though Milosevic signed on to each and every peace proposal advanced in the key years 1992-1995,[56] and even though the Clinton administration and Izetbegovic sabotaged them all until Dayton,[57] with the Clinton team eventually using the 1999 Rambouillet Conference strictly as a means of clearing the ground for war.[58]

In December 1992, U.S. Deputy Secretary of State Lawrence Eagleburger called for a "second Nuremberg " tribunal to bring justice to the embroiled Yugoslavia , naming Milosevic, six other Serb officials, and three Croats as its proper targets. "We know that crimes against humanity have occurred," Eagleburger said, "and we know when and where they occurred. We know, moreover, which forces committed those crimes, and under whose command they operated. And we know, finally, who the political leaders are and to whom those military commanders were—and still are—responsible."[59] Within less than three months, the Security Council adopted the first of its resolutions during 1993 that established an "international tribunal... for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991."[60]

Later that same year, HRW also called for the prosecution of no fewer than 29 different individuals by name, ranging "from the lowest prison guard to the former Yugoslav Minister of Defense and the Chief of Staff of the Yugoslav National Army."[61] Of course, the Nuremberg tribunal had focused on the "supreme international crime," but just as HRW has ruled out this crime—of aggression—as part of its list of human rights crimes, so did the founding Statute of the Tribunal,[62] understandably as that

Statute was drafted by U.S. officials who wanted to be free of any obstruction to their own cross-border attacks. The point was to focus on the target Serbs and stave-off a negotiated settlement in the alleged interests of "justice," until a proper political result could be obtained.

Michael Scharf, a former State Department insider, acknowledged that the ICTY was organized as "little more than a public relations device," a "useful policy tool," that could "fortify the international political will to employ economic sanctions or use force."[63] But this only acknowledges what should be obvious from the ICTY's origins, structure and performance: Namely, that the ICTY was an integral part of war-planning and war-making operations, and that it is neither independent nor designed to produce anything but a strictly politicized "justice" for Yugoslavia. As Michael Mandel argues, the ICTY was used by the U.S. policymakers "to justify their intention to go to war... by branding their proposed enemies as Nazis," and by this means to "derail the peace process."[64] HRW has also been a part of this war-making apparatus; as we have seen, its leaders have steadily called for "justice" and if need be war to bring the villains—at least the Arch Villains—to pay for their sins.

HRW regularly cites ICTY findings as unquestionable truth, and it is proud to have helped the ICTY to collect data on Serb crimes, publicize those crimes and the ICTY's good work—and "to influence the U.S. government to condition financial aid for Yugoslavia on cooperation with the tribunal."[65] Of course HRW has treated the ICTY as an arm of genuine justice, just as the ICTY has depended on nongovernmental organizations such as HRW as well as NATO officials for supposedly unbiased information. In a commentary titled "Human Rights, American Wrongs," Kenneth Roth, while assailing the U.S. rejection of the International Criminal Court, stated that " Washington says it would never deploy US troops where they would be subject to an international tribunal. But... US troops in Bosnia and Kosovo have been subject to the jurisdiction of the Yugoslav war crimes tribunal. So were US bombers over Bosnia in 1995 and Serbia and Kosovo in 1999. The crisis over the International Criminal Court is a manufactured one."[66] This is a clear illustration of Roth's convenient self-deception, as he fails to recognize that the ICTY was U.S.-controlled and that its failure ever to indict any U.S. officials was a foregone conclusion.

Even Jamie Shea, NATO's chief of public relations during the 1999 war, admitted that "NATO countries are those that have provided the finance to set up the Tribunal,... are amongst the majority financiers.... I am certain that when Justice Arbour goes to Kosovo and looks at the facts she will be indicting people of Yugoslav nationality and I don't anticipate any others at this stage."[67] But nowhere was the truth of this point more dramatically evident than in the ICTY's own performance, as when Chief Prosecutor Carla Del Ponte refused to open an investigation of possible NATO war crimes on the grounds that the 495 dead Serbs documented by the ICTY's investigation were an insufficiently large number—"there is simply no evidence of the necessary crime base for charges of genocide or crimes against humanity," in the words of the Prosecutor's Final Report.[68] But under the ICTY's Statute, the Prosecutor is obligated not only to investigate but to prepare indictments where a prima facie case for crimes against humanity exists.[69] There is also the awkwardness that Milosevic's initial indictment rested on a "crime base" of 344 dead Kosovo Albanians, and of these, only 45 were reported to have died prior to the start of NATO's war.[70]

But even more remarkable, the indictment of Milosevic et al. for Kosovo was hastily put together based on unverified information supplied to the ICTY by the U.S. and U.K.; and it was issued two months into NATO's war, just as NATO had begun stepping up its bombing of Serb civilian facilities and was in need of a public relations boost to offset what Amnesty International (but not HRW) called war crimes.[71] So in a tacit alliance with HRW as well as the attacking (and ICTY-funding) countries, the ICTY actively supported commission of both the "supreme international crime" and its plain vanilla derivatives.

Michael Mandel shows that during 1998, just as NATO was building up its forces in preparation for the 1999 military attack on Yugoslavia, the ICTY greatly intensified its investigations and charges against the Serbs.[72] HRW did exactly the same: It had already written to Louise Arbour by early March, 1998, urging the Office of the Prosecutor to open an investigation into Serb-perpetrated atrocities,[73] and HRW was very quick to place monitors on the ground inside Kosovo in early 1998, and to step up its accumulation of evidence against Belgrade. It worked alongside the ICTY as a PR-arm of NATO, helping to create the moral environment for NATO's commission of the supreme international crime on March 24, 1999. It should be noted that, despite a period of intense anti-Serb propaganda that lasted some 12 to 15 months before the bombing war began, NATO Secretary General George Robertson told the British House of Commons that, "until Racak... the KLA were responsible for more deaths in Kosovo than the Yugoslav authorities had been."[74] And it is now well established that during that period the KLA was getting funds and training from the CIA.[75] These were points of no concern whatsoever to the ICTY and HRW.

In sum, HRW's performance in the Balkans has been perfectly geared to serve the aims of U.S. policy, but as that policy was one of keeping the pot of armed conflict boiling in order to dismantle the SFRY and to weaken Serbia by putting an alleged pursuit of "justice" ahead of settling a series of grave internal conflicts, the effect of HRW policy has been extremely damaging to human rights. The same was and remains true in the cases of Iraq and Afghanistan . In each instance HRW has not challenged the privileges enjoyed by the aggressor states in their regular commission of the supreme international crime, thereby giving its tacit approval to this most fundamental of human rights violations—and in the case of the SFRY, actively urging aggression.[76] By virtue of biases which regularly underrate U.S. and allied human rights violations and inflate those of their targets, HRW facilitates the supreme international crime.

Van: "Ian Johnson" <i-johnson@lineone.net>
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Onderwerp: CDSM: Human Rights Watch in Service of the War Party (3 of

Part 3: HRW "Weighs the Evidence"

Weighing the Evidence: Lessons from the Slobodan Milosevic Trial (hereafter, WTE) was drafted under the auspices of HRW's International Justice Program (IJP). Principal author Sara Darehshori is a Senior Counsel with the IJP. The document acknowledges the help (among others) of ten current and former HRW staff members, including the IJP's Director Richard Dicker. Gratitude is expressed toward the ICTY prosecutor Dermot Groome "for reviewing the evidence sections of the paper;" Groome's main responsibility at the Milosevic trial was to make the charge of "genocide" stick to the defendant. Thanks are also given to the Milosevic trial's chief prosecutor Geoffrey Nice, who "was especially generous with his time and insights and deserves special mention." To Diana Dicklich, the Prosecution's case manager during the Milosevic trial. And to Alexandra Milenov, a Registry Liaison Officer for Serbia and Montenegro . Also, WTE acknowledges the help of unidentified "members of the Office of the Prosecutor, Chambers, Registry, Outreach, and Defense... ." Finally, it mentions but does not identify by name the "assistance and leads given us by several journalists who covered the trial closely and provided us with insights from an observer's perspective."[77]

The IJP's promotional literature tells us that its purpose is "to promote justice and accountability for genocide, war crimes, and crimes against humanity in countries where national courts are unable or unwilling to do so."[78] But whenever we look at the IJP's work, no matter where we turn, we find the former Yugoslavia occupying center stage. Of the 49 full-length "Reports" to have been archived on the IJP's website through December 2006, roughly one-third of them (16) deal with the conflicts over the former Yugoslavia.[79] Similarly, of the 481 documents that the IJP archives "by Region," 31 percent of them focus on "The Balkans" (i.e., on matters related to the former Yugoslavia, including the performance of the ICTY).[80] In keeping with this focus, the single longest document ever published by HRW (861 pages) was devoted to publicizing the work of the ICTY; as its Preface tells us, it was "intended as an accessible reference tool to assist practitioners and researchers as they familiarize themselves with ICTY case law."[81] Indeed, HRW's longest-ever study of a particular theater of conflict (623 pages) was devoted to the Serbian province of Kosovo . More precisely, it stated that its aim was "to document the war crimes committed by Serbian and Yugoslav government forces in Kosovo between March 24 and June 12, 1999—the period of the NATO bombing of Yugoslavia ."[82] No other theater or theme besides the former Yugoslavia and the work of the ICTY weighs anywhere near as heavily in the IJP's scales. It would not be unfair to say that the former Yugoslavia has served HRW as a kind of real-world laboratory against which to test certain conceptions of human rights and international justice. WTE thus belongs to a lineage that has been years in the making, and this report exhibits the same overall pattern of advocacy and bias that has characterized HRW's treatment of Balkans issues from 1990 onward.[83]

Surely this extraordinary attention is not justified by the scale of the atrocities. As we noted earlier, HRW avoided reporting current estimates of war-related deaths in Bosnia, even though it acknowledged their "downward revision"—the unacknowledged numbers falling from 200,000 - 300,000 to 100,000 on all sides.[84] Although estimates of the deaths caused by the Indonesian invasion and occupation of East Timor are commonly in the order of 200,000,[85] the IJP archives only one major report on East Timor, but 16 on Yugoslavia.[86] Clearly, this degree of contrast in levels of attention cannot be correlated with the scale of atrocities under investigation, and flies in the face of HRW's claim that its aim is "redressing the more grievous human rights crimes."[87] The contrast can, however, be linked to U.S. foreign policy priorities. Thus, Indonesia was immensely important to Washington, and the U.S. supported its military attack on East Timor, with HRW favorite Richard Holbrooke serving first as the Carter and later the Clinton point man on East Timor, providing cover for Indonesia's genocidal performance.[88] But in the former Yugoslavia, Washington supported Croatia and the Muslims of Bosnia, and assailed the Serbs; and it can hardly be a coincidence that HRW was deeply interested in atrocities committed by Serbs, with Holbrooke again serving as the Democrats' point man, but this time by advocating hard-line policies toward the alleged Serb aggressors. (Holbrooke has been a guest speaker at multiple HRW events held in the United States and abroad.[89] His wife, Kati Marton, serves on the HRW Board of Directors.[90])

In another dramatic illustration of HRW's adaptation to the U.S. foreign policy agenda, we may contrast HRW's treatment of Serb conduct in Croatia, Bosnia, and Kosovo, on the one hand, to which HRW gives priority, documents extensively, and denounces with great indignation and generous use of the word "genocide," with HRW's treatment of the Croatian slaughter and ethnic cleansing of Serbs during Operations Flash and Storm in 1995, on the other. These operations were carried out by Croatian forces with the active support of the Clinton administration. Flash itself was a substantial ethnic cleansing of Serbs from Western Slavonia , carried out in May 1995, in which at least 450 Serbs were killed and an estimated 12,000 expelled.[91] As described by Brendan O'Shea, "This was conquest and a 'land grab'. This was precision ethnic cleansing supported and condoned by the United States ."[92]

Operation Storm was a larger-scale action that involved the brutal and carefully planned ethnic cleansing of the entire Serb civilian population of Croatian Krajina, some 250,000 people. Carried out within a month of the Srebrenica massacre in eastern Bosnia, Storm may well have involved the killing of more Serb civilians than Bosnian Muslim civilians killed in the Srebrenica area in July: Most of the Bosnian Muslim victims were fighters, not civilians, as the Bosnian Serbs bused the Srebrenica women and children to safety; the Croatians made no such provision and several hundred women and children were slaughtered in Krajina.[93]

The ruthlessness of the Croats was impressive: "UN troops watched horrified as Croat soldiers dragged the bodies of dead Serbs along the road outside the UN compound and then pumped them full of rounds from the AK-47s. They then crushed the bullet-ridden bodies under the tracks of a tank."[94]

HRW went to great pains to deny that Operation Flash involved serious human rights violations, and its report on the subject chastised the UN for rushing to a hasty negative judgment.[95] In this case, HRW called for great care in dealing with witness evidence of human rights violations, a point that it never once makes in WTE as regards the ICTY's eminently problematic acceptance of witness evidence of Serb actions.[96] It also singled out for reprimand the UN official Yasushi Akashi for public statements that HRW found "controversial" and unfairly critical of the Croatian military campaign. "[W]e believe that criticism of a government's human rights record should be commensurate with the level of abuse," HRW countered; "exaggerated and imprudent remarks... can potentially be counterproductive and damaging to respect for human rights."[97] This report used the phrase "ethnic cleansing" three times, but only in reference to Serb actions, not Croat; and HRW never applies the word "genocide" to Operation Flash or Storm, though it uses this word liberally in remarks about Serb behavior. Keeping to the same line, a much longer 1996 report on Operation Storm limited its use of the phrase to "bureaucratic ethnic cleansing," and then only in relation to laws enacted by Croatia to discourage the return of Serbs driven out by its military campaign.[98] "The Croatian government has... argued that 'Operation Storm' did not constitute—nor can it be compared to—the abuses associated with the policy of 'ethnic cleansing' of non-Serbs as practiced in Serbian-controlled territories in Croatia and Bosnia since 1991 and 1992," this report noted. "Unless the Croatian government reverses its recent actions by allowing the safe return of Serbian civilians to the Krajina area... it will also have to answer to the charge of 'ethnic cleansing' that is often levied against Serbian forces."[99] As regards Serb actions, HRW never makes the use of the phrase "ethnic cleansing" dependent on Serb failure to reverse what has already been done.

Even more dramatic were the gross apologetics for Operation Storm provided in August 1995 by Holly Cartner, then Executive Director of Human Rights Watch/Helsinki.[100] Cartner explained the vast exodus of Serbs from Krajina as resulting from "intensive military operations," Serbs "encouraged to go by their own leaders," and Croatia's anti-Serb propaganda. She writes that Serbs "were able to collect their belongings... and leave in semi-orderly fashion." She never acknowledges the high-level deliberate planning of this cleansing operation—it was just an inexplicable "military operation"—nor does she mention the active U.S. support for Operation Storm. She calls upon Croatian President Tudjman to send trained people to care for the remaining Serbs, to permit the return of those who fled, and to prosecute soldiers guilty of war crimes. But she doesn't demand trials for the Croat leaders in the interest of "justice"—these leaders are apparently good folks who had made a little mistake but can get their own house in order. "While all parties to the wars in the former Yugoslavia have committed war crimes," Cartner asserted, "only one side—the rebel Serbian forces in Bosnia and Croatia—has attempted to eliminate 'in whole or in part' a people on the basis of their ethnicity." Pushing out 250,000 Serbs while killing over a thousand of them in just a few short days doesn't qualify as eliminating on the basis of ethnicity!

Shortly before, Peter Galbraith, U.S. Ambassador to Croatia, had also denied that Operation Storm constituted a case of "ethnic cleansing," telling a BBC radio interviewer that "Ethnic cleansing is a practice sponsored by the leadership in Belgrade, carried out by the Bosnian Serbs and also by the Croatian Serbs," not by Croatia—a position condemned throughout much of the world.[101] But though Storm was one of the clearest cases—and the largest—of cleansing a geographic space of its people on the basis of their ethnicity during the Balkan conflicts, neither the U.S. Government, HRW, nor Holly Cartner could bring themselves to use such a term to describe this Croatian action. The HRW double standard in word usage as well as in the selection (and misuse) of evidence follows closely the official agenda. Twice over the course of three months in 1995, Croatia had militarily emptied Serb population centers, and HRW principals attacked the critics of Croatia 's offensives for their insensitivity towards the perpetrators, truly a remarkable chapter in the history of this human rights organization.

While WTE pretends to be fair-minded on the Milosevic trial, it is not: It hews closely to the Prosecution's case against Milosevic, takes for granted all the premises of the Prosecution and establishment narrative, and selects and massages evidence on a regular basis to support that narrative. Thus WTE takes it as a simple truism that the ICTY is pursuing justice, and it never addresses ICTY's political origins, purpose, integration into NATO plans and operations, problematic rules and rule-making, staffing, and selectivity.

According to a celebrated maxim: "Justice must not only be done, it must also be seen to be done." But both the ICTY and WTE postulate Serb and Milosevic guilt; and WTE sees no contradiction between presuming guilt and conducting a fair trial, much less between the integration of the work of the ICTY and U.S.-NATO policy, on the one side, and the likelihood or even the possibility of its rendering justice, on the other. WTE does not find it problematic that Richard May, the Presiding Judge until a fatal illness forced his resignation in late February 2004, Geoffrey Nice, the lead prosecutor, and four of the five amicus curiae appointed by the court heralded from countries that participated in the NATO war against Yugoslavia, or close allies.[102] Similarly, of the 25 judges now serving at the ICTY, 12 are from NATO members; one is from South Korea, a close U.S. ally; three from Jamaica and Guyana, countries having close relations with Great Britain; three from Austria, Sweden and Switzerland, countries generally supportive of NATO in the Balkans; two from Pakistan and Senegal, which are Muslim countries. ICTY President Fausto Pocar is from Italy , a NATO country; and Vice President Kevin Parker is from Australia , a close U.S. ally.[103] One proposed judge from Russia was vetoed on the basis of a potential "pro-Serb bias"! [104]

The ideas stressed in John Laughland's Travesty, that legal justice requires a lawful base in an enabling statute, a separation between prosecution and judges, a stable body of rules not changeable by the judges in accord with passing convenience,[105] an appeals process outside the body of appointed judges themselves, qualified judges, and independence from powerful interests with

a political agenda, are outside HRW's and WTE's orbit of thought.[106] This failure to question structured bias is remarkable for a body that claims to support the rule of law—which HRW seems to regard as something that an advanced civilization needs to impose upon backwards peoples. But while HRW allegedly seeks the rule of law and "accountability" in these backward areas, it is extremely cavalier about the lack of rigor of the law, judicial practice, and accountability, in an institution pursuing "justice" in accord with U.S. and NATO priorities. As we have stressed, with HRW's principals regularly violating the UN Charter prohibition of aggression, that area of justice is set aside, and although it accepts the urgency of the ICTY principle that one can hardly hope to "restore the rule of law [etc.]... if the culprits are allowed to go unpunished,"[107] HRW fails to see the necessity of applying this in the case of those committing the "supreme international crime," such as Richard Holbrooke, Madeleine Albright, Bill Clinton and George Bush.

The most important achievement of the Milosevic trial, WTE declares, was that it "showed how Belgrade enabled the war to happen."[108] The "JNA, the Serbian Ministry of Interior and other entities... armed Serb civilians and local territorial defense groups in Krajina and Bosnia prior to the start of conflict...."[109] To support this line, WTE cites NATO commander Wesley Clark: "We knew that the Serb military had been... carved out of the Yugoslav military."[110]

But the armed forces of Bosnia and Herzegovina , Croatia , and even Macedonia were carved out of the JNA no less than were the Serb forces. In a series of civil wars, each rival sought and acquired arms, allies, and sponsors—some more successfully than others. If the JNA helped to create the military formations of the Serbian Krajina and Republika Srpska, it did likewise for the Bosnian Muslim and Bosnian Croat armies, for Fikret Abdic's Muslim troops in Bihac, and for countless paramilitary groupings. Unlike Berlin , Vienna or Washington , however, (or Riyadh , Tehran , Islamabad or Ankara ,) Belgrade was not a foreign power. This point is lost on WTE. As is the fact that if aid to the Croatian and Bosnian Serbs "enabled the war to happen," so did aid to the Croats and Muslims, with decisive consequences as the wars dragged on.

But the Milosevic trial shed little light on which rival inherited what from the JNA, including its arms, organizational knowledge, plant and infrastructure. The Prosecution showed no interest in this line; nor does WTE. During cross-examination of Morton Torkildsen, a financial "expert" whose testimony figures prominently in WTE (the document cites Torkildsen's name 20 times), Milosevic asked whether the analysis he produced had covered "not just [the] weapons and equipment but entire military factories" left behind in territories "under control of the Croats and Muslims?" "No," was Torkildsen's reply. His mandate went only as far as "evidence relative to the indictment of the accused." But no further.[111]

In any case, how the rivals acquired their weapons is secondary to who took up arms first, and for what purposes. Also prominent in WTE (mentioned 15 different times) is the testimony of the former JNA General Aleksandar Vasiljevic. Prosecutor Nice asked Vasiljevic about the JNA's "goals." "[T]he first and basic objective was...for the JNA to separate the parties in conflict," Vasiljevic explained, referring to court documents. "Later, the objectives were to protect... the JNA units which were then... in facilities and barracks that were under blockade in the territory of Croatia . And sometime from August or September onwards, 1991... the protection of endangered peoples is referred to, the people in those areas that were attacked by either side, any side. Specifically in that period of time that we're referring to, that is to say September 1991, this had to do with the protection of the Serb people in some areas...." Nice then asked a follow-up question: "Was there, in your opinion, any question of the JNA forcing a political solution to the crisis?" Vasiljevic replied: "Never. Not in any period of time. The JNA never imposed a solution or ways of getting out of the crisis."[112] But these aspects of Torkildsen's and Vasiljevic's testimony do not interest WTE, and none of it "enabled the war to happen." Instead, the Serbs were most responsible for the wars in Yugoslavia . The Serbs committed crimes far more horrendous than their rivals. The Serbs, alone, were guilty of genocide.

WTE commits many errors, each invariably supportive of its biased treatment of the issues. For example, following the ICTY and party line narrative, WTE reports that the Serbs "expelled" 800,000 Kosovo Albanians by June 1999.[113] But large numbers fled from fear of NATO bombs and fighting, some were pushed out by the KLA, and literal expulsions by the Yugoslav army were concentrated in areas of strong KLA presence.[114] What is more, the larger fraction of Kosovo Serbs than Kosovo Albanians who fled during that bombing war were hardly "expelled,"[115] although some may have been pushed out by, or fled in fear of, the KLA.

In addition to offering an error-laden history, WTE stops short in its descriptions of events when the story might appear to contradict the benign version of NATO's and the ICTY's supposed campaign for justice. Thus WTE writes that since the end of the bombing war and the withdrawal of FRY and Serb forces from Kosovo on June 20, 1999, the "United Nations has administered Kosovo with support from a NATO-led peacekeeping force, although it formally remains part of Serbia ."[116] But that is all. No mention of the fact that under UN and NATO auspices there were over a thousand killings and disappearances, that over 150,000 Serbs and tens of thousands of Roma were driven out of Kosovo in what Jan Oberg has called the "largest ethnic cleansing [in proportionate terms] in the Balkans,"[117] and that it is a state dominated by fear and chronic low level terror and with a thriving drug and sex trade, but with a huge U.S. military base planted in its center.

HRW's bias and blasé acceptance of abuses of a supposedly judicial process were quickly made evident in their putting forward the "Scorpion video" as a case in which an "important item" of "evidence" came into view through the work of the ICTY.[118] This video, "which showed members of the notorious 'Scorpion' unit, believed to have been acting under the aegis of the Serbian police, executing men and boys from Srebrenica at Trnovo. Although the video was never admitted as evidence, it was shown at the trial

and would not have become public but for the trial. It had enormous impact...."[119] Contrary to WTE, the statement that this group was "believed to be operating under the aegis of the Serbian police" was convincingly refuted during the Milosevic trial (see Appendix). WTE's and HRW's contempt for the rule of law is also displayed by WTE's failure to mention that the video was shown by the prosecutor during Milosevic's defense, free of cross-examination, despite its lack of authentication and the absence of any connection between it and the knowledge and testimony of the witness on the stand. As amicus curiae Steven Kay objected in court, it was "sensationalism... not cross-examination,"[120] an unjudicial propaganda contribution to the imminent 10th anniversary memorial to the Srebrenica massacre, and clear evidence of the ICTY's political role.[121]

But why was this evidence deemed "important" by WTE? There has never been any doubt that Serb paramilitaries executed "men and boys" during these years of fighting in Bosnia, just as there is no question but that Croat and Bosnian Muslim (and imported Mujahadeen) did the same. Naser Oric, the Bosnian Muslim commander at Srebrenica until shortly before its fall to Bosnian Serb forces in July 1995, proudly showed Western reporters videos of beheaded Serbs that forces under his command had killed during their operations.[122] Back in May 1993, the Yugoslav government submitted to the UN Secretary-General an extensive 132-page dossier titled War Crimes and Crimes and Genocide in Eastern Bosnia...Committed Against the Serb Population from April 1992 to April 1993, listing by name and place hundreds of Serbs killed by Muslim and Mujahadeen forces in that early period.[123] More recently, the Tabeau-Bijak report estimated some 16,000 Serb civilians killed in Bosnia during the 1992-1995 wars.[124] In civil wars people are killed, sometimes using the most heinous methods. So a video record of the execution of six young Bosnian Muslim males is only important for identifying particular individuals as engaging in criminal acts or for propaganda service.

The Prosecution's evidence in the Milosevic trial consisted heavily of witnesses who claimed killings and other abuses by Serb forces, and WTE follows in the same well-worn path. As Laughland notes, however, "Indictments [by the ICTY] are drawn up with little or no reference to the fact that the acts in question were committed in battle: one often has the surreal sensation one would have reading a description of one man beating another man unconscious which omitted to mention that the violence was being inflicted in the course of a boxing match."[125] At the opening of his trial Milosevic devoted several hours to showing video evidence of deaths and injuries to Serbs from NATO violence,[126] and there is every reason to believe that he could have called several hundred witnesses, and presented a great deal more video evidence of crimes against Serbs. That would have represented a different agenda and political purpose than the trial in place, but only committed partisans like the ICTY and HRW could believe that civil war atrocities were unique to one side and that a video showing six executions was "important" evidence.

In early August 2006, Serbian and Croatian television began playing videotapes that allegedly depict scenes shot at various stages of Operation Storm. One shows the "Croatian army's 'Black Mamba' unit and the Bosnian military's 'Hamze' squad killing and abusing Serb soldiers and civilians," Agence France Presse reported. A second shows the Army of Bosnia and Herzegovina Fifth Corps Commander Atif Dudakovic "ordering his troops to torch Serb villages in northwestern Bosnia in September 1995. 'I'm ordering the village to be torched....Torch everything without exception', Atif Dudakovic... shouted in the film that showed houses in flames." A BBC report translated Dudakovic ordering: "[B]urn that village....Burn, burn everything....Go on, burn everything in your wake!"[127] The State Department's information bureau acknowledged that "One tape reportedly shows Croat and Bosnian troops harassing and attacking convoys of Serb refugees, in one scene killing a Serb who has surrendered. Another tape shows a prominent Bosnian general apparently ordering his troops to burn Serb villages."[128]

Bosnia-Herzegovina's Foreign Minister Mladen Ivanic (a Serb) called for an investigation, and said authorities needed to show that they would "treat all war crimes the same way."[129] But when asked during its weekly press briefing whether the Office of the Prosecutor "was conducting an investigation" into these matters, spokesman Anton Nikiforov "stated that it was regrettable that the tape had surfaced now just as the OTP had finished its investigative mandate."[130] Through early 2007, the ICTY had not indicted Dudakovic. Is it not interesting how videotapes such as these, and Naser Oric's, are not "important" to WTE or the ICTY, and allegedly come too late for action, just as the long-awaited (and perhaps nonexistent) indictments of Tudjman and Izetbegovic were never served during their lifetimes?[131]

WTE suggests that the Milosevic trial has served a truth commission-like function on behalf of the historical record, both in its having assembled evidence, decisions, and transcripts of proceedings, and for the news accounts of journalists who reported on what transpired in the courtroom. The "Milosevic trial may be one of the few venues in which a great deal of evidence was consolidated about the conflicts," WTE affirms. As a result, it "should help shape how current and future generations view the wars and in particular Serbia 's role in them."[132] But this is history according to the Office of the Prosecutor, whose lawyers and staff can at least claim that their job was to win a conviction at trial. Not so HRW or its IJP; and yet throughout WTE, the only history that is recounted for future generations is one of countless criminal acts perpetrated by ethnic Serbs. WTE shapes this version of history by reference not to the work of historians, but to the charges and the language adduced by ICTY indictments.[133]

For WTE, the record is not weakened by the Serb-only focus and political aims and structuring of the trial. Nor is it damaged by the fact that the ICTY corrupted the record by allowing hearsay evidence, anonymous testimony, closed sessions, the use of unauthenticated evidence such as illegal interceptions of telephone conversations or diaries that witnesses transcribe from memory; and frequently refused to allow full cross-examination of prosecution witnesses.[134] When NATO's wartime General Wesley Clark testified, strict limits were placed on the questions Milosevic could ask him, and the ICTY permitted the transcript of his testimony to be redacted by U.S. officials, contrary to the ICTY's own rules.[135] When Milosevic cross-examined William Walker, a career U.S. Foreign Service Officer who as head of the Kosovo Verification Mission during the pre-war period was suspected of working at cross-purposes with it, and promoting a war-agenda, the court placed a three-hour limit on Milosevic, and Judge May interrupted him "over 60 times," while never once interrupting the Prosecution.[136] In one remarkable instance,

Milosevic asked Presiding Judge Richard May, "are you prohibiting me from calling in question or challenging the credibility of this witness?" And May replied: "Yes, I am. Now, move on."[137] When Milosevic was questioning former U.S. Ambassador to Croatia Peter Galbraith about his and U.S. co-responsibility for the ethnic cleansing of Krajina Serbs during Operation Storm—a point well-established in the historical record[138]—Judge May declared that this was "a preposterous question" and terminated the inquiry.[139] This trial was engaged in no truth-search under May's and the ICTY's auspices.

WTE continues the HRW double standard of allowing NATO to do things for which it condemns Serbia . As noted, the main thrust of WTE is its attempt to summarize the ICTY's records that show that Belgrade provided both the Bosnian and Croatian Krajina Serbs with financial, material, and administrative support.[140] But the United States supplied weapons, training, logistic and diplomatic support to the Bosnian Muslims and Croats; and it created a network for the delivery of weapons and Mujahadeen to the Bosnian Muslims from foreign states such as Iran and Saudi Arabia[141]—all in violation of a Security Council "embargo on all deliveries of weapons and military equipment to Yugoslavia."[142] These U.S. actions which would seem to be the counterpart of those engaged in by Serbia somehow fall out of the HRW-WTE orbit of the condemned; only one side is guilty of supplying arms and of keeping the war going. Thus, in an Orwellian process, the crime of aggression, which both the ICTY and HRW purport to exempt from their human-rights and war-crimes province, is allowed to come to life when the Belgrade Serbs allegedly do it, and WTE is indignant over this further example of Serb perfidy, although in this case the "aggression" occurred within a disintegrating Yugoslav state and, hence, was civil warfare. On the other hand, massive U.S. support for the Bosnian Muslims and Croats is exempted from the term here, just as the ICTY (and HRW) exempted from any condemnation the 1999 U.S. and NATO attack on Yugoslavia , which was a pure example of aggression across internationally recognized borders.

In portraying the Milosevic trial as "groundbreaking" and a "watershed moment for justice," WTE states that "With the establishment of the International Criminal Court, no government official, on the basis of his or her position, is beyond the law. The time when being a head of state meant immunity from prosecution is past."[143] This is untrue. Like the ICTY Statute, the Rome Statute that created the ICC also exempts the "supreme international crime" from its jurisdiction, so U.S. invasions in violation of the UN Charter are beyond the ICC's reach, and U.S. Government officials enjoy complete immunity from prosecution for acts of aggression.[144] Nowhere does WTE mention that the United States refuses to join the ICC, and in fact has formally notified the UN Secretary-General and ICC that it "does not intend to become a party to the treaty," and therefore "has no legal obligations arising from its signature on December 31, 2000."[145] What is more, the United States has exploited Article 98 to reach bilateral agreements with over 100 different states, securing their pledges never to surrender U.S. citizens to ICC custody, or to transfer U.S. citizens to states that have not reached similar agreements with the U.S.[146] This behavior, and the different U.S. treatment of the ICTY, might plausibly be seen as based on lesser U.S. power over the ICC as compared with the U.S.-controlled and properly "politicized" ICTY, points not in accord with WTE and HRW biases.

Trying to suggest an even handedness on the part of the ICTY, after having had to concede that many Serbs were ethnically cleansed from Croatia in 1995, and suffered from "violations of international humanitarian law" in Bosnia as well, WTE notes that these "are the subject of ICTY proceedings." WTE supports this assertion with footnotes that refer to three additional ICTY cases: Prosecutor v. Ante Gotovina et al. (Croatia), Prosecutor v. Oric (Bosnia), and Prosecutor v. Naletilic and Martinovic (Bosnia).[147] What neither text nor footnotes point out, however, is that only the Serbian head of state, Milosevic, was brought to trial, in accord with the Serb-oriented priorities indicated by U.S. officials from late 1992 onward, just prior to the creation of the ICTY in 1993.

The massive trial of Milosevic, with 295 witnesses and 49,191 pages of testimony, failed to produce a single credible piece of evidence that Milosevic had ordered any killings that might fall under the category of war crimes. But the so-called Brioni Transcript of talks that Croatian President Franjo Tudjman held with his military and political leadership on July 31, 1995, show Tudjman instructing his military leaders to "inflict such a blow on the Serbs that they should virtually disappear."[148] What followed in Operation Storm in the next month was a massive blow that made the Krajina Serbs "virtually disappear."[149] Imagine the windfall that a statement such as Tudjman's would have provided Carla Del Ponte, Geoffrey Nice, Dermot Groome, and HRW, had it been Milosevic instead who uttered a statement linking him directly to criminal activity of this magnitude! But Tudjman was a U.S. ally, and Operation Storm was approved and aided by the United States and some of its corporate mercenaries.[150] As Chief Prosecutor Del Ponte explained in an address before Goldman Sachs-London, "These crimes were committed in the course of a military operation, undoubtedly legitimate as such, aimed at re-taking the part of the Croatian territory which was occupied by Serb forces."[151] That its clear purpose and result was a major ethnic cleansing is covered over by making it merely a "military operation" that is "legitimate as such," while avoiding the critical language reserved for Serb military operations.

Were the ICTY honest in its devotion to justice and accountability—and not a political-public relations-"judicial" arm of NATO—then not only Tudjman, but also Bill Clinton, Madeleine Albright, Richard Holbrooke, and Peter Galbraith would have been indicted as "co-perpetrators" of a "joint criminal enterprise," the clear purpose of which was the forcible and permanent removal of the majority of ethnic Serbs from large areas of Croatia. But given political realities, Del Ponte finds Operation Storm "legitimate," and Tudjman would die in bed unindicted, while his co-perpetrators never would be brought to trial either. In the judgment of the ICTY as well as HRW, they were all too busy bringing "justice and accountability" to the Balkans!

But don't the indictments of the Croatian General Ante Gotovina and the notorious Bosnian Muslim fighter Naser Oric show that the ICTY is even-handed? No, they do not. Gotovina's indictment was not publicized until shortly after the kidnapping of Milosevic, almost surely as a public-relations demonstration of the ICTY's even-handedness.[152] This was necessary, given the scale of Operation Storm—ignoring it altogether would have been an admission of extreme bias, perhaps too much even for the ICTY to manage. Not only was Tudjman never indicted, in a kindly gesture Carla Del Ponte informed Croat leaders of the still-

sealed indictment of Gotovina, giving other Croats time to wash their hands of Gotovina and Gotovina a chance to flee—a gesture that is never extended to Serbs, where very frequently the target of the secret indictment has been seized in raids by NATO troops.[153] Nevertheless, the Croats have been very angry with the ICTY for "betraying" them in the interest of apparent balance, especially in light of the fact that the patron of the ICTY (the United States) was itself an active participant in Operation Storm, and Gotovina's counsel is sure to raise this close alliance if Gotovina is ever actually tried.

In the case of Naser Oric, it took the ICTY a decade before it got around to indicting him,[154] although his murderous record was clear and the videos he showed reporters of his beheaded Serb victims had belonged to the public record, along with much other evidence, for the entire period. Furthermore, the indictment charged Oric only with abusing eight prisoners, although the evidence of his command-role in hundreds of killings of civilians was solid and long known. His term of imprisonment was modest, although he was an active and direct killer who as General Philippe Morillon said in his testimony to the ICTY, didn't take prisoners (i.e., he executed all captives).[155]

The key legal concept used by the ICTY to deal with Milosevic's alleged criminality over not only Kosovo but also—belatedly—Croatia and Bosnia , is the "joint criminal enterprise" (JCE). This concept does not appear in the ICTY Statute or in law tradition—it was an original concoction to fit the needs of this trial. WTE states that "A joint criminal enterprise is a doctrine of liability whereby the accused is individually responsible if he acts in concert with others pursuant to a common criminal purpose with the same criminal intent."[156] In the ICTY version, the individual doesn't have to jointly plan with his fellow criminals, and doesn't even have to know what they are doing, let alone control their activities. The common purpose can be inferred from the fact that they are all fighting a common enemy, and those doing so are collectively guilty. The common "criminal purpose" can even be imputed from this—in the Milosevic trial the alleged quest for a "Greater Serbia," which can be inferred from the efforts Milosevic made to help Serbs who were losing the protection of a Yugoslav nation to join together in a lesser entity. Thus, if Milosevic was despised by the Bosnian Serbs for his willingness to accept a string of proposed agreements that would have left them outside Serbia, and for even imposing a boycott on them to induce them to sign one such agreement,[157] and the Croatian Serbs were furious at him for failing to help them as they were ethnically cleansed under Operation Storm, still he was occasionally supporting them, along with the Serbs in Kosovo. Hence he was guilty of acting in concert with these other Serb leaders.

It is obvious that this wonderfully expansive concept makes soldiers who are part of an army engaged in warfare potentially all guilty of being members of a joint criminal enterprise, and they have been found collectively guilty, but only when the Serbs do it.[158] Laughland points out that a strong supporter of the Tribunal, William Schabas, "has ridiculed 'JCE' as standing for 'just convict everyone.'"[159] Thus, as we have pointed out, there could be no clearer case of JCE than the commonly planned and executed Operation Storm, as well as the JCE of NATO leaders in attacking Yugoslavia in violation of the UN Charter. These are a much better fit to the JCE concept than the case against Milosevic. But in these cases NATO or NATO allies were doing the killing or cleansing, so that in this Alice-in-Wonderland tribunal's quest for justice, while the JCE doctrine is perfectly applicable to these major cases in logic, it does not apply in practice. WTE does not have a word of criticism of this doctrine. Nor does it advance any reason of its own to accept it, other than the fact that the Prosecution happened to make it,[160] and the Appeals Chambers ultimately accepted it.[161]

WTE displays its bias further by alleging Milosevic's "frequent courtroom grandstanding,"[162] a charge that the establishment narrative has always used to help explain the length of the trial as well as to denigrate the villain. Carla Del Ponte's periodic wild public statements condemning the man still to be tried, or her appearance before Goldman Sachs-London, begging for money on the grounds that ICTY-style justice will help create a favorable climate of investment,[163] and her apologetics for Operation Storm, are of course unmentioned.[164] The repeated showing of a BBC film The Death of Yugoslavia, "on which the prosecution relied very heavily to make its case" (Laughland), is ignored, and WTE fails to note the numerous times that Geoffrey Nice orated at length without relevance to the charges—Laughland points out that in his opening statement, Nice "had a highly emotive and unverifiable story about a baby crying itself to death during the Bosnian war, absurdly claiming that 'of course' Milosevic knew about this."[165] Nice was given a free hand, while Milosevic was subjected to a stream of interruptions and arbitrary cut-offs by an extremely hostile and impolite Judge May.[166] Most important, May allowed the prosecution to bring on a vast number of witnesses and "experts" offering hearsay or irrelevancies at great length. This resulted from the fact that this was a highly political case, not one dealing with soldiers committing war crimes (the main thrust of laws of war), with the Milosevic indictment almost surely extended to Bosnia and Croatia for fear that with Kosovo alone it would be difficult to answer why NATO's war crimes in its bombing war did not constitute a "joint criminal enterprise" as much as the Serb war that followed the NATO attack. But the prosecution had not tied Milosevic to the Bosnia/Croatia wars previously, and were grievously unprepared in this political proceeding in which they found guilt first—in fact, knew it back in 1992!—but then a decade later still struggled to find the evidence.

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Concluding Note

While it has often done valuable service, HRW has failed badly in dealing with the disintegration of Yugoslavia . It supported that dismantlement, its leaders arguing that this would help minorities. They were wrong and thus their stance contributed to an escalation of human rights abuses. Their claim that justice must be given greater weight than peace-making fed into the interests of those eager for war and had disastrous effects on all the "nations" of the former Yugoslavia. Their claim that justice must come first in order to deliver peace of mind to the victims and as essential for peace and reconciliation, which follows the ICTY party line, is untenable and hypocritical in the light of ICTY and HRW practice. A focus on justice merges easily into vengeance and feeds antagonism and hostility, particularly when carried out in a one-sided fashion. The first Milosevic indictment listed 344 Kosovo Albanian victims, so presumably their relatives needed "justice, " but as noted earlier the ICTY found that 495 Serb victims of NATO bombing did not provide a sufficient "crime base" for any action, so how are the families of these victims to obtain justice? Where is the justice for the victims of Operation Storm, or the scores of thousands of Serbs and Roma ousted from the Kosovo under NATO control? (Serbia has had to deal with more refugees than any other area in the former Yugoslavia .)

If the Serbs feel—and we believe are fully justified in feeling—that they have been victims of a Great Power assault based on geopolitical considerations, and subjected to extreme and politicized discrimination in the workings of the ICTY, the show trial of their leader will hardly make them more peace-minded. That show trial was also a "travesty" in terms of substance. If it was to educate Serbs by instructing them about their leaders' guilt, it failed abysmally, and not just because it was managed incompetently. It failed because, at bottom, it was a political trial in which the political case was not only unsustainable, but was shown to be trying the lesser villains—the bigger ones being those guilty of the "supreme international crime"—and it revealed itself throughout to be a "rogue court" serving the bigger villains, violating every legal principle, and moving inexorably toward the pre-determined finding of guilt.

Sadly, HRW has played an important role in this travesty and has therefore been an important contributor to human rights violations in the former Yugoslavia . HRW helped stir up passions in the demonization process from 1992 onward and actively and proudly contributed to preparing the ground for NATO's "supreme international crime" in March 1999. It has conveniently assumed "neutrality" on matters of aggression, though WTE focuses on Serbia's cross-border aid to the Bosnian and Krajina Serbs as something to be strongly condemned—so it ceases to be neutral on aggression when the Serbs can be targeted, although, with a droll application of the double standard, U.S. and Croatian aid to their allies in Bosnia are exempt from criticism. There are no holds barred in finding against the bad guys, just as our side only makes regrettable mistakes. This human rights group is even completely oblivious to the violation of Slobodan Milosevic's human rights as a prisoner. Indicted Croatians are exempted from being put on trial for ill health,[167] indicted Kosovo Albanians are released from Hague incarceration to return to campaign for office in Kosovo,[168] but Milosevic, a very sick man, was not released to get medical attention in Moscow even with Russian assurances of his return.[169] His death just 16 days after this rejection was regretted by Carla Del Ponte because "It deprives the victims of the justice they need and deserve"[170]—but WTE and HRW have no word of criticism for this improper treatment. They are on the team with Carla Del Ponte and the Western establishment.

In the past, two of the present authors have compared the Milosevic trial to the Moscow show trials of the late 1930s.[171] Recalling the Dewey Commission of Inquiry's conclusion that the Moscow trials "served not juridical but political ends," we observed that, among the parallels between these trials and the bodies conducting them, one that stands out is their public-relations function, and, more broadly, their drafting of a historical record that serves the needs of the dominant political faction, even if executed in juridical form. Here we add the observation that Human Rights Watch's Weighing the Evidence concludes its summary of the Prosecution's case against Milosevic in the same place where it begins, with the affirmation that, going forward, "Trials of high-level suspects will be important for the documentation of events and the role and responsibility of various actors, irrespective of any conclusion relating to the defendant's guilt or innocence."[172] If this is true, and if we allow the Milosevic trial and the ICTY to become our models for "international justice," then both the historical record and human rights will suffer damaging blows.

Neither the execution videotape[A1] nor any of the other evidence presented during the trial of Slobodan Milosevic substantiated the prosecution's claim—now repeated by WTE—that the Scorpions were "acting under the aegis of the Serbian police."[A2]

In fact, the most detailed evidence about the Scorpions to have emerged at the trial occurred nearly two years earlier, during the testimony of prosecution witness Milan Milanovic, a former deputy defense minister of the Republika Srpska Krajina.

Milanovic is a witness on whose word HRW attaches great weight.[A3] When asked by the Prosecution under whom the Scorpions served (i.e., "were subordinated") during the period they were active in the Bihac Pocket, Milanovic replied: "They were subordinated to the command of the army of the Republic of Serbian Krajina ."[A4] Asked for a second time under whom the Scorpions were subordinated when they subsequently went to Trnovo in eastern Bosnia , Milanovic replied: "To the MUP of the Republika Srpska."[A5]

Later, during Milanovic's cross-examination by Slobodan Milosevic, the following exchange took place:[A6]

Milosevic: Did you engage them [the Scorpions] in your area?

Milanovic: I proposed to the director of the oil company that they secure the oil fields that were on the separation lines.... I proposed Slobodan Medic as the person who should be in charge of that security, and then they were under the director of the oil company.

Milosevic: So this was a security unit for the oil company, the head of which you yourself proposed?

Milanovic: Correct....

Milosevic: But you also sent them to Bosnia and Herzegovina , didn't you?

Milanovic: I didn't send them. The command of the corps sent them to accomplish various assignments, and most of those units that went outside the area I would visit very frequently.

Milosevic: Very well. So the government sent them.

Milanovic: Yes, the government and the army command.

So the Scorpions were recruited by the government of the Republika Srpska Krajina to protect the oil fields. Milanovic, a prosecution witness with no love for the government of Serbia , made no claim about the Scorpions serving under the command of (or having been "subordinated" to) the Serbian MUP. It was the Srpska Krajina government that sent the Scorpions into Bosnia .

Shortly thereafter, Milanovic explained that in 1999, while NATO was bombing Serbia , the Scorpions wanted to go to Kosovo. According to Milanovic's testimony:[A7]

[A]fter the NATO attack on the Federal Republic, seven, eight, or ten days after that he [Slobodan Medic] called me up and told me that he'd rather not go as a reservist to the army of Yugoslavia but as a member of MUP. At the same time... I was called up by General Djordjevic, the head of the public security, saying that he needed volunteers. So I didn't know what to do for three or four days, whether to send him or not, because everything was being monitored. I didn't know whether I should get in touch with the two of them, and three or four days later I did establish—link the two of them up, and two or three days later he went to Kosovo.

Milosevic then asked Milanovic: "Was he returned from there following General Djordjevic's orders? He demanded that he return?" And Milanovic replied: "Yes. He was returned, but he went back and stayed until the end of the bombing raids."[A8]

Again, we emphasize that Milanovic never made any claim about the Republic of Serbia 's MUP. Were the Scorpions already a unit of the Serbian MUP, it would have made no sense for the Scorpions to ask Milanovic to arrange for them to be sent to Kosovo as members of the Republic of Serbia's MUP.

A1. For the passage where Prosecution Geoffrey Nice presents the alleged "Scorpions video," see Milosevic Trial Transcript, June 1, 2005, pp. 40275 ff.

A2. Sara Darehshori, Weighing the Evidence: Lessons from the Slobodan Milosevic Trial, Human Rights Watch, December, 2006, p. 14.

A3. WTE mentions Milan Milanovic's name 16 different times.

A4. Milosevic Trial Transcript, October 14, 2003, p. 27431.

A5. Ibid. "MUP" denotes Ministarstvo Unutrašnjih Polsova, meaning in this instance the Ministry of the Interior of the Republika Srpska—not the MUP of the Republic of Serbia , i.e., under the command of Belgrade and Slobodan Milosevic.

A6. Milosevic Trial Transcript, October 14, 2003, pp. 27493 - 27494.

A7. Milosevic Trial Transcript, October 14, 2003, pp. 27494 - 27495.

A8. Milosevic Trial Transcript, October 14, 2003, p. 27495.

Endnotes

1. U.S. Helsinki Watch Committee: The First Fifteen Months (U.S. Helsinki Watch Committee, 1980), pp. 3. "[H]uman rights provisions" referred to Article VII of the Declaration on Principles Guiding Relations between Participating States (a.k.a. the Helsinki Final Act), adopted at the First Summit of the Conference on Security and Cooperation in Europe in Helsinki on August 1, 1975. Article VII affirmed among other things that "participating States will respect human rights and fundamental freedoms," and "act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights [and] the International Covenants on Human Rights, by which they may be bound." The other nine articles largely reaffirmed the principles set out in the UN Charter (e.g., the sovereign equality among States (I), refraining from the threat or use of force in international affairs (II), the peaceful settlement of disputes (V), the non-intervention in the internal affairs of other States (VI), and so on (pp. 3-8)). (Also see note 47, below.)

2. Orville Shell, quoted in Dusko Doder, "Helsinki Watch Unit Set Up To Monitor U.S. on Rights," Washington Post, March 18, 1979.

3. U.S. Helsinki Watch Committee: The First Fifteen Months, p. 4. Among the activities highlighted by this document (pp. 9-19), fundraisers, lobbying, and publishing efforts on behalf of Soviet bloc dissidents featured the most prominently, and a mark of distinction attached to expressions of solidarity with figures running afoul of Soviet, Czech, and Polish authorities. One Helsinki Watch op-ed that appeared in the June 16, 1979 New York Times was quoted: "Soviet leaders should be told in Vienna that until the legitimate rights of the Helsinki monitors are restored, the fulfillment of another goal of the Helsinki Accords—the granting of most-favored-nation-status—is out of the question" (p. 12). Notwithstanding its pledge to monitor "domestic compliance" to Article VII standards, the U.S. Helsinki Watch Committee was organized around monitoring the Soviet bloc above all.

4. One of the major players within the network of Western-based non-governmental organizations, HRW has strong linkages with both the U.S. foreign policy establishment and George Soros' operations. Within the past six years, HRW's Europe and Central Asia Advisory Board has included U.S. State Department veteran Morton Abramowitz, the former Voice of America/Radio Liberty head Paul Goble, former Republican congressman Bill Green, and former U.S ambassadors Warren Zimmerman (Yugoslavia), Jack Matlock (Soviet Union), and Herbert Okun (United Nations). By 2005, Okun alone was left from that group. As of 2006, HRW's 33 member Board of Directors included Lloyd Axworthy, a former Foreign Minister of Canada; Richard Goldstone, a former South African judge and chief prosecutor at the ICTY; Vartan Gregorian, the Carnegie Corporation's President; James Hoge, editor of Foreign Affairs; Kati Marton, the wife of Richard Holbrook; and a number of business executives, lawyers, academics, and rights activists. George Soros has served on the HRW advisory boards for both the Americas and Europe-Central Asia for many years; and several of his associates do likewise, such as Gara LaMarche (U.S.) and Peter Osnos (Europe-Central

Asia —Osnos is also a HRW Board of Directors emeritus). An Open Society Institute annual report speaks of its "partnership" with HRW, which is "of enormous importance to the Soros foundations: the relationships with grantees that have developed into alliances in pursuing crucial parts of the open society agenda." (See Building Open Societies: Soros Foundation Network 2005 Annual Report, pp. 175-176.) Although we can only touch on this topic here, the overlap between a whole network of like-minded political, media, and human rights organizations throughout the Balkans and Eastern Europe , and Soros- and OSI-funded groups such as HRW and the International Crisis Group, is substantial. For a glimpse at some of them, see Gilles d'Aymery, "The Circle of Deception: Mapping the Human Rights Crowd in the Balkans," Swans, July 23, 2001; Andrew Bolt, "Justice for Sale ," Herald Sun (Melbourne), June 20, 2002; Paul Treanor, "Who is behind Human Rights Watch?" 2004; and Neil Clark, "NS Profile-George Soros," New Statesman, June 2, 2003.

5. Whatever its origins, HRW has turned itself into a very profitable nonprofit enterprise. According to HRW's Annual Report (the most current at this time), for the fiscal year ended June 30, 2006, HRW reported revenue of $39.8 million, of which $31.5 million derived from donations ("public support"). With expenses reported at $30.2 million (including programs, salaries, and supporting services), HRW thus earned some $9.6 million during the period in question. (See "Financial Information," pp. 52-56.) Turning to HRW's financial supporters, we read that for the 12 month period through March 2006, HRW had 57 donors of $100,000 or more; these included a wide array of wealthy individuals and business people (9 of whom remained anonymous), and many foundations (Annenberg, Ford, Hewlett, McArthur, Merck, Mott, the Open Society Institute, and the Sandler Family). Another 102 donors gave between $25,000 and $99,999; and scores of others gave between $5,000 and $24,999. (See pp. 62-65.) The exact amounts given in each case are not reported. But it is of interest that Soros' Open Society Institute gave HRW $1 million (as reported in its own annual report: see Building Open Societies: Soros Foundation Network 2005 Annual Report, where HRW is described as a "longtime" OSI grantee (p. 172)). George Soros' name is listed separately as another HRW contributor of over $100,000. Indeed, each of the last five Annual Reports archived by the HRW website in electronic form ranks both Soros and the OSI among the "$100,000 or more" donors. (See 2001, p. 38; 2002, p. 50; 2003, p. 40; 2005, p. 63; and 2006, p. 62.) Although HRW's funding is broadly based, there is a top-heavy concentration among the very wealthy, corporate, and establishment foundations, and Gorge Soros and the OSI figure prominently.

6. In one notorious editorial about its "unsettled business with Americas Watch," the Wall Street Journal echoed Reaganite rhetoric and accused the organization of siding with Cuba and Russia against the United States . "[T]he moral authority they won with Helsinki Watch in support of human rights in the Soviet Union and East Europe they have squandered in Latin America," the editorial concluded. "We admit that we are not pristinely apolitical. We tend to give a benefit of doubt to those resisting totalitarianism rather than to those spreading it. Americas Watch does the opposite, and calls it apolitical." "'Universal Standards'," August 17, 1984. Unfortunately, the HRW website archives very little prior to 1990. So what by far was the organization's (i.e., Americas Watch) most important work in monitoring U.S. violations of Article VII standards is not available in electronic form.

7. Kenneth Roth, "Indict Saddam," Wall Street Journal, March 22, 2002.

8. On the illegality of aggressive war, see Final Judgment of the International Military Tribunal for the Trial of German Major War Criminals (September 30, 1946), specifically "The Common Plan or Conspiracy and Aggressive War," from which this passage derives.

9. Fred Abrahams, "The West Winks at Serbian Atrocities in Kosovo," International Herald Tribune, August 5, 1998.

10. See Thomas J. Nagy, "The Secret Behind the Sanctions: How the U.S. Intentionally Destroyed Iraq's Water Supply," The Progressive, September, 2001; and Joy Gordon, "Economic Sanctions as a Weapon of Mass Destruction," Harper's Magazine, November, 2002. Note that as early as June, 1991, the New York Times was reporting that the "Bush Administration's internal findings" on the damage inflicted to Iraq 's infrastructure had concluded that " Iraq has, for some time to come, been relegated to a pre-industrial age, but with all the disabilities of post-industrial dependency on an intensive use of energy and technology." Patrick E. Tyler, " U.S. Officials Believe Iraq Will Take Years to Rebuild," New York Times, June 3, 1991. Summing up the U.S. targeting strategy during the 1991 war, the Washington Post reported that "its purposes and selection of targets" were less military in nature than civilian: Namely, "disabling Iraqi society at large." The Post continued: "The worst civilian suffering, senior officers say, has resulted not from the bombs that went astray but from precision-guided weapons that hit exactly where they were aimed—at electrical plants, oil refineries and transportation networks." In the words of a confidential source who "played a central role in the air campaign," so-called "Strategic bombing... strikes against 'all those things that allow a nation to sustain itself'." Barton Gellman, "Allied Air War Struck Broadly in Iraq ; Officials Acknowledge Strategy Went Beyond Purely Military Targets," Washington Post, June 23, 1991.

11. John Mueller and Karl Mueller, "Sanctions of Mass Destruction," Foreign Affairs, May/June, 1999. "The destructive potential of economic sanctions can be seen most clearly, albeit in an extreme form, in Iraq ," the authors note. "It is interesting that this loss of human life has failed to make a great impression in the United States ."

12. Madeleine Albright to Lesley Stahl, "Punishing Saddam," 60 Minutes, CBS TV, May 12, 1996. Their exchange went exactly as follows: Stahl: "We have heard that a half a million children have died. I mean, that's more children than died when--wh--in--in Hiroshima . And--and, you know, is the price worth it?" Albright: "I think this is a very hard choice, but the price--we think the price is worth it."

13. The closest that HRW ever came to treating the "sanctions of mass destruction" with the gravity that an advocate for human rights should was under the entry for "Iraq" in its World Report 1997 and, later, in two documents addressed to the members of the UN Security Council that argued for a restructuring of the sanctions so as to reduce their human impact and help rebuild the civilian economy. See Hanny Megally, "Letter to United Nations Security Council," Human Rights Watch, January 4, 2000; and "Explanatory Memorandum Regarding the Comprehensive Embargo on Iraq," Human Rights Watch, January, 2000. Even the "United Nations was bound by customary norms of international humanitarian law," the 1997 entry stated, noting explicitly that "Article 54 of Protocol I to the 1949 Geneva Conventions prohibits the use of starvation of civilians as a method of warfare." "The Security Council must share responsibility for the enormous impact of the measures it has imposed on the well-being of Iraq 's population," the Explanatory Memorandum argues. "The Council must do all within its reach to remove itself as a party to this destructive and deadly dynamic by ensuring that it actions lie well within the parameters established by basic humanitarian principles." This later intervention also pointed out the overwhelming role of a "single country" (the United States) in blocking humanitarian relief efforts. But this clearest and most dramatic case in modern times of the use sanctions as a method of warfare to deprive Iraqi civilians of life and liberty was never accompanied by calls for referral to the International Court of Justice or an ad hoc tribunal to bring to justice the political leadership of the states most responsible for their multi-year enforcement. Instead, in keeping with familiar priorities, HRW took the occasion to remind the Council to "take immediate steps towards the long overdue establishment of an international criminal tribunal that would indict and, to the extent possible, try those individual Iraqi officials and former officials credibly reported to be responsible for acts of genocide, war crimes, and crimes against humanity." ("Explanatory Memorandum Regarding the Comprehensive Embargo on Iraq," January, 2000.)

14. We note that in Kenneth Roth's approximately 1,140 word commentary, he used the word 'genocide' to describe the practices of the Baghdad regime no fewer than eight different times, but the effects of the sanctions regime not so much as once.

15. According to a team of researchers headed by Gilbert Burnham of the Bloomberg School of Public Health at Johns Hopkins University, in the 40 months between the start of the U.S. war in March 2003 and when the research was concluded in July 2006, 654,965 Iraqis may have died as a result of the war, 91.8 percent of them (or 601,207 in all) due to violent causes. See Gilbert Burnham et al., "The Human Cost of the War in Iraq: A Mortality Study, 2002-06," The Lancet, Vol. 368, No. 9544, October 14, 2006 (as posted to the website of the Center for International Studies, MIT).

16. As Garlasco told the Washington Post: "The methods that they used are certainly prone to inflation due to overcounting....These numbers seem to be inflated." Rob Stein, "100,000 Civilian Deaths Estimated in Iraq ," Washington Post, October 29, 2004. For the original research to which Garlasco was responding, see Les Roberts et al., "Mortality before and after the 2003 invasion of Iraq: cluster sample survey," The Lancet, Vol. 364, No. 9448, November 20, 2004 (as posted to the Count The Casualties website).

17. Lila Guterman, "Lost Count," Chronicle of Higher Education, February 4, 2005.

18. According to Ewa Tabeau and Jakub Bijak, two researchers employed by the Demographics Units at the International Criminal Tribunal for the Former Yugoslavia, the total "number of war-related deaths in Bosnia and Herzegovina [was] 102,622 individuals, of which 47,360 (46%) [were] military victims and about 55,261 (54%) [were] civilian war-related deaths." See "War-related Deaths in the 1992–1995 Armed Conflicts in Bosnia and Herzegovina: A Critique of Previous Estimates and Recent Results," European Journal of Population, Vol. 21, June, 2005, p. 207. (Also see note 32, below.)

19. See Michael Mandel, How America Gets Away With Murder: Illegal Wars, Collateral Damage, and Crimes Against Humanity (Pluto Press, 2004), pp. 3-28, where the inherent criminality of aggressive war is discussed at length. In an argument diametrically opposed to HRW, Mandel quotes Robert H. Jackson, the Chief Prosecutor at Nuremberg: "Any resort to war—any kind of war—is a resort to means that are inherently criminal. War inevitably is a course of killings, assaults, deprivations of liberty, and destruction of property. An honestly defensive war is, of course, legal and saves those lawfully conducting it from criminality. But inherently criminal acts cannot be defended by showing that those who committed them were engaged in a war, when war itself is illegal" (p. 6). See Nuremberg Trial Proceedings, Second Day, November 21, 1945, Transcript pp. 145-146.

20. "Human Rights Watch Policy on Iraq," ca. late 2002 or early 2003. This scandalous disavowal of interest in an imminent "supreme international crime" continued: "As in the case of other armed conflicts, Human Rights Watch thus does not support or oppose the threatened war with Iraq. We do not opine on whether the dangers to civilians in Iraq and neighboring countries of launching a war are greater or lesser than the dangers to U.S. or allied civilians—or, ultimately, the Iraqi people—of not launching one. We make no comment on the intense debate surrounding the legality of President George Bush's proposed doctrine of 'pre-emptive self-defense' or the need for U.N. Security Council approval of a war."

21. In Craig R. Whitney, "Hands Off: The No Man's Land in the Fight for Human Rights," New York Times, December 12, 1999.

22. See "ICTY: Milosevic Trial Exposed Belgrade's Role in Wars," Human Rights Watch Press Release, December 14, 2006.—Part 3 of this paper is devoted to an analysis of Weighing the Evidence.

23. See Kenneth Roth, "Why justice needs NATO," The Nation, September 22, 1997; Kenneth Roth, "Human Rights Watch Calls on Yugoslav War Crimes Tribunal to Investigate Possible War Crimes in Kosovo," March 7, 1998.

24. Discussed in Part 3, but documented at length in John Laughland Travesty: The Trial of Slobodan Milosevic and the Corruption of International Justice (Pluto Press, 2007), passim; and Mandel, How America Gets Away With Murder, Part II.

25. Laughland, Travesty, pp. 70-71; and Mandel, How America Gets Away With Murder, pp. 148-149.

26. See the discussion of "collateral damage" in Mandel, How America Gets Away With Murder, pp. 46-56.

27. This is well illustrated by the rate of Israeli and Palestinian casualties, which for years, and during the first intifada, ran at 1-25, dropping to 1-3 during the second intifada. See James Bennet, "Mideast Turmoil: News Analysis; Mideast Balance Sheet," New York Times, March 12, 2002.

28. Marc W. Herold, "Is One-Third of the Truth, the Whole Truth? Counting by Human Rights Watch," July 28, 2002. (Or see the several documents archived on Marc Herold's webpage at the University of New Hampshire.)

29. Richard Dicker, "Milosevic Won't Escape History's Verdict," International Herald Tribune, March 13, 2006.

30. World Report 2007 (Human Rights Watch, 2007), p. 368. (Or see the electronic entry for "Bosnia and Herzegovina.")

31. See "Status of the Database by Centers," a webpage updated monthly by the Research and Documentation Center. As of December 2006, the RDC's estimate stood at 97,826. Here we simply note the contrast with Richard Dicker's "hundreds of thousands killed."

32. Kenneth Roth, "Fight the Good Fight," The Guardian, October 22, 2002.

33. Mandel, How America Gets Away With Murder, p. 184.

34. See Amnesty International, "Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force, June, 2000, pp. 11-13.

35. Kenneth Roth, "Indiscriminate Bombardment," Jerusalem Post, August 20, 2006. Also see Peter Bouckaert and Nadim Houry, Fatal Strikes: Israel's Indiscriminate Attacks Against Civilians in Lebanon, Human Rights Watch, August, 2006.

36. "Lebanon/Israel: Hezbollah Hit Israel with Cluster Munitions During Conflict," Human Rights Watch Press Release, October 19, 2006. According to this report, "Hezbollah launched cluster attacks that were at best indiscriminate, i.e., they violated the principle of distinction by using unguided and highly inaccurate cluster munition models against populated areas. At worst, Hezbollah deliberately attacked civilian areas with these weapons." The total number of attacks for which HRW singled out Hezbollah on this occasion was two, both taking place on July 25 against the Galilee village of Mghar.

37. Hans Köchler, Global Justice or Global Revenge (Springer-Verlag Wien, 2003), p. 294, p. 313.

38. Orville Shell, Robert L. Bernstein, and Aryeh Neier, Letter, Wall Street Journal, June 5, 1984. These writers note that their Letter was quoting the same 1984 report that the Journal had attacked. For a copy, see Human Rights in Nicaragua, Americas Watch, April, 1984, p. 5. And for some excerpts from this report, see David Peterson, "Something about Human Rights Watch," ZNet, February 24, 2006.

39. For two classic expressions of this U.S.-protective point of view, see Virginia N. Sherry et al., Needless Deaths in the Gulf War: Civilian Casualties During the Air Campaign and Violations of the Laws of War, Human Rights Watch, June, 1991; and Bonnie Docherty and Marc E. Garlasco, Off Target: The Conduct of the War and Civilian Casualties in Iraq, Human Rights Watch, December, 2003.

40. As we show in Part 3, HRW's treatment of Serbia's conduct in Kosovo (i.e., within Serbia itself), ca. 1998-1999, remains the exemplary case of this human rights organization's service on behalf of U.S. war objectives.

41. For its strongest statement yet on the issue of command responsibility and torture, see the analysis by HRW Special Counsel Reed Brody, Getting Away with Torture? Command Responsibility for the U.S. Abuse of Detainees, April, 2005.

42. "US: Mark Five Years of Guantanamo by Closing It," Human Rights Watch Press Release, January 5, 2007.

43. Kenneth Roth appeared as a guest on Your World Today, CNN, Transcript 011101CN.V10, January 11, 2007.

44. See Deborah Pearlstein, Ending Secret Detentions, Human Right First, June, 2004; and Deborah Pearlstein and Priti Patel,

Behind the Wire: An Update to Ending Secret Detentions, Human Rights First, March, 2005.

45. See Fred Abrahams et al., Under Orders: War Crimes in Kosovo, Human Rights Watch, October, 2001, the "Executive Summary," pp. 3-16.

46. Jeri Laber and Kenneth Anderson, "Why Keep Yugoslavia One Country?" New York Times, November 10, 1990.

47. See the Declaration on Principles Guiding Relations between Participating States (a.k.a. the Helsinki Final Act), August 1, 1975. As of the date on which the Laber - Anderson commentary appeared in the New York Times (indeed, straight through the Dayton Peace Accords of November 21 1995, which formally brought to an end all but one of the internal wars over the SFRY), the "inviolability of frontiers" (Art. III) and the "territorial integrity of states" (Art. IV) so loudly proclaimed by Helsinki could only refer to the internationally recognized border that separated the SFRY from the other sovereign states that neighbored it—not the internal borders that separated its six republics from one another. For foreign states and non-governmental actors to have regarded the internal republican borders as the relevant "frontiers" under Helsinki principles not only contradicted the actual Declaration at Helsinki, but was a highly provocative interference in the sovereign affairs of the SFRY.

48. Robert M. Hayden, Blueprints for a House Divided: The Constitutional Logic of the Yugoslav Conflicts (University of Michigan Press, 1999), pp. 91-92.

49. Robert Hayden, "Don't Turn Yugoslavia Into Europe's Lebanon," Letter, New York Times, December 3, 1990.

50. See notes 4 and 5, above.

51. In his book Collision Course: NATO, Russia, and Kosovo (Greenwood Publishing Group, 2005), John Norris, a State Department spokesman during the 1999 U.S. war against Yugoslavia, writes that "it was Yugoslavia's resistance to the broader trends of political and economic reform—not the plight of Kosovar Albanians—that best explains NATO's war" (p. xxiii). Basically, Norris denies that the Clintonites' war had anything to do with humanitarian principles—the rhetoric of humanitarianism aside.

52. See Mandel, How America Gets Away With Murder, Ch. 4, "The War Crimes Tribunal," pp. 117-146; and Köchler, Global Justice or Global Revenge, esp. the Annex: Memorandum "On the Indictment of the President of the Federal Republic of Yugoslavia...," pp. 353-356.

53. See, e.g., "No Kosovo Settlement Without Accountability for War Crimes," Human Rights Watch Press release, February 6, 1999.—The earliest high-profile use of the slogan "no peace without justice" in relation to the former Yugoslavia appears to have been a resolution introduced into the U.S. House of Representatives by Rhode Island's Patrick J. Kennedy, War Crimes in Bosnia, November 20, 1995. – The relevant paragraph stated: "The United States should oppose amnesty for any indicted war criminals. On this anniversary [of the Nuremberg Tribunal], as the world hopes for peace in the Balkans, it is the responsibility of Congress to say unequivocally that there can be no peace without justice." The very same day, the New York Times's veteran columnist Anthony Lewis recounted a discussion he had had with the ICTY's Chief Prosecutor Richard Goldstone: "No Peace Without Justice," it was titled (November 20, 1995). "As the Tribunal's Chief Justice Richard Goldstone has repeatedly said, there can be no peace without justice," the Wall Street Journal editorialized. "On the 50-year anniversary of the Nuremberg trials, that's worth remembering" ("Prisoners of Peace," November 21, 1995). Less than one month later, John Shattuck, the Assistant Secretary of State for Human Rights, picked up the same theme when he noted that one of the positives of the Dayton Accords was its pledge of cooperation with the Yugoslav Tribunal: "There will be no peace without justice." ("U.S. official: No cooperation on human rights issues by Serbs," Deutsche Presse-Agentur, December 13, 1995.)

54. See, e.g., Yossef Bodansky, Some Call It Peace: Waiting for the War in the Balkans (International Media Corp., 1996); Peter Brock, Media Cleansing: Dirty Reporting. Journalism and Tragedy in Yugoslavia (GM Books, 2005); David Chandler, "Western Intervention and the Disintegration of Yugoslavia," in Philip Hammond and Edward S. Herman, Eds., Degraded Capability: The Media and the Kosovo Crisis (Pluto Press, 2000), pp. 19-30; Robert M. Hayden, Blueprints for a House Divided: The Constitutional Logic of the Yugoslav Conflicts (University of Michigan Press, 1999); Brendan O'Shea, The Modern Yugoslav Conflict 1991 - 1995: Perception, deception, dishonesty (Frank Cass, 2005); David Owen, Balkan Odyssey (Harcourt Brace & Company, 1995); Dennison Rusinow, Ed., Yugoslavia: A Fractured Federalism (Wilson Center Press, 1988); Susan L. Woodward, Balkan Tragedy: Chaos and Dissolution After the Cold War (The Brookings Institution, 1995); Warren Zimmerman, Origins of a Catastrophe (Random House, 1996).

55. These sweeping charges represent an amalgam of the no fewer than eight different indictments and amendments thereof of Slobodan Milosevic et al. for Serb conduct in Kosovo (May 22, 1999; June 29, 2001; and October 29, 2001), Croatia (October 8, 2001; October 23, 2002; and July 28, 2004); and Bosnia and Herzegovina (November 22, 2001; November 22, 2002).

56. Among the ceasefires and peace proposals that Milosevic supported were the Brioni Pact of 1991, the Vance Plan of 1991, the Cutileiro (or Lisbon) Plan of 1992 (vetoed by the Bosnian Muslims), the Vance-Owen Plan of 1993 (a plan eventually sabotaged by U.S. authorities, as Owen describes in his memoirs), the Owen-Stoltenberg Plan of 1993 (vetoed by the United States), the

European Action Plan of 1993 (also sabotaged by the United States), the Contact Group Plan of 1994, the extension of the Carter ceasefire beyond May 1, 1995, and, of course, the Dayton process, about which Richard Holbrooke observed of the twentieth, and next-to-last, day, the U.S. was "going to close down in the morning—unless Milosevic could save the negotiations." See To End A War (New York: The Modern Library, Rev. Ed., 1999), pp. 306-312.

57. Writing about the new Clinton Administration's efforts in early 1993 to kill-off the Vance - Owen Peace Plan, which allocated some 42 percent of Bosnia and Herzegovina to the Pale Serbs, rather than the 49 percent under Dayton, chief negotiator David Owen explains that Alija Izetbegovic withdrew his signature from the plan because "he felt encouraged by US attitudes to hold out for a better deal." Owen reproduces an excerpt from an early 1993 telegram he sent to an aid in Washington. "We have this Administration briefing the press in a way that could not but stiffen those Muslims who want to continue the war. We have [the Sarajevo Government's UN Representative Muhamed] Sacirbey openly telling everyone that the US Administration has said they should not feel any need to sign the map." Later, Owen adds that "The new administration had already made up their mind and were intent on killing off the [Vance - Owen Peace Plan]....They promised to come up with an alternative policy over the next few weeks, but in the meantime seemed intent on killing off a detailed plan backed by all their allies and close to being agreed by the parties. It was by any standard of international diplomacy outrageous conduct." Balkan Odyssey, pp. 111 - 119. —Here we add simply that this was in early 1993; the Dayton Peace Accords were not signed until nearly three years later, in late 1995.

58. The Rambouillet Conference was held at the Chateau Rambouillet in France from February 6 - 20, 1999. Its ostensible purpose was to negotiate an interim political settlement to the conflict over the Serbian province of Kosovo. But the conference was held under extreme duress, as at no point were the Serb negotiators free from the threat of military attack by NATO, which six days prior to the conference had issued an Activation Order "authoriz[ing] air strikes against targets on [Federal Republic of territory" (January 30, 1999). As the former State Department official George Kenney reported shortly after the war, a "senior State Department official had bragged that the United States 'deliberately set the bar higher that the Serbs could accept'. The Serbs needed, according to the official, a little bombing to see reason." See Marc Weller, Ed., The Crisis in Kosovo 1989 - 1999 (Documents and Analysis Publishing Ltd., 1999), Ch. 15, "The Rambouillet Conference," pp. 392-474, which includes a copy of NATO's Activation Order (p. 416); and George Kenney, "Rolling Thunder: the Rerun," The Nation, June 14, 1999.

59. Elaine Sciolino, "U.S. Names Figures It Wants Charged with War Crimes," New York Times, December 17, 1992.

60. UN Security Council Resolution 808 (S/RES/808), February 22, 1993. The exact same phrasing appears as Article 1 of the Statute of the Tribunal. Also see UN Security Council Resolution 827 (S/RES/827), May 25, 1993.

61. Prosecute Now!, Helsinki Rights Watch, August 1, 1993. As this advocacy document explained, "Helsinki Watch's failure to name other heads of state and top military commanders as defendants in no way is intended to absolve them of responsibility. While we have not presented such information here, we believe that many senior officials should also be found criminally liable for aiding and abetting in the 'planning, preparation, or execution' of war crimes."

62. See Statute of the International Tribunal Adopted May 25, 1993, along with subsequent updates. None of articles 2 through 5, which run the gamut including breaches of the Geneva Conventions of 1949, the laws and customs of war, genocide, and crimes against humanity, so much as mentions the "supreme international crime"—or anything remotely like it.

63. Michael P. Scharf, "Indicted for War Crimes, Then What?" Washington Post, October 3, 1999 (as posted to the Public International Law & Policy Group website).

64. Mandel, How America Gets Away With Murder, p. 126.

65. "The Milosevic Case," in When People's Basic Rights Are Trampled, Human Rights Watch, undated press release.

66. Kenneth Roth, "Human Rights, American Wrongs," Financial Times, July 1, 2002.

67. Press Conference Given by NATO Spokesman Jamie Shea, May 16, 1999.—The very next day, Shea responded to much the same question: "As you know, without NATO countries there would be no International Court of Justice, nor would there be any International Criminal Tribunal for the former Yugoslavia because NATO countries are in the forefront of those who have established these two tribunals, who fund these tribunals and who support on a daily basis their activities. We are the upholders, not the violators, of international law." (Press Conference Given by NATO Spokesman Jamie Shea, May 17, 1999.)

68. See Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, Office of the Prosecutor, ICTY, June, 2000, par. 90. Also see the accompanying Press Statement (PR/P.I.S./510-e), ICTY, June 13, 2000.

69. See Article 18 of the ICTY's Statute, "Investigation and preparation of indictment" (1993, 2006). Par. 4 states: "Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute."

70. See Louise Arbour, Prosecutor of the Tribunal Against Slobodan Milosevic et al. (IT-99-37), Schedules A - G, May 22, 1999. —These schedules list the names of 344 dead Kosovo Albanians whom, in this particular case, constituted a sufficient "crime base" to bring the indictment. As noted, however, the deaths of only the 45 persons named in Schedule A ("Racak," January 15, 1999) date from prior to the start of NATO's war.

71. See Amnesty International, "Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force, June, 2000, pp. 11-13.

72. Mandel, How America Gets Away With Murder, pp. 132-146.

73. Kenneth Roth, "Human Rights Watch Calls on Yugoslav War Crimes Tribunal to Investigate Possible War Crimes in Kosovo," Press Release, March 7, 1998.

74. George Robertson, Testimony before the Select Committee on Defense, U.K. House of Commons, March 24, 1999, par. 391. Robertson's exact words were: "Up until Racak earlier this year the KLA were responsible for more deaths in Kosovo than the Yugoslav authorities had been."

75. Ian Bruce, "Serbs used CIA phone to call in convoy raid," The Herald (Glasgow), April 19, 1999; Gregory L. Vistica, "Cyberwar and Sabotage," Newsweek, May 31, 1999; "Secret Help for Kosovars," Intelligence Newsletter, June 24, 1999; "Western Spy Stampede," Intelligence Newsletter, September 9, 1999; Tom Walker and Aidan Laverty, "CIA aided Kosovo guerrilla army," Sunday Times, March 12, 2000; "NATO Faces Combat With KLA Forces Which the US Trained and Armed," Defense and Foreign Affairs Strategic Policy, February, 2001; Peter Beaumont et al., "'CIA's bastard army ran riot in Balkans'," The Observer, March 11, 2001; David Hackworth, "Dodging bullets from home," Washington Times, March 17, 2001; James Bissett, "We created a monster," Toronto Globe and Mail, July 31, 2001; and Vesna Peric Zimonjic, "Balkans: CIA Probes Possible Kosovo Links to London Blasts," Inter Press Service, July 25, 2005.

76. At a news conference held in Washington on July 31, 1995 to publicize a letter signed by 27 non-governmental organizations, HRW Executive Director Kenneth Roth read out from the letter: 'The time has come for multilateral action to end the massacre of innocent civilians in Bosnia. Nothing else has worked. Force must be used to stop genocide, not simply to retreat from it. American leadership, in particular, is required.' In Peter Sisler, "Rights groups call for action in Bosnia," United Press International, July 31, 1995; and Dana Priest, "Coalition Calls for Action in Bosnia; Groups Want More Allied Military Force Used 'to Stop Genocide'," Washington Post, August 1, 1995.

77. Sara Darehshori, Weighing the Evidence: Lessons from the Slobodan Milosevic Trial, Human Rights Watch, December, 2006, p. 77. (Hereafter cited as WTE.) We wrote to Sara Darehshori and the HRW Communications Department, and inquired whether HRW would share with us a list of the people interviewed or consulted during the preparation of WTE. But citing confidentiality, HRW reiterated its policy against making these names public, and declined.

78. See the homepage of the International Justice Program, Human Rights Watch, from which this quote derives.

79. See IJP Reports, which archives material dating as far back as an April 1991 report on the experiences of Argentina. Our data are valid through the December 2006 publication date of Weighing the Evidence.

80. Through December 31, 2006. See "Documents by Region," a heading which appears in the right-hand column of the homepage of the International Justice Program. The regions or theaters of interest archived here are: Afghanistan (6); Argentina (14); The Balkans (150); Cambodia (11); Chad ("The Case Against [former President] Hissène Habré, an 'African Pinochet'") (14); "Tchad: L'affaire Habré" (the French-language version of the above); Chile (4); Democratic Republic of Congo (31); Indonesia and East Timor (20); Iraq (95); Rwanda (35); Sierra Leone (57); Sudan (32); and Uganda (12). Note that for the sake of our tabulation here, we counted the number of documents listed under "Chad" once, while excluding the French-language copies listed under "Tchad: L'affaire Habré."

81. Jennifer Trahan et al., Genocide, War Crimes and Crimes Against Humanity: A Topical Digest of the Case Law of the International Criminal Tribunal for the Former Yugoslavia, Human Rights Watch, July, 2006, p. ii. Excluded from this list are HRW's annual reports.

82. Fred Abrahams et al., Under Orders: War Crimes in Kosovo, Human Rights Watch, October, 2001, p. xix.

83. To cite another example of HRW's advocacy on Balkan issues, we read in a May 1992 commentary that Yugoslavia's wars were the "results of a relentless propaganda campaign, aimed at stirring up old tensions and engineered by Serbia's irresponsible, power-mad leader, Slobodan Milosevic, a communist who turned nationalist to further his own cause.... [Milosevic] is involved in an insatiable land grab. Under the pretext of protecting Serbs, his government—using the Yugoslav army and Serbian paramilitary forces—has committed just about every crime against civilians known to international law: summary executions, hostage taking, indiscriminate shelling and destruction of towns and cities, and forcible removal of populations.... The United States... must now

urge every measure possible to shame and isolate Milosevic, including a call for an international tribunal to investigate Serbia's war crimes." Jeri Laber and Ivana Nizich, "Milosevic's Land Grab," Washington Post, May 22, 1992.

84. See Part 1, and notes 30 and 31.

85. See Final Report of the Commission for Reception, Truth and Reconciliation in East Timor, esp. Part 6, "The Profile of Human Rights Violations in Timor-Leste, 1974 - 1999" (as posted to the ETAN website). The report itself gives confusing and inconsistent numbers—a problem we cannot address here. But it does provide additional sources, and fn. 7 (p. 5) states in full: "Estimates based on official Portuguese, Indonesian and Catholic Church data suggest an overall magnitude of approximately 200,000 deaths. See, for example, Ben Kiernan, 'The Demography of Genocide in Southeast Asia: The Deathtolls in Cambodia, 1975-79, and East Timor, 1975-80', Critical Asian Studies 35(4), 2003, pp. 585-597, and Geoffrey Gunn, East Timor and the United Nations: The Case for Intervention, Red Sea Press, Lawrenceville, NJ,1997, pp. 26-27. On the lower side, see Robert Cribb, 'How Many Deaths? Problems in the statistics of massacre in Indonesia (1965-1966) and East Timor (1975-1980)', in Ingrid Wessel and Georgia Wimhoefer (eds.), Violence in Indonesia, Abera-Verl, Hamburg, 2001. John Waddingham offers a review of estimates derived from 'intuitive' and indirect methods: see John Waddingham, 'Timor-Leste Death Toll Claims: a Proposal for Listing and Critical Commentary', Submission to CAVR, 14 July 2003."

86. See "Asia Watch Calls for International Monitors at Trials for East Timorese," January, 1992, as posted to IJP Reports on the HRW website.

87. "Making History: Profile of a human rights activist: Richard Dicker," HRW's Annual Report 2005, p. 34.

88. Holbrooke, who was head of the State Department's Bureau of East Asian and Pacific Affairs in the Carter administration, was in charge of U.S. policy toward Indonesia and East Timor in 1977 and 1978, when Indonesian terror and killings reached their peaks, and during which time the United States continued its support of Indonesia and did nothing to curb the violence. In testimony before Congress on December 4, 1979, Holbrooke lied about the origins of the war and Indonesian responsibility for the deaths, telling Congress that the "welfare of the Timorese people is the major objective of our policy toward East Timor"—a blatant lie—and lauded Indonesia for its "humanitarian approach to the Indochinese refugee problem." (See Noam Chomsky, Toward A New Cold War (Pantheon, 1982), p. 350 and p. 471.) U.N. Security Council resolutions condemned Jakarta's invasion and occupation, but the Carter-Holbrooke team provided Jakarta with advanced counter-insurgency aircraft, which the Indonesian military employed to bomb and napalm the East Timorese. An Australian parliamentary report later described the period as one of "indiscriminate killing on a scale unprecedented in post-World War II history." See Joseph Nevins, "First the Butchery, Then the Flowers: Clinton and Holbrooke in East Timor," CounterPunch, May 16 - 31, 2002 (as posted to the ETAN website).

89. See, e.g., "Holbrooke Speaks," HRW Update, Spring 2000. In January 2006, HRW sponsored a "luncheon [in Zurich] for 150 prominent and interested individuals from the banking capital of the world." Among the speakers was "former U.S. Ambassador to the United Nations Richard Holbrooke." See HRW's Annual Report 2006, p. 35.

90. The Kati Marton - Richard Holbrooke couple are pictured together in HRW's Annual Report 2005, p. 65.

91. Roger Cohen, citing Croatian Defense Minister Gojko Susak, "In Towns Taken by Croats, Many Deaths but Few Details," New York Times, May 8, 1995.

92. O'Shea, The Modern Yugoslav Conflict: 1991 - 1995, p. 187.

93. See, e.g., "Notification regarding anniversary of Serbs suffering in the agression of Croatian army on the Serb Krajina in the August 1995," as posted to the Veritas website (last accessed on February 20, 2007). Here we read that this organization estimated that 1,883 Krajina Serbs had been killed in Operation Storm through August, 1995, and that these included 524 women and 14 children. Also see "Croatian Serb Exodus Commemorated," Agence France Press, Aug. 4, 2004. In the graves around Srebrenica exhumed through 2000, only one of bodies that have been exhumed to date was identified as female.

94. Tim Ripley, Operation Deliberate Force: the UN and NATO Campaign in Bosnia 1995, (Centre for Defence and International Security Studies, 1999), p. 192.

95. See The Croatian Army Offensive in Western Slavonia and its Aftermath, Human Rights Watch, July, 1995.

96. Laughland, Travesty, Ch. 8, "Witnesses for the Prosecution," pp. 150-175; and Mandel, How America Gets Away With Murder, Ch. 5, "The Trial of Milosevic," pp. 147-175.

97. The Croatian Army Offensive in Western Slavonia and its Aftermath, p. 2; pp. 17-18.

98. Ivana Nizich and Holly Cartner, Impunity for Abuses Committed During "Operation Storm" and the Denial of the Right of Refugees to Return to the Krajina, Human Rights Watch, August, 1996, p. 29 ff.

99. Ibid., p. 30.

100. Holly Cartner, "Artificial Symmetry of Atrocity," Letter, Washington Post, August 18, 1995.

101. "US snubs Portillo over 'cleansing'," The Herald (Glasgow), August 9, 1995; and "Britain angry after US denies 'ethnic cleansing'," The Independent, August 9, 1995. "Red Cross officials, United Nations representatives and Western diplomats rejected Mr Galbraith's assessment," The Independent reported. "One ambassador described the remark as 'breathtaking'."

102. The U.K. (Richard May, Steven Kay, and Gillians Higgins); the U.S. (Geoffrey Nice); the Netherlands (Michail Wladimiroff); Australia (Timothy McCormack). The lone exception was amicus curiae Branislav Tapuskovic (a Belgrade Serb).

103. Data as of early 2007. See Organs of the Tribunal, ICTY website.

104. Laughland, Travesty, p. 92. Also see Köchler, Global Justice or Global Revenge?, p. 354.

105. Laughland cites calls by the ICTY trial chambers for rule "flexibility" and a realistic law that "disregards legal formalities." He gives a number of examples where the ICTY altered its rules to allow it to achieve its (conviction) aims. Travesty, p. 94 and p. 96; and Ch. 5, "Potemkin Justice," pp, 88-109.

106. John Laughland, Travesty, chaps. 4-5.

107. See Antonio Cassese et al., Annual Report of the International Tribunal for...the Former Yugoslavia (A/49/342 - S/1994/1007), ICTY, August 29, 1994, par. 15.—Being the first of the ICTY's Annual Reports to the UN, its authors were eager to dismiss concerns that the "establishment of the Tribunal might jeopardize the peace process." They countered: "[T]he Tribunal will contribute to the peace process by creating conditions rendering a return to normality less difficult. How could one hope to restore the rule of law and the development of stable, constructive and healthy relations among ethnic groups, within or between independent States, if the culprits are allowed to go unpunished? Those who have suffered, directly or indirectly, from their crimes are unlikely to forgive or set aside their deep resentment. How could a woman, who had been raped by servicemen from a different ethnic group, or a civilian whose parents or children had been killed in cold blood quell their desire for vengeance if they knew that the authors of these crimes were left unpunished and allowed to move around freely, possibly in the same town where their appalling actions had been perpetrated? The only civilised alternative to this desire for revenge is to render justice: to conduct a fair trial by a truly independent and impartial tribunal and to punish those found guilty. If no fair trial is held, feelings of hatred and resentment seething below the surface will, sooner or later, erupt and lead to renewed violence."

108. WTE, p. 2; p. 15.

109. WTE, p. 25.

110. WTE, fn. 79, p. 25.

111. Milosevic Trial Transcript, April 11, 2003, p. 19128.—This exchange continued: Milosevic: "You hadn't heard of the takeover of entire brigades and corps and their equipment, weapons, ammunition factories, military factories, airports, and everything else that was in the possession of the JNA and was left behind in those territories? You had none of that in mind?" Torkildsen: "I have not looked at that aspect, no" (pp. 19128 - 19129).

112. Milosevic Trial Transcript, February 5, 2003, pp. 15769 - 15770.

113. WTE, p. 9.

114. See, e.g., Daniel Pearl, "Body Count In Kosovo Falls Short Of Feared Total," Wall Street Journal, November 11, 1999; and Daniel Pearl and Robert Block, "Body Count: War in Kosovo Was Cruel, Bitter, Savage; Genocide It Wasn't," Wall Street Journal, December 31, 1999.

115. We have always believed that a close and honest study of official sources showed that refugee flows both prior to and during NATO's 1999 bombing war correlated, not with a plan of "systematic forced expulsion" and unambiguous "ethnic cleansing" (HRW), but with strategic military factors, including the intensity of fighting, the operational presence of the KLA in the various theaters of combat, and the relative density of the national groups living in the areas being contested. Across Kosovo's 29 municipalities, ethnic Albanians did not flee the territory uniformly. Nor were they alone—members of all ethnic groups fled areas where fighting took place. Municipalities in different parts of Kosovo where the KLA's presence was thin saw relatively little fighting and therefore little refugee flow. This was particularly true prior to the withdrawal of the observers and the start of the bombing campaign. See the report published by the OSCE, Kosovo/Kosova: As Seen, As Told. The human rights findings of the OSCE Kosovo Verification Mission October 1998 to June 1999, esp. Part III, Ch. 14, "Forced Expulsion," pp. 146-162; and Part V, "The Municipalities," pp. 226-585. Also see the treatment of this matter in Noam Chomsky, A New Generation Draws the Line:

Kosovo, East Timor and the Standards of the West (Verso, 2000), p. 114 ff. Chomsky summarized the work of former New York Times reporter David Binder, who "notes 'a curiosity' documented in the OSCE report: 46 percent of the Albanians left Kosovo during the bombing, along with 60 percent of the Serbians and Montenegrins. Thus, 'proportionately more Serbs were displaced during the bombing, and they did not return to Kosovo'" (p. 114).

116. WTE, p. 10.

117. Jan Oberg, "UN Broke in Kosovo," PressInfo 86, Transnational Foundation for Peace and Future Research, February 7, 2000.

118.See "Ex-Yugoslavia: Srebrenica Indictees Still at Large," HRW, June 13, 2005.

119. WTE, p. 14.

120. Milosevic Trial Transcript, June 1, 2005, p. 40278.—As Kay stated: "We haven't established any foundation for this. To my mind, this looks like sensationalism. There are no questions directed to the witness on the content of that film in a way that he can deal with it. It's merely been a presentation by the Prosecution of some sort of material they have in their possession that has not been disclosed to us and then it has been shown for the public viewing without any question attached to it. It's entire sensationalism. It's not cross-examination."

121. Although the "Scorpions" video was never admitted into the evidence at trial—a fact conceded without comment by WTE (p. 14)—its contribution to ICTY propaganda was enormous. Chief Prosecutor Carla Del Ponte seized on its showing to repeat her demand for the arrest of the Bosnia Serbs Radovan Karadzic and Ratko Mladic, and on a trip to Sarajevo, told the Mothers of Srebrenica Association: "I have other video material but as you know, it is public only when we can provide it in the court during the trials"—uncorroborated allegations repeated without challenge. (Samir Krilic, "Chief prosecutor of U.N. war crimes tribunal says court has more video material on killings," Associated Press, June 3, 2005). News coverage of the "Scorpions" video event owed everything to the Prosecution at the ICTY, according to whom each incident, however great or small—including the execution of a number of male prisoners at Trnovo on or about July 17, 1995—is alleged to be linked to every other incident under the concept of a "joint criminal enterprise." (See our discussion elsewhere in Part 3.)

122. See Bill Schiller, "Muslims' hero vows he'll fight to the last man," Toronto Star, January 31, 1994; John Pomfret, "Weapons, Cash and Chaos Lend Clout to Srebrenica's Tough Guy," Washington Post, February 16, 1994; and Bill Schiller, "Fearsome Muslim warlord eludes Bosnian Serb forces," Toronto Star, July 16, 1995.

123. See Memorandum on War Crimes and Crimes and Genocide in Eastern Bosnia (Communes of Bratunac, Skelani and Srebrenica) Committed Against the Serb Population from April 1992 to April 1993 (A/48/177 - S/25835), May 24, 1993.

124. See Tabeau and Bijak, fn. 12, p. 213, where they explain the method by which they reached their provisional estimate of 16,700 war-related Bosnian Serb civilian deaths.

125. Laughland, Travesty, p. 83.

126. For Milosevic's opening statement at trial, see Milosevic Trial Transcript, February 14, 2002; and Milosevic Trial Transcript, February 15, 2002.

127. Tanja Subotic, "Bosnian minister urges action on war crime videos," AFP, August 8, 2006; "TV shows footage of ex-Bosnian army chief ordering torching of Serb villages," BBC Worldwide Monitoring, August 7, 2006.

128. Vince Crawley, "U.S. Welcomes Cooperative Inquiry of New Balkans War Videos," Washington File, U.S. Department of State, August 16, 2006.

129. Tanja Subotic, "Bosnian Serbs file charges against ex-Muslim general," Agence France Presse, August 10, 2006.

130. Anton Nikiforov, ICTY Weekly Press Briefing, August 9, 2006.

131. For Tudjman, see Graham Blewitt, OTP, "ICTY Weekly Press Briefing," November 8, 2000; and Paul Lashmar et al., "The Tudjman Tapes—Secret recordings link dead dictator to Bosnia crimes," The Independent, November 1, 2000; and for Izetbegovic, see Mirko Klarin, "Izetbegovic Investigated," Institute for War and Peace Reporting, November 5-10, 2001.

132. WTE, p.1, p. 5.

133. WTW, footnotes 5, 6, 7, 8, and 11, pp. 7-8.

134. Laughland, Travesty, Ch. 8, "Witnesses for the Prosecution," pp. 150-175; and Mandel, How America Gets Away With Murder, Ch. 5, "The Trial of Milosevic," pp. 147-175.

135. See Judge Richard May, Decision on Prosecution's Application for a Witness Pursuant to Rule 70, ICTY, October 30, 2003.

136. Mandel, How America Gets Away With Murder, p. 169. Mandel adds: "The effect of all this harassment of Milosevic was not only to prevent [William] Walker from getting caught in any lies, but also to put him at his ease by showing him that the Court was on his side, that they did not think anything Milosevic said reflected at all adversely on Walker's credibility" (p 170).

137. Milosevic Trial Transcript, October 30, 2003, pp. 28326-28327.

138. Raymond Bonner, "War Crimes Panel Finds Croat Troops 'Cleansed' the Serbs, New York Times, March 21, 1999.

139. Milosevic Trial Transcript, June 26, 2003, p. 23183.—This revealing exchange went exactly as follows: Slobodan Milosevic (addressing Peter Galbraith on the subject of Operation Storm): "[D]o you consider yourself and the United States government responsible for the crimes that were committed against the Serbs?" Judge May: "No need to answer that. That's a preposterous question. You've heard it, you've heard what the witnesses has said. Now, you've got one minute left, so you better have your last question."

140. WTE, pp. 14-49.

141. See Cees Wiebes, Intelligence and the War in Bosnia, 1992 – 1995 (Lit Verlag, 2003). Esp. Ch. 4, Section 2, "Arms supplies to the ABiH: the Croatian Pipeline," pp. 158-177; and Section 3, "Secret arms supplies to the ABiH: the Black Flights to Tuzla," pp. 177-198. Also see William Drozdiak et al., "U.S. Helps Bosnian Arms Get Arms, Europeans Say," Washington Post, July 28, 1995; James Risen and Doyle McManus, "Clinton Secretly OKed Iran's Arms Shipments to Bosnia," Los Angeles Times, April 5, 1996. (We note that the month of April 1996 produced a considerable number of news reports on these topics.) Most important, see the massive investigative report by the House Committee on International Relations (a.k.a. the "Iranian Green Light Subcommittee"), Final Report of the Select Subcommittee to Investigate the United States Role in Iranian Arms Transfers to Croatia and Bosnia, U.S. House of Representatives (Washington, D.C.: U.S. Government Printing Office, 1997); and the report by the Senate Select Committee on Intelligence, U.S. Actions Regarding Iranian and Other Arms Transfers to the Bosnian Army, 1994-1995, U.S. Senate, November 1996.

142. UN Security Council Resolution 713 (S/RES/713), September 25, 1991, operative par. 6. Res. 713 applied to the Socialist Federal Republic of Yugoslavia and its Republics, as well as to the subsequent independent states and the successor Federal Republic of Yugoslavia. Res. 713 was rescinded on November 22, 1995 by Security Council Resolution 1021 (S/RES/1021).

143. WTE, pp. 5-6.

144. Although Article 5.1 of the Rome Statute of the International Criminal Court (adopted July 17, 1998; it entered into force on July 1, 2002) lists the "crime of aggression" among the four "most serious crimes of concern to the international community as a whole" for which the ICC is to exercise jurisdiction, Article 5.2 adds: "The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations." Also see Mandel, How America Gets Away With Murder, pp. 207-219.

145. See John R. Bolton (signed), "International Criminal Court: Letter to UN Secretary General Kofi Annan," U.S. Department of State, May 6, 2002. At the time, Bolton was the Under Secretary of State for Arms Control and International Security.

146. See Article 98.2 of the Rome Statute of the International Criminal Court: "The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender."

147. WTE, notes 6 and 8, p. 8.

148. For our reference to the Brioni Transcripts of July 31, 1995, see Milosevic Trial Transcript, June 26, 2003, p. 23200. In this instance, the former U.S. Ambassador to Croatia Peter Galbraith was undergoing cross-examination by amici curiae Branislav Tapuskovic. Reading from the text of a Prosecution Exhibit that included Tudjman's words as quoted in the Brioni Transcript, Takuskovic said: "We have the inclination of the United States if, gentlemen, you decide to engage in that attack as you did in Slavonia.....That is the purpose of this discussion today, to inflict such a blow on the Serbs that they should virtually disappear" (lines 1-10). For a slightly different version of this quote, which has Tudjman instructing his military to "strike in a way to make it sure that the Serbs will practically disappear from Croatia," see Sladjana Kovacevic, "Tugjman's Orders to Expel the Croatian Serbs Found?" as posted to the One World Southeast Europe website, October 18, 2004.

149. For Operation Storm, see above, and notes 91-101.

150. On the role of the U.S.-based military planning and logistic work behind Operation Storm, see, e.g., Ken Silverstein, Private Warriors (Verso, 2000). One firm, the Virginia-based Military Professional Resources, Inc., "got its first big overseas contract in 1995, when Croatia hired the firm to advise and train its military forces." "Just months after MPRI went into Zagreb," Silverstein continues, "Croatia's army—until then, bumbling and inept—launched a series of bloody offensives against Serbian forces....'No country moves from having a rag-tag militia to carrying out a professional military offensive without some help', says Roger Charles, a retired Marine lieutenant colonel and military researcher who has closely monitored MPRI's activities....As of early 1995, he says, the Croatian army 'consisted of criminal rabble, a bunch of fucking losers. MPRI turned them into something resembling an army'." See esp. Chapter 4, "Mercenary, Inc.," pp. 171-175.

151. Carla Del Ponte, "The Dividends of International Criminal Justice" (Address at Goldman Sachs - London), ICTY, October 6, 2005.

152. See Carla Del Ponte, Prosecutor of the Tribunal Against Ante Gotovina (IT-01-45-I), ICTY, May 21, 2001. Here we note simply that although the date of this indictment was May 21, 2001, and Milosevic's transfer to the custody of the ICTY at The Hague was June 28, 2001, the Gotovina indictment was kept under seal until July 26, 2001.

153. As noted, although the ICTY indicted the Croatian General Ante Gotovina on May 21, 2001, it kept the indictment under seal until July 26, 2001. Yet on July 6, Carla Del Ponte visited Zagreb , where she announced that two Croatian citizens had been indicted by the ICTY, and publicized the fact that the sealed indictments already had been turned over the government of Prime Minister Ivica Racan. This meant that any potential indictee was bound to know about his having been named in the still-sealed indictments. At the time, news reports circulated widely that correctly named the two men (the other being General Rahim Ademi); and several top ministers resigned from the government in protest. Ademi surrendered to the ICTY in late July, but Gotovina went underground, and was not apprehended until December 2005 on the Canary Islands . See Peter Beaumont and Ed Vulliamy, "Croats accused of war crimes: Now net closes on generals who killed Serbs," The Observer, July 8, 2001; Nick Thorpe, "Hague indictments spark Croatian crisis," The Guardian, July 9, 2001; Carlotta Gall and Marlise Simons, "Croatia in Turmoil After Agreeing to Send 2 to Tribunal," New York Times, July 9, 2001; Ian Traynor and Giles Tremlett, "Capture of war crimes suspect paves Croatia's way to EU entry," The Guardian, December 9, 2005; Renwick McLean and Marlise Simons, " Croatian Suspect In War Crimes Is Arrested In Canary Isles," New York Times, December 9, 2005; and Molly Moore, "Top Croatian War Crimes Suspect Is Arrested," Washington Post, December 9, 2005.

154. See Carla Del Ponte, Prosecutor of the Tribunal Against Naser Oric (IT-03-68-I), ICTY, March 28, 2003.

155. See Milosevic Trial Transcript, February 12, 2004, p. 32044. During cross-examination of the French General, former Commander of UNPROFOR (September 1992 - July 1993) and later Commander of the E.U.'s Rapid Reaction Force (June 2, 1995 -), Philippe Morillon, the amici curiae Branislav Tapuskovic read quotes from Morillon's November 1999 testimony before a French Parliamentary inquiry, the transcript of which one of the exhibits in the Milosevic trial records. At one point, their exchange went exactly as follows: Tapuskovic: "'Oric said', and I'm quoting you, 'that those were the rules of the game, and that in this type of partisan warfare, he cannot take prisoners'. Were those your words or not?" Morillon: "Yes" (lines 17-20).

156. WTE, fn. 13, p. 10.

157. Richard Holbrooke recounts "Milosevic's astonishing decision" on the eighteenth day of negotiations at Dayton "to give Sarajevo to the Muslims." "Why," Holbrooke wondered, has Milosevic "decided to abandon the Bosnian Serbs?" Holbrooke speculates that Milosevic "was fed up with the Bosnian Serbs and decided to weaken their Pale base by giving away the Serb-controlled parts of Sarajevo ....This explanation was consistent with one of Milosevic's main themes at Dayton that the Bosnian Serb leadership had become an impediment." Holbrooke adds: "To further weaken Pale, I proposed that the Dayton agreement include a provision moving the Bosnian Serb capital to Banja Luka . Milosevic seemed interested in this proposal, but, to my surprise, Izetbegovic demurred....We should have pushed Izetbegovic harder to agree to establish the Serb capital at Banja Luka ." To End A War, pp. 292-293. Also see the exchange at trial between Milosevic and David Owen, the co-chair, first with Cyrus Vance, later with Thorvald Stoltenberg, of the International Conference on the Former Yugoslavia, beginning with Milosevic's statement (p. 28469): "Well, you said yourself, Lord Owen, that we spent hours and hours putting forth arguments for reasons to accept those peace plans. Now, do you consider that we should have used force against Republika Srpska, perhaps, which, apart from presenting arguments, that's the only other thing that we could have done, use force. Did you really think we should have used force, that the Serbs should attack the Serbs in order to resolve some of these outstanding problems? We opted for political settlements, political means, to solve the problem." Milosevic Trial Transcript, November 3, 2003, pp. 28469 - 28472.

158. In the most extreme case, a September 30, 2005 report by the Srebrenica Working Group of the Republika Srpska made the determination that 19,473 Bosnian Serbs had participated on the Srebrenica massacre of July 1995; as of the date of this report, 17,074 of them had been identified by name. We caution, of course, that this working group was organized at the behest of the Office of the High-Representative for Bosnia and Herzegovina , the colonial administration created by the 1995 Dayton Accords, and the highest political authority in the country. It should not be regarded as the product of an independent inquiry. See "RS Government Finally Meets Its Obligations," Press Release, Office of the High Representative for Bosnia and Herzegovina, October 4, 2005; "Transcript of the International Agencies' Joint Press Conference," Office of the High Representative for Bosnia and

Herzegovina, October 4, 2005; Irene Knezevic, "Bosnian Serb panel identifies 17,000 participants in 1995 Srebrenica massacre," Associated Press, October 4, 2005; Olga Lola Ninkovic, "Over 19,000 Serbs took part in Srebrenica—report," Reuters, October 4, 2005; Nicholas Wood, "From list of 19,000, 90 more trials," International Herald Tribune, October 6, 2005; "Numbers," Time Magazine, October 17, 2005.

159. Laughland, Travesty, p. 122.

160. See Prosecutor of the Tribunal Against Slobodan Milosevic, Pre-Trial Hearing on Prosecution's Motion for Joinder, (IT-99-37-PT, IT-01-50-PT, IT-01-51-I), December 11, 2001, p. 71 ff. Also see Judge Richard May, Decision on Prosecution's Motion for Joinder, ICTY Trial Chamber, December 13, 2001.—Summarizing the argument submitted by the Prosecution, May noted that according to the Prosecution, the "'transaction' or common scheme, strategy or plan which connects the three Indictments is Milosevic's plan to create a 'Greater Serbia', encompassing Kosovo and the areas of Croatia and Bosnia and Herzegovina with a substantial Serb population: this was to be achieved through the forcible removal of non-Serbs from large areas of the territory of the former Yugoslavia by means of acts which constitute crimes under the Statute" (par. 16). May added that, "given the continuous and evolving nature of the crimes, it would be impossible adequately to consider his participation in the crimes in any one of the Indictments without considering his role in the crimes in the other two Indictments" (par. 17). And later, May explained that the Prosecution "used the words 'Greater Serbia' only as a 'handle' and that the alleged overall plan of the accused was a centralised Serbian State encompassing Serb populated areas and the determination to retain or gain whatever would fall within that plan" (par. 21).

161. See Judge Claude Jorda, Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, ICTY Appeals Chamber, February 1, 2002; and Judge Claude Jorda, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal To Order Joinder, Appeals Chamber, April 18, 2002.

162. WTE, p. 1; p. 5.

163. Del Ponte, "The Dividends of International Criminal Justice" (Address at Goldman Sachs - London), ICTY, October 6, 2005.

164. As recounted by Laughland, Travesty, p. 149.

165. Laughland, Travesty, pp. 23-24; p. 129.

166. After studying transcripts of the early days of the Milosevic trial, Canadian defense attorney Edward L. Greenspan observed that the interaction between the Prosecution and the Trial Chamber showed that the result of the trial "is a foregone conclusion.....In the Hague, justice is manifestly and undoubtedly seen to be not done....[Presiding Judge Richard] May doesn't even feign impartiality or, indeed, interest. He clearly reviles Milosevic.... The result is certain. A kangaroo court is one in which legal procedures are largely a show, and the action 'jumps' from accusation to sentencing without due process. No matter how long a trial takes, if the result is inevitable, then it's a show trial. The accusers might as well shoot Milosevic. At least, it doesn't soil the process." Edward L. Greenspan, "This is a lynching," National Post, March 13, 2002.

167. In April, 2003, the ICTY suspended its warrant for the arrest of the former Chief of Staff of Croatia's Army, General Janko Bobetko, under indictment by the ICTY since August, 2002. An ICTY-appointed doctor determined the 83-year-old too ill to travel to The Hague, and the previous month, an ICTY judge had declared that if Zagreb agreed to serve the six-month-old indictment on Bobetko, suspension of the arrest warrant would be "effective immediately," thus rendering the whole indictment meaningless. Bobetko died less than three weeks later. See Judge Carmel Agius, Order for Service of Indictment, March 19, 2003; "ICTY Officially Informs Zagreb on Suspension of Arrest Warrant," ONASA News Agency, April 9, 2003; and "Obituary of General Janko Bobetko," Daily Telegraph, April 30, 2003.

168. Kosovo Prime Minister Ramush Haradinaj was indicted in March 2005 (IT-04-84-I) on multiple counts of crimes against humanity and violations of the laws or customs of war for events that occurred while he was a commander of the Kosovo Liberation Army. He resigned his office and surrendered to ICTY custody. On June 6, 2005, Haradinaj was granted provisional release to return to participation in the political life of Kosovo, pending trial. (See Judge Carmel Agius, Decision on Ramush Haradinaj's Motion for Provisional Release, ICTY, June 6, 2005.) Some 20 months later, Haradinaj remained at large, and with a final date for his trial scheduled for March 2007, he was ordered to return to ICTY custody no later than February 26, 2007. (See Judge Alphons Orie, Order Recalling Ramush Haradinaj from Provisional Release, ICTY, February 1, 2007.)

169. See Judge Patrick Robinson, Decision on Assigned Counsel Request for Provisional Release (IT-02-54-T), ICTY, February 23, 2006. Milosevic's release from custody for special medical care at the Bakoulev Center in Russia was denied because, "notwithstanding the guarantees of the Russian Federation and the personal undertaking of the Accused, the Trial Chamber is not satisfied that the first prong of the test has been met—that is, that it is more likely than not that the Accused, if released, would return for the continuation of his trial" (par. 18).

170. Carla Del Ponte, "Press Conference by the ICTY Prosecutor at The Hague," March 12, 2006.

171. See Ch. 2, "A Study in Propaganda," in Michael Barratt Brown, Edward S. Herman, and David Peterson, The Trial of Slobodan Milosevic (Spokesman, 2004), pp. 31-78. (For an electronic version, see "Marlise Simons on the Yugoslavia Tribunal: A Study in Total Propaganda Service," ZNet, 2004.)

172. WTE, p. 75. Compare the assertion WTE makes in its Introduction: "Human Rights Watch believes the evidence introduced [in the Milosevic trial] should help shape how current and future generations view the wars and in particular Serbia 's role in them" (p. 5).

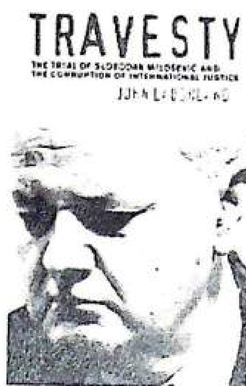
Global Research Articles by Edward S. Herman

Global Research Articles by David Peterson and George Szamuely

Recensie van het boek van John Laughland, Travesty:
The Trial of Slobodan Milosevic and the Corruption of International Justice (Londen/Ann Arbor: Pluto Press, 2007).

Mei 2007

Door Edward Herman (vertaling: Denise Grobben)



[Z Magazine, April 2007] Het geweldige nieuwe boek van John Laughland, Travesty: The Trial of Slobodan Milosevic and the Corruption of International Justice, is het vierde belangrijke kritische onderzoek naar aanleiding van gebeurtenissen in de oorlog op de Balkan dat ik heb gerecenseerd voor Z Magazine. De drie hiervoor waren Fools'Crusade van Diana Johnstone (2002), How America Gets Away With Murder van Michael Mandel (2004), en Media Cleansing: Dirty Reporting van Peter Brock (2005). Een interessant en zorgwekkend feit is dat van geen van de drie eerdere boeken een recensie is verschenen in de grote Amerikaanse kranten of tijdschriften, en zelfs niet in enig liberaal of links blad in dit land (zoals The Nation, In These Times, The Progressive, of Mother Jones), met uitzondering van Z Magazine. Dit getuigt van de kracht van het gevestigde verhaal over de recente geschiedenis van de Balkan, waarbij Clinton, Blair en de NAVO aan de goede kant streden, hoewel wat aan de late kant en niet van harte, om de etnische zuiveringen en de genocide van de Serviërs, geleid door Milosevic, een halt toe te roepen, en waarbij de slechterik netjes voor een legitieme rechtbank wordt voorgeleid om berecht te worden in het belang van rechtvaardigheid.

Dit verhaal werd al snel algemeen geaccepteerd, met behulp van een intensieve propaganda campagne van de Kroatische en Bosnische Moslimregering (bijgestaan door Amerikaanse PR-bedrijven), de Verenigde Staten en andere NAVO-landen, het door de NAVO georganiseerde Internationale Strafhof voor Voormalig Joegoslavië (ICTY, of Joegoslaviëtribunaal), en de westerse media, die zich al snel aansloten bij deze strijd. Dit informele collectief richtte zich op de vele verhalen en foto's van slachtoffers, allemaal eenzijdig en ontdaan van enige context. In zijn commentaar op de parade van getuigenissen van slachtoffers merkt Laughland op dat de 'beschuldigingen' [van het tribunaal] zijn opgetekend zonder enige of met slechts een enkele referentie aan het feit dat de genoemde daden begaan werden in een oorlogssituatie: 'je krijgt regelmatig het surrealistische gevoel dat je een beschrijving leest van hoe een man een andere man bewusteloos slaat, zonder dat erbij gezegd wordt dat het om een bokswedstrijd gaat'. Maar de stroom van getuigen, die de verdediging net zo makkelijk had kunnen opvoeren als ze de kans hadden gekregen – wat Milosevic aantoonde met de videopresentatie van zwaar mishandelde Serviërs aan het begin van zijn proces - is een effectieve manier om iemand te demoniseren en droeg bij aan de massale productie van ware volgelingen die ieder tegenargument of tegenstrijdig bewijs afdeden als 'een verontschuldiging voor Milosevic'.

Deze consolidatie van een partijpolitieke lijn werd kracht bijgezet door een ware lobby van instellingen en toegewijde individuen, die klaarstonden om bovenop afvalligen te duiken die de nieuwe aanname in twijfel trokken, alsmede op die media die heel soms vragen zetten bij de 'waarheid'. De weigering om de boeken met een afwijkend geluid te recenseren en de kwesties te behandelen die zij oproepen, getuigt ook van lafheid en een zelf opgelegde onwetendheid van de media. Vooral de links-liberale media tonen zich ongewillig om een verhaal te betwisten dat op ieder vlak gelogen is, zoals wordt aangetoond in de drie eerder verschenen boeken en opnieuw in Travesty.

In Travesty richt Laughland zich met name op 'De corruptie van de internationale rechtsorde' zoals vertoond door de ICTY in het schouwspel waarmee ze Milosevic hebben opgepakt en berecht. In de rest van het boek worden echter alle kwesties met betrekking tot de Balkanoorlog en de rol van de verschillende partijen besproken. De geïnstutionaliseerde leugens worden een voor een ontrafeld. Op het gebied van internationale rechtsspraak benadrukt Laughland het feit dat het ICTY een politieke rechtbank is met expliciete politieke doelstellingen die haaks staan op de eisen voor enige vorm van eerlijke rechtsspraak.

Deze politieke rechtbank is voornamelijk het werk van de Verenigde Staten en Groot-Brittannië, landen die beiden vrolijk andere landen aanvallen, maar graag de fictie in stand houden die hun eigen agressie een rechtvaardig tintje geeft en een quasi-morele dekking. Hiervoor zetten de regels van het ICTY Neurenberg op z'n kop. Het tribunaal van Neurenberg vervolgde de Nazi-leiders voor het plannen en uitvoeren van de 'hoogste internationale misdaad' van agressie. Maar het statuut van het ICTY maakt niet eens melding van misdaden tegen de vrede (hoewel het met een Kafkaeske hypocrisie wel claimt het beschermen van de vrede als doel te hebben). Laughland meldt dat op deze manier 'in plaats van het bestaande internationaal recht toe te passen, het ICTY dit in feite teniet doet'. De dominante machten die nu de mogelijkheid willen hebben om overal te kunnen interveniëren passen de

principes toe, die teruggrijpen op het gebrek aan ...ct voor internationale grenzen van de Nazi's. Laugh...d zegt dat 'de verbintenis aan non-interventie in bin...nlandse zaken', opnieuw bevestigd als onderdeel van ...e Neurenberg Principes in de VN-charter, een poging is om een antifascistische theorie over internationale betrekkingen te institutionaliseren. Deze theorie hebben de geallieerden vernietigd door in 1999 Joegoslavië aan te vallen, en deze antifascistische theorie hebben het ICTY en de humanitaire interventionisten losgelaten, waardoor de mogelijkheid werd geschapen voor een agressievere vorm van imperialisme.

Het ICTY is niet tot stand gekomen door het aannemen van een wet of door de ondertekening van een internationaal verdrag (zoals bij het Internationaal Gerechtshof het geval was) maar door een paar regeringen die de Veiligheidsraad domineerden. Laughland toont aan dat dit buiten de bevoegdheid van de Veiligheidsraad viel (wat ook werd aangetoond in een ander buitengewoon maar politiek incorrect en genegeerd boek, Global Justice or Global Revenge? van Hans Kochler) [Springer-Verlag Wien, 2003]. Het werd ook in het leven geroepen voor de vervolging van een partij in het conflict, waarvan de schuld al vastlag voor aan het proces begonnen werd. De politieke motieven waren zogenaamd om vrede te brengen door de schurken te straffen, wat als afschrikmiddel moest dienen, maar ook om de slachtoffers te helpen door wat Laughland 'de therapeutische kracht van veroordelingen' noemt. Maar hoe kun je een afschrikmiddel hanteren zonder vooroordeel tegen vrijspraak? Laughland merkt ook op dat 'de grote nadruk op de rechten van de slachtoffers met zich meebrengt dat 'gerechtigheid' neerkomt op een schuldig oordeel, en dat komt gevaarlijk dichtbij het goedpraten van precies die wraking waarvan aanhangers van het strafrecht zeggen dat ze het afwijzen. Het idee dat zulke processen een politiek educatieve functie zouden hebben herinnert in zichzelf al aan de 'agitation trials' die gehouden werden voor de stichtelijke opbouw van het proletariaat in de vroege Sovjet-Unie.

Laughland legt de nadruk op de wetteloosheid van het Joegoslavië-tribunaal op alle fronten. Het is niet ontstaan door een wet en er bestaat geen hoger instituut dat haar beslissingen controleert en waar men in beroep kan gaan. De rechters, die vaak op politieke gronden benoemd worden en geen rechterlijke ervaring hebben, beoordelen zichzelf. Laughland wijst op het feit dat de rechters hun regels talloze keren hebben aangepast, terwijl geen van die aanpassingen ooit getoetst zijn door een hogere autoriteit. Die regels zijn 'flexibel' opgesteld om zo efficiënt mogelijk tot resultaten te komen; de rechters gaan er prat op dat het ICTY 'zich niks aantrekt van wettelijke formaliteiten' en dat het niet nodig is om 'jezelf te binden aan beperkende regels die zijn voortgekomen uit het ouderwetse rechtssysteem met een jury'. De aanpassingen van de regels hebben de rechten van de gedaagde gestaag uitgekleed, hoewel die rechten al vanaf het begin niet veel voorstelden: Laughland haalt een Amerikaanse advocaat aan die hielp bij het opstellen van de regels voor bewijslast van het ICTY, die toegeeft dat ze zo opgesteld waren dat de mogelijkheid dat een beschuldiging wegens gebrek aan bewijs zou worden geseponeerd zo klein mogelijk was.

Laughland beweert dat het ICTY een 'vervolgende organisatie' is wiens 'hele beleid en structuur beschuldigend is'. Dat is de reden waarom de rechters langzamerhand een stroom van regels aannamen die schadelijk waren voor de verdediging en voor de mogelijkheid om een eerlijk proces te voeren – waaronder het accepteren van bewijs uit de tweede hand, geheime getuigenissen en gesloten sessies (waarvan de laatste twee 40 procent van de getuigenissen in het proces tegen Milosevic besloegen). Onder de regels van het ICTY is het zelfs mogelijk om een beroep en een nieuw proces tegen een vrijgesproken verdachte te beginnen – met andere woorden het ICTY kan iemand gevangen zetten die het zelf net heeft vrijgesproken.

De vernietigende analyse van Laughland van de aanklacht en het proces tegen Milosevic is een studie naar machtsmisbruik in een door politieke motieven gedreven showproces, onkundigheid en gerechtelijke nalatigheid. De eerste aanklacht, die werd opgevoerd tijdens de NAVO bombardementen op 27 mei 1999, was opgesteld in nauwe samenwerking met Amerikaanse en Britse functionarissen, en de directe politieke reden was glashelder - om de mogelijkheid van onderhandelingen over een vredesverdrag uit te sluiten en de aandacht af te leiden van de NAVO bombardementen op de civiele infrastructuur (een legale oorlogsmisdaad, die nog een schepje bovenop de 'ultieme internationale misdaad' deed, beiden beschermd door dit instituut dat zogenaamd 'rechtsspraak' koppelde aan het beschermen van de vrede!). De latere ontvoering en overdracht van Milosevic aan Den Haag was een schending van Joegoslavische wetten en uitspraken van hun rechtbanken. Dat het ICTY gedienstig was aan de NAVO en haar minachting van rechtsregels was overduidelijk.

De oorspronkelijke aanklacht tegen Milosevic betrof alleen zijn verantwoordelijkheid voor vermeende oorlogsmisdaden in Kosovo. Maar Laughland laat zien dat de wilde beweringen over massaslachtingen en genocide in Kosovo niet gestaafd konden worden met bewijs, en dat de NAVO-bombardementen net zoveel slachtoffers onder de Kosovaarse burgers gemaakt zouden kunnen hebben als het Joegoslavische leger. Hierdoor werd het probleem benadrukt dat als de aanklacht tegen Milosevic beperkt zou blijven tot Kosovo, het moeilijk te rechtvaardigen zou zijn waarom NAVO-leiders niet werden aangeklaagd, iets wat zelfs de openbare aanklager van het ICTY moest toegeven. Dus werd twee jaar na de eerste aanklacht, na

de ontvoering en overdracht van Milosevic naar Den Haag, de aanklacht uitgebreid met Bosnië en Kroatië. Wat wel vervelend was, was dat toen Mladic en Karadzic in 1995 voor misdaden in Bosnië werden aangeklaagd, Milosevic gevrijwaard bleef. Dan was er ook nog het probleem dat de Bosnische en Kroatische Serviërs niet langer onder Servische verantwoordelijkheid, en dus die van Milosevic, vielen na de onafhankelijkheidsverklaring van Bosnië en Kroatië, en het feit dat Milosevic constant met hen had gestreden om verschillende vredesplannen aan te nemen tussen 1992 en 1995 (beschreven in het boek Balkan Odyssey van Sir David Owen, een ander interessant boek dat waarschijnlijk werd genegeerd omdat het niet de partij-lijn volgde).

Dus probeerde de openbare aanklager er een zaak van genocide van te maken door met terugwerkende kracht Milosevic de grote baas te maken in een 'joint criminal enterprise' (gezamenlijke misdadige onderneming - JCE) om van alle Kroaten en Moslims af te komen in een 'Groter Servië'. In de oorspronkelijke aanklacht, die zijn vermeende misdaden beperkten tot Kosovo, wordt nergens melding gemaakt van enige deelname aan een JCE of een drang naar een 'Groter Servië'. De aanklager moest dus opnieuw beginnen met bewijs te verzamelen voor de misdaden in Bosnië en Kroatië, en dingen die Milosevic verbonden met de JCE en Groter Servië. Eerst schuldig verklaren, dan op zoek naar het bewijs, was de regel van deze politieke rechtbank. Het proces ging al van start, terwijl 'het bewijs' nog samengesteld werd. Dit bestond grotendeels uit de verklaringen van massa's zogenaamde getuigen van vermeende misdaden, vaak nog uit de tweede hand, en bijna geen van deze hadden betrekking op de besluitvorming van Milosevic of hoe de aanklacht tegen hem verschilde van aanklachten die gebracht hadden kunnen worden tegen Izetbegovic, Tudjman of Bill Clinton. Laughland toont zeer overtuigend aan dat de buitensporige lengte van het proces absoluut niet aan de show van Milosevic lag - een geliefde leugen van Marlise Simons en de mainstream media in het algemeen - maar dat het kwam doordat het een politiek proces betrof waarvoor een enorme hoeveelheid bewijs benodigd was, en doordat de aanklager, die onvoorbereid was en moeite moest doen om een opgeklopte aanklacht plausibel te maken, probeerde om het gebrek aan enige documentatie van een door Milosevic bedacht plan te verhullen met een stroom van irrelevante getuigen van een civiele oorlog en oorlogsmisdaden in Kosovo.

Een essentieel element in de zaak van de aanklager was de latere aanklacht dat Milosevic deelgenomen had aan een 'joint criminal enterprise' om in Kroatië en Bosnië van alle niet-Serviërs af te komen, met als doel een 'Groter Servië'. Het concept van een JCE is niet terug te vinden in jurisprudentie of in het statuut van het ICTY. Het was een geïmproviseerde aanklacht, zodat je overal en altijd schuld kunt vinden. Je bent onderdeel van een JCE als je iets slechts doet samen met iemand anders, samen met anderen iemand aanvalt die iets slechts Met dat gezamenlijke doel hoef je niet eens te weten die ander doet om onderdeel van de JCE te zijn. Laugh land geeft een vernietigende analyse van deze geweldig uitgebreide en opportunistische doctrine, in het hoofdstuk 'Just convict everyone' (Veroordeel gewoon iedereen maar), een titel die is gebaseerd op een quote van een advocaat die wel achter het ICTY staat, maar de JCE een beetje teveel van het goede vindt. Milosevic zou waarschijnlijk veroordeeld zijn op deze 'pak alles', of 'pak iedereen', doctrine. Het past natuurlijk veel beter bij de gezamenlijke en doelgerichte aanval van Clinton, Blair en de NAVO op Joegoslavië, of op de door de Amerikanen gesteunde etnische zuivering door de Kroaten van de Serviërs in Krajina in augustus 1995, maar er is niemand om hun met een JCE om de oren te slaan, terwijl wij het ICTY hebben om af te rekenen met de vijanden van de VS en de NAVO!

Laughland wijdt een prima hoofdstuk aan Groter Servië, waarin hij laat zien dat Milosevic niet de aanstichter was van de oorlogen (en hij quote zelfs aanklager Nice die dit toegegeven heeft), dat hij geen extreme nationalist was en dat de beschuldigingen aangaande zijn speeches in 1987 en 1989 vals waren, dat zijn steun aan de Serviërs in Kroatië in Bosnië ongeregeld was en voornamelijk defensief, en dat hij niet werkte naar een Groter Servië maar dat hij hoogstens bezig was om de Serviërs in het uiteenvallende Joegoslavië de kans te geven bij elkaar te blijven. Tijdens de verdediging van Milosevic beweerde de leider van de Servische Nationalistische Partij, Vojislav Seselj, dat alleen zijn partij naar een Groter Servië streefde, aangezien de Kroaten en Bosnische Moslims eigenlijk Serviërs waren met een ander geloof en zijn partij ervoor streed om ze allemaal te verenigen in Servië - Milosevic wilde alleen de Serviërs die in een van de afgevallen staten gestrand waren de kans bieden om naar Servië te komen. Op dat moment gaf de aanklager, Geoffrey Nice, toe dat Milosevic niet een Groter Servië voor ogen had, maar dat hij, met Nice's woorden, alleen het 'pragmatische' doel had om 'ervoor te zorgen dat alle Serviërs die in voormalig Joegoslavië hadden gewoond de kans moesten krijgen om....in dezelfde eenheid te wonen'. Dit zorgde voor enige consternatie onder de rechters, omdat de agressieve drang van Milosevic naar een Groter Servië de kern was van de zaak van het ICTY. Nog nooit hiervan gehoord? Dat kan kloppen, omdat de New York Times en andere mainstream media het nooit vermeld hebben, net zoals ze nooit hebben geprobeerd om de steun van Milosevic aan een reeks van vredespogingen te verenigen met zijn vermeende rol als agressor met als enig doel een Groter Servië.

Er staat nog veel meer waardevols in Travesty, ik kan niet eens de hier besproken kwesties eer aan doen. Het is een geweldig boek dat op de leeslijst zou moeten staan van

der die verheldering zoekt in de verwarde en ver-
rende kwesties van de Balkanoorlog en 'humanitaire
terventie'. Het helpt het idee om zeep dat de NAVO-
aanvallen gebaseerd waren op een moraal die het recht-
vaardigde om de soevereiniteit en het internationaal recht
met voeten te treden, en het toont zonder twijfel aan dat
het ICTY een volledig gepolitiseerd schurkentribunaal is
dat een 'corrumpering van het internationaal recht' in-
houdt.

Zoals Laughland benadrukt (en Johnstone en Mandel ook) was deze NAVO-oorlog, en het ICTY werkt als stoorzender voor die oorlog, zeer functioneel om het internationale toneel klaar te maken voor de oorlogen van George Bush in Afghanistan en Irak, en wellicht ook Iran.

De oorlog werd, en wordt nog steeds, behandeld als een 'goede oorlog', een 'humanitaire interventie'. Dus degenen die het standaardverhaal, gebaseerd op leugens, voor zoete koek aannamen, hebben op z'n minst de continuïteit in het beleid van Clinton en Bush gemist, en de behulpzaamheid van de eerstgenoemde aan de publicisten van de 'goede oorlog' door de bescherming van de 'antifascistische theorie van internationale betrekkingen' weg te nemen, die kleine landen moest beschermen tegen de agressie van de grote machten, en zo de wet van de jungle te lanceren.

Te koop via Internet bij:
www.amazon.com/Travesty-Slobodan-Milosevic-Corruption-International/dp/0745326358/lewrockwell/

... ik heb gerecenseerd voor Z Magazine. De drie hiervoor waren Fools'Crusade van Diana Johnstone (2002), How America Gets Away With Murder van Michael Mandel (2004), en Media Cleansing: Dirty Reporting van Peter Brock (2005). Een interessant en zorgwekkend feit is dat van geen van de drie eerdere boeken een recensie is verschenen in de grote Amerikaanse kranten of tijdschriften, en zelfs niet in enig liberaal of links blad in dit land (zoals The Nation, In These Times, The Progressive, of Mother Jones), met uitzondering van Z Magazine. Dit getuigt van de kracht van het gevestigde verhaal over de recente geschiedenis van de Balkan, waarbij Clinton, Blair en de NAVO aan de goede kant streden, hoewel wat aan de late kant en niet van harte, om de etnische zuiveringen en de genocide van de Serviërs, geleid door Milosevic, een halt toe te roepen, en waarbij de slechterik netjes voor een legitieme rechtbank wordt voorgeleid om berecht te worden in het belang van rechtvaardigheid.

Dit verhaal werd al snel algemeen geaccepteerd, met behulp van een intensieve propaganda campagne van de Kroatische en Bosnische Moslimregering (bijgestaan door Amerikaanse PR-bedrijven), de Verenigde Staten en andere NAVO-landen, het door de NAVO georganiseerde Internationale Strafhof voor Voormalig Joegoslavië (ICTY, of Joegoslaviëtribunaal), en de westerse media, die zich al snel aansloten bij deze strijd. Dit informele collectief richtte zich op de vele verhalen en foto's van slachtoffers, allemaal eenzijdig en ontdaan van enige context. In zijn commentaar op de parade van getuigenissen van slachtoffers merkt Laughland op dat de 'beschuldigingen' [van het tribunaal] zijn opgetekend zonder enige of met slechts een enkele referentie aan het feit dat de genoemde daden begaan werden in een oorlogssituatie: 'je krijgt regelmatig het surrealistische gevoel dat je een beschrijving leest van hoe een man een andere man bewusteloos slaat, zonder dat erbij gezegd wordt dat het om een bokswedstrijd gaat'. Maar de stroom van getuigen, die de verdediging net zo makkelijk had kunnen opvoeren als ze de kans hadden gekregen – wat Milosevic aantoon-

Deze consolidatie van een partijpolitieke lijn werd kracht bijgezet door een ware lobby van instellingen en toegewijde individuen, die klaarstonden om bovenop afvalligen te duiken die de nieuwe aanname in twijfel trokken, alsmede op die media die heel soms vragen zetten bij de 'waarheid'. De weigering om de boeken met een afwijkend geluid te recenseren en de kwesties te behandelen die zij oproepen, getuigt ook van lafheid en een zelf opgelegde onwetendheid van de media. Vooral de links-liberale media tonen zich ongewillig om een verhaal te betwisten dat op ieder vlak gelogen is, zoals wordt aangetoond in de drie eerder verschenen boeken en opnieuw in Travesty.

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Eindelijk zou 'het proces van de eeuw' in de rechtbank aan de orde komen. Maar toen werd hoofdverdachte Willem Holleeder ernstig ziek. Toeval of falende gezondheidscontrole?

'Holleeder is volksvermaak. Die laat je niet zomaar ziek worden'

Een rechtbanktekening van de zitting op 2 april 2007. Willem Holleeder (2e van links) met drie medeverdachten. Rechts advocaat Jan-Hein Kuijpers.

TEKENING JAN HENSEMA

Laura van Baars en Sandra Kooke

Toen Willem Holleeder vorige week plotseling veranderde van een ongenaakbaar ogende verdachte van afpersing en bedreiging in een oververmoeide, zielige man, werd er weinig achter gezocht. De meeste omstanders reageerden nogal lacherig op zijn advocaat Jan-Hein Kuijpers, die vond dat zijn cliënt veel te vroeg op moest staan om het proces bij te kunnen wonen en daarom sprak van 'marteling'.

Nu blijkt dat Holleeder lijdt aan een lekkende hartklep en volgens Kuijpers kampt met lever- en nierproblemen. Omdat de advocaat het vermoeden heeft uitgesproken dat Holleeder vergiftigd zou zijn, staat er ook een toxicologisch onderzoek op de agenda. Met name de hartkwaal roept vragen op over het gezondheidsregime van de extra bewaakte gevangenis (ebi) in Vught, waar Holleeder verbleef. Had een dokter dit moeten zien aankomen?

Holleeders vorige advocaat Bram Moszkowicz, die hem tot voor kort regelmatig zag en sprak, heeft nooit gemerkt dat Holleeder iets onder de leden had. „Ik heb van hem nooit enige klacht vernomen," zegt hij. „Ik heb geen aanwijzingen dat er slecht voor hem gezorgd is, maar evenmin bewijzen dat er goed voor hem gezorgd is. Ik ben net zo verbaasd als iedereen."

Als een gedetineerde niet 'piept', zal hij niet speciaal worden onderzocht, legt Gerard de Jonge, een van de schrijvers van het Bajesboek en strafrechtdocent in Maastricht, uit. Hij ziet geen reden om uit te gaan van nalatigheid van de arts van de gevangenis in Vught. Die besloot maandag zelf dat Holleeder moest worden overgebracht naar het penitentiair ziekenhuis in Scheveningen.

„Nadat een aantal gedetineerden overleden was, is in de jaren negentig de gezondheidszorg in gevangenissen sterk verbeterd. Iedereen die binnenkomt, krijgt bezoek van de dokter, meestal een GGD-arts die fulltime of parttime voor de inrichting werkt. Ik weet niet hoe nauwkeurig Holleeder daarbij onderzocht is. Het hangt er natuurlijk ook vanaf welke klachten hij zelf gemeld heeft. Ze gaan je niet zonder aanleiding helemaal binnenstebuiten keren. Er zullen dus best dingen tussendoor slippen, maar dat hangt ook van de gedetineerde zelf af."

Gevangenen kunnen dezelfde aanspraak op medische zorg maken als mensen die niet gedetineerd zijn, is de officiële reactie van de woordvoerder van de Dienst Justitiële Inrichtingen, Hans Janssens.

Uit onderzoek van gezondheidsorganisatie Nivel blijkt dat gedetineerden zelfs relatief veel contact hebben met medici, gemiddeld 19 keer per jaar met een verpleegkundige en 6,6 keer met een arts. Prettige patiënten zijn het over het algemeen niet. Vooral simuleren, aandacht trekken en agressief gedrag ergeren de artsen, blijkt uit het onderzoek.

'Justitie valt in deze zaak niets te verwijten'

Het gezondheidsbeleid in de ebi in Vught is niet anders dan in andere instellingen en lijkt goed in orde. Huisartsen uit de omgeving van Vught werken in de ebi en controleren of de gevangenen genoeg medische zorg krijgen.

De gevangenis staat ook nog onder controle van de Inspectie Gezondheidszorg (IGZ) en die concludeert ook dat de situatie daar in orde is. De IGZ treedt alleen op als er klachten zijn. Dat gebeurde de laatste jaren slechts één keer. Een gedetineerde was het er niet mee eens dat bij doktersbezoek altijd een bewaker aanwezig was. Maar doktoren moeten altijd met bewakers naar binnen vanwege het *gijzelingsgevaar*. De klacht was derhalve ongegrond.

De Jonge wijst er wel op dat het bestaan in een gevangenis als die in Vught erg zwaar is. In 1998 stelde het Europees comité ter preventie van foltering vast dat er een onmenselijk regime heerste. Daarna is de ebi in Vught uitgebreid onderzocht. Twee groepen psychologen concludeerden dat de conditie van gedetineerden in de ebi niet afweek van die van gedetineerden elders. In 2003 bepaalde het Europese Hof bovendien dat de ebi niet in strijd was met artikel 3 van het Mensenrechtenverdrag dat foltering verbiedt.

Zwaar is het leven in de ebi desalniettemin, zegt De Jonge. „Vooral het feit dat je voortdurend wordt gecontroleerd – tot visitatie aan toe – en dat je alleen contact hebt met bewakers, is zwaar. Het hangt van je eigen gestel af of je dat aankunt."

Al met al denkt De Jonge dat Holleeders ziekte een kwestie van toeval is en niet van nalatigheid. „Omdat het om een verdachte als Holleeder gaat, zit er een speciaal tintje aan deze zaak, maar op zich zie ik er niets bijzonders aan. Hij is meteen overgebracht naar het penitentiair ziekenhuis in Scheveningen en vandaar naar Leiden, wat de normale procedure is."

„Justitie valt in deze zaak niets te verwijten", vindt ook Nico Steijnen, voormalig advocaat van Slobodan Milosevic, die overleed in de gevangenis van Scheveningen. Hij meent zelfs dat Holleeder extra voorzichtig is behandeld. „Holleeder is volksvermaak, die kunnen ze niet zomaar ziek laten worden. Vaak zie je dat hoe marginaler je positie wordt, hoe minder medische hulp je krijgt. Holleeder is onze slechte stiefbroer geworden. Hij is coulanter behandeld dan Milosevic. Er is op tijd onderzoek verricht en ingegrepen. Hij kan bovendien meteen geopereerd worden. Gebrek aan adequaat optreden kan de rechtbank dus niet verweten worden."

Sagittarius

Van: "guido cramer"
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Verzonden: woensdag 16 mei 2007 19:11

Geachte meneer Steijnen.

Ik heb inmiddels op uw aanraden verscheidene boeken gelezen over Slobodan Milosevic en denk dat de mening die u is aangedaan inderdaad de juiste is. Hierbij verwijs ik naar eem brief van u die u enkele jaren geleden al hebt gepubliceerd, en waarover ik u rond januari over heb bericht.

Kunt u mij nog enkele interessante boeken aanraden, dit onderwerp aangaande. Of heeft u wellicht interessante documenten die ik zou mogen inzien.

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graag hoor ik van u

Naar ik hoop stoor ik u niet al te veel,

Met vriendelijke groeten

Guido Cramer

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