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6. The Legality of the Use of Force (Serbia and Montenegro v. Canada)

The US refusal to recognize the compulsory jurisdiction of the ICJ left the prime mover of the "humanitarian intervention" out of the grasp of international law and made the junior NATO partners, like Canada, pay for their quixotism. If there ever was an example of political law, this is it. The US made the political consequences and it made its partners, like Canada, answer for their legal consequences. In other words, it was a political decision to whom law would be applied and to whom it would not.

[38] http://en.wikipedia.org/wiki/Nicaragua_v._United_States. Actually, Kirkpatrick's words were not part of the legal defense but a part of an interview with a journalist: http://www.lawschool.cornell.edu/lawlibrary/asil/15oped.htm . It should be noted that Kirkpatrick was one of the sigNATOries of the Statement of Principles of the New American Century.
[39] http://en.wikipedia.org/wiki/International_Court_of_Justice

States to accept the compulsory jurisdiction of the ...

issued on August 2, 1946 and it recognized the compulsory jurisdiction of the ICJ over the US. However, the Truman Declaration was amended by the so-called Connally Reservation, which read as follows: "The United States does not accept compulsory jurisdiction over any disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America, as determined by the United States of America."[42]

In the *Nicaragua* case the objections concerning the jurisdiction have eclipsed the clearness of the decision on the merits. If legal scholarship had given due attention to the decision by the IJC on the merits of the case, the decision on the preliminary measures in the *Legality of Use of Force* would not have been such an anticlimax as it was. The case

[40] http://www.advocacynet.org/news_view/news_94.html
[41] *Idem*
[42] *Idem*

6.1. Lessons from the Nicaragua Decision

The *Nicaragua* decision came under heavy fire. Understandably, the most vocal protests came from the US administration. "On October 7, 1985, President Ronald Reagan announced that the United States was withdrawing from the compulsory jurisdiction of the International Court of Justice (ICJ)."[40] Many lessons have been drawn from the showdown between the US and the ICJ. As has been seen earlier in this paper, the Reaganites still thought that the salvation of the world depended on the use of military force, which it justified somewhat questionably, with moral clarity. The advocates of the new world order, on the other hand, draw the lesson that "opt-in regimes can undermine justice"[41].

The more the US, in turn, came under fire from the international community for its refusal to ratify the Rome Statute of the ICC, the less inclined the US hardliners were to ratify it. That disinclination can be accounted for almost entirely by the *Nicaragua* experience. It should be remembered that the United States had been among the first States to accept the compulsory jurisdiction of the ICJ. The Truman Declaration was issued on August 2, 1946 and it recognized the compulsory jurisdiction of the ICJ over the US. However, the Truman Declaration was amended by the so-called Connally Reservation, which read as follows: "The United States does not accept compulsory jurisdiction over any disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America, as determined by the United States of America."[42]

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[41] *Idem*
[42] *Idem*

in question concerned the legality of the bombing campaign which was carried out as a "humanitarian intervention". Yugoslavia turned to the ICJ to request the indication of provisional measures, namely to order the NATO countries to stop the bombing. The case for the indication of provisional measures was thrown out of court, because the ICJ decided it had no jurisdiction in the case. It is to be noted however, that even though the request for the indication of provisional measures failed, "the findings reached by the Court in the present proceedings in no way prejudge the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves" (para. 42). The Court is still busy with the case, even if the proceedings have never quite reached the stage of the merits. The Court will hold public hearings from 19 to 23 April 2004.[43]

I will discuss the case against Canada just to pick one of the similar cases against several NATO countries: Belgium, Canada, France, Germany, Italy, Netherlands, Portugal, Spain, the United Kingdom and the United States of America. That already reveals the first problem in the case. The ICJ does not have jurisdiction over NATO, only over individual states. The case thus had to be split between the individual member states of NATO. Indeed, it is not true to say that NATO acted as a monolithic whole. That is demonstrated by the fact that Yugoslavia (or "Serbia and Montenegro" as it is now called) did not take to court the following NATO countries: Greece, Denmark and Norway. Only Norway had refused to take any part in the bombing campaign. Greece and Denmark played only a marginal role. In Greece, practically the whole population was against the campaign.

It was to be expected that the case against the US would not get very far. The reason was the American refusal to recognize the jurisdiction of the ICJ. Paragraphs 27 to 28 of the Order of 2 June 1999 on the Request for the Indication of Provisional Measures against the US read as follows:

> Whereas the United States observes that it "has not consented to jurisdiction under Article 38, paragraph 5, [of the Rules of Court] and will not do so";

[43] http://212.153.43.18/icjwww/idocket/iyca/iycaframe.htm .

> Whereas it is quite clear that, in the absence of consent by the United States, given pursuant to Article 38, paragraph 5, of the Rules, the Court cannot exercise jurisdiction in the present case, even prima facie.

The Court was at pains not to appear unfair to those NATO countries that had recognized the compulsory jurisdiction of the ICJ. It resorted to denying its jurisdiction to indicate provisional measures. The way it argued the lack of jurisdiction is less enlightening as the composition of the judges that voted against the indication of the provisional measures.

The following judges were against the indication of provisional measures (or, as the decision ultimately read, in favor of the rejection of the request for the indication of provisional measures). Seven of them came from NATO countries: Judge Stephen M. Schwebel is American. Judge Gilbert Guillaume is French. Judge Géza Herczegh is Hungarian (Hungary joined NATO in March 1999, when the bombing started). Judge Carl-August Fleischhauer is German. Judge Rosalyn Higgins is British. Judge Pieter H. Kooijmans is Dutch. Judge *ad hoc* Marc Lalonde is Canadian.

The following five judges who were also against the indication of provisional measures (or in favor of the rejection) came from outside NATO countries. Anyone can draw their own conclusions as to the role of their background. Judge Shigeru Oda is Japanese. Judge Mohammed Bedjaoui is Algerian. Judge Raymond Ranjeva is from Madagascar. Judge Abdul G. Koroma is from Sierra Leone. Judge Gonzalo Parra-Aranguren is from Venezuela.

The following four judges were in favor of the indication of the provisional measures: Judge Christopher Gregory Weeramantry is Sri Lankan. Judge Vladlen S. Vereshchetin is Russian. Judge Shi Jiuyong is Chinese. Judge *ad hoc* Milenko Kreca is from Yugoslavia.

Of the 16 judges in all, seven (almost half) came from NATO countries, and they were all in favor of the rejection. Perhaps even more importantly, they all came from NATO countries that were mentioned in the complaint by Yugoslavia. On the other hand, three

of the four judges that were against the rejection came from Russia, China and Yugoslavia. There is a clear pattern here.

6.2. Jus Cogens and Erga Omnes

As has been seen earlier in this paper, the prohibition of the use of force is part of *jus cogens*, that is, a peremptory norm of international law. It can be argued that the violation of such a rule gives rise to an obligation *erga omnes*, gives rise to erga omnes obligations of protection that bind all states and generates effects to third parties, including private persons.[44]

In the present case, that would mean that the Court could not have dabbled with a norm of *jus cogens* by the pseudo-argument that Yugoslavia recognized the jurisdiction too late, and since the wording of the recognition spoke only disputes from the date of recognition onwards, Yugoslavia had excluded the Court's jurisdiction to deal with the issue. The important point is, however, that if the non-use of force is a norm of *jus cogens* which gives rise to an obligation *erga omnes*, then the NATO countries would have had enforceable obligations towards Yugoslavia, even if the recognition of the jurisdiction had been lacking. Now the Court seems to have thought that the protection of human rights was an obligation *erga omnes*, which gave the NATO countries the right to intervene, even if their own interests were apparently not involved (until NATO decided to make the conflict its business so that beating the Yugoslav resistance became a matter of international prestige).

It is, however, questionable, whether the Court has any more jurisdiction to deal with the merits either, according to its own logic. The merits deal with the same dispute, which according to the Court arose before Yugoslavia recognized the jurisdiction of the Court.

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[44] See generally Report nº 96/03, Case 12.053, Maya Indigenous Communities of the Toledo District, Belize, October 24, 2003 at URL http://www.indianlaw.org/200310PrelimRpt.doc .

As if to show how tenuous the Court's argument is, paragraph 39 of the decision states as follows:

> Whereas the fact that the bombings have continued after 25 April 1999 and that the dispute concerning them has persisted since that date is not such as to alter the date on which the dispute arose; whereas each individual air attack could not have given rise to a separate subsequent dispute; and whereas, at this stage of the proceedings, Yugoslavia has not established that new disputes, distinct from the initial one, have arisen between the Parties since 25 April 1999 in respect of subsequent situations or facts attributable to Canada.

6.3 State as Victim of Genocide?

Besides, to say that Yugoslavia had *erga omnes* obligations towards all other states, including NATO, in relation to basic human rights, is not tenable. If human rights entail *erga omnes* obligations, then surely the prohibition of genocide entails such obligations as well. Sure enough, Yugoslavia argued explicitly that the bombing campaign constituted genocide. However, the Court employs the most bizarre logic to wriggle out of that argument. The Court said in para. 39 of the decision:

> Whereas it appears to the Court, from this definition, "that the essential characteristic of genocide is the intended destruction of 'a national, ethnical, racial or religious group'"...; whereas the threat or use of force against a State cannot in itself constitute an act of genocide within the meaning of Article II of the Genocide Convention.

How the Court arrived at the conclusion that the use of force was directed *against a State* is not at all as clear as the Court might think. There was no declaration of war against any State. The use of force was palmed off as a humanitarian intervention. The whole exercise was to target the Serbs, a clearly defined national, ethnical, and even religious group. There is little doubt that the campaign was directed against the Serbs, no matter how unbelievably Madelaine Albright tried to explain that the Americans do not hate the Serbs.

Just the fact that the Yugoslav State took up the defense of a national group on its territory at the ICJ does not in itself make the State *per se* the object of the alleged

genocide. That should be all the more clear in view of the fact that Yugoslavia was called *a failed state*. In any case, the State has more right to "intervene" on behalf of one of the major constituent ethnical groups on its territory than a military coalition of Western powers on behalf of another ethnical group.

There is little point in dissecting all the legal faults of the *Legality of Use of Force* decision. The emphasis is on the political background of the recoiling from a meaningful judgment. Even if the Court did not indicate the provisional measures, it showed its own pusillanimity by mentioning in paragraphs 44 and 45 that the parties should not aggravate or extend the dispute and that disputes should be resolved by peaceful means:

> 44. Whereas, whether or not States accept the jurisdiction of the Court, they remain in any event responsible for acts attributable to them that violate international law, including humanitarian law; whereas any disputes relating to the legality of such acts are required to be resolved by peaceful means, the choice of which, pursuant to Article 33 of the Charter, is left to the parties;
>
> 45. Whereas in this context the parties should take care not to aggravate or extend the dispute;

The Court hardly needs to remind the parties not to aggravate or extend the dispute. It had just demonstrated that there was no dispute that within its jurisdiction. Nevertheless, the Court reminds the parties that disputes should be resolved by peaceful means. The recourse to the Court, of course, is a "peaceful means" *par excellence*. The Court had just given a very bizarre piece of advice, because it had just closed the door to such resolution by peaceful means.

The Court's advice was bizarre for another reason too. The dispute related to the use of force. How can one resolve a dispute concerning the use of force "by peaceful means", now that the Court had denied it had jurisdiction? Was the Court trying to say that the real dispute was the alleged human rights violations on the Yugoslav territory and Yugoslavia was responsible for the use of force that NATO was supposedly "forced" to use? That would show very clearly that the Court was not interested in the legal dispute before it, which was very clear-cut from the purely legal point of view, but refused to

deal with the issue out of political considerations. By giving such backhanded advice in a situation that it had just refused to deal with shows that it was almost begging for forgiveness for its own cowardice.

To show how clear-cut the legal decision was, one has to consider the legality of the use of force in light of the UN Charter. The system of the UN Charter is based on the prohibition of the use of force. There are two exceptions: 1) self-defense and 2) Security Council authorization. Neither was applicable in this case. The humanitarian intervention was not an act of self-defense. Neither was there a Security Council authorization. In fact, such authorization was never even asked. On this point Prof. Cotler is wrong in his speech in the House of Commons.

The reason for the refusal to ask the Security Council for authorization was the conviction that Russia would torpedo any authorization by exercising its veto power in the Security Council. That was certainly twisted logic, considering to what lengths Canada, in particular, went to try to reach a consensus in the Security Council in the Iraqi conflict.

The Court's refusal to touch on those fundamental issues speaks volumes of its unwillingness to deal with politically hazardous issues.

jurisdiction over any disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America, as determined by the United States of America."[42]

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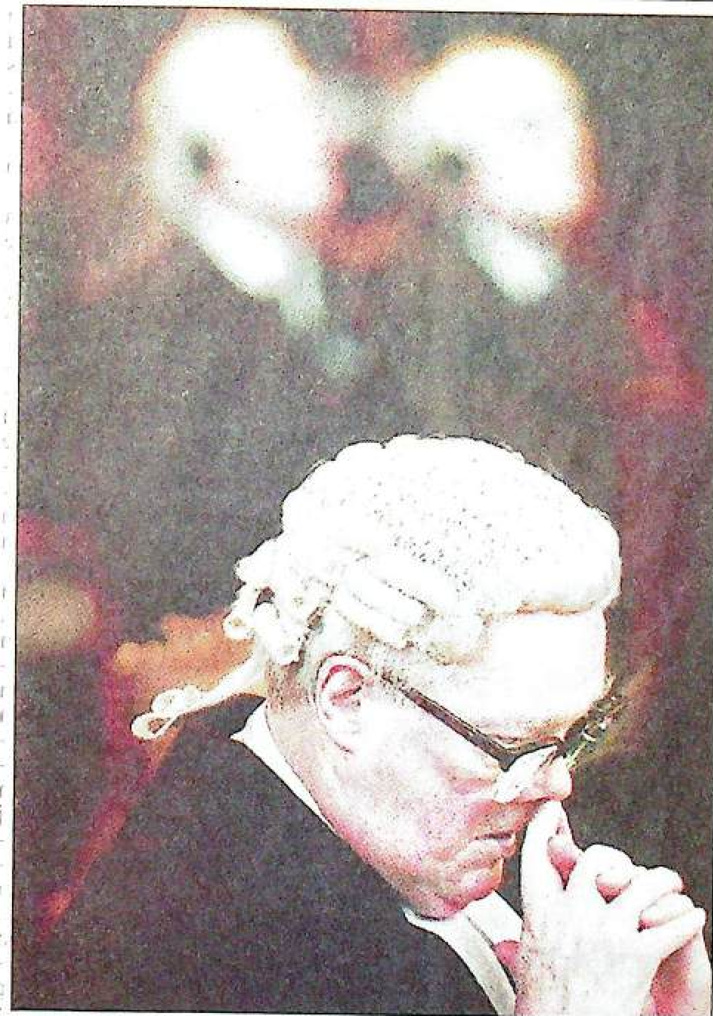
[41] *Idem*
[42] *Idem*

'Belgrado drijft zinloze zaak door voor VN-hof'

Servië-Montenegro blijft de zaak over de NAVO-bombardementen in 1999 bij het Internationaal Gerechtshof (ICJ) doorzetten, hoewel Belgrado zelf impliciet toegeeft dat het VN-hof niet bevoegd is.

Dit was een steeds terugkerend argument tijdens de tweede dag van de mondelinge behandeling van de zaak in het Vredespaleis. Gisteren was het de beurt aan Duitsland, Frankrijk en Italië om te betogen waarom het ICJ zich niet ontvankelijk zou moeten verklaren. Nederland en vier andere NAVO-landen lieten deze mening maandag al horen. Belgrado verzet zich inmiddels in zijn schriftelijke stukken zelf niet meer tegen het argument dat het op het moment van de feiten geen VN-lid was en dat de genocideconventie in 1999 niet toepasbaar was, aldus de gedaagde partijen gisteren. Die stukken uit Belgrado zijn trouwens nog niet openbaar.

Het toenmalige Joegoslavië had de zaak tegen een aantal NAVO-landen aangespannen in april 1999. Het bondgenootschap wilde destijds de toenmalige Joegoslavische president Milosevic dwingen een internationale troepenmacht toe te staan in de Servische provincie Kosovo. Belgrado vroeg het hof toen tevergeefs de NAVO-bombardementen te stoppen in een soort internationaal kort geding. De bevoegdheid van het hof in de nu beginnende bodemprocedure zou moeten stoelen op het VN-lidmaatschap van Belgrado en op de genocideconventie. Beide zaken zijn pas na de val van Milosevic goed geregeld door het land dat inmiddels Servië-Montenegro heet. Ook al zou het ICJ bevoegd zijn, dan heeft Belgrado ook inhoudelijk geen zaak, aldus Duitsland, Frankrijk en Italië. Ook al zijn er bij de bombardementen doden gevallen, valt niet aannemelijk te maken dat de NAVO genocide heeft gepleegd. (ANP)



Ian Brownlie, advocaat van Servië. FOTO JOOST VAN DEN BROEK

Gerechtshof buigt zich over bommen op Joegoslavië

AP, ANP
DEN HAAG 20-4-2004

Het Internationale Gerechtshof in Den Haag is maandag begonnen met de hoorzittingen over de NAVO-bombardementen op Joegoslavië in 1999, ten tijde van de Kosovo-crisis. Servië-Montenegro eist van acht NAVO-lidstaten een schadevergoeding vanwege de bombardementen.

De vertegenwoordigers van Nederland en België betoogden gisteren dat Servië-Montenegro niet de juridische erfgenaam is van Joegoslavië en dat de klacht daarom niet ontvankelijk is. Belgrado stelt dat bij het 78 dagen durende bombardement veel burgers zijn gedood, waarmee de NAVO de internationale wetgeving zou hebben geschonden.

De gedaagde landen, Nederland, België, Canada, Frankrijk, Duitsland, Italië, Portugal en Groot-Brittannië, zullen alle het woord voeren. Ook juristen uit Belgrado zullen spreken.

De Servische minister van Buitenlandse Zaken, Vuk Draskovic, zei dat de aanklacht wordt ingetrokken als Kroatië en Bosnië hun aanklacht tegen Belgrado wegens volkenmoord bij het Internationale Gerechtshof intrekken.

Uncorrected

Non-corrigé

CR 99/14

International Court of Justice

THE HAGUE

YEAR 1999

Public sitting

held on Monday 10 May 1999, at 10.00 a.m., at the Peace Palace,

Vice-President Weeramantry Acting President, presiding

in the case concerning

Legality of Use of Force

(Yugoslavia* v. *Belgium) (Yugoslavia* v. *Canada) (Yugoslavia* v. *France) (Yugoslavia* v. *Germany) (Yugoslavia* v. *Italy) (Yugoslavia* v. *Netherlands) (Yugoslavia* v. *Portugal) (Yugoslavia* v. *Spain) (Yugoslavia* v. *United Kingdom) (Yugoslavia* v. *United States of America)

Request for the indication of provisional measures

Cour internationale de Justice

LA HAYE

ANNEE 1999

Audience publique

tenue le lundi 10 mai 1999, à 10 heures, au Palais de la Paix,

sous la présidence de M. Weeramantry, vice-président faisant fonction de président

dans l'affaire relative à la

Licéité de l'emploi de la force

(Yougoslavie c. Belgique) (Yougoslavie c. Canada) (Yougoslavie c. France) (Yougoslavie c. Allemagne) (Yougoslavie c. Italie) (Yougoslavie c. Pays-Bas) (Yougoslavie c. Portugal) (Yougoslavie c. Espagne) (Yougoslavie c. Royaume-Uni) (Yougoslavie c. Etats-Unis d'Amérique)

Demande en indication de mesure conservatoire

VERBATIM RECORD

COMPTE RENDU

Present: Vice-President Weeramantry, Acting President

President Schwebel

Judges

Oda
Bedjaoui
Guillaume
Ranjeva
Herczegh
Shi
Fleischhauer
Koroma
Vereshchetin
Higgins
Parra-Aranguren
Kooijmans

Judges *ad hoc*

Kreca
Duinslaeger
Lalonde
Gaja
Torres Bernárdez,

Registrar, Valencia-Ospina

Présents : M. Weeramantry, vice-président, faisant fonction de président en l'affaire

M. Schwebel, président de la Cour

MM. Oda
Bedjaoui
Guillaume
Ranjeva
Herczegh
Shi
Fleischhauer
Koroma
Vereshchetin
Mme Higgins
MM. Parra-Aranguren
Kooijmans,

juges

Kreca,
Duinslaeger,
Lalonde,
Gaja,
Torres Bernárdez,

juges *ad hoc*

M. Valencia-Ospina, greffier

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Mr. Manfred P. Emmes, Embassy of the Federal Republic of Germany,

M. Christophe Eick, ministère général des affaires étrangères,

M. Manfred P. Emmes, ambassade de la République fédérale d'Allemagne à La Haye,

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comme conseillers.

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comme agent;

Mr. Luigi Daniele,

M. Luigi Daniele,

Mr. Luigi Sico,

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Mr. Aurelio Pérez Giralda, Director of the International Legal Department at the Ministry of Foreign Affairs,

as Agent;

Mr. Félix Valdés, Minister Counsellor (Chargé d'affaires) at the Embassy of Spain in the Netherlands,

as Co-Agent;

Mrs. Adela Díaz Bernárdez, Embassy Secretary, Member of the International Legal Department of the Ministry of Foreign Affairs,

as Counsel.

Le Gouvernement de la Royaume d'Espagne est représenté par :

M. Aurelio Pérez Giralda, directeur du service juridique international du ministère des affaires étrangères d'Espagne,

comme agent;

M. Félix Valdés, ministre conseiller (chargé d'affaires) à l'ambassade du Royaume d'Espagne à La Haye,

comme co-agent;

Mme Adela Díaz Bernárdez, secrétaire d'ambassade, membre du service juridique international du ministère des affaires étrangères,

comme conseil.

The Government of the United Kingdom of Great Britain and Northern Ireland is represented by:

Sir Franklin D. Berman, K.C.M.G., Q.C., Legal Adviser to the Foreign & Commonwealth Office,

as Agent;

Le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord est représenté par :

sir Franklin D. Berman, K.C.M.G., Q.C., conseiller juridique du ministère des affaires étrangères et du Commonwealth,

comme agent;

The Rt. Hon. John Morris, M.P., Q.C., Attorney-General,

Professor Christopher Greenwood, Q.C.,

as Counsel;

Mr. Michael Wood, C.M.G., Deputy Legal Adviser, Foreign & Commonwealth Office,

as Deputy Agent ;

Mr. Martin Hemming,

Mr. Iain MacLeod,

Mr. Rupert Cazalet,

as Advisers;

Ms Avril Syme,

as Secretary.

le très honorable John Morris, M.P., Q.C., *Attorney-General*,

M. Christopher Greenwood, Q.C.,

comme conseils;

M. Michael Wood, C.M.G., conseiller juridique adjoint au *Foreign and Commonwealth Office*,

comme agent adjoint;

M. Martin Hemming,

M. Iain MacLeod,

M. Rupert Czalet,

comme conseillers;

Mme Avril Syme,

comme secrétaire.

The Government of the United States of America is represented by:

Mr. David R. Andrews, Legal Adviser, United States Department of State,

as Agent;

Mr. Michael J. Matheson, Deputy Legal Adviser, United States Department of State,

Le Gouvernement des Etats-Unis d'Amérique est représenté par :

M. David R. Andrews,

comme agent;

M. Michael J. Matheson,

comme coagent;

as Co-Agent;

Mr. John R. Crook, Assistant Legal Adviser for United Nations Affairs, United States Department of State,

as Counsel and Advocate;

M. John R. Crook, conseiller juridique adjoint chargé des questions concernant les Nations Unies au département d'Etat des Etats-Unis,

comme conseil et avocat;

Mr. Allen S. Weiner, Legal Counsellor, United States Embassy, The Hague,

Mr. David A. Koplow, Deputy General Counsel, United States Department of Defense,

as Counsel;

M. Allen S. Weiner, conseiller juridique à l'ambassade des Etats- Unis d'Amérieque à La Haye,

M. David A. Koplow, conseil général adjoint, ministère de la défense des Etats- Unis d'Amérique,

comme conseils.

The VICE-PRESIDENT, acting President: Please be seated. The sitting is open. The Court meets today, pursuant to Article 74, paragraph 3, of the Rules of Court, to hear the observations of the Parties on the requests for the indication of provisional measures submitted by the Federal Republic of Yugoslavia in the proceedings concerning *Legality of Use of Force* instituted by it on 29 April 1999 against, respectively, Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, Spain, the United Kingdom and the United States of America.

Although each of these proceedings is a separate case, all of them were instituted by applications in similar terms, in which the Applicant takes the same position on the merits, and the provisional measures requested in each case are identical. The Court has accordingly taken the view that it should make certain practical arrangements to facilitate the conduct of these hearings on the requests for the indication of provisional measures. It has decided on the following procedure:

Yugoslavia, being both the Applicant and the State seeking provisional measures, will speak first, addressing its requests for the indication of provisional measures in respect of all the cases. Yugoslavia will be followed by the individual Respondents, each of which will address the case to which it is Party; for the purposes of these cases, the Respondents will be heard in their English alphabetical order, which is also the order in which the various cases have been entered on the Court's General List. These practical arrangements are without prejudice to any subsequent decision by the Court, pursuant to Article 47 of its Rules, at any time to direct that proceedings be joined, or to direct common action in respect of one or more elements of the proceedings pending before it.

*

Article 32 of the Rules of Court provides that, if the President of the Court is a national of one of the parties in a case, he shall not exercise the functions of the presidency in respect of that case. The President of the Court, Judge Schwebel, will accordingly not exercise the functions of the presidency in the case between Yugoslavia and the United States of America. Notwithstanding that Article 32 does not apply, as such, to the other proceedings instituted by Yugoslavia on 29 April 1999, Judge Schwebel considers that it would not be appropriate for him to exercise the functions of the presidency in any of those cases either. It therefore falls on me as Vice-President of the Court, pursuant to Article 13 of the Rules of Court, to exercise the functions of the presidency in all of the cases concerning *Legality of Use of Force.*

*

By a letter dated 26 April 1999, which accompanied all the Applications, the Minister for Foreign Affairs of Yugoslavia informed the President of the Court that his Government, availing itself of the provisions of Article 31 of the Statute of the Court, wished to choose Mr. Milenko Kreca to sit as judge *ad hoc* in all of the cases submitted by it to the Court. None of the respondent Governments raised any objection within the time-limit fixed for this purpose pursuant to Article 35, paragraph 3, of the Rules of Court. Since the Court itself had no objection, the choice of Mr. Kreca was then confirmed.

By a letter dated 5 May 1999, the Ambassador of Belgium to the Netherlands informed the Court that the Belgian Government wished to choose Mr. Patrick Duinslaeger to sit as judge *ad hoc* in the case of *Yugoslavia* v. *Belgium*. By a letter of the same date, the Minister of Foreign Affairs of Canada informed the Court that his Government wished to choose the Honourable Marc Lalonde, C.P., O.C., C.R., to sit as judge *ad hoc* in the case of *Yugoslavia* v. *Canada*. By a letter dated 7 May 1999, the Ambassador of Italy to the Netherlands informed the Court that the Italian Government wished to choose Mr. Giorgio Gaja to sit as judge *ad hoc* in the case of *Yugoslavia* v. *Italy*. By a letter of the same date the Chargé d'affaires of Spain to the Netherlands informed the Court that his Government wished to choose Mr. Santiago Torres Bernárdez to sit as judge *ad hoc* in the case of *Yugoslavia* v. *Spain*. Within the time-limits fixed for that purpose pursuant to Article 35, paragraph 3, of the Rules of Court, the Government of Yugoslavia, referring to Article 31, paragraph 5, of the Statute of the Court, objected, in identical terms, to each one of these nominations. Article 31, paragraph 5, of the Statute reads as follows:

> "5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court."

The Court, after due deliberation, found that the nomination of judges *ad hoc* by Belgium, Canada, Italy and Spain was justified in the present phase of their respective cases, and that Messrs. Duinslaeger, Lalonde, Gaja and Torres Bernárdez would accordingly sit at the present hearings and take part in the Court's subsequent deliberations in the current phase of those cases. The Parties were immediately informed of the Court's decision.

It therefore now devolves on me to perform the pleasant duty of installing these distinguished individuals as judges *ad hoc*. Mr. Kreca, Professor of International Law and formerly Associate Dean, Belgrade School of Law, is well known to the Court, since he is already sitting as judge *ad hoc* in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia)*. Mr. Duinslaeger is Advocate-General at the Belgian Court of Cassation; before that, he was *inter alia* Deputy Prosecutor-General at the Brussels Court of Appeal and Judicial Liaison Officer for Belgium at the International Criminal Tribunal for the former Yugoslavia and at the International Criminal

Tribunal for Rwanda. Mr. Lalonde is an individual eminent both in the political and in the legal field; he, too, is well known to the Court, since he recently sat as judge *ad hoc* in the case concerning *Fisheries Jurisdiction (Spain* v. *Canada)*. Mr. Gaja, member of the *Institut de droit international*, is Professor at the Faculty of Law of the University of Florence and a former Dean of that Faculty; he was counsel to the Italian Government before this Court in the *Elettronica Sicula S.p.A. (ELSI)* case. Lastly, I come to Mr. Torres Bernárdez, who hardly requires further introduction: he too is a member of the *Institut de droit international* and was formerly Registrar of this Court; he sat as judge *ad hoc* both in the case concerning *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* and in the *Fisheries Jurisdiction(Spain* v. *Canada)* case; he currently sits as judge *ad hoc* in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)*.

As you know, Article 31, paragraph 6, of the Statute renders applicable to judges *ad hoc* the requirement imposed by Article 20 upon all Members of the Court that, before they take up their duties, they must make a solemn declaration in open court that they will exercise their powers impartially and conscientiously. Moreover, Article 8, paragraph 3, of the Rules states that judges *ad hoc* shall make the declaration "in relation to any case in which they are participating", even if they have already made such a declaration on a previous occasion, outside the framework of the case in hand.

I therefore now call upon the distinguished *ad hoc* judges nominated in the various cases to make the declaration set out in Article 4, paragraph 1, of the Rules. We will proceed case by case, following the order in which they have been entered on the List. I shall ask Mr. Kreca to make his declaration first; exceptionally, this declaration will be deemed to have been made in each one of the ten cases. I will then call, in the following order, Messrs. Duinslaeger, Lalonde, Gaja and Torres Bernárdez. I ask all those present to rise. Mr. Kreca.

Mr. KRECA:

> "I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

The VICE-PRESIDENT, acting President: Thank you. Mr. Duinslaeger.

Mr. DUINSLAEGER:

> "I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

The VICE-PRESIDENT, acting President: Thank you. Mr. Lalonde.

M. LALONDE:

«Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.»

The VICE-PRESIDENT, acting President: Thank you. Mr. Gaja.

M. GAJA :

«Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.»

The VICE-PRESIDENT, acting President: Mr. Torres Bernárdez.

Mr. TORRES BERNÁRDEZ :

"I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

The VICE-PRESIDENT, acting President: Thank you. Please be seated. I take note of the solemn declarations made by Messrs. Kreca, Duinslaeger, Lalonde, Gaja and Torres Bernárdez, and accordingly declare them duly installed as judges *ad hoc* in the individual cases concerning *Legality of Use of Force* in respect of which they have been appointed.

* *

All of these cases, as I have already explained, were brought before the Court by separate applications, filed simultaneously in the Registry by Yugoslavia on 29 April 1999.

The Applications for proceedings against Belgium, Canada, the Netherlands, Portugal, Spain and the United Kingdom base the jurisdiction of the Court on Article 36, paragraph 2, of the Statute and on Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948; whereas the Applications for proceedings against France, Germany, Italy and the United States of America base the Court's jurisdiction on Article IX of the Genocide Convention and on Article 38, paragraph 5, of the Rules of Court.

Each of the Applications defines in identical terms, *mutatis mutandis*, the subject-matter of the dispute submitted to the Court. Likewise, each Application presents the facts and grounds of law, and the claims on the merits, in identical terms, *mutatis mutandis*.

I will now call upon the Registrar to read out the claims formulated by Yugoslavia in its

Applications, replacing throughout the name of the respondent State in question by the words "the Respondent".

The REGISTRAR:

"The Government of the Federal Republic of Yugoslavia requests the International Court of Justice to adjudge and declare:

- by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, [the Respondent] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State;

- by taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called 'Kosovo Liberation Army', [the Respondent] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;

- by taking part in attacks on civilian targets, [the Respondent] has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects;

- by taking part in destroying or damaging monasteries, monuments of culture, [the Respondent] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;

- by taking part in the use of cluster bombs, [the Respondent] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e. weapons calculated to cause unnecessary suffering;

- by taking part in the bombing of oil refineries and chemical plants, [the Respondent] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable environmental damage;

- by taking part in the use of weapons containing depleted uranium, [the Respondent] has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage;

- by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, [the Respondent] has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;

- by taking part in destroying bridges on international rives, [the Respondent] has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;

- by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, [the Respondent] has acted

against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;

- [the Respondent] is responsible for the violation of the above international obligations;

- [the Respondent] is obliged to stop immediately the violation of the above obligations vis-à-vis the Federal Republic of Yugoslavia;

- [the Respondent] is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons."

The VICE-PRESIDENT, acting President: On 29 April 1999, after filing its Applications instituting proceedings, the Yugoslav Government submitted in respect of each case a request for the indication of provisional measures, invoking Article 73 of the Rules of Court. In each of these requests Yugoslavia amplifies in the same way the facts stated in the Applications, and in particular lists in identical terms the targets alleged to have come under attack in the air strikes and the damage claimed to have been inflicted upon them. At the close of each of the requests for the indication of provisional measures, Yugoslavia states that:

"If the proposed measure were not to be adopted, there will be new losses of human life, further physical and mental harm inflicted on the population of the Federal Republic of Yugoslavia, further destruction of civilian targets, heavy environmental pollution and further physical destruction of the people of Yugoslavia."

I now call upon the Registrar to read out the measure which Yugoslavia asks the Court, in identical terms *mutatis mutandis*, to indicate in each of its requests; for the sake of convenience, I shall ask him to replace the name of the respondent State in each case by the words "the Respondent".

The REGISTRAR:

"[The Respondent] shall cease immediately its acts of use of force and shall refrain from any act of threat or use of force against the Federal Republic of Yugoslavia."

*

The VICE-PRESIDENT, acting President: Immediately after the filing of the Applications and the requests for the indication of provisional measures, signed copies thereof were transmitted to the Governments concerned, in accordance with Article 38, paragraph 4, and Article 73, paragraph 2, of the Rules of Court.

Article 74 of the Rules of Court provides that a request for the indication of provisional measures shall have priority over all other cases. The date fixed for the hearing must afford the Parties an opportunity of being represented at that hearing. Accordingly, by communications dated 29 April 1999, the Parties to each case were informed that the date for the opening of the hearing provided for in Article 74, paragraph 3, of the Rules, at which they would be able to present their observations on the request for the indication of provisional measures, had been set at

10 May 1999, at 10 a.m. By letters dated 4 and 8 May 1999 the Parties were further informed of the practical arrangements which the Court had made in order to facilitate the conduct of those hearings.

* *

In accordance with my announcement at the beginning of this sitting, the Court will first hear Yugoslavia make its presentation against all ten Respondents. For this purpose the entire Court and all the *ad hoc* judges will sit.

Thereafter each case will be taken up in English alphabetical order and the Court appropriately constituted will reconvene for each of these hearings.

It is expected that Yugoslavia will make its presentation for two hours and thereafter each party Respondent will address the Court for one hour.

I now accordingly call upon Mr. Etinski, Agent of the Federal Republic of Yugoslavia, to make his submissions.

Mr. ETINSKI: Mr. President, distinguished Members of the Court, I have the honour to appear before you as the Agent of the Federal Republic of Yugoslavia in a case against the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Republic of France, the Federal Republic of Germany, the Republic of Italy, the Kingdom of the Netherlands, the Kingdom of Belgium, Canada, Portugal and the Kingdom of Spain (hereinafter referred to as the Respondents), due to bombing of the Yugoslav territory in violation of the obligation not to use force against another State and other obligations.

I am pleased and honoured to introduce to you Mr. Ian Brownlie, Mr. Olivier Corten, Mr. Steven Djordjevic, Mr. Miodrag Mitic, Mr. Eric Suy, Mr. Paul de Waart appearing before you as counsel and advocates and Mrs. Sanja Milinkovic as the assistant.

Following the Applications, the Yugoslav Government filed requests for interim measures of protection, asking the Court to order the Respondents to cease immediately their acts of use of force and to refrain from any act of threat or use of force against the Federal Republic of Yugoslavia.

I will try to draw your attention to the basic elements of the case in these incidental proceedings.

Mr. Brownlie will elaborate illegal use of force.

Mr. de Waart will cast some light on an attempt to impose by force the so-called Rambouillet Accord.

Mr. Suy will address the issue of jurisdiction of the Court.

Mr. Mitic will set out facts urging the Order of the Court.

At the end of our first round presentation I will submit the request.

The claim presented by the Applications reads as follows and, as I am referring now to all Respondents, the name of each Respondent appearing originally in each Application will now be

replaced by the term "Respondents", but due to the economy of time, I will not read now the claim but, with your permission, it will appear in the records of the session:

- by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, the Respondents has acted against the Federal Republic of Yugoslavia in breach of their obligation not to use force against another State;

- by taking part in the training, arming, financing, equipping and supplying the so-called terrorist groups, i.e. the 'Kosovo Liberation Army', the Respondents have acted against the Federal Republic of Yugoslavia in breach of their obligation not to intervene in the affairs of another State;

- by taking part in attacks on civilian targets, the Respondents have acted against the Federal Republic of Yugoslavia in breach of their obligation to spare the civilian population, civilians and civilian objects;

- by taking part in destroying or damaging monasteries, monuments of culture, the Respondents have acted against the Federal Republic of Yugoslavia in breach of their obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;

- by taking part in the use of cluster bombs, the Respondents have acted against the Federal Republic of Yugoslavia in breach of their obligation not to use prohibited weapons, i.e. weapons calculated to cause unnecessary suffering;

- by taking part in the bombing of oil refineries and chemical plants, the Respondents have acted against the Federal Republic of Yugoslavia in breach of their obligation not to cause considerable environmental damage;

- by taking part in the use of weapons containing depleted uranium, the Respondents have acted against the Federal Republic of Yugoslavia in breach of their obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage;

- by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, the Respondents have acted against the Federal Republic of Yugoslavia in breach of their obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;

- by taking part in destroying bridges on international rives, the Respondents have acted against the Federal Republic of Yugoslavia in breach of their obligation to respect freedom of navigation on international rivers;

- by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, the Respondents have acted against the Federal Republic of Yugoslavia in breach of their obligation not to deliberately inflict on a national group conditions of life calculated to bring about their physical destruction, in whole or in part;

- the Respondents are responsible for the violation of the above international obligations;

- the Respondents are obliged to stop immediately the violation of the above obligations vis-à-vis the Federal Republic of Yugoslavia;

- the Respondents are obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons.

The basic elements of the case are as follows:

1. The Court has jurisdiction to decide on the claim.

2. The use of force against the Federal Republic of Yugoslavia is illegal.

3. Nothing can justify the use of force against the Federal Republic of Yugoslavia.

4. Deliberately inflicting on the Yugoslav nation as a national group conditions of life calculated to bring about its physical destruction in whole or in part.

5. The acts of force are imputable to the Respondents.

6. There are facts proving the greatest urgency concerning provisional measures of protection and existence of irreparable prejudice.

Mr. President, distinguished Members of the Court,

1. The Court has jurisdiction to decide on the claim

The grounds for jurisdiction of the Court to adjudge the claim are created by Article 36, paragraph 2, of the Statute of the Court and Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide in relation to the United Kingdom of Great Britain and Northern Ireland, the Kingdom of the Netherlands, the Kingdom of Belgium, Canada, Portugal and the Kingdom of Spain. In regard to the United States of America, the Republic of France, the Federal Republic of Germany and the Republic of Italy, the Court is authorized to act by Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide. The Applicant has referred also to Article 38, paragraph 5, of the Rules of Court inviting the Respondents to submit to the control of the Court with respect to legality of their attitude.

Your Excellencies,

2. The use of force against the Federal Republic of Yugoslavia is illegal

The acts of bombing of the Yugoslav territory are in breach of the obligation not to resort to the threat or use of force against another State, which exists as a general rule of customary law and as a basic principle of the Charter of the United Nations and has a nature of *jus cogens*. Bruno Simma is right when he says:

> "In contemporary international law, as codified in the 1969 Vienna Convention on the Law of Treaties (Articles 53 and 64), the prohibition enunciated in Article 2(4) of the Charter is part of *jus cogens*, i.e., it is accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same peremptory character. Hence, universal *jus cogens*, like the prohibition embodied in Article 2(4), cannot be contracted out of at the

> regional level. Further, the Charter prohibition of the threat or use of armed force is binding on States both individually and as members of international organizations, such as NATO, as well as on those organizations themselves." (Bruno Simma, *NATO, the UN and the Use of Force: Legal Aspects, EJIL*, 1999, Vol. 10, No. 1.)

2.2. The acts of bombing of the territory of Yugoslavia are not just illegal acts. They constitute a crime against peace and also the crime of genocide.

2.3. The Security Council of the United Nations is exclusively empowered by the United Nations Charter to decide on the use of force, according to provisions of Chapter VII of the Charter. The United Nations Security Council may utilize regional arrangements or agencies for enforcement action. But according to Article 53 of the Charter "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council . . .". NATO and its member States are without authorization of the Security Council for the use of force against the Federal Republic of Yugoslavia.

I find it opportune here to quote a few provisions. First, Article 103 of the Charter of the United Nations:

> "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

And second, Article 7 of the 1949 North Atlantic Treaty, which is quite in harmony with Article 103 of the Charter and reads as follows:

> "The Treaty does not affect, and shall not be interpreted as affecting, in any way the rights and obligations under the Charter of the Parties which are Members of the United Nations, or the primary responsibility of the Security Council for the maintenance of international peace and security."

2.4. By bombing civilian targets the Respondents are in breach of the obligations established by the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War and by the 1977 Protocol I to the Convention.

2.5. By destroying oil refineries and chemical plants, the Respondents caused large pollution of soil, air and water endangering the basic conditions of survival of the nation. They have bombed several times the oil refineries in Pancevo, near Belgrade, in Novi Sad, the chemical plants for production of fertilizers in Pancevo, the nitrogen factory in Pancevo, the chemical company "Prva iskra" in Baric, close to Belgrade and others. A large part of the population of Pancevo have left their flats to protect themselves.

2.6. By using cluster bombs and weapons containing depleted uranium, the Respondents are in breach of the obligation not to use prohibited weapons, i.e., weapons calculated to cause unnecessary suffering, established as a principle of law of armed conflicts. It is estimated that the Respondents used about 15,000 cluster bombs. As many as 3,600 cluster bombs were used in the attacks against towns in Kosovo and Metohija - Pristina, Uroseva, Djakovica, Prizren and other cities.

Mr. President,

3. Nothing can justify use of force against the Federal Republic of Yugoslavia

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by consensus in the General Assembly as resolution 2625 (XXV) of 24 October 1970, says:

> "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law."

The International Court of Justice has strictly applied this fundamental principle. It made clear its legal understanding of the principle in the *Nicaragua* case as follows:

> "The Court also notes that Nicaragua is accused by the 1985 finding of the United States Congress of violating human rights . . .
>
> "while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping of the *contras*. The Court concludes that the argument derived from the preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of the United States, and cannot in any event be reconciled with the legal strategy of the respondent State, which is based on the right of collective self-defence." *(Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 134-135, paras. 267 and 268.)

Professor Schachter is quite clear in his "International Law in Theory and Practice", published in 1991. On page 128, he says:

> "International law does not, and should not, legitimize the use of force across national lines except for self-defence (including collective self-defence) and enforcement measures ordered by the Security Council. Neither human rights, democracy or self-determination are acceptable legal grounds for waging war, nor for that matter, are traditional just causes or righting wrongs. This conclusion is not only in accord with the UN Charter as it was originally understood; it is also in keeping with the interpretation adopted by the great majority of States at the present time."

I could stop here. But, without prejudice to the jurisdiction of the Court defined by the Yugoslav declaration of the acceptance of the compulsory jurisdiction of the Court, I believe that, for a full comprehension of the case, it could be useful to shed light on facts surrounding the case.

The Federal Republic of Yugoslavia is a party to almost all international instruments on human rights. It is a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; the 1966 International Convention on the Elimination of All Forms of Racial Discrimination; the 1966 International Covenant on Economic, Social and Cultural Rights; the 1966 International Covenant on Civil and Political Rights; the 1968 Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; the 1973International Convention on the Suppression and Punishment of the Crime of Apartheid; the 1979 Convention on Elimination of All Forms of Discrimination against Women; the 1948

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the 1985 International Convention against Apartheid in Sports 1985; the 1989 Convention on the Rights of the Child. The Federal Assembly ratified in 1998 the Framework Convention for the Protection of Minorities adopted by the Council of Europe in 1994. The Framework Convention became a part of internal law and I submit, as Annex 1, the text of law 35 of this Convention. The basic rights of individuals - members of minorities - are provided for by the Yugoslav Constitution and relevant laws. There is a large number of minority communities in Yugoslavia. In the northern part of Serbia, Vojvodina, the Hungarians, Slovaks, Romanians, Ruthenians are the largest minority communities. There are no special difficulties in relations between them and the State. These communities are represented at all levels of State organization. They are practising local self-government and exercising their rights in the fields of education, culture and media. The Albanian community in Kosovo and Metohija has the same legal status and same rights. The problem in relations between this community and the State arises from the militant secessionist movement culminating in claim to secession.

Demanding only and exclusively secession aimed at joining Albania and creating Great Albania, the major part of the Albanian minority, in the law few years, refused to exercise its rights provided for by internal law, to participate in elections, to co-operate with State organs. In spite of this, the atmosphere was tolerable. Even during the civil war in Croatia and Bosnia and Herzegovina there were no special difficulties. The situation with reference to human rights in the Federal Republic of Yugoslavia, including Kosovo and Metohija, was assessed as positive by the Respondents. Between 1996 and 1998, the Federal Republic of Yugoslavia concluded several bilateral agreements on the return and readmission of Yugoslav citizens obliged to leave the territory of the other State. Such agreements were applied in relation to the Federal Republic of Germany from 1 December 1996 (Ann. 2). The Agreement with the Republic of Italy was signed on 19 June 1997 (Ann. 3). The text of the agreement was initialled with the Kingdom of Belgium on 16 January 1998 (Ann. 4). The negotiations with Canada began in September 1997. The above-mentioned agreements are related almost entirely to Albanians from Kosovo and Metohija. They had been leaving Kosovo and Metohija due to economic reasons. To legalize their stay abroad they alleged national discrimination. As their requests for asylum were refused, while their number was increasing, the host countries negotiated their readmission to Yugoslavia. The refused requests for asylum and the negotiation and conclusion of agreements on the readmission of citizens obliged to leave the territory of the other State proved that these States did not find national discrimination against Albanians in Yugoslavia or the violation of their human rights to be the case. Otherwise, they would be in breach of their obligations vis-à-vis refugees.

In the course of 1996 and 1997 there were occasional terrorist attacks by small criminal groups. During 1998 the situation changed. In that year there were 1,854 terrorist attacks in which 284 persons were killed and 556 were wounded. Among them there were 115 killed and 399 wounded policemen. More that 100 civilians were kidnapped by terrorist groups. Their fate remains unknown. The Governments of the Federal Republic of Yugoslavia and the Republic of Serbia tried to find a peaceful solution offering a broad autonomy for Kosovo and Metohija and nominating a government delegation to discuss the autonomy issue with representatives of the political parties of Kosovo Albanians. About twenty times during 1998 the Government delegation travelled to Pristina, the capital of Kosovo and Metohija, waiting for the representatives of the Albanian political parties. But they did not appear.

In late summer 1998, police forces managed to suppress terrorist activities and to disperse terrorist groups in Kosovo and Metohija. Forcibly recruited Albanians handed over weapons to the police and returned to their villages where they received medical care and relief supplies, in particular food, by the State authorities.

Not escaping external monitoring of the situation in Kosova and Metohija, the Government of the

Federal Republic of Yugoslavia concluded with the OSCE on 16 October 1998, the Agreement on the OSCE Kosovo Verification Mission, accepting a large monitoring mission of 2,000 members and reducing the presence of police and armed forces in Kosovo and Metohija. The willingness of the Yugoslav Government to bring about the calming down of the situation was abused by terrorist groups. They reorganized themselves and continued with terrorist attacks. When attacking civilians, they were occasionally and *pro forma* warned by the Respondents. As if they were entitled to kill Yugoslav policeman and soldiers. In fact, the terrorist groups were supported by the Respondents. Bank accounts for the contribution to terrorism in Kosovo and Metohija exist in the United States of America, the Republic of France, the Republic of Italy, the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of the Netherlands and Canada and have been advertised in the media and on the Internet.

Desirous to overcome the difficult situation, the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia accepted the invitation of the Contact Group countries to meet the representatives of the political parties of the Kosovo Albanians at Rambouillet in an attempt to reach a political accord on broad autonomy for Kosovo and Metohija. To fulfil the precondition of the Kosovo Albanian parties for talks to begin, the Governments accepted the Contact Groups' representatives as mediators. Unfortunately, this opportunity was misused by some member countries of the Contact Group. They attempted to impose on the Federal Republic of Yugoslavia by ultimatum and the so-called Interim Agreement of Peace and Self-Government in Kosovo. These countries attempted to impose a project of self-government, non-existent anywhere in the world, which encompasses elements of sovereignty and jurisdiction over and above those of federal units. Furthermore, it provided for some sort of protectorate over Kosovo and Metohija, as well as military occupation by international military forces under the direction of NATO. There is no State with a minimum self-respect that could possibly accept such a proposal. This does not mean that the delegation of the Government of Serbia and Yugoslavia, at the meeting in France, gave up the idea of broad autonomy. The members of the delegation signed their proposal entitled "Agreement on Self-Government in Kosmet".

After the failure of the Rambouillet-Kleber meeting, NATO began to send troops to countries bordering with Yugoslavia, i.e. with Serbia's province of Kosovo and Metohija. In response Yugoslavia increased the presence of its forces in the region but nothing dramatic happened in Kosovo and Metohija. Without any grounds whatsoever, the OSCE Chairman-in-Office withdrew the Kosovo Verification Mission. In this letter he said:

> "The OSCE Mission has made an important contribution to stability in Kosovo, and it is with sadness that I have to withdraw the Mission. As OSCE Chairman-in-Office, responsible for safety of approximately 1,400 verifiers from many different countries, I do, however, have no other choice in the present situation.
>
> My decision has been made in the light of the increased violence of Kosovo, of which both Yugoslav troops and the KLA are to blame. The build up of Yugoslav troops in Kosovo in breach of the October Agreement has, however, unnecessarily aggravated the situation further, and has been a decisive element in my considerations." (Letter of OSCE Chairman-in-Office of 19 March 1999 addressed to the President of the Federal Republic of Yugoslavia, Ann. 5.)

The Chairman-in-Office made no mention of the humanitarian catastrophe because it did not exist at the time. But, it was precisely the humanitarian catastrophe that was subsequently presented as the reason for the beginning of the use of force. He referred only to "the increased violence in Kosovo" blaming both the Yugoslav troops and the so-called KLA. He did not explain the accusation further. At that time the terrorist groups intensified their activities, intending to prepare justification for NATO military intervention. The Chairman-in-Office mentioned also

"the build up of Yugoslav troops in Kosovo in breach of the October Agreement". As I said earlier, the number of Yugoslav armed forces was slightly increased in response to a growing number of NATO troops on the Yugoslav borders.

By bombing the territory of Yugoslavia, the Respondents have caused the humanitarian catastrophe in the whole of Yugoslavia, including Kosovo and Metohija. Streams of refugees moved from all parts of Yugoslavia. The Government of the Federal Republic of Yugoslavia declared unilaterally the cessation of its actions against terrorist groups in Kosovo and Metohija before the Orthodox Easter and called on the refugees to return to their homes. The Respondents answered that it is not enough, that it is necessary that NATO forces come to Kosovo and Metohija to secure the safe return of the refugees. After that, NATO bombed a refugee column, killing 75 Albanian refugees returning to their homes.

I wish to underline that the Albanian minority in Yugoslavia is not threatened by the State of Serbia or Yugoslavia. It is victimized by the secessionist policy of its political leadership pushing it to confrontation with the State.

Your Excellencies, if the Respondents contend that their motive is pure and boils down to the protection of human rights, please be cautious about this assertion. My Government has applied for membership of the Council of Europe (Ann. 6). It has been learned that the way to the membership of the Council of Europe leads through the European Convention for Human Rights and through the membership of the European Court of Human Rights. Instead of supporting this application and opening a possibility for external judicial control of human rights in my country, the Respondents chose bombing as a method of improving the state of human rights in the Federal Republic of Yugoslavia. By killing people, by murdering children, by destroying the economy, by polluting the soil, air and water, the Respondents intend to protect the rights of one minority. By destroying a whole nation, they want to protect a part of that nation, i.e., one of its numerous ethnic communities. Mr. President, distinguished Members of the Court, such an attitude cannot be acceptable from any point of view.

Your Excellencies, *the Respondents are deliberately inflicting on the Yugoslav nation as a national group conditions of life calculated to bring about its physical destruction in whole or in part.*

4.1. Continued bombing of the whole territory of the State, pollution of soil, air and water, destroying the economy of the country, contaminating the environment with depleted uranium inflicts conditions of life on the Yugoslav nation calculated to bring about its physical destruction.

4.2. The Respondents have used weapons containing depleted uranium. The Institute for Nuclear Science, based in Belgrade, confirmed this fact (Ann. 7). The Army Environmental Policy Institute tasked by the Office of the Assistant Secretary of the Army Installations, Logistic and Environment of the USA has produced the technical report on health and environmental consequences of depleted uranium use in the US Army. Commenting on the health risk from radiation, the Report informed:

> "Internalized DU delivers radiation wherever it migrates in the body. Within the body, alfa radiation is the most important contributor to the radiation hazard posed by DU. The radiation dose to critical body organs depends on the amount of time that DU resides in the organs. When this value is known or estimated, cancer and hereditary risk estimates can be determined." (Health and Environmental; Consequences of Depleted Uranium Use in the US Army: Technical Report, p. 108, Ann. 8.)

It is well known that the radiation hazard materialized in the case of a large number of US soldiers participating in actions against Iraq. Serious health and environmental consequences have been detected in areas of Bosnia and Herzegovina exposed to effects of weapons containing depleted uranium. Far-reaching health and environmental damage is a matter of certain pre-knowledge of the Respondents, and that implies the intent to destroy a national group as such in whole or in part.

4.3. On the night of 2 May 1999 and later, the Respondents bombed power plants, transformer stations and transmission lines, destroying the largest part of the country's power supply system and leaving almost all users without electricity. By this act the Respondents have targeted the Yugoslav nation as a whole and as such. In the present-day world electricity is an element of survival of society. The Respondents had to be aware that the destruction of the power supply system of a country can produce enormous consequences, including loss of human life. This is also a matter of certain pre-knowledge on the part of the Respondents and implies the intent to destroy the Yugoslav national group.

4.4. The above facts substantiate the qualification of the crime of genocide.

Mr. President and Members of the Court, *the acts of force are imputable to the Respondents.*

5.1. The Respondents have used their military forces for bombing. The military forces are organs of a State and their acts are imputable to a State.

5.2. I refer to Article 5 of the 1949 North Atlantic Treaty, which reads as follows:

> "The parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all, and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attached by taking forthwith, *individually and in concert* with the other Parties, such action as it deems necessary, including the use of force, to restore and maintain the security of the North Atlantic area."

According to quoted basic rule, the Respondents are acting individually and in concert.

5.3. I believe that information offered by the NATO Handbook published in 1998, dealing with the functioning of that Organization, could be relevant for the matter. Describing "the principal policy and decision-making forum of NATO, the North Atlantic Council", the Handbook says:

> "When decisions have to be made, action is agreed upon on the basis of unanimity and common accord. There is no voting or decision by majority. Each nation represented at the Council table or any of its subordinate committees retains complete sovereignty and responsibility for its own decision" (NATO Handbook, Brussels, 1998. p. 37).

5.4. And about the role of integrated military forces, the Handbook informs:

> "In accordance with the fundamental principles which govern the relationship between political and military institutions within democratic states, the integrated military structure remains under political control and guidance at the highest level at all times." (*Ibid.*, p. 245.)

5.5. So, even as a part of the integrated military force of NATO, military forces of the Respondents are under their control and guidance.

Your Excellencies, *there are facts proving the greatest urgency concerning provisional measures of protection and existence of irreparable prejudice.*

Until now the Respondents killed more than 1,200 people in Yugoslavia and wounded more than 4,500 people. After filing the requests for preliminary measures of protection, Respondents killed more than 200 people in Yugoslavia.

On the night of 30 April 1999, the Trauma Centre in Belgrade admitted 38 citizens wounded in the attack of the Respondents on downtown Belgrade. One of them died.

On 1 May 1999 around 1.00 p.m., the Respondents bombed a bus on the Pristina-Podujevo road in Kosovo and Metohija, killing 60 passengers aboard the bus. Out of 13 wounded and taken to the Clinical Centre in Pristina, nine are Albanians and four are Serbs. There are four children. The bus running a regular service between Nis and Pristina took a direct hit by a missile, cutting it in half. One hour later, they targeted an ambulance which rushed to the scene to attend to the victims. One physician received a wound to the head. (Photo evidence is enclosed.)

On 3 May 1999 around noon, the Respondents struck a bus running between Pec-Kula and Rozaje in Kosovo and Metohija. Twenty civilians were killed and 43 injured. Mostly women, children and elderly people were on board. The bus running a service between Djakovica and Podgorica was burned in the strike. The bus took a direct hit from two missiles while cluster bombs were dropped at the time when police and medical teams from Pec tried to get to the bus and rescue the victims. A great many fragments of cluster bombs were found about the scene of the incident. The words "sensor proximity - 39/b" were written on the cluster bombs. Besides the bus, several cars were hit.

On 7 May 1999, the Respondents bombed by cluster bombs the centre of Nis, the second largest city in Yugoslavia, killing ten civilians.

On the night of 7 May 1999, bombing the centre of Belgrade they destroyed the Embassy of the People's Republic of China, murdering four members of the diplomatic staff.

The Respondents confirmed all the above casualties.

In the period after submission of the requests for preliminary measures, the Respondents bombed Belgrade, Podgorica, Novi Sad, Pristina, Nis, Pancevo, Vrsac, Uzice, Cacak, Kraljevo, Trstenik, Nova Varos, Pec, Leposavic, Berane, Sombor, Novi Pazar, Krusevac, Pozega, Bajina Basta, Prijepolje, Valjevo, Sremska Mitrovica, Gnjilane, Kosovska Mitrovica, Backa Palanka and a large number of villages (photo evidence is enclosed). It means that the Respondents bombed the entire territory of Yugoslavia, causing enormous civilian and military casualties and destruction. They intend to proceed to the full destruction of the Yugoslav nation. They should be halted before that.

Thank you, Mr. President and distinguished Members of the Court, for your attention, and I kindly ask you, Mr. President, to call on Mr. Brownlie to take the floor.

The VICE-PRESIDENT, acting President: Thank you, Mr. Etinski. I give the floor now to Mr.

Brownlie.

Mr. BROWNLIE: Mr. President, distinguished Members of the Court,

I have the privilege to represent the Federal Republic of Yugoslavia. My task in the first round is to review the legal issues concerning the use of force by the respondent States.

I. Propositions

In the first place I would like to present a set of propositions.

First: The attack on the territory of Yugoslavia involves a continuing breach of Article 2, paragraph 4, of the United Nations Charter.

Secondly: The attack cannot be justified as individual or collective self-defence and is not authorized by any Security Council resolution.

Thirdly: Humanitarian intervention, the justification belatedly offered by the respondent States, has no legal authenticity whatsoever.

Fourthly: The reliance upon humanitarian intervention is in any case - in any case - invalidated by the unlawful modalities of the aerial bombardment, and the means adopted by the respondent States are extremely disproportionate to the declared aims of the action.

Fifthly: The few exponents of humanitarian intervention invest the doctrine with a profile which is totally unlike this bombing campaign.

Sixthly: The command structure of NATO constitutes an instrumentality of the respondent States, acting as their agent.

That completes my series of propositions.

II. Article 2, paragraph 4, of the United Nations Charter

And so the attack on the territory of Yugoslavia involves a continuing breach of Article 2, paragraph 4, of the Charter.

In my submission, the principle of Article 2, paragraph 4, stated in 1945 remains unqualified. As Professor Virally, amongst others, has pointed out, the preparatory work of the Charter indicates unequivocally that intervention for special motives was ruled out by the inclusion of the phrase "against the territorial integrity or political independence of any State". (See Cot and Pellet, *La Charte des Nations Unies*, 1985, p. 114.) That is the contribution by Professor Virally.

The subsequent practice of the member States of the United Nations has not produced a departure in general international law. Such a departure would, in principle, be a major aberration and would require consistent and substantial evidence. Such a change in customary law has not been

asserted to exist, much less proved, by a single member State of NATO.

III. Confirmation of this position

The position of the Charter was confirmed, 25 years later, in 1970, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation. As the Court will readily appreciate, the Declaration provides evidence of the consensus among States on the meaning of the principles of the Charter. In particular, the Declaration confirmed:

> *"The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter."*

The document then has an official commentary:

> "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.
>
> No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.
>
> The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.
>
> Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.
>
> Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security."

The general legal régime of the Charter was affirmed by Professor Schwebel, as he then was, in his Hague lectures delivered in 1972 under the heading "Aggression, Intervention and Self-defence in Modern International Law" (*Recueil des Cours*, Vol. II (1972), pp. 413-497).

The basic principles of the legal régime relating to the use of force were also reaffirmed in the Definition of Aggression adopted by the General Assembly on 14 December 1974 (resolution 3314 (XXIX)). Article 5 of the definition provides that: "No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression."

IV. Reliable sources give no recognition to the doctrine of humanitarian intervention

In my submission, the respondent States cannot rely upon the alleged doctrine of humanitarian intervention. There is no evidence of such a development in customary international law.

Moreover, officials of the respondent States have, in fact, sought to rely upon resolutions of the Security Council, and not a doctrine of humanitarian intervention. I refer to the expression viewed by the Foreign Secretary of the United Kingdom, Mr. Robin Cook, on 19 October 1998, and the speech in Parliament by Mr. Blair, Prime Minister, on 23 March this year.

Reliable authority covering a period of 30 years has failed to recognize a principle of humanitarian intervention.

I shall review the relevant authorities in chronological order.

> The first is that of Dr. Marjorie Whiteman, editing the famous *Digest of International Law* in accordance with United States practice (Vol. 12, pp. 204-215 (1971) (Tab 3)). It is of course an official publication of the United States Department of State. Dr. Whiteman sets out various opinions - some in favour, some against - but she offers no endorsements of the principle by the United States Government. That is in 1971.
>
> Secondly, there are the views of Professor Schwebel, as he then was, in the *Hague Academy Lectures* of 1972. In his substantial review of the subjects of aggression and intervention, Mr. Schwebel did not make a single reference to humanitarian intervention. That is in 1972.
>
> Thirdly, there is the view of Professor Oscar Schachter, which appears in the *Michigan Law Review* (Vol. 82 (1984), p. 1629). Professor Schachter wrote that "governments by and large (and most jurists) would not assert a right to forcible intervention to protect the nationals of another country from atrocities carried out in that country".
>
> Fourthly, there is the British Foreign Office view expressed in Foreign Policy Document No. 148. This is set out in full in the *British Year Book of International Law*, Volume 57 (1986), beginning at page 614.

The key passage reads thus:

> "II.22. In fact, the best case that can be made in support of humanitarian intervention is that it cannot be said to be unambiguously illegal. To make that case, it is necessary to demonstrate, in particular by reference to Article 1(3) of the UN Charter, which includes the promotion and encouragement of respect for human rights as one of the Purposes of the United Nations, that paragraphs 7 and 4 of Article 2 do not apply in cases of flagrant violations of human rights. But the overwhelming majority of contemporary legal opinion comes down against the existence of a right of humanitarian intervention, for three main reasons: first, the UN Charter and the corpus of modern international law do not seem specifically to incorporate such a right; secondly, state practice in the past two centuries, and especially since 1945, at best provides only a handful of genuine cases of humanitarian intervention, and, on most assessments, none at all; and finally, on prudential grounds, that the scope for abusing such a right argues strongly against its creation. As Akehurst argues, 'claims by some states that they are entitled to use force to prevent violations of human rights may make other states reluctant to accept legal obligations concerning human rights'. In essence, therefore, the case against making humanitarian intervention an exception to the principle of non-intervention is that its doubtful benefits would be heavily outweighed by its costs in terms of respect for international law." (Footnote omitted.) (P. 619.)

I next come to the opinion of Professor Yoram Dinstein, in his monograph on *War, Aggression and Self-Defence* (CUP, 1988, at p. 89 (Tab 4)). Professor Dinstein concluded that: "Nothing in the Charter substantiates the right of one State to use force against another under the guise of ensuring the implementation of human rights." (*Ibid.*, p. 89.)

There is then the view of Professor Randelzhofer of Germany, in the volume edited by Bruno Simma, the *Charter of the United Nations, A Commentary* (OUP, 1994, (Tab 6) at pp. 123-124).

Professor Randelzhofer considers that there is no room for the concept of humanitarian intervention either in the Charter or in customary law.

And lastly, we have the views of Professor Bruno Simma, writing in the *European Journal of International Law* (Vol. 10 (1999) available on the Internet). He regards the use of force for humanitarian purposes as incompatible with the United Nations Charter in the absence of the authorization of the Security Council (Tab 8).

Mr. President, these sources cover a period of 30 years and constitute the careful opinions of well-known authorities of various nationalities.

V. On the facts, this attack on Yugoslavia cannot qualify as humanitarian intervention

Mr. President, aside from the legal issues, there are very strong grounds for the disqualification of the so-called air strikes as a humanitarian intervention.

> *First:* There is no genuine humanitarian purpose. The action against Yugoslavia, as many diplomats know, forms part of an ongoing geopolitical agenda unrelated to human rights. When in 1995, 600,000 Serbs were forced out of the Krajina, the respondent States stayed silent.
>
> *Secondly:* The modalities selected disqualify the mission as a humanitarian one. Bombing the populated areas of Yugoslavia and using high performance ordnance and anti-personnel weapons involve policies completely inimical to humanitarian intervention. Moreover, bombing from a height of 15,000 feet inevitably endangers civilians, and this operational mode is intended exclusively to prevent risks to combat personnel.

The population of Yugoslavia as a whole is being subjected to inhumane treatment and punishment for political reasons. One thousand two hundred civilians - 1,200 civilians - have been killed so far, and 4,500 seriously injured.

Some groups of civilians, including television personnel - including television personnel - have been deliberately targeted. Several attempts have been made to assassinate the Head of State of Yugoslavia. And so, in our view, these modalities clearly disqualify the claim to act on humanitarian grounds.

> *Thirdly:* The selection of a bombing campaign is disproportionate to the declared aims of the action. Thus, in order to protect one minority in one region, all the other communities in the whole of Yugoslavia are placed at risk of intensive bombing.
>
> *Fourthly:* The pattern of targets and the geographical extent of the bombing indicates broad political purposes unrelated to humanitarian issues.

VI. Major considerations of international public order disqualifying the bombing as a humanitarian action

Mr. President, in addition to these factual elements, there are major considerations of international public order which, both individually and cumulatively, disqualify the bombing of Yugoslavia as a humanitarian action.

> *First:* As the respondent States know very well, the so-called crisis originated in the deliberate fomenting of civil strife in Kosovo and the subsequent intervention by NATO States in the civil war. This interference is continuing. In such conditions those States responsible for the civil strife and the intervention are estopped from pleading humanitarian purposes.
>
> In this context it is relevant to recall that the International Law Commission draft of 1980 on State Responsibility provides in Article 33 (in material part) that:
>
>> "2. In any case, a state of necessity may not be invoked by a State as a ground for precluding wrongfulness: . . .
>>
>> . . . .
>>
>> *(c)* if the State in question has contributed to the occurrence of the state of necessity." (*YILC*, 1980, Vol. II (Part Two), pp. 34-52).
>
> *Secondly:* The threats of massive use of force go back seven months and have throughout been intended to produce not a genuine peaceful settlement but a dictated result. The massive air campaign was planned some time ago for the purposes of general coercion in order to force Yugoslavia to accept NATO demands. NATO first threatened air strikes in October of last year, and this is a matter of public knowledge.
>
> *Thirdly*: There has been no attempt to obtain Security Council authorization. Members of the Court if this was an obviously humanitarian intervention acceptable to the international community as a whole, why was it not possible to ask for the authorization of the Security Council.
>
> *Fourthly*: There is no evidence that the *jus cogens* principle concerning the use of force has been replaced by any other principle of *jus cogens*.

VII. The exponents of humanitarian intervention in the literature envisaged a radically different model

Mr. President, my next point is this. If the views of the few exponents of humanitarian intervention are studied, it becomes clear that they did not envisage anything like the NATO bombing of the populated areas of Yugoslavia, the damage to the system of health care, the destruction of the civilian infrastructure, the use of prohibited weapons, and the destruction of cultural property on a large scale.

Finally, the respondent States are jointly and severally responsible for the actions of the NATO military command structure, which in my submission constitutes an instrumentality of the respondent States.

Mr. President, I would ask you to give the floor to my colleague Professor Paul de Waart.

The VICE-PRESIDENT, acting President: Thank you, Mr. Brownlie. Perhaps the Court may take a short adjournment now. The Court will adjourn for 15 minutes.

The Court adjourned from 11.25 to 11.45 a.m.

The VICE-PRESIDENT, acting President: Please be seated. I give the floor now to Mr. de Waart.

Mr. de WAART: Mr. President, distinguished Members of the Court,

1. Introductory remarks

It is my task to review the legal issues concerning the threat of the use of force by the respondent States for exacting from the Federal Republic of Yugoslavia (FRY) its signing of the draft Interim Agreement for Peace and Self-Government in Kosovo, hereafter the Interim Agreement. These legal issues are the law of treaties, the scope and content of the Interim Agreement, fundamental principles of international law at stake in the so-called coercive diplomacy, and the absence of a "state of necessity" respectively.

I will argue that the threat of the use of force and the subsequent use of force by the respondent States after Yugoslavia's refusal to sign, violates the Charter of the United Nations and the Vienna Convention on the Law of Treaties. Even if Yugoslavia would have signed, the Interim Agreement would have been null and void under current international law.

2. Law of Treaties

According to the 1969 Vienna Convention on the Law of Treaties, Mr. President, "[A] treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations" (Art. 52).

In his Foreword to Malawer's book *Imposed Treaties and International Law*, published in 1977, Professor R. R. Baxter stated:

> "the remarkable reception of the Vienna Convention on the Law of Treaties into customary international law had undoubtedly given a firm place to Article 52 in general international law. But neither Article 2, paragraph 4, of the Charter, nor Article 52 of the Vienna Convention has solved the problem of imposed treaties."

Malawer defined an imposed treaty "not only as a treaty ending hostilities as described above, but also as any international agreement concluded as the result of the aggressive use of military force" (p. 9). According to him, to Malawer, "force" in Article 52 should be interpreted anyhow as "military force" (p. 162). According to Meinhard Schröder, the wording of Article 52 "would include not only *unjustified* physical or armed force, but also economic and political pressure" (emphasis added) ("Treaties, Validity", in R. Bernhardt, *Encyclopedia of Public International Law*, instalment 7 (1984), p. 513).

The threat or use of force against the Federal Republic of Yugoslavia in order to compel it to sign the Rambouillet draft Agreement in Kosovo was unjustified, for it implied a serious violation of the principles of international law embodied in the United Nations Charter, particularly the principle of sovereign equality of all its members, the duty of States to settle their international disputes peacefully and their duty not to intervene in matters which are essentially in the domestic jurisdiction of States.

The present humanitarian catastrophe, which is world-wide deeply regretted, emerged in the wake of the unbalanced interpretation and application of the above fundamental principles of international law by the Contact Group, particularly its NATO Members. This Group, as you know, consists of the Foreign Ministers of France, Germany, Italy, the Russian Federation, the United Kingdom and the United States. Admittedly, the implementation articles of the Interim Agreement recognize the territorial integrity and political independence of the Federal Republic of Yugoslavia. However, the NATO Members added fuel to the UCK separatism by their one-sided threatening of the Federal Republic of Yugoslavia with aerial bombardments if it did not accept the Interim Agreement. This appears from the content of the Interim Agreement. The Contact Group for Yugoslavia drafted the Interim Agreement. The draft was submitted to the three parties involved - the Federal Republic of Yugoslavia, the Republic of Serbia and to Kosovo at Rambouillet and Kleber successively, in February and March 1999. The Federal Republic of Yugoslavia and Serbia refused to sign. Only two of the three witnesses - the United States and the European Union - signed the Interim Agreement. The third witness - the Russian Federation - refused to do so.

As appears from its outline, the chapters dealing with the implementation by a NATO-led military force in Kosovo form the hard kernel of the Interim Agreement, and I dwell upon it in a footnote, which I will not read out now[1]. The text of part of the Interim Agreement was downloaded from the Internet and submitted as an annex to my speech. Appendix B of Chapter 7 deals with the status of the Multi-national Military Implementation Force (KFOR) - Kosovo FOR, probably. According to its final paragraph, the provisions of Annex B shall remain in force until completion of the operation or as the parties and NATO may otherwise agree (p. 43 of the Interim Agreement).

"Operation" means, according to the draft,

> "the support, implementation, presentation, and participation by NATO and NATO personnel in furtherance of this Chapter the purposes of which are to establish a durable cessation of hostilities, to provide for the support and authorization of the Kosovo Forces (KFOR)" (Ann. B, para. 1 *(d)*; Interim Agreement, p. 41).

Moreover, the Interim Agreement states that the purposes of the obligation of the parties are as follows:

> "*(b)* to provide for the support and authorization of the KFOR and in particular to authorize the KFOR to take such actions as are required, including the use of

necessary force, to ensure compliance with this Chapter and the protection of KFOR, Implementation Mission (IM), and other international organizations, agencies, non-governmental organizations involved in the implementation of this Agreement, and to contribute to secure environment;

(c) to provide, at no cost, the use of all facilities and services required for the deployment operations and support of the KFOR."

The outline shows that, quantitatively speaking, the gist of the Interim Agreement was not so much the political part - democratic self-government in Kosovo - but the implementation part - the encampment of NATO forces in Kosovo.

At the first conference in Rambouillet progress was made. At the second conference in Kleber the Yugoslavian delegation was asking to continue to agree on the political part and then to discuss the implementation part without the pressure of a foreign military presence. The position of some States in the Contact Group, however, was that the implementation part should be agreed first, including the foreign military presence.

Mr. President, the NATO Members overlooked that no self-respecting sovereign State, not defeated as an aggressor State in an inter-State conflict, may be expected to accept a foreign military force on its territory which have a mandate as if it is an occupation force.

It is crystal clear that the sovereignty of the Federal Republic of Yugoslavia and the admittance of NATO forces in Kosovo are matters within the domestic jurisdiction of the Federal Republic of Yugoslavia. The Interim Agreement rightly recognized it itself, because it stated that:

- the international community has a commitment to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia (Interim Agreement, pp. 1 and 4);

- and the Implementation Mission in Kosovo required an invitation by the parties (i.e., the Federal Republic of Yugoslavia, Serbia and Kosovo) (Interim Agreement, p. 25).

Nevertheless, the draft looks like a dictated peace treaty with a defeated aggressor State, to whom the provisions of the Vienna Convention on the Law of Treaties do not apply (Article 75). Illustrative is paragraph 8 of Appendix B of the Rambouillet draft: Status of Multi-National Military Implementation Force, which reads:

"NATO personnel shall enjoy, together with their vehicles, vessels, aircraft and equipment, free and unrestricted passage and unimpeded access throughout the Federal Republic of Yugoslavia [not only Kosovo] including associated airspace and territorial waters. This shall include, but not be limited to, the right of bivouac, maneuver, billet, and utilization of any areas or facilities as required for support, training, and operations." (Interim Agreement, p. 42.)

What is more, the final authority to interpret Chapter 2 of the Interim Agreement - devoted to Police and Civil Public Security - is the Chief of the Implementation Mission (CIM) of the OSCE; the Final Authority to interpret Chapter 7 - devoted to Implementation II - is the KFOR Commander, whose determinations are binding on all parties and persons (draft Agreement, Chap. 7, Art. XV; see p. 38 of the Interim Agreement).

In sum, the Interim Agreement created an illegal stranglehold on the Federal Republic of Yugoslavia.

4. Fundamental principles of international law at stake

The Interim Agreement raised key questions in respect of relationship between a number of fundamental principles of international law, such as

- sovereignty, territorial integrity and political independence of States;

- the use of force in the context of humanitarian intervention by States under the umbrella of a treaty organization discussed before the break by Professor Brownlie.

The Security Council, acting under Chapter VII of the United Nations Charter, called upon the Federal Republic of Yugoslavia and the Kosovar Albanian leadership to achieve a political solution (resolution 1160 (1998) of 31 March 1998 and 1199 (1998) of 23 September 1998). It welcomed the agreement of 16 October 1998 between the Federal Republic of Yugoslavia and the OSCE in respect of establishing an OSCE verification mission in Kosovo (resolution 1203 (1998) of 24 October 1998). In so doing, it demanded immediate action of the Federal Republic of Yugoslavia and the Kosovo Albanian leadership to co-operate with international efforts to improve the humanitarian situation and to avert the impending humanitarian catastrophe.

5. No "state of necessity"

The principles, agreed upon on 6 May 1999 of the so-called G-8 - and the so-called G-8 consists of the G-7, i.e., Canada, France, Germany, Italy, Japan, United Kingdom and United States and, as No. 8, Russia - recognized the need of an agreement with the Federal Republic of Yugoslavia, i.e., its approval as a sovereign State.

The "Statement on Kosovo" issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington, DC on 23 and 24 April 1999 states that NATO's military action against the Federal Republic of Yugoslavia supports the political aims of the international community, which were reaffirmed in recent statements by the United Nations Secretary-General and the European Union: "a peaceful, multi-ethnic and democratic Kosovo where all its people can live in security and enjoy universal human rights and freedoms on an equal basis".

Neither the European Union nor the United Nations Secretary-General, however, has the power to authorize the NATO Members to enforce the support of the Federal Republic of Yugoslavia in respect of the above purposes through military action, and that on behalf of the international community. Even less, the NATO Members may dictate conditions on which there can be no compromise at all.

According to Article 53 of the United Nations Charter "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council". The comment on this Article in *The Charter of the United Nations; A commentary* (already mentioned) (Bruno Simma (ed.), OUP, 1994, p. 735), observes that there is a presumption that the Security Council has examined the limits of the competence of a regional organization at the preliminary stage of its authorization and that therefore the activity of the regional agency under Security Council authorization is not *ultra vires*. However, in the present case, such an examination and authorization by the Security Council is lacking. By starting the aerial bombardment the NATO acted *ultra vires* indeed.

NATO belongs to the category of traditional international organizations, which are "in essence

based on inter-governmental co-operation of states which retain control of the decision-making and finance of the organization" (Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, 7th revised ed. p. 95).

It is telling that the status of NATO forces is based upon an agreement between the Parties to the North Atlantic Treaty and not upon an agreement between the NATO and its Members. In other words, the NATO apparently has no implied powers.

NATO Member States have no right under the Washington Treaty to humanitarian intervention in Kosovo under the pretext of acting in a state of necessity. The ILC Draft on the State Responsibility already mentioned states unambiguously that a state of necessity may not be invoked by a State to defend the wrongfulness of an act unless

> *(a)* the act was the only means of safeguarding an essential interest of the State against a grave and imminent peril; and
>
> *(b)* the act did not seriously impair an essential interest of the State towards which the obligation existed.

Moreover a state of necessity may not be invoked by a State as a ground for precluding wrongfulness, if, amongst other things, the international obligation with which the act of the State is not in conformity arises out of a peremptory norm of international law or if the State in question has contributed to the occurrence of the state of necessity. (International Legal Materials (1998), pp. 451-452; Th. Meron, Internal Strife: Applicable Norms and a Proposed Instrument, in Astrid Delissen and Gerard J. Tanja, *Humanitarian Law of Armed Conflict: Challenges Ahead - Essays in Honour of Frits Kalshoven*, Martinus Nijhoff Publishers, 1991).

The NATO Members contributed to the state of necessity themselves by their illegal and premature threat of the aerial bombardments. An analogous application of the draft Articles on State Responsibility to the relation between the Federal Republic of Yugoslavia, Serbia and Kosovo implies that Kosovo did not meet the conditions of Article 33, since the KCU contributed to the occurrence of the state of necessity.

The NATO aerial bombardments do not meet the criteria of Article 33 either. The bombardments were certainly not the only means. Some NATO States have had at their disposal a number of peaceful means for the settlement of disputes. The bombardments impair an essential interest of the Federal Republic of Yugoslavia. Finally but not lastly, the international prohibition of the use of force arises out of a peremptory norm of international law. Moreover, the threat or use of force is a prohibited countermeasure. (Art. 50, *International Legal Materials* (1998), pp. 457-458).

Reference may also be made to the famous 19th century *Caroline* case, which gave birth to the rule of customary international law that the doctrine of self-defence is limited to dangers which are "instant, overwhelming, leaving no choice of means, and no moment for deliberation" (Werner Meng, "The Caroline", in R. Bernhardt, *Encyclopedia of Public International Law*, volume one (1992), p. 538).

NATO States may not argue that a dispute on the use of force is a political dispute and that the Court should not consider political disputes. The Court rejected this argument, in my humble opinion quite rightly, in the *United States-Iran* case (*I.C.J. Reports 1980*, p. 19).

In the present case NATO Members cannot and may not take refuge behind the Security Council. It is telling that the recent G-8 Principles require the approval of the Security Council.

In sum, Mr. President, the respondent States violated the peremptory norm *(jus cogens)* of the prohibition of the use of force by participating in the aerial bombardment of the Federal Republic of Yugoslavia in order to compel this State to sign the Interim Agreement.

Thank you, Mr. President, distinguished Judges. I now ask you, Mr. President, to give the floor to my co-counsel, Mr. Suy.

The VICE-PRESIDENT, acting President: Thank you, Mr. de Waart. Mr. Suy, you have the floor now.

M. SUY : Monsieur le président, Madame et Messieurs de la Cour,

Introduction

L'honneur qui m'échoit de paraître une nouvelle fois devant la Cour est affecté par les circonstances dramatiques qui ont incité la République fédérale de Yougoslavie d'introduire la présente requête. L'attaque aérienne préméditée contre la résidence du chef de l'Etat dans le but de son élimination physique, le bombardement de l'ambassade de la République populaire de Chine s'ajoutent à tant d'autres exemples d'actes de violence commis en violation des normes fondamentales du droit international. Ils montrent que la Yougoslavie est en droit de demander d'urgence des mesures de protection de ses droits en litige. Une ordonnance de la Cour internationale de Justice indiquant des mesures conservatoires, des mesures provisoires pourrait ainsi constituer une contribution spécifique aux efforts diplomatiques en cours.

1. Qu'il me soit permis de souligner brièvement des analogies entre les circonstances dramatiques d'aujourd'hui, c'est-à-dire le recours à la force et ce qui s'est passé il y a soixante ans. A cette époque, l'Allemagne nazie menaçait d'envahir la Tchécoslovaquie si celle-ci ne consentait pas à accorder une grande autonomie au pays des Sudètes, faisant partie de la Tchécoslovaquie mais avec une large majorité de souche et d'expression allemande. Afin d'éviter une intervention armée, le Gouvernement de Prague, mais également celui le Royaume-Uni et la France cédèrent dans les accords de Munich. Le président Milosevic a voulu éviter un autre Munich et refusa dès lors de signer les accords de Rambouillet. Le négociateur Richard Holbrook lui disait en des termes très directs que, dans ce cas la Yougoslavie serait bombardée. Peu de mois après la signature des accords de Munich, Hitler réclama du Gouvernement de la Tchécoslovaquie l'incorporation du pays des Sudètes en Allemagne. Il disait aux autorités tchèques, que s'ils ne consentaient pas à cette incorporation, Prague serait bombardée. Aujourd'hui, soixante ans plus tard, la situation est donc pire. Nous assistons au bombardement - et non plus à la menace d'utiliser la force - afin de contraindre la Yougoslavie d'accepter un diktat. Cette régression du droit international, ce retour à la diplomatie de la canonnière par le moyen de missiles, en violation de la constitution que la communauté internationale s'est donnée après la défaite de l'Allemagne nazie, tout cela est de mauvaise augure pour l'état du droit et des relations internationales au seuil du XXIe siècle.

2. Monsieur le président, j'aborderai maintenant les différents aspects des mesures provisoires. La Cour a eu à connaître, je crois de vingt et un cas, de demandes en mesures provisoires. Par conséquent, et comme il s'est formé une importante jurisprudence en la matière, je traiterai brièvement des aspects suivants : la compétence *prima facie* de la Cour, la sauvegarde des droits de chacun et l'urgence.

1. La compétence *prima facie* de la Cour

Chaque fois que la Cour est amenée à exercer son pouvoir d'indiquer des mesures conservatoires, elle doit s'assurer, et cela fait partie des «circonstances» mentionnées dans son Statut, qu'elle est *prima facie* compétente. On a toujours clairement distingué la compétence de la Cour pour ce qui est de statuer sur le fond (laquelle n'entre pas en ligne de compte à ce stade-ci de la procédure) et sa compétence pour ce qui est d'indiquer des mesures conservatoires.

Permettez-moi quand même de citer ce que la Cour a dit, et c'est une phrase classique dans l'affaire du *Passage par le Grand-Belt* (*ordonnance du 29 juillet 1991*, p. 15) :

> «[en] présence d'une demande en indication de mesures conservatoires, point n'est besoin pour la Cour, avant de décider d'indiquer ou non de telles mesures, de s'assurer d'une manière définitive qu'elle a compétence quant au fond de l'affaire, mais elle ne peut indiquer ces mesures que si les dispositions invoquées par le demandeur semblent *prima facie* constituer une base sur laquelle la compétence de la Cour pourrait être fondée» (voir également l'affaire relative à la *Convention de Vienne sur les relations consulaires (Paraguay c. Etats-Unis d'Amérique)*, *ordonnance du 9 avril 1999*, par. 23).

La Yougoslavie, Monsieur le président, invoque tout d'abord sa propre déclaration d'acceptation de la compétence de la Cour, faite le 25 avril 1999, récemment, conformément au paragraphe 2 de l'article 36 de son Statut, ainsi que les déclarations faites par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord (en 1969), les Pays-Bas (en 1956), la Belgique (en 1958), le Canada (en 1994), le Portugal (en 1955) et l'Espagne (en 1990).

Dans l'affaire de la *Frontière terrestre et maritime entre le Cameroun et le Nigéria(mesures conservatoires*), la Cour internationale de Justice a estimé que les déclarations faites conformément au paragraphe 2 de l'article 36 de son Statut «constituent *prima facie* une base sur laquelle sa compétence pourrait être fondée» (ordonnance du 15 mars 1996).

La Yougoslavie invoque, en outre, l'article IX de la convention pour la prévention et la répression du crime de génocide dont l'article IX dispose :

> «Les différends entre les Parties contractantes relatifs à l'interprétation, l'application ou l'exécution de la présente Convention, y compris ceux relatifs à la responsabilité d'un Etat en matière de génocide ou de l'un quelconque des autres actes énumérés à l'article III, seront soumis à la Cour internationale de Justice, à la requête d'une partie au différend.»

Dans ses ordonnances du 3 avril et du 13 septembre 1993, la Cour a estimé que l'article IX de la convention sur le génocide à laquelle le demandeur et le défendeur sont parties semblait «constituer une base sur laquelle la compétence de la Cour pourrait être fondée» (*C.I.J. Recueil 1993*, p. 16, par. 26, et p. 342, par. 36).

Dès lors et de l'avis de la République fédérale yougoslave, il ne semble pas exister de doute quant à la compétence *prima facie* de la Cour à indiquer des mesures conservatoires que les parties contre lesquelles la demande est formée devraient prendre ou exécuter.

2. La sauvegarde des droits de chacun

Dans l'article 41 du Statut de la Cour les mesures conservatoires concernent le «droit de chacun».

Le texte anglais est cependant beaucoup plus précis puisqu'il parle de «provisional measures which ought to be taken to preserve the respective rights of either party».

La nécessité de sauvegarder les droits *en litige* constitue la base juridique qui permet à la Cour d'indiquer les mesures. La jurisprudence de la Cour a cependant à ce sujet évolué. Dernièrement, votre Cour était assez portée à indiquer des mesures conservatoires en cas de conflit armé ou d'incident violent. Elle a introduit dans sa jurisprudence la notion de la non-aggravation du différend et la nécessité d'éviter des incidents.

Et je cite à l'appui de cette façon de voir l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*, dans laquelle la Cour, à l'unanimité, a indiqué une mesure conservatoire prévoyant que :

> «les Gouvernements des Etats-Unis d'Amérique et de la République du Nicaragua veillent l'un et l'autre à ce qu'aucune mesure d'aucune sorte ne soit prise qui puisse aggraver ou étendre le différend soumis à la Cour» (*C.I.J. Recueil 1984*, p. 187, par. 41, B 3).

Dans l'affaire du *Différend frontalier* entre le Burkina Faso et la République du Mali, la Chambre constituée par la Cour disait :

> «Considérant que, indépendamment des demandes présentées par les Parties en indication de mesures conservatoires, la Cour ou, par conséquent la Chambre dispose en vertu de l'article 41 du Statut du pouvoir d'indiquer des mesures conservatoires en vue d'empêcher l'aggravation ou l'extension du différend quand elle estime que les circonstances l'exigent.» (*C.I.J. Recueil 1986*, p. 9, par. 18.)

Enfin, l'affaire de la *Frontière terrestre et maritime entre le Cameroun et le Nigéria (mesures conservatoires, ordonnance du 15 mars 1996)* mérite également d'être citée. Ici, votre Cour

> «est d'avis qu'il existe un risque que des événements de nature à aggraver ou à étendre le différend puissent se reproduire, rendant ainsi toute solution de ce différend plus difficile» (*C.I.J. Recueil 1996*, p. 23, par. 42; les citations apparaissent dans mon texte écrit).

Monsieur le président, dans toutes les affaires où il était question d'un conflit armé ayant entraîné des pertes en vies humaines et des dommages matériels, la protection des droits respectifs des parties comprend la nécessité pour celles-ci d'éviter toute aggravation ou extension du différend, comme de prévenir tout affrontement.

La Cour ne peut exercer sa compétence et indiquer des mesures conservatoires que si elle estime pour autant que les circonstances l'exigent, pour sauvegarder les droits de chacune des parties. Il importe donc d'identifier les droits susceptibles d'être protégés. A regarder la requête de la République fédérale de Yougoslavie, et plus particulièrement le relevé d'obligations internationales dont la Yougoslavie prétend qu'elles ont été violées, force est de constater qu'il s'agit de droits qui ne sont ni ridicules comme l'a dit une certaine presse récemment, ni existants, ni illusoires, ni indéterminés. Il est vrai que les actions préjudiciables aux droits de la Yougoslavie ont été et continuent d'être commises depuis bientôt deux mois. Mais peut-on en conclure, Monsieur le président, qu'il n'y a plus d'urgence, alors que ces actes se poursuivent en s'intensifiant de jour en jour ? Peut-on dire que les droits que la Yougoslavie invoque en vertu du droit international ne méritent pas ou plus d'être préservés puisqu'ils sont de toute façon déjà bafoués et violés ?

La République fédérale de Yougoslavie estime que les circonstances de l'espèce, à savoir l'intervention militaire massive et continue par des pays appartenant à l'Alliance atlantique, au moyen de bombardements aériens causant des dégâts considérables à des objectifs civils, à des objectifs protégés ainsi qu'à la population civile, comme le démontre la documentation soumise à la Cour, exigent que la Cour internationale de Justice indique des mesures conservatoires conformément à l'article 41 du Statut de la Cour.

Le dernier point que je veux aborder brièvement c'est la question de l'urgence.

5. L'urgence

L'article 74 du Règlement de la Cour dispose notamment que la demande en indication de mesures conservatoires a priorité sur toutes autres affaires et que la Cour est immédiatement convoquée pour statuer d'urgence sur cette demande. Dans l'affaire de la *Frontière terrestre et maritime*, votre Cour a affirmé que des mesures conservatoires «ne sont justifiées que s'il y a urgence» (*C.I.J. Recueil 1996*, p. 22, par. 35).

Dans l'affaire du *Passage par le Grand-Belt*, la Cour a donné une définition de l'urgence que je voudrais citer:

> «Considérant que les mesures conservatoires visées à l'article 41 du Statut sont indiquées «en attendant l'arrêt définitif» de la Cour au fond et ne sont par conséquent justifiées que s'il y a urgence, c'est-à-dire s'il est probable qu'une action préjudiciable aux droits de l'une ou l'autre Partie sera commise avant qu'un tel arrêt définitif ne soit rendu.» (*C.I.J. Recueil 1991*, p. 17, par. 23.)

Dans l'affaire de la *Frontière terrestre et maritime*, le Nigéria a soutenu que les circonstances de l'affaire, et notamment le fait que des efforts afin d'arriver à une solution diplomatique étaient menés, prouvaient qu'il n'y avait pas d'urgence. La Cour n'a pas accepté cette façon de voir les choses. Vous avez tout d'abord considéré que cet effort de médiation «ne prive ... pas la Cour des droits et devoirs qui sont les siens dans l'affaire portée devant elle» (*C.I.J. Recueil 1996*, p. 22, par. 37). Mais la Cour ajoute tout de suite un critère important pour estimer qu'il y a urgence :

> «il y a eu des incidents militaires et ... ceux-ci ont causé des souffrances, des pertes en vies humaines - tant militaires que civiles -, des blessés et des disparus, ainsi que des dommages matériels importants» (*ibid.*, par. 38).

Ceci me permet Monsieur le président, Messieurs les Membres de la Cour de conclure brièvement; quand on considère l'ensemble des faits qui se sont produits depuis le 25 mars en République fédérale de Yougoslavie sous la forme de bombardements aériens de plus en plus intensifs par des pays appartenant à l'Alliance atlantique, causant de plus en plus de dommages civils et parmi la population civile, peut-on vraiment nier que la demande en indication de mesures conservatoires soit placée sous le signe de l'urgence ?

Je vous remercie, Monsieur le président, et je vous prie de donner maintenant la parole à Dr. Mitic.

The VICE-PRESIDENT, acting President: Thank you, Mr. Suy. Mr. Mitic, please.

Mr. MITIC: Mr. President, distinguished Members of the Court, the consequences which NATO aggression against Yugoslavia caused so far and continues to cause are tragic. Yugoslavia is suffering enormous loss of human life. There is a huge number of casualties, in particular among the civilian population, due to intentional, savage bombing of civilian facilities and residential areas by the NATO aggressor in order to deter and deprive the population of the basic conditions for life. Carbonized and mutilated bodies of innocent people lying in the debris of their destroyed homes; bodies of helpless sick people and children in hospitals; of workers in annihilated factories; of journalists and technical staff in radio and TV stations; of passengers using regular bus and railway services; of children on playgrounds and in schools; of ordinary passers-by in streets which are day and night showered with bombs; of killed and wounded Serbian and Albanian refugees in targeted reception centres and camps - that is the result of the so-called NATO "air campaign" which, to accentuate the irony, has been named "noble angel".

The attacks on residential areas, mainly the parts inhabited by working-class people of the mining town of Aleksinac, Cuprija, Nis, Surdulica; workers' housing blocks in Belgrade and on a large number of towns in Kosovo and Metohija took a toll of several hundreds of innocent lives, mostly children, women and the elderly. In Surdulica alone, hundreds of houses have been demolished or damaged, 200 of which have been erased or are beyond repair. Indeed, one fourth of this small town has been destroyed. Among the destroyed buildings there is not a single military facility or a facility of importance to the military. As the bodies of killed children, women and the old were being taken out of the demolished houses in this town, almost at the same time, at a briefing for journalists, the NATO spokesman indifferently said: "NATO has never targeted civilians intentionally and never will do so". However, moments later, under the pressure of journalists' questions, he admitted that "stray missiles were in question", i.e., so-called collateral damage, officially admitted to by NATO after a previous denial. Collateral damage was also admitted to in the case of the attack on a column of Albanian refugees on the Djakovica-Prizren road. In the attack 75 civilians were killed by projectiles dropped from NATO planes, while many others were seriously wounded. At first an attempt was made to present the incident as the doing of Yugoslav airplanes. The same is true of the attacks on civilian facilities in Aleksinac, Kraljevo, Uzice, Nis, Cuprija, parts of Belgrade, the shelling of a passenger train on a bridge near Grdelica with more than 50 killed passengers. Some of the carbonized bodies of the passengers could not be identified. The shelling of a "Nis-ekspres" bus in Luzane near the town of Podujevo, with more than 60 civilian passengers killed and the attacks on a number of other buses resulting in several dozens of civilian casualties, including the most recent bombing of the Embassy of China and of the market place in the centre of Nis, were also termed "collateral damage". Even more brutal are the strikes immediately after the hitting in order to prevent the fire brigade and medical teams from attending to the victims who have suffered grave bodily injuries. As a point of illustration, ten minutes after the strike on the bus near Luzane, the emergency service ambulance which rushed to the scene to extend medical help, was also hit. In that incident a member of the medical team was seriously wounded. On the occasion of the bombing of Belgrade, ten minutes after the missiles fell killing and injuring a great many people, the rescue team which came to take care of the wounded civilians was exposed to attack. On that occasion the City of Belgrade Director of Inspectorate lost both legs while several members of the rescue team suffered serious injuries.

More than 300 towns and villages in various regions of Yugoslavia were targeted so far with "Tomahawk" and other cruise missiles and airplane bombs. They are usually shelled at night, with the exception of populated areas and facilities in Kosovo and Metohija which are battered almost without letup. Areas in which Serbs live as well as those in which Albanians and members of the other national communities reside are equally bombarded. Numerous areas and villages with an entirely Albanian population have also been shelled. This fact completely disillusioned the majority of the members of the Albanian national community. Namely, it was claimed that this aggressive action has allegedly been undertaken for their benefit. In order to turn the

Albanian population against the legitimate Yugoslav authorities, NATO officially spread various untruths and fabrications about mass executions of Albanians, about rape and looting. Also about the Yugoslav authorities killing the prominent leaders of Albanian political parties, such as Dr. Ibrahim Rugova and others, including their families. But, much to the regret of NATO propagandists, they appeared in public, safe and sound, both in Yugoslavia and elsewhere in the world.

The intention of the NATO Alliance is obvious. Its aim is not only to weaken the Yugoslav defence capacity by destroying military facilities and by killing and wounding, without any legal grounds whatsoever, Yugoslav soldiers and military officers and members of the police force, but also to destroy a large part of the Serbian people and citizens of Yugoslavia. Under the pretext of preventing the alleged persecution of members of the Albanian national community in Kosovo and Metohija army barracks are bombarded not only in that area but also in the whole territory of Yugoslavia. More than 200 army barracks have been bombed in various parts of the country with an obvious intent to inflict the largest possible number of casualties. One may ask who is entitled to kill the soldiers of a sovereign State, innocent young people who, as in any other European country, are doing their national service on the territory of their own country and are not fighting against the troops of a foreign State. To make things even more hypocritical, NATO also shelled a number of military checkpoints on the border of the Federal Republic of Yugoslavia. These bombings and the other forms of aggression signify the most direct support to the Albanian separatist and terrorist forces in the pursuance of their aims of separating a part of the Yugoslav territory and joining Albania. With the open support of Albania and NATO member States the terrorist groups are not only being prepared and trained on its territory but outright acts of aggression against Yugoslavia are being committed.

That NATO action is intended not only against the Yugoslav army and police force, but also against the people as a whole, is shown not only by the savage attacks on the civilian population using the most sophisticated weapons and explosives, but also by other systematic forms of endangerment of the lives and health of the Yugoslav people. This is attested to in particular by countless attacks on chemical plants and oil refineries and installations (some facilities have been pounded dozens of times). These attacks have already caused the environmental catastrophe, air pollution and poisoning of rivers. Large quantities of released poisonous substances and oil slicks are bound to have disastrous consequences also for the broader neighbourhood of Yugoslavia. Oil installations and refineries in Pancevo and Novi Sad, chemical plants in Belgrade, Pancevo and other places are targeted almost on a daily basis. With the intention of depriving ordinary people of the means of living, the largest economic enterprises providing jobs for hundreds of thousands of workers and bread and butter for more than a million members of their families, have been completely destroyed. Among them in particular: "Zastava" car factories in Kragujevac, the bombing of which caused injuries to more than 120 workers and other staff; nitrogen plant and fertilizer plant in Pancevo; industry of machinery in Nis, "14 October" Factory in Krusevac, "Feronikl" in Pristina, industrial complex "Lola-Utva" in Pancevo; household appliances factory "Sloboda" in Cacak; "Krusik" Holding Company in Valjevo, "21 May" Motor Factory in Rakovica and more than 50 other important economic enterprises, built and developed for decades with great sacrifice on the part of their workers, including business and financial co-operation with their partners mostly in Western Europe.

The merciless destruction of transport infrastructure, in particular of bridges, roads, civilian airports, railway installations and lines, paralysed normal life and the economic activity across the country, bringing into jeopardy still more the basic existential conditions and subsistence of the population. Sixty-five major bridges and overpasses have been destroyed, including all three bridges across the Danube in Novi Sad; bridges across the Danube near Kovin, Beska and Ilok; the nearly completed newly-built bridge across the River Sava near Ostruznica (Belgrade); the bridge on major railway lines Belgrade-Bar, Nis-Vranje, Prukuplje-Pristina, Priboj-Nova Varos

and other traffic facilities thus dismembering the country's territory into several parts.

By destroying the bridges on the Danube NATO caused navigation on the most important European waterway to be brought to a standstill, doing enormous damage to transport and the economies also of other European countries, and grossly violating the Danube Convention and all other relevant international agreements. By destroying almost all civilian airports in Yugoslavia, the freedom of air traffic was unscrupulously suppressed, in addition to halting navigation on rivers and road traffic.

There are no records in history so far of anyone attempting to destroy the means of public information, the way NATO has done in Yugoslavia, violating all norms of human rights and freedom of information. The Television of Serbia building in Belgrade was bombarded. In the debris 14 journalists, directors, cameramen and other staff, including two young girls working in the make-up section, were found dead. Several staff suffered serious bodily injuries. The building and equipment of TV Novi Sad, broadcasting information in five different languages for five national communities in Vojvodina, has been destroyed. TV studios of five privately-owned TV stations and a number of radio stations have been pounded. In a brutal attack on TV infrastructure, more than 40 TV transmitters, relays and TV masts have been completely destroyed, including the well-known large TV tower on Mount Avala. Also destroyed was the central satellite station in Ivanjica handling PTT communication with the whole world. To increase isolation from the world in the domain of postal traffic even more, buildings and equipment of a large number of civilian posts have been destroyed, in small villages and big cities, such as Uzice, Vranje, etc., alike.

Utilizing the aggression on Yugoslavia as an opportunity for and a means of testing new weapons, NATO, in addition to using cluster bombs and ammunition with depleted uranium on a massive scale, also made use for the first time of the bombs with graphite coils causing short circuit and the disruption of the entire power supply system of Yugoslavia. This resulted in power failure, leaving not only citizens and economic facilities without electricity and water for days, but also hospitals and other medical and humanitarian institutions. Also shelled were a convoy of trucks near Urosevac carrying Greek humanitarian relief supplies, as well as heating plants in a number of towns depriving the population of heating. It should be added that more than 60 hospitals, maternity wards and health institutions have been damaged or completely destroyed in air raids. This has caused enormous difficulties in providing health care to citizens, contributing to the aggressor's intent to exterminate the people using all available means.

Even the most important cultural monuments, places of historical interest, churches and monasteries have not been spared, the purpose being to obliterate the cultural, religious and historical identity of the people. The famous monastery of Gracanica suffered damage in a dozen strikes in a row hitting the church and the surrounding area.

Important architectural monuments, such as the Provincial Government of Vojvodina building in Novi Sad, buildings housing a number of federal and republic ministries in Belgrade, TV tower on Mount Avala, Air Force Club in Zemun, buildings in Nemanjina Street in Belgrade, etc., were hit.

The power supply system of Serbia, in addition to being bombed with special devices causing short circuit and disruption of the system, was also bombarded. Many facilities have been destroyed, including the central thermal electric plant in Obrenovac; TE plant "Drmno" in Kostolac; power plants on the River Lim; hydro-electric plant "Perucac" near Bajina Basta; hydro-electric plant "Bistrica"; artificial lake in Medjuvrsje near Cacak, but also raw material suppliers of power plants, such as mines in Volujak and Goles; transformer stations in Zemun Polje, Baric, Nis, Novi Sad and water systems and pipelines serving electric power

generation.

Unprecedented aggression on a sovereign State, a Member and one of the founders of the United Nations, culminated in the direct bombing of the official residence of the Head of State - the President of the Federal Republic of Yugoslavia. On that occasion, a guided missile hit the master bedroom, the residence was demolished, which is tantamount to the attempted murder of the Head of State, an act inappropriate in the relations between the members of the world community at the end of the second millennium. The official explanation of NATO, unprecedented in history, was that there was no intention to kill the Head of State, but to destroy the military command centre, precisely in the President's bedroom. And all that at dawn, when most people are sleeping.

From the beginning of the aggression on 24 March 1999, there is an air-raid alarm in the whole of Yugoslavia and hundreds of thousands of people are forced to spend nights in basements and underground shelters for nearly two months now. This causes serious health problems to children, the old and the sick. In Kosovo and Metohija, in other parts of southern Serbia, and of late in the whole country, air-raid alarms, accompanied by frequent daily bombardment, paralyse life also during the day. Because of that economic activities are considerably reduced. Due to serious risks for schoolchildren's lives schools have been closed for the past five weeks.

Buildings and equipment of a large number of State and local organs and services have been heavily bombed inflicting huge material damage and civilian casualties. Thus, the Federal Ministry of Internal Affairs building and that of the Federal Ministry of Defence have been repeatedly bombed. The buildings housing the Federal Ministry of Foreign Affairs and the Republic of Serbia Government have been considerably damaged. The Ministry of Internal Affairs of Serbia building has been destroyed; many other government and local authorities buildings across the country have also been destroyed. Several museums and theatres have been damaged extensively. A number of cemeteries have not been spared either. The remains of those buried were blown up, along with gravestones. As if NATO is bent on erasing any trace of the existence of one people, by simply obliterating any trace even of its members who have been resting in peace.

Detailed and accurate data on all the consequences of the aggression, including photo documentation, have been made available to the Court.

The losses of human life and immense material damage are multiplying in this wicked aggression against Yugoslavia which continues unabated. NATO member States, in the absence of any legal, moral or political grounds, explain this unprecedented gross violation of the basic principles and provisions of the Charter of the United Nations and international law by the attempt to prevent the alleged humanitarian catastrophe of the Albanian population in Kosovo and Metohija. It is beyond comprehension that any normal human being could entertain the idea that it is possible to protect anyone's rights and interests in this territory through a general humanitarian catastrophe of all the citizens of Yugoslavia, including Albanians, brought about by an aggression without precedent. Except the interests of the terrorist so-called Kosovo Liberation Army, which, after the beginning of NATO aggression on Yugoslavia, lost all support not only of a considerable part of the Albanian community, but also of the prominent leaders of Albanian political parties.

The aggression on Yugoslavia, and its indirect and direct consequences, have caused concern not only of the public opinion in neighbouring countries, which suffer both economic and military defence consequences of the aggression, but also of the world public opinion. This is evidenced by strong protests not only of ordinary people, but also of prominent political, public and cultural personalities in many countries. They demand that the aggression, bombing and bloodshed be stopped. Among those calling for the immediate stoppage of the bombing are His Beatitude

Pope John Paul II, Secretary General of the International Committee of the Red Cross, Cornelio Somaruga, United Nations High Commissioner for Human Rights, Mary Robinson, Special Rapporteur of the United Nations Commission on Human Rights, Jirzi Dienstbir.

The Yugoslav Government, which is leading general resistance of the people, stands ready for a political solution respecting the interests of members of all national communities in Kosovo and Metohija, including the Albanian community. But it is not ready to accept conditions threatening the country's sovereignty and territorial integrity, as was attempted at Rambouillet and in Paris, in contravention also of the Charter of the United Nations and Articles 51 and 52 of the Vienna Convention of the Law of Treaties. What was involved was outright coercion and threat of force to make us accept an agreement, the provisions of which would certainly not be accepted by the government of any sovereign State in the world. That threat was voiced publicly, in front of the members of the delegation of the Republic of Serbia, by United States Secretary of State Madeleine Albright. Consequently, the immediate cause for the aggression was the refusal to accept the diktat-agreement the controversial provisions of which had not been previously approved by the Contact Group either, whose agreed proposals, including all the proposed principles, had been accepted by the Yugoslav side. Following the act of aggression and the barbaric bombardment of the area of Kosovo and Metohija suffered by its population, a second alleged reason for the illegal aggression on Yugoslavia was invented, that is the prevention of the humanitarian catastrophe which was created as a result of the increased number of refugees. However, the fact that the refugees left their homes in Kosovo and Metohija precisely because of NATO's merciless and savage bombing of the civilian population was passed over in silence. This is equally true of the members of the Albanian community and the members of the Serbian and all other communities. They fled not only to neighbouring countries but also to other parts of Yugoslavia which were not exposed to massive NATO air-raids at the beginning of the aggression. This is evidence by many facts that can be easily proved. This is evidenced by many facts that can be easily proved. But also by the official reports of the OSCE Verification Mission which monitored the situation in the province with its 1,400 verifiers up until the commencement of the aggression. Only a day before the aggression started the OSCE Mission left the territory, without any reason on the part of the Yugoslav side. It thus enabled NATO to freely and brutally attack Yugoslavia and its people with full force. This is also shown by the official communiqué of the NATO Council of 17 December 1998, which "welcomes the agreement between the Federal Republic of Yugoslavia and NATO establishing the Air Verification Mission, completing the OSCE Ground Mission", and which resulted in the prevention of the humanitarian catastrophe. From the NATO Council communiqué of 8 December 1998 it can be clearly seen that the "establishment of the Verification Mission for Kosovo opened a new stage in the cooperation between NATO and OSCE". This was also reflected in the "close cooperation with OSCE in recent months in planning and establishing these missions".

Instead of all this, the OSCE Mission, at the insistence of NATO, with which it "closely cooperated", withdrew from the territory of Yugoslavia, thus showing that it did not care about the situation in Kosovo and Metohija and its population, but that its primary concern was in the function of NATO and its genocidal intentions against the people of Yugoslavia.

Besides, it should also be added that NATO and the so-called Western States have played an aggressive role in the breaking up of Yugoslavia in 1991-1992, by openly supporting the secessionist republics on the basis of the right to self-determination.

Only the Serbian people on the territory of the former Yugoslav Republics of Croatia and Bosnia and Herzegovina were denied the realization of this right on the basis of its clearly expressed will to remain in the former, common State; at least in areas with homogenous Serbian population on the territory which, at the creation of the Kingdom of Yugoslavia, was "the State of Croats, Slovenes and Serbs" (Croatia, Slovenia and Bosnia and Herzegovina). NATO Members turned a

deaf ear to the Serbian interests also after the signing of the Dayton Agreement, imposing new sanctions on Yugoslavia, especially the United States. Secessionists in Kosovo and Metohija were thus encouraged to boycott the dialogue with the Government of Serbia and to commit unheard-of acts of terror against the entire population of that province. This included Albanians who were exposed to killing for the smallest act of loyalty to their State, for taking part in voting at elections, having a job in the State technical services or an enterprise. On the eve of the aggression on Yugoslavia, NATO Members wanted to show clearly also to Serbs in Bosnia and Herzegovina, and to Yugoslavia, that might makes right; that it is over and above any right or agreement. On the same day they announced, through their high representative, the replacement of the democratically elected President of the Republika Srpska. And, the American arbiter announced his decision on Brcko, which, like that of the high representative for Bosnia-Herzegovina, constitutes an unauthorized revision of the Dayton Agreement, The obvious intention in Rambouillet was to place Kosovo and Metohija under a similar "protectorate", in which the sovereignty and territorial integrity of Yugoslavia would only be a facade.

Our country is exposed to unrelenting daily bombing by 1,000 planes of the most powerful military alliance in the world. At its borders there are almost 20,000 NATO troops equipped with planes, tanks and heavy artillery. As the condition for stopping bombardment it is demanded that Yugoslavia withdraw its army from its own territory and leave control to the troops of the aggressor countries. Which State on earth could possibly accept such a Diktat! We are a small and weak country in comparison to such a formidable military power which attacked us unilaterally and without any justification whatsoever. But we cannot surrender, at the price of the greatest sacrifices. Because on our side are both justice and truth, which the mighty are seeking to suppress by the monopoly of information and by physical destruction of our media and our people. In addition to brave resistance put up by our army and the whole people, our basic means in this unequal struggle are legal means and the confidence which we place in this distinguished world Court to deliberate upon this question of crucial importance not only for the fate of Yugoslavia, but also that of the United Nations and the entire international community.

Thank you, Mr. President. I ask you kindly to give the floor to Mr. Etinski.

The VICE-PRESIDENT, acting President: I give the floor now to the distinguished Agent of Yugoslavia, Mr. Etinski.

Mr. ETINSKI: Thank you Mr. President.

Mr. President, distinguished Members of the Court. The case before you is clear. The request I am submitting to you is founded in fact and in law. The matter is honest. Stop killing. Save the lives of all Yugoslav citizens, Serbs and Albanians, civilians and soldiers. Save the whole nation and all its communities. Don't be late.

I ask the Court to indicate the following provisional measure:

The United States of America, the United Kingdom of Great Britain and Northern Ireland, the Republic of France, the Federal Republic of Germany, the Republic of Italy, the Kingdom of the Netherlands, the Kingdom of Belgium, Canada, Portugal and the Kingdom of Spain shall cease immediately the acts of use of force and shall refrain from any act of threat or use of force against the Federal Republic of Yugoslavia. Thank you, Mr. President.

The VICE-PRESIDENT, acting President: Thank you very much, Mr. Etinski. The Court will now adjourn and resume at 3 p.m. to hear the submissions of Belgium.

The Court rose at 1.05 p.m.

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1 The outline of the Interim Agreement is as follows: Preamble, introductory Framework (2 Articles) and eight Chapters, dealing with, successively: Constitution (11 Articles); Police and Civil Public Security (9 Articles); Conduct and Supervision of Elections (3 Articles); Economic Issues (2 Articles); Humanitarian Assistance, Reconstruction and Economic Development (1 Article); Implementation I (5 Articles); Ombudsman (3 Articles); Implementation II (16 Articles) with two Appendices, i.e., Approved VJ (army forces)/MUP (Ministry of Interior Police) Cantonment Sites (8 paragraphs), Appendix A - and Status of Multi-national Military Implementation Force (25 paragraphs) - Appendix B; and finally Amendment, Comprehensive Assessment, and Final Clauses (2 Articles). The text of the Interim Agreement is downloaded from the Internet.

Europäisches Hearing zu einem Internationalen Tribunal über den NATO-Krieg gegen Jugoslawien

Berlin,30.10.1999,Heilige Kreuzkirche.

Völkerstrafrechtliche Fragen des Krieges

Rechtsanwalt Prof.Dr.jur.habil.Erich Buchholz,Berlin

Das angezielte internationale (informelle) Tribunal,das sich auf einen möglichst breiten gesellschaftlichen Konsens stützen soll= te und seine Legitimation nur aus der Moral und dem Gewissen der Menschen,der Völker herzuleiten vermag,ist gehalten,auf der Grundlage des Rechts,namentlich des Völkerrechts und des Völker= strafrechte zu agieren.

Ohne jegliche Vorabbefindung konzentriert sich dieser Beitrag juristisch auf völkerstrafrechtliche Aspekte (Verbrechen nach Völkerrecht = crimes by international law) und in tatsächlicher Hinsicht auf Allgemeinkundiges,so die Tatsache,daß in der Zeit vom 24.3. bis zum 10.6.1999 durch NATO-Verbände ohne Kriegser= klärung Luftschläge gegen das Staatsgebiet Jugoslawiens geführt wurden.

Ich darf vorausschicken:

Abgesehen von einigen Ansätzen im Versailler Vertrag darf als Ausgangspunkt des Völkerstrafrechts der am 27.8.1928 in Paris unterzeichnete Brand Kellog-Pakt angesehen werden,nach dem der Krieg als Mittel zur Lösung internationaler Komnflikte als Ver= brechen verurteilt und geächtet wurde;zu Beginn des zweiten Welt kriegs hatten sich 62 Staaten (das waren damals vor der Befrei= ung vom Kolonialismus fast alle in Betracht kommende Staaten), darunter auch Deutschland,diesem Pakt angeschlossen.

Als maßgeblicher Schritt zu dem uns heute bereits geläufigen Völkerstrafrecht darf (namentlich für Europa) das im unmittelbaren Anschluß an das Potsdamer Abkommen von den vier Alliierten am 8.8.1945 verabschiedete Londoner Statut des Internationalen Militärgerichtshofs (IMT-Statut) angesehen werden,auf dessen Grundlage dann in Nürnberg der Prozeß gegen die deutschen Hauptkriegsverbrecher stattfand.

Dieses Statut enthält die drei klassischen Verbrechen nach Völkerrecht:

- Verbrechen gegen den Frieden
- Kriegsverbrechen (im engeren Sinn)
- Verbrechen gegen die Menschlichkeit (die damals in Nürnberg zunächst nur im Rahmen der Kriegsvorbereitung und als Bestandteil dieser angesehen wurden)

Wesentlich ist,daß die maßgeblichen Elemente dieses IMT-Statuts als "Nürnberger Prinzipien" am 11.12.1946 als Resolütion 95(I) von der Vollversammlung der VN bestätigt wurden und dadurch Allgemeingültigkeit erlangten.

Dies entsprach dem Geist und Wortlaut der UN-Charta.

In Übereinstimmung mit dem IMT-Statut erließen die vier Alliier= am 20.12.1945 das KRG Nr.10 als Rechtsgrundlage für die strafrechtliche Verfolgung anderer Verbrechen der Hitleranhänger.

Aus Gründen,die hier nicht dargestellt werden können,ging die vom Londoner IMT-Statut und der UN-Resolution ausgehende Arbeit der International Law Commission (ILC) an einem Internationalen Strafkodex für Verbrechen gegen den Frieden,die Menschlichkeit und Kriegsverbrechen nur schleppend voran.

Lediglich bezüglich der Bestrafung und Verfolgung des Völkermords kam am 9.12.1948 auf der Grundlage der UN-Resolution 96 (I) eine Konvention zustande,die dann in zahlreichen Staaten -

auch in beiden deutschen Staaten - ins nationale Recht transfor= miert wurde (§ 220 a StGB/BRD;im StGB der DDR war es § 91).

Es darf als ein bedeutender Fortschritt angesehen werden,daß am 17.7.1998 auf einer Diplomaten-Konferenz der Vereinten Natio= nen in Rom ein Statut des Internationalen Strafgerichtshofes - übrigens gegen die Stimmen der USA - angenommen wurde.

Mit diesem inzwischen von hinreichend viel Staaten ratifizierten Rechtsakt wurde,wie erkennbar,nicht nur eine materiell-rechtli= che Rechtsgrundlage für die Verfolgung der betreffenden Verbre= chen nach Völkerrecht,sondern vor allem auch eine statuarisch- prozedurale Rechtsgrundlage geschaffen,undzwar für einen ständi= gen Internationalen Strafgerichtshof,der seinen Sitz ebenso wie der Internationale Gerichtshof in Den Haag haben soll.

Als ständiger Internationaler Strafgerichtshof unterscheidet er sich von den verschiedenen bekannten ad-hoc-Tribunalen,wie s.Zt. in Nürnberg und Tokio,und in diesem Jahrzehnt den für Ruanda und für das ehemalige Jugoslawien.

Daß sich die USA gegen einen ständigen Internationalen Strafge= richtshof sperren,liegt darin begründet,daß es für die Großmacht USA unvorstellbar erscheint,daß ihre Bürger,z.B.auch hohe Mili= tärs oder Politiker,vor einem anderen Gerichtshof stehen sollten als einem der USA - aber Bürger anderer Staaten sollen durchaus vor ein internationales Gericht gestellt werden können.

Das Statut des Internationalen Strafgerichtshofes (im folgenden als Statut von Rom bezeichnet) enthält - ähnlich wie das vorer= wähnte Londoner IMT-Statut - die notwendigen Regelungen des ma= teriellen Strafrechts,nämlich eine Beschreibung der Verbrechen nach Völkerrecht,für die dieser Gerichtshof zuständig sein soll.

Dies findet sich Art.5;er benennt im einzelnen

- das Verbrechen des Völkermords
- Verbrechen gegen die Menschlichkeit
- Kriegsverbrechen (im engeren Sinne)
- das Verbrechen der Aggression.

Während die ersten drei Arten von Verbrechen nach Völkerrecht in den nachfolgenden Art.6,7 und 8 ausführlich definiert und be= schrieben wurden,fehlt in dem Statut von Rom eine solche Defi= nition für das besonders schwere Verbrechen der Aggrssion.

Übrigens ist in dem Statut des ad-hoc-Tribunals für das ehemalige Jugoslawien von 1993 nicht einmal die Jurisdikti= on für dieses Verbrechen der Aggression vorgesehen.
Ob die an diesem Jugoslawien-Tribunal interessierten Staa= ten,voran die USA,schon damals wohlweislich eine Verfolg= barkeit wegen eines solchen Verbrechens ausdrücklich ausge= schlossen wissen wollten,muß dahinstehen.

Jedenfalls muß bzw.darf zum Zwecke der Bestimmung dessen,wann ein Verbrechen der Aggression vorliegt,auf die UN-Resolution vom 14.12.1974 zurückgegriffen werden.

Nach dieser Definition ist "Aggression...bewaffnete Gewalt,die ein Staat" - oder natürlich auch mehrere Staaten - "gegen die Souveränität,territoriale Integrität oder politische Unabhängig= keit eines anderen Staates anwendet oder in irgendeiner anderen Weise mit der Charta der Vereinten Nationen unvereinbar ist..."

Überdies enthält Art.3 der Defintion eine beispielhafte Aufzäh= lung von (sieben) Aggressionshandlungen;darunter findet sich ausdrücklich die Bombardierung und auch die Entsendung bewaffne= ter Banden pp - man denke an die sog.UCK - zur Ausübung von Ag= gressionsakten,eben der Anwendung von bewaffneter Gewalt.
Dabei hat die beispielhafte Aufzählung dieser Formen von Aggres= sion die Funktion,schon dem ersten Anschein nach (prima facie) das Vorliegen einer Aggression erkennen zu können.

Angemerkt sei,daß es nach Art.5 der erwähnten Definition keiner= lei Rechtfertigung für eine Aggression gibt.

Denn die Aggression als solche ist "ein Verbrechen gegen den Weltfrieden";sie zieht völkerrechtliche Verantwortlichkeit nach sich.

Indem ich diese Merkmale zitiere,die nach allgmeinem internati= onalen Konsensus eine Aggression ausmachen,dürfte es auch für juristische Laien und,ohne bereits eine irgendwie geartete Vor= verurteilung vorzunehmen,bereits dem ersten Anschein nach ohne Zweifel sein,daß genau ein solches Verhalten seitens der NATO gegenüber Jugoslawien betrieben wurde.

Nach der zitierten Resolution über den Begriff der Aggression wurde die Rechtfertigung einer solchen ausdrücklich ausgeschlos= sen.

Es kann daher auch dahinstehen,ob bei einer unzweifelhaft nicht vorliegenden Legitimation seitens des UN-Sicherheitsrates eine andere Lage bestanden hätte.

Es darf hier daran erinnert werden,daß im Ergebnis des zweiten Weltkrieges die UN-Charta gerade zu dem Zweck ausgearbeitet und angenommen worden war,um "die kommenden Generationen vor der Geißel des Krieges zu bewahren".

Diese Charta orientiert demgemäß in ihrem Kapitel VI auf die friedliche Beilegung von Streitigkeiten;sie erlaubt die indivi= duelle und kollektive Selbstverteidigung der Staaten nur bei einem bewaffneten Angriff auf diese,also im klassischen Fall der "völkerrechtlichen Notwehr".

Ein solcher liegt seitens Jugoslawien augenscheinlich nicht vor; keines der NATO-Staaten hat jemals behauptet,ein Opfer eines be= waffneten Angriffs seitens Jugoslawien geworden zu sein.

Für den Fall der Bedrohung des Friedens,eines Friedensbruches oder einer Angriffshandlung wurde durch die UN-Charta allein dem Sicherheitsrat übertragen,Maßnahmen nach Art.41 und 42 der Charta zu ergreifen,"um den internationalen Frieden und die Sicherheit aufrechtzuerhalten und wiederherzustellen".

Unbeschadet dessen,ob ein solcher Fall des Art.39 UN-Charta vorlag oder nicht,ist vor der NATO-Aggression jedenfalls nicht das nach der UN-Charta einzig für betreffende Maßnahmen legitimierte Organ,der Sicherheitsrat,angerufen oder tätig geworden.

Nach dem bestehenden Völkerrecht ist somit eine Rechtfertigung der NATO-Luftschläge gegen Jugoslawien nicht erkennbar.

Übrigens war auffällig,daß - auch seitens der Bundesregierung - zum Zwecke der Legitimierung der Aggression kein juristisches Argument vorgebracht,daß nicht auf Regeln des Völkerrechts,etwa die UN-Charta,verwiesen wurde.

Vielmehr wurde lediglich - ich möchte es so formulieren - politisch,mit dem Hinweis auf eine gewisse Notwendigkeit "argumentiert" ~~wurde~~.

Die Luftschläge der NATO seien notwendig gewesen,um den Völkermord und ethnische Säuberungen im Kosovo zu beenden.

Nun darf man fragen,ob jemals irgendein Politiker oder Militär, der an Luftbombardements kommandierend beteiligt ist oder war, auch nur ein einziges Beispiel dafür kennt oder anzuführen vermag,daß Völkermord oder ethnische Säuberungen ausgerechnet durch Luftschläge und Bombardierungen von Flugzeugen aus beendet oder zumindest eingeschränkt wurden.

Alle historische Erfahrung,namentlich dieses Jahrhunderts besagt das Gegenteil:

Die diesbezüglichen Verbrechen der Hitlerleute wurden be=
kanntlich nur durch die militärische debellatio,d.h.die
vollständige Besiegung Hitlerdeutschlands durch Bodentrup=
pen und schließlich durch die bedingungslose Kapitulation
beendet.Durch die alliierten Luftschläge,auch die gegen
Dresden und Nürnberg,wurde weder die Fortsetzung des Völ=
kermords,noch der anderen Verbrechen der Hitlerleute ver=
hindert.
Befreit wurden KZ-Häftlinge bekanntlich durch Bodentruppen
der Alliierten !

Ich möchte daher - ganz generell und nicht nur auf Jugoslawien
oder den Kosovo bezogen - konstatieren,daß Luftangriffe ein völ=
lig ungeeignetes Mittel sind,irgend einem Völkermord oder ir=
gendwelchen ethnischen Säuberungen Einhalt zu gebieten.

Da ich mir nicht anmaße,mögliche andere Motive für die Aggres=
sion gegen Jugoslawien zu mutmaßen,muß es - ohne weiteren Prü=
fungen und Erkenntnissen vorgreifen zu wollen bei dieser für
jedermann offenkundigen Feststellung des äußeren Tatbestands
bleiben:

NATO-Streitkräfte führten seit dem 24.3.1999 gegen Jugosla=
wien Aggressionshandlungen durch.

Diese waren weder durch den UN-Sicherheitsrat legitimiert,noch
kann in der erklärten Begründung,Völkermord und ethnischen Säu=
berungen im Kosovo Einhalt gebieten zu wollen,eine hinreichend,
durch Erfahrung begründete Rechtfertigung erblickt werden.

Soweit zum Verbrechen der Aggression.

Darüber hinaus wurden uns allen durch die Medien - und somit
ebenfalls allgemeinkundig - zahlreiche tatsächliche Anhaltspunk=
te für das Vorliegen des Verdachts auf weitere Verbrechen nach
Völkerrecht vermittelt,nämlich Kriegsverbrechen im engen Sinne,

wie sie in Art 2 und 3 des Statuts des Jugoslawientribunals defi= niert sind.

Denn es besteht der schwerwiegende Verdacht,dass solche Verbre= chen im Zuge der Luftschläge gegen Jugoslawien begangen wurden.

Möglicherweise wurden auch Verbrechen gegen die Menschlichkeit i.S.d.Art.5 dieses Statuts begangen

Für all diese (weiteren) Verbrechen werden unumstößliche Beweise zu sammeln und öffentlich zu präsentieren und auch dem Jugosla= wien Tribunal in Den Haag zur Verfügung zu stellen sein.

Vor allem aber wird all dies durch die Medien breit bekannt zu machen sein,da diesen aus der Medienfreiheit hohe Verantwortung erwächst,im Geiste der UN-Charta zu wirken.

NATO aggression against Yugoslavia

Jun 13 Messages received on our Web page. The views expressed on this page are those of the authors and do not represent the policy or position of the Serbian Unity Congress. This page is updated on a regular bases during the day. Visit our help page for instructions on your browser settings.

NEWS, REPORTS

- PETNICA, anti-NATO magazine, Jun 11
- KLA Is Coming, Serbs Are Leaving, DSS

News Bits | Press Releases | Tanjug

As almost all Greeks, I am deeply sorry for the attrocities against Serbia. Apart from people's suffering, the destruction of so many works and monuments, the environmental damage, it was the idea of international justice and of united Europe that got badly injured. But in my opinion most mass media have been prejudiced against Serbia and managed to pass it to the public, at least to some extent. Otherwise I cannot explain how the bombing lasted so long. This of course was not realized in Greece, been close to Serbia. But there were protests from all countries, I attach an article from Time in case you have not considered it yet. We believe that Serbs and Muslims can live in peace in Kossovo, if external forces do not intervene, acting for their own interests. This is what European Union should have supported, to promote united Europe. But we participated in the bombing instead! Let us hope that announced peace will be true and permanent. All the best

Konstantinos Kalaitzoglou Athens-Greece

Message from S.U.C. Homepage: http://www.suc.org/

From: et

Subject: Web Master message 6/13/99 4:22

The UN should have the responsibility for the funding in securing peace as the peace agreement was sanctioned by it.

Message from S.U.C. Homepage: http://www.suc.org/

From: Jerry =20 Subject: Web Master message 6/13/99 10:48

The diseased bastards have finally admitted that what they are sending are= occupation ground forces. This, long after Clinton denied he

http://www.suc.org/kosovo_crisis/Jun_13/news.html 13.6.99

compelling evidence of war crimes committed by Nato in its bombing campaign against Yugoslavia. Arbour reaffirmed that the tribunal has jurisdiction over any crimes committed by individual Nato leaders in Yugoslavia and welcomed the submissions as useful to the Tribunal in carrying out its mandate. Arbour did not disclose the nature of any ongoing investigation of NATO crimes citing a firm rule of the Tribunal against doing so before it is ready to announce an indictment.

The lawyers charged Nato leaders with grave violations of international criminal law in causing civilian death, injury and destruction. They underlined that ample evidence was available to justify prosecution of indivdual Nato leaders and promised to continue providing the Prosecutor with evidence to further substantiate the charges.

Appearing before the tribunal were Alexander Lykouzeros of Greece, Andr=E9 Savik of Norway, Glen Rwangala of the United Kingdom and Alejandro Teitelbaum of the American Association of Jurists and professor Michael Mandel of Canada. 'We told the Prosecutor that the tribunal's credibility was on the line,' said Mandel. 'This is a historic opportunity to demonstrate the even-handedness of international justice. A failure to indict Nato leaders would be a severe blow to international law.

Contacts: Michael Mandel (Canada): mmandel@yorku.ca Alexandros Lykourezos (Greece): lykourez@otenet.gr Alejandro Teitelbaum (France): assamjur@alo.com Glen Rangwala (UK): gr10009@cam.ac.uk Andr=E9 Savik (Norway): balkan@balkan.cc

ADRESSE

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would use= ground forces and long after Clinton claimed his troops are "Peacekeepers".= There's a name that ought o have George Orwell lauighing in his grave,= "Peacekeepers." As in "Peacekeepers fix bayonets!" Fortunately, the media= has let slip the obvious fact that the Yugoslavians of all awlks of life,= Serbians, Albanians, Montenegrans and others, will rally behind their flag= to throw the foreign occupiers out of their country. The Americans, Calling= themnselves "NATO", will get a hot reception. It will probably be bloody,= and entail lots of casualties. The Russians, thank god, have realized that= they cannot ask their troops to act as human shields for the invaders.= Instead, they did the rerasonable thing that any military commander would= do. They had their troops go in early and occupy the high ground and other= stratgeic areas. It is predictable that the Russians are dug in around the= airport, and will stay dug in there. I hope Clinton's air force isn't= stupid enough to try to land at that airport. This will not be a bloodless= invasion. Clinton will not conquer the Balkans that easily. He was thrown= oput of Somaliland a few years ago, and he will be thrown out of Kosovo= this time around. Americans were defeated in Lebanon and compelled to= withdraw during the reign of King Ronald-the-Chicken-Hearted. American= mercenaries were compelled to withdraw from Nicaragua. They are threatening= to use mercenaries in Yugoslavia, but these merceneries (KLA) will be no= more successful than the ones Reagan dispatched into Nicaragua. The stooge= media ballyhoos whatever crap is fed to them by the military-industrial= complex. Our task is to somehow get the truth out. It is similar to the= problem we faced during the Vietnam War. The truth came out only after= American troops started telling tales about places like Mai Lai, and tiger= cages, and other American atrocities, and only after there were massive= demonstrations around the globe against the American war, and only after= Nixon's henchmen murdered four kids at kent State and beat senseless= thousands of other who dared to protest the war, and only after Nixon could= no longer get the cannon fodder he needed to prosecute his war, after the= kids said "Hell no, we won't go."=20

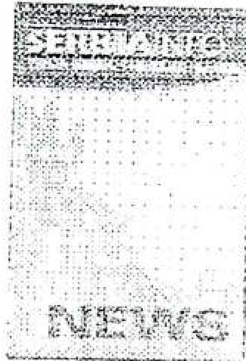
This will be a similar problem. The media had their collective nose stuffed= firmly into Clinton's ass. We need to work at the grass roots level to get= people to understand that they are being lied to, (The best the media could= do during the Vietnam War was when Cronkite said, "I think we have a= credibility gap.") There are no Cronkites around now, so we are unlikely to= get even that mild remonstration. We somehow need to bring the public's= attention forceably to the fact that the lying bastyards are lying= bastards. Then we have to get them to demand the truth. We'll need= alternative news channels on TV, with a variety of opposing viewpoints,= many of which we will not agree with, but just having them around will= force the media clowns to straighten up their act.

Evidence of Nato Crimes Presented to Prosecutor

(The Hague, 9 June 1999) Legal representatives from Canada, Greece, Norway and the United Kingdom met today for two and a half hours with the Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, Louise Arbour and senior members of her legal staff in The Hague. The lawyers presented what they believe to be

CHARGES FOR THE HAGUE AGAINST THE NATO LEADERS - ONE OF THE INDICTMENTS

June 29, 1999



IN THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

NOTICE OF THE EXISTENCE OF INFORMATION CONCERNING SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW WITHIN THE JURISDICTION OF THE TRIBUNAL;

REQUEST THAT THE PROSECUTOR INVESTIGATE NAMED INDIVIDUALS FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND PREPARE INDICTMENTS AGAINST THEM PURSUANT TO ARTICLES 18.1 AND 18.4 OF THE TRIBUNAL STATUTE.

TO:

Madam Justice Louise Arbour,
Prosecutor,
International Criminal Tribunal for the Former Yugoslavia,
Churchillplein 1, 2501 EW,
The Hague,
Netherlands.

AND TO:

William J. Clinton, Madeleine Albright and William S. Cohen,
C/o William J. Clinton
President
The White House, 1600 Pennsylvania Ave NW
Washington, District of Columbia 20500
United States of America

Tony Blair, Robin Cook and George Robertson,
C/o Rt. Hon. Tony Blair
Prime Minister
10 Downing St.
SW1A 2AA London
United Kingdom

Javier Solana, Jamie Shea, Wesley K. Clark, Harold W. German,
Konrad Freytag, D.J.G. Wilby, Fabrizio Maltinti, Giuseppe Marani
and Daniel P. Leaf,

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Jean Chrétien, Lloyd Axworthy and Arthur Eggleton,
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Prime Minister's Office
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C/o Gerhard Schoeder
Chancellor
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C/o Kostas Simitis
Prime Minister

Greece

Viktor Orban, J. Martonyi and J. Szabo,
C/oViktor Orban
Prime Minister
Kossuth Lajos ter 1-3
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Office of the Prime Minister
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C/o Massimo D'Alema
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C/o Jean-Claude Juncker
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C/o Willem Kok
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C/o Kjell Magne Bondevik
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Antonio Manuel de Oliveira Guterres, J.J. Matos da Gama and V.

Gabinete do Primeiro-Ministro
Lisboa Portugal

Jose Maria Aznar, A. Matutes and E. Serra Rexach,
C/o Excmo. Sr. Jose Maria Aznar
Presidente del Gobierno
Complejo de la Moncloa Edf.
Semillas 28071 |
Madrid Spain

Bulent Ecevit, I. Cem and H. S. Turk,
c/o Bulent Ecevit
Prime Minister
Office of the Prime Minister
Basbakanlik 06573
|Ankara Turkey

FROM:

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Judith A. Fudge, |Professor H. J. Glasbeek, Professor Reuben A.
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Beinusz Szmukler,
President, Consultative Council,
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Buenos Aires, Argentina

IN THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

RE: William J. Clinton, Madeleine Albright, William S. Cohen, Tony Blair, Robin Cook, George Robertson, Javier Solana, Jamie Shea, Wesley K. Clark, Harold W. German, Konrad Freytag. D.J.G. Wilby, Fabrizio Maltinti, Giuseppe Marani, Daniel P. Leaf, Jean Chrétien, Lloyd Axworthy, Arthur Eggleton, Jean-Luc Dehaene, E. Derycke, J.-P. Poncelet, Vaclav Havel, J. Kavan, V. Vetchy, Poul Nyrup Rasmussen, N.H. Petersen, H. Haekkerup, Jacques Chirac, Lionel Jospin, H. Védrine, Alain Richard, Gerhard Schröder, J. Fischer, R. Scharping, Kostas Simitis, G. Papandreou, A. Tsohatzopoulos, Viktor Orban, J. Martonyi, J. Szabo, David Oddsson, H. Asgrimsson, G. Palsson, Massimo D'Alema, L. Dini, C. Scognamiglio, Jean-Claude Juncker, J. Poos, Alex Bodry, Willem Kok, J. van Aartsen, F.H.G. de Grave, Kjell Magne Bondevik, K. Vollebæk, D.J. Fjærvoll, Jerzy Buzek, B. Geremek, J. Onyszkiewicz, Antonio Manuel de Oliveira Guterres, J.J. Matos da Gama, V. Simão, Jose Maria Aznar, A. Matutes, E. Serra Rexach, Bulent Ecevit, I. Cem and H. S. Turk.

NOTICE OF THE EXISTENCE OF INFORMATION CONCERNING SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW WITHIN THE JURISDICTION OF THE TRIBUNAL;

REQUEST THAT THE PROSECUTOR INVESTIGATE NAMED

INDIVIDUALS FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND PREPARE INDICTMENTS AGAINST THEM PURSUANT TO ARTICLES 18.1 AND 18.4 OF THE TRIBUNAL STATUTE.

WHEREAS the 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 was established by the UN Security Council with "the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of" its Statute (Article 1);

AND WHEREAS by Article 2 of the said Statute, the Tribunal has the power "to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention" including the following:

(a) wilful killing; (c) wilfully causing great suffering or serious injury to body or health; (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

AND WHEREAS by Article 3 of the said Statute, "the International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

(a) employment of poisonous weapons or other weapons to cause unnecessary suffering; (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings; (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science.

AND WHEREAS by Article 6 of the said Statute "the International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute;"

AND WHEREAS Article 7 of the said Statute provides for individual criminal responsibility thus:

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime. 2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility or mitigate punishment. 3. The fact that any of

was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. 4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

AND WHEREAS Article 8 of the said Statute provides that the territorial and temporal jurisdiction of the Tribunal "shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspacé and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991;"

AND WHEREAS by Article 9 of the said Statute "the International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991" but the International Tribunal "shall have primacy over national courts;"

AND WHEREAS Article 18 of the said Statute provides inter alia that:

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed. 2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned. 4. 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. The indictment shall be transmitted to a judge of the Trial Chamber.

AND WHEREAS High Commissioner Robinson also stated in her speech:

In the NATO bombing of the Federal Republic of Yugoslavia, large numbers of civilians have incontestably been killed, civilian installations targeted on the grounds that they are or could be of military application and NATO remains sole judge of what is or is not acceptable to bomb¼In this situation, the principle of proportionality must be adhered to by those carrying out the bombing campaign. It surely must be right to ask those carrying out the bombing campaign to weigh the consequences of their campaign for civilians in the Federal Republic of Yugoslavia.

AND WHEREAS NATO has carried out between 5,000 and 10,000 bombing missions over the territories of the former Yugoslavia since March 24, 1999;

AND WHEREAS NATO leaders have openly admitted targeting civilian infrastructure as well as military targets;

AND WHEREAS the list of targets has included fuel depots, oil refineries, government offices, power stations and communications links, such as roads, tunnels, bridges and railway links, including those not inside the region of, or in the vicinity of, Kosovo;

AND WHEREAS in addition to these deliberate attacks on civilian infrastructure and objects, there have been a great number of attacks which have caused direct physical harm and death to civilians;

AND WHEREAS it appears that these bombing missions have directly caused the death of approximately 1,000 civilian men, women and children and serious injury to 4,500 more;

AND WHEREAS instances of this nature include the 12 April bombing of a train travelling from Belgrade to Ristovac as it crossed the bridge spanning the Yuzhna Morava river at the Grdelica gorge, killing at least 10 passengers and wounding 16; the 15 April bombing of a refugee convoy in four separate locations along a 12 mile stretch of the road that runs from Prizren to Djakovica, killing approximately 74 people; the 23 April bombing of Serbian Television editorial offices, killing approximately 15 people; the 27 April bombing of a residential district in Surdulica, killing 16 people including 12 children; and the May 1 bombing of a bus on the Luzan bridge in Kosovo killing at least 34 people including 15 children;

AND WHEREAS, though the above-named NATO leaders have claimed that these incidents were accidents, they have also admitted that they were an inevitable result of their bombing strategy, a strategy which they appear to have continued unmodified and even to have intensified throughout these incidents;

leadership;

AND WHEREAS the NATO bombing has done an estimated $100 billion dollars in property damage and completely destroyed or seriously damaged dozens of bridges, railways and railway stations, major roads, airports, including civilian airports, hospitals and health care centres, television transmitters, medieval monasteries and religious shrines, cultural-historical monuments and museums, hundreds of schools, faculties and facilities for students and children, thousands of dwellings and civilian industrial and agricultural facilities;

AND WHEREAS refineries and warehouses storing liquid raw materials and chemicals have been hit causing environmental contamination and exposing the civilian population to the emission of poisonous gases;

AND WHEREAS the NATO bombings have also made use of weapons banned by international convention, including cruise missiles utilizing depleted uranium highly toxic to human beings;

AND WHEREAS credible detailed reports of the civilian death and destruction inflicted by the NATO bombing are attached as an Annex to this Notice;

AND WHEREAS THEREFORE there is abundant evidence that many instances of serious violations of international humanitarian law within the jurisdiction of the Tribunal have been committed by NATO forces in the attack on Yugoslavia commencing March 24 and continuing to this day;

AND WHEREAS this evidence is readily available to the Prosecutor in eyewitness, videotaped, televised and publicly broadcast reports, in press reports and on the Internet, and in the evidence presented by the Federal Republic of Yugoslavia in its current complaint against the NATO countries before the International Court of Justice;

AND WHEREAS all of the above-named persons, Heads of State and Government of the 19 NATO countries, their Foreign Ministers and Ministers of Defence, and officials and military leaders of NATO, have admitted publicly to having agreed upon and ordered these actions, being fully aware of their nature and effects;

AND WHEREAS the above-named persons have acted in open violation of the United Nations Charter, which provides in so far as is

likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. Article 37 1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council. 2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 39 The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 41 The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42 Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 51 AND WHEREAS the NATO bombing has done an estimated $100 billion dollars in property damage and completely destroyed or seriously damaged dozens of bridges, railways and railway stations, major roads, airports, including civilian airports, hospitals and health care centres, television transmitters, medieval monasteries and religious shrines, cultural-historical monuments and museums, hundreds of schools, faculties and facilities for students and children, thousands of dwellings and civilian industrial and agricultural facilities;

AND WHEREAS refineries and warehouses storing liquid raw materials and chemicals have been hit causing environmental contamination and exposing the civilian population to the emission of poisonous gases;

AND WHEREAS the NATO bombings have also made use of weapons banned by international convention, including cruise missiles utilizing depleted uranium highly toxic to human beings;

to this Notice;

AND WHEREAS THEREFORE there is abundant evidence that many instances of serious violations of international humanitarian law within the jurisdiction of the Tribunal have been committed by NATO forces in the attack on Yugoslavia commencing March 24 and continuing to this day;

AND WHEREAS this evidence is readily available to the Prosecutor in eyewitness, videotaped, televised and publicly broadcast reports, in press reports and on the Internet, and in the evidence presented by the Federal Republic of Yugoslavia in its current complaint against the NATO countries before the International Court of Justice;

AND WHEREAS all of the above-named persons, Heads of State and Government of the 19 NATO countries, their Foreign Ministers and Ministers of Defence, and officials and military leaders of NATO, have admitted publicly to having agreed upon and ordered these actions, being fully aware of their nature and effects;

AND WHEREAS the above-named persons have acted in open violation of the United Nations Charter, which provides in so far as is relevant:

Article 2 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security;

AND WHEREAS the International Court of Justice has stated in ruling against United States intervention in Nicaragua:

In any event, while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with de mining of ports, the destruction of oil installations, or again with de training, arming and equipping of the contras.

(CASE CONCERNING THE MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST NICARAGUA (NICARAGUA v.

UNITED STATES OF AMERICA) (MERITS) Judgment of 27 June 1986, I.C.J. Reports, 1986, p.134-135, paragraphs 267 and 268)

AND WHEREAS the above-named persons, Heads of State and Government of the 19 NATO countries, their Foreign Ministers and Ministers of Defence, and officials and military leaders of NATO have acted in open violation of the NATO Treaty which provides in so far as is relevant:

Article 1 The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

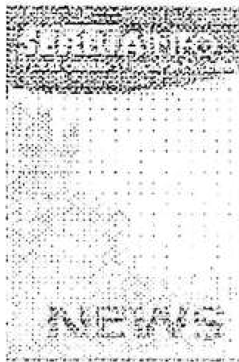
Article 7 This Treaty does not affect, and shall not be interpreted as affecting in any way the rights and obligations under the Charter of the Parties which are members of the United Nations, or the primary responsibility of the Security Council for the maintenance of international peace and security;

AND WHEREAS the above-named persons have acted in open violation of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, which provides as follows:

CHARGES FOR THE HAGUE AGAINST THE NATO LEADERS - ONE OF THE INDICTMENTS
Part 2

June 29, 1999

BACK



Art 51. - Protection of the civilian population 1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances. 2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. 3. Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities. 4. Indiscriminate attacks are prohibited. Indiscriminate attacks are: (a) those which are not directed at a specific military objective; (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction. 5. Among others, the following types of attacks are to be considered as indiscriminate: (a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

Art 79. Measures or protection for journalists 1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.

Article 85 - Repression of breaches of this Protocol

3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health: (a) making the civilian population or individual civilians the object of

cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a)(iii);

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

AND WHEREAS the above-named persons have acted in open violation of the Principles of International Law Recognized in the Charter of the Nüremberg Tribunal and in the Judgment of the Tribunal, as adopted by the General Assembly of the united Nations (1950), which provide in so far as is relevant:

Principle III The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

Principle IV The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principle VI The crimes hereinafter set out are punishable as crimes under international law: (a) Crimes against peace: (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i). (b) War crimes: Violations of the laws or customs of war include, but are not limited to, murder wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

Principle VII Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law;

THEREFORE we respectfully request that the Prosecutor immediately investigate and indict for serious crimes against international humanitarian law:

THE FOLLOWING HEADS OF STATE AND GOVERNMENT, MINISTERS OF FOREIGN AFFAIRS AND MINISTERS OF DEFENCE OF THE NATO COUNTRIES: William J. Clinton, Madeleine Albright, William S. Cohen (United States of America), Tony Blair, Robin Cook, George Robertson (United Kingdom), Jean Chrétien, Lloyd Axworthy, Arthur Eggleton (Canada), Jean-Luc Dehaene, E. Derycke, J.-P. Poncelet (Belgium), Vaclav Havel, J. Kavan, V. Vetchy (Czech Republic), Poul Nyrup Rasmussen, N.H. Petersen, H. Haekkerup (Denmark), Jacques Chirac, Lionel Jospin, H. Védrine, Alain Richard (France), Gerhard Schröder, J. Fischer, R. Scharping (Germany), Kostas Simitis, G. Papandreou, A.

Juncker, J. Poos, Alex Bodry (Luxembourg), Willem Kok, J. van Aartsen, F.H.G. de Grave (Netherlands), Kjell Magne Bondevik, K. Vollebæk, D.J. Fjærvoll (Norway), Jerzy Buzek, B. Geremek, J. Onyszkiewicz (Poland), Antonio Manuel de Oliveira Guterres, J.J. Matos da Gama, V. Simão (Portugal), Jose Maria Aznar, A. Matutes, E. Serra Rexach (Spain), Bulent Ecevit, I. Cem and H. S. Turk (Turkey);

AND THE FOLLOWING OFFICIALS AND MILITARY LEADERS OF NATO: Javier Solana, Jamie Shea, Wesley K. Clark, Harold W. German, Konrad Freytag, D.J.G. Wilby, Fabrizio Maltinti, Giuseppe Marani and Daniel P. Leaf;

AND WHOEVER ELSE shall be determined by the Prosecutor's investigations to have committed crimes in the NATO attack on Yugoslavia commencing March 24, 1999.

Respectfully submitted, this 6th day of May, 1999

"Michael Mandel"

Michael Mandel (Professor) for W. Neil Brooks Judith A. Fudge H. J. Glasbeek Reuben A. Hasson (Professors)

Sil Salvaterra David Jacobs Brian Shell Christopher Black John Philpot (Barristers and Solicitors)

Peter Rosenthal (Professor, Barrister and Solicitor)

Roberto Bergalli (Professor)

Alejandro Teitelbaum Alvaro Ramirez Gonzalez Vanessa Ramos Beinusz Szmukler (American Association of Jurists)

ANNEX: CIVILIAN DEATH AND DESTRUCTION IN THE FORMER YUGOSLAVIA

The following are two reports from Ministry of Foreign Affairs of the Federal Republic of Yugoslavia (a designated source of information under Article 18.1 of the Stature of the Tribunal):

1) NATO Crimes Against Civilians and Civilian Infrastructure in the Federal Republic of Yugoslavia (MINISTRY OF FOREIGN AFFAIRS YUGOSLAV DAILY SURVEY - www.mfa.gov.yu/Bilteni/Engleski/si290499_1-e.html); and
2) Civilian Victims and Devastation in NATO Aggression on Yugoslavia (SERBIAINFO - www.serbia-info.com/news/1999-04/23/11210.html)

NATO CRIMES AGAINST CIVILIANS AND CIVILIAN INFRASTRUCTURE IN THE FEDERAL REPUBLIC OF YUGOSLAVIA (April 29, 1999)

of the Charter of the United Nations since the inception of the world Organization, a violation of the Helsinki Final Act and the undermining of the very foundations of the international legal order. At the same time, this aggression is a crime against peace, stability and humanity.

The Federal Republic of Yugoslavia has warned on time the United Nations Security Council of a possible aggression, and during the aggression itself it requested that it be immediately halted and most strongly condemned. Had this legitimate request of the Federal Republic of Yugoslavia been met, enormous human sufferings and destruction would have been avoided. The most illustrative examples are given below.

KILLING AND PLIGHT OF THE CIVILIANS During the last thirty-six days of NATO aggression, the Federal Republic of Yugoslavia has been exposed to extensive civilian destruction, unprecedented in modern history of the world. NATO aggressors have focused their attacks primarily on civilian targets, directly threatening the lives and fundamental human rights of the entire population of the Federal Republic of Yugoslavia. By bombing relentlessly the cities, towns and villages throughout Yugoslavia, the NATO aggressor has killed so far, in nine hundred attacks, more than a thousand civilians, including a great number of children. Over five thousand people sustained injuries, many of whom will remain crippled for life. At the same time, several thousand private homes and flats have been ruined, mostly in Belgrade, Nis, Cuprija, Aleksinac, Pristina, etc. We shall present the most tragic instances of the killings and plight of the innocent civilian population. Fifty-five passengers were killed and twenty-six injured in an international passenger train on the Belgrade-Thessaloniki line. More than four hundred civilians were killed by NATO bombs in Kosmet: in the centre of Pristina, in Djakovica, Prizren, Kosovo Polje, Urosevac, Kosovska Mitrovica, in refugee camps in Orahovac and Srbica, Vitina, etc.

Thirteen civilians were killed and twenty-five wounded in an attack on Kursumlija.

Twelve civilians were killed and forty wounded in the bombing of Aleksinac. Sixteen RTS workers were killed and seventeen wounded in the bombing of the headquarters of this biggest Radio and Television outlets in the FRY. Unfortunately, the final number of victims has not been established yet since more victims have remained buried in the rubble.

In Pancevo, Cacak, Vranje and Nis the number of casualties has been increasing each day.

KILLING OF CHILDREN

Children are the most vulnerable category of the population, innocent and defenceless which suffer in particular due to the barbaric bombing

killing of five children from the Kodza family in the village of Doganovici near Urosevac on 24 April 1999 as a result of the delayed effect of bombs (Edon, aged 3, Fisnik, aged 9, Osman, aged 13, Burim, aged 14 and Vajdet, aged 15. Six other children were also injured in the same incident, two of them were seriously wounded.

The killing of a three-year old Milica Rakic in the Belgrade suburb of Batajnica;

The killing of six children in the refugee centre in Djakovica and 19 children in the refugee column on the Prizren-Djakovica road;

The death of a child in Kosovo Polje; The killing of five years old girl Arta Lugic while her brothers Neron and Egzon and her sister Arijeta were seriously wounded in Lipljane;

The killing of nine children in Kursumlija; The killing of two children in Aleksinac, as well as other numerous examples.

Children are most often victims of the sprinkle cluster bombs with delayed effect. The death toll on children would have been even more tragic, had the missile struck the biggest Maternity Hospital in Belgrade (It exploded some thirty metres away from the Hospital).

KILLING AND PLIGHT OF REFUGEES

Particularly tragic is the fate of refugees, who convinced that they should not believe the propaganda ploys on the alleged "ethnic cleansing" decided to return to their homes. Legitimate authorities of the FRY encourage them every day to do so and guarantee their safety. On the occasion of a return of a large group of refugees, on 14 April, on the Djakovica-Prizren road, NATO aircraft killed 75 citizens of the FRY and wounded 111. The attack of NATO aircraft was systematically prepared and lasted for three hours. In this way, NATO has in the most brutal way "demonstrated" that the story of "humanitarian catastrophe" suits it only if it fits in the legitimate aggression on the FRY, as well as that innocent civilians are constantly taken advantage of for NATO interests in the Balkans.

In addition, NATO bombed several refugee camps in which Serbs expelled from Croatia and Bosnia and Herzegovina were accommodated (Djakovica, Pristina, Kursumlija, etc). Several dozens of refugees were killed, mostly children and the frail, ruthlessly ending their tragedy which came about in the wake of the break-up of Yugoslavia.

BOMBING OF SURDULICA

The aggressors war planes bombed at noon, on 27 April 1999, the residential area of the town of Surdulica. On that occasion 16 citizens were killed (including 12 children), while several dozen were wounded out of which twenty persons remained in hospital for further

notorious crime.

ASSASSINATION ATTEMPT ON PRESIDENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA SLOBODAN MILOSEVIC

An assassination attempt on the President of the Federal Republic of Yugoslavia on 22 April 1999 represents an organised terrorist act without precedent in the history of modern Europe. This is not only a crime against a Head of a sovereign State, but primarily an attack on the democratically expressed will of a people and thus against the foundations of the democratic values of the civilisation. Although the residence of the President of the Federal Republic of Yugoslavia was targeted, this attack has also a symbolic meaning as if the targets had been the homes of all Yugoslav citizens. This crime has caused abhorrence and condemnation by international public. However, it is incomprehensible that the United Nations Security Council has remained silent and failed to condemn this terrorist act or the killings of civilians and children.

CRIME AGAINST THE FREEDOM OF SPEECH

The destruction of more than ten private radio and television stations, two dozen TV transmitters, as well as the bombing of the Radio and Television of Serbia building on 23 April 1999 represents the biggest aggression against freedom of thought and a disgrace to the civilization at the threshold of a third millennium. Transmitters at Iriski venac, Krnjaca, Mt Cer, Bukulja, Tornik, Crni vrh, Jasetrebac, Ovcar, Grmija and others were destroyed, so that the transmitter infrastructure at the entire territory of Serbia was severely damaged. Two times in six days the studios and transmitter located at the business centre "Usce" which housed TV stations: BK TV, Pink, Kosava and SOS Channel, as well as several other radio stations were bombed.

Transmitter of the TV station Palma was bombed and destroyed on 28 April 1999.

The satellite station "Yugoslavia" in the village of Prilike near Ivanjica was severely damaged.

BOMBING OF THE BUILDING OF THE RADIO AND TELEVISION OF SERBIA

The building was demolished taking a heavy toll during the bombing of the largest Radio and TV company in the Balkans with 7000 employees and the state-of-the-art infrastructure which was made available to hundreds of foreign correspondence. The aim of this crime, in which 16 RTS workers were killed and 19 wounded, was more than obvious: to suppress the right to a different opinion and its being publicly expressed with a view to pursuing further war-mongering manipulation with the world public. Clearly, the intention of NATO aggressors is to prevent the world public from learning the

against the propaganda fabrications of the NATO aggressors.

For all champions of the freedom of speech and for all people committed to the right to freedom of expression, this destructive act represents the last warning alarm before NATO generals take control over the aggressors' media.

DESTRUCTION OF VITAL YUGOSLAV ECONOMIC FACILITIES

According to the assessment of experts from Western countries, the damage done to date by NATO air strikes is well in excess of one hundred billion US dollars. By the destruction of factories, business capacities and production facilities, more than half a million people have lost their jobs and over two million of them remained without any kind of income. Destroyed are the industrial complexes in Belgrade, Novi Sad, Kragujevac, Nis, Pancevo, Cacak, Kraljevo, Valjevo, Pristina, Vranje, Kursumlija, Krusevac, Kula, Gnjilane, Sremska Mitrovica and in other towns and cities. The petrochemical industry of the Federal Republic of Yugoslavia has been totally destroyed, as well as the largest Yugoslav factory of artificial fertilisers.

Private entrepreneurs are a particular target of NATO aggression and the most glaring example of it is the destruction of the "Usce" business centre in Novi Beograd which was hit on 21 and 27 April 1999. That was one of the biggest business centres in the Balkans, which housed more than a hundred newly established private firms in full business expansion, foreign representative offices, seven private Radio and TV stations and one of the most modern poli-clinics in the FRY. The building of this business centre is also one of the landmarks of modern Belgrade.

DESTRUCTION OF BRIDGES

On the false pretext of "neutralizing the military power of the Federal Republic of Yugoslavia", the NATO aggressor started systematic destruction of the major Yugoslav road and rail traffic routes. About 20 bridges have been totally demolished so far and a few dozen of them have been damaged. Also, several dozen major and local roads, airports, railway tracks, railway stations, etc. have been destroyed. All ruined facilities were part of costly capital investments, into which the resources and the efforts of several generations of Yugoslav citizens were pooled. All the facilities are strategic part of the European traffic infrastructure, and some of them are of historical and cultural importance ("The Wailing Bridge " in Novi Sad, on which the Fascists killed several thousand Jews in the Second World War).

About 30 bridges have been destroyed including those at the strategic European E-75 corridor. By the destruction of the bridges on the Danube river the aggressors have blocked the entire river navigation at this traffic artery of the greatest importance for European economy and the shortest link between the Northern and Mediterranean sea (The Rhein-Mein-Danube route). Thus, the European shipping companies suffer each day the damage of over 20 million DM.

Examples: Sloboda Bridge, Wailing Bridge, Zezelj Bridge and the bridge in Beska (all in the city of Novi Sad), several bridges on the Ibar primary road and on the major railway lines.

ENVIRONMENTAL DISASTER

Concurrently with the humanitarian, NATO strikes have caused an environmental catastrophe which is endangering not only the Federal Republic of Yugoslavia, but also the neighbouring countries and the entire European continent. Ecology does not recognize boundaries. The NATO aggressor is thus teetering on the brink of another Chernobyl in the heart of Europe. The destruction of petrochemical installations, the warehouses storing semi-processed and finished products of the chemical industry have already caused significant adverse effects on the health of the population of the Federal Republic of Yugoslavia and the neighbouring countries. During some of the air strikes it was pure luck that an environmental catastrophe was not provoked spreading all over Europe. The aggressor's attacks did not spare even huge forests, tourist centres and the national parks on the mountains of Serbia (Kopaonik, Zlatibor, Divcibare, Tara, Prokletije, Sara, Fruska Gora). The ozone layer was depleted by the exhaust gases. The Black Sea, Aegean and the Adriatic basins, practically the entire Mediterranean, are threatened by environmental pollution.

Examples: Nitrogen factory in Pancevo, the oil refineries in Pancevo and Novi Sad, the chemical company "Prva iskra" in Baric and others.

HOSPITALS AND HEALTH INSTITUTIONS

The aggressors' bombings, calculated to provoke the greatest possible confusion and panic among innocent people, have damaged many clinical and hospital centres, inflicting not only great material damage to property (destruction of buildings and expensive medical equipment), but also causing new health problems and intensifying psychological traumas among the sick people. The destruction of all the three bridges in Novi Sad totally cut off and left, without the supply of water, the largest Yugoslav centre for the treatment of cardiovascular diseases, to which several million people gravitate. The Maternity Hospital in Belgrade, and the biggest hospital in the Balkans (Military Medical Academy Hospital - VMA), and the Orthopaedic hospital of Banjica, the hospitals in Cuprija and Aleksinac, as well as the medical centres in Pristina and in many other towns were damaged.

DESTRUCTION OF PRE-SCHOOL INSTITUTIONS, SCHOOLS AND UNIVERSITIES

Since the outset of the aggression, NATO has put a stop to the education of close to one million pupils and students in Yugoslavia. Over three hundred facilities built for the education and upbringing of children and young people of all ages were destroyed. This will inevitably be reflected on the development and social integration of young people. Hard hit are university centre in Nis (Machine Engineering, Civil Engineering, Electronical, Technical, Law and

At the moment it is difficult to perceive and evaluate all the humanitarian, economic, environmental, health and other consequences of the NATO criminal aggression against the FR of Yugoslavia. The greatest victim of the aggression is the entire Yugoslav people and its material and cultural resources. At the same time, the violation of the Charter of the United Nations, the NATO has created a precedent which may a cast a shadow over the future of all peoples and sovereign States. The cause for concern is all the grater because, by combining pressure and promises, NATO is drawing an increasing number of countries into its aggression against the FR of Yugoslavia, which will have long-term negative consequences on the future relations and co-operation between all Southeast European countries. Attempts by NATO to justify its brutal aggression by an alleged care for the refugees may bring about an irreversible degradation of the United Nations and involve this highest international forum in the crime against a country which is one of its founding members.

CHARGES FOR THE HAGUE AGAINST THE NATO LEADERS - ONE OF THE INDICTMENTS
Part 3

June 29, 1999

BACK

CIVILIAN VICTIMS AND DEVASTATION IN NATO AGGRESSION ON YUGOSLAVIA (April 23, 1999)

OVERVIEW OF DESTRUCTION OF CIVILIAN TARGETS ON THE TERRITORY OF THE FEDERAL REPUBLIC OF YUGOSLAVIA AS A RESULT OF BARBARIC AND CRIMINAL AGGRESSION BY NATO, FROM 24 MARCH TO 19 APRIL 1999

CIVILIAN CASUALTIES

From the onset of NATO aggression against our country up to 19 April 1999, the North Atlantic Alliance made over 7,000 criminal attacks against the territory of the Federal Republic of Yugoslavia. 700 warplanes, of which 530 combat planes, were used; more than 2000 cruise missiles were launched and over 6,000 tons of explosives were dropped. About 500 civilians were killed and more than 4,000 sustained serious injuries e.g.:in Kursumlija: 13 dead and 25 wounded; in Pancevo: 2 dead and 4 wounded; in Cacak: one dead and 7 wounded; in Kragujevac: over 120 workers were wounded during an attack on the car factory "Zastava"; in Vranje: two dead and 23 wounded; in Aleksinac: 12 dead and more than 40 wounded; in Nagavac village, Orahovac municipality: 11 dead and 5 wounded; in Pristina: 10 dead and 8 wounded; Grdelicka gorge: 55 killed and 16 wounded; attack on two refugee columns, with four cruise missiles, on the Djakovica-Prizren road: 75 killed and 100 wounded, of whom 26 critically; in the village of Srbica: 10 killed, among whom 7 children; Belgrade suburb of Batajnica: a three year old girl was killed,and five civilians wounded.

Three million children are endangered in our country as a result of war and bombardment by NATO criminals. After these barbarian attacks hundreds of thousands citizens have been exposed to poisonous gasses which can have a lasting consequences on the health of the entire population and the environment. After the demolition of the Petrovaradin bridge, Novi Sad and Petrovaradin were cut of water supply (600 000 citizens) since the main and city pipeline was constructed into the bridge. About one million citizens in our country

industrial facilities all around the country. Two million citizens have no means for living and cannot ensure the minimum for existence.

Overall material damage is enormous. Preliminary estimates indicate that barbaric air strikes of the neo-fascist NATO alliance, since the beginning of the unprovoked aggression on the SR of Yugoslavia,on industrial, commercial and civil facilities and structures throughout our peace-loving country, have incurred damages in excess of 10 billion dollars. In the territory of the northern province of Vojvodine alone, damages have been estimated in excess of 3,5 billion dollars.

TRAFFIC

The road and railway networks, especially road and rail bridges, most of which were destroyed or damaged beyond repair, suffered extensive destruction. The targets of attacks were such communications as: 1. BRIDGES (11 DESTROYED AND 13 DAMAGED): 1.The Varadin Bridge over the Danube was destroyed (on 1 April 1999); 2.The "Sloboda" (Freedom) Bridge over the Danube was destroyed (on 4 April 1999); 3.The "Mladosti" (Youth) Bridge over the Danube, connecting Backa Palanka with Ilok, was damaged (on 4 April 1999); 4.The new railway bridge over the Danube connecting Bogojevo and Erdut was damaged (on 5 April 1999); 5.The road bridge over the Danube, connecting Bogojevo with Erdut was damaged (on 5 April 1999); 6.The bridge over the Danube along the Beograd-Novi Sad road, near Beska, Indjija municipality, was damaged (on 1 April 1999); 7.The road bridge along the Magura Belacevac road, 15 kilometres from Pristina, suffered extensive damage.

29-6-99 ADRESSAND.

CHARGES FOR THE HAGUE AGAINST THE NATO LEADERS - ONE OF THE INDICTMENTS
June 29, 1999

IN THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

NOTICE OF THE EXISTENCE OF INFORMATION CONCERNING SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW WITHIN THE JURISDICTION OF THE TRIBUNAL;

REQUEST THAT THE PROSECUTOR INVESTIGATE NAMED INDIVIDUALS FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND PREPARE INDICTMENTS AGAINST THEM PURSUANT TO ARTICLES 18.1 AND 18.4 OF THE TRIBUNAL STATUTE.

TO:

Madam Justice Louise Arbour,
Prosecutor,
International Criminal Tribunal for the Former Yugoslavia,
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AND TO:

- n.n.) '

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Buenos Aires, Argentina

IN THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

RE: William J. Clinton, Madeleine Albright, William S. Cohen, Tony Blair, Robin Cook, George Robertson, Javier Solana, Jamie Shea, Wesley K. Clark, Harold W. German, Konrad Freytag. D.J.G. Wilby, Fabrizio Maltinti, Giuseppe Marani, Daniel P. Leaf, Jean Chrétien, Lloyd Axworthy, Arthur Eggleton, Jean-Luc Dehaene, E. Derycke, J.-P. Poncelet, Vaclav Havel, J. Kavan, V. Vetchy, Poul Nyrup Rasmussen, N.H. Petersen, H. Haekkerup, Jacques Chirac, Lionel Jospin, H. Védrine, Alain Richard, Gerhard Schröder, J. Fischer, R. Scharping, Kostas Simitis, G. Papandreou, A. Tsohatzopoulos, Viktor Orban, J. Martonyi, J. Szabo, David Oddsson, H. Asgrimsson, G. Palsson, Massimo D'Alema, L. Dini, C. Scognamiglio, Jean-Claude Juncker, J. Poos, Alex Bodry, Willem Kok, J. van Aartsen, F.H.G. de Grave, Kjell Magne Bondevik, K. Vollebæk, D.J. Fjærvoll, Jerzy Buzek, B. Geremek, J. Onyszkiewicz, Antonio Manuel de Oliveira Guterres, J.J. Matos da Gama, V. Simão, Jose Maria Aznar, A. Matutes, E. Serra Rexach, Bulent Ecevit, I. Cem and H. S. Turk.

NOTICE OF THE EXISTENCE OF INFORMATION CONCERNING SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW WITHIN THE JURISDICTION OF THE TRIBUNAL;

REQUEST THAT THE PROSECUTOR INVESTIGATE NAMED INDIVIDUALS FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND PREPARE INDICTMENTS AGAINST THEM PURSUANT TO ARTICLES 18.1 AND 18.4 OF THE TRIBUNAL STATUTE.

WHEREAS the 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 was established by the UN Security Council with "the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of" its Statute (Article 1);

AND WHEREAS by Article 2 of the said Statute, the Tribunal has the power "to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949,

namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention" including the following:

(a) wilful killing; (c) wilfully causing great suffering or serious injury to body or health; (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

AND WHEREAS by Article 3 of the said Statute, "the International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

(a) employment of poisonous weapons or other weapons to cause unnecessary suffering; (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings; (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science.

AND WHEREAS by Article 6 of the said Statute "the International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute;"

AND WHEREAS Article 7 of the said Statute provides for individual criminal responsibility thus:

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime. 2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility or mitigate punishment. 3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. 4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

AND WHEREAS Article 8 of the said Statute provides that the territorial and temporal jurisdiction of the Tribunal "shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991;"

AND WHEREAS by Article 9 of the said Statute "the International

Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of
international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991" but the International Tribunal "shall have primacy over national courts;"

AND WHEREAS Article 18 of the said Statute provides inter alia that:

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.
2. The Prosecutor shall have the power to question
suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.
4. 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. The indictment shall be transmitted to a judge of the Trial Chamber.

AND WHEREAS the President of the Tribunal, Judge Gabrielle Kirk McDonald, in a press release of April 8, 1999, urged that:

All States and organisations in possession of information pertaining to the alleged commission of crimes within the jurisdiction of the Tribunal should make such information available without delay to the Prosecutor.

AND WHEREAS on April 30 in Geneva the United Nations High Commissioner for Human Rights Mary Robinson in a speech to the Commission cited a letter from the Prosecutor in which the Prosecutor
stated: The actions of individuals belonging to Serb forces, the Kosovo Liberation Army (KLA), or NATO may ¼ come under scrutiny, if it appears that serious violations of international humanitarian law have occurred.

AND WHEREAS High Commissioner Robinson also stated in her speech:

In the NATO bombing of the Federal Republic of Yugoslavia, large numbers of civilians have incontestably been killed, civilian installations targeted on the grounds that they are or could be of
military application and NATO remains sole judge of what is or is not acceptable to bomb¼In this situation, the principle of proportionality must be adhered to by those carrying out the bombing campaign. It surely must be right to ask those carrying out the bombing campaign to weigh the consequences of their campaign for civilians in the Federal Republic of Yugoslavia.

AND WHEREAS NATO has carried out between 5,000 and 10,000 bombing missions over the territories of the former Yugoslavia since March 24, 1999;

AND WHEREAS NATO leaders have openly admitted targeting civilian infrastructure as well as military targets;

AND WHEREAS the list of targets has included fuel depots, oil refineries, government offices, power stations and communications links, such as roads, tunnels, bridges and railway links, including those not inside the region of, or in the vicinity of, Kosovo;

AND WHEREAS in addition to these deliberate attacks on civilian infrastructure and objects, there have been a great number of attacks which have caused direct physical harm and death to civilians;

AND WHEREAS it appears that these bombing missions have directly caused the death of approximately 1,000 civilian men, women and children and serious injury to 4,500 more;

AND WHEREAS instances of this nature include the 12 April bombing of a train travelling from Belgrade to Ristovac as it crossed the bridge spanning the Yuzhna Morava river at the Grdelica gorge, killing at least 10 passengers and wounding 16; the 15 April bombing of a refugee convoy in four separate locations along a 12 mile stretch of the road that runs from Prizren to Djakovica, killing approximately 74 people; the 23 April bombing of Serbian Television editorial offices, killing approximately 15 people; the 27 April bombing of a residential district in Surdulica, killing 16 people including 12 children; and the May 1 bombing of a bus on the Luzan bridge in Kosovo killing at least 34 people including 15 children;

AND WHEREAS, though the above-named NATO leaders have claimed that these incidents were accidents, they have also admitted that they were an inevitable result of their bombing strategy, a strategy which they appear to have continued unmodified and even to have intensified throughout these incidents;

AND WHEREAS there is ample evidence in the public statements of NATO leaders that these attacks on civilian targets are part of a deliberate attempt to terrorize the population to turn it against its leadership;

AND WHEREAS the NATO bombing has done an estimated $100 billion dollars in property damage and completely destroyed or seriously damaged dozens of bridges, railways and railway stations, major roads, airports, including civilian airports, hospitals and health care centres, television transmitters, medieval monasteries and religious shrines, cultural-historical monuments and museums, hundreds of schools, faculties and facilities for students and children, thousands of dwellings and civilian industrial and agricultural facilities;

AND WHEREAS refineries and warehouses storing liquid raw materials and chemicals have been hit causing environmental contamination and exposing the civilian population to the emission of poisonous gases;

AND WHEREAS the NATO bombings have also made use of weapons

banned by international convention, including cruise missiles utilizing depleted uranium highly toxic to human beings;

AND WHEREAS credible detailed reports of the civilian death and destruction inflicted by the NATO bombing are attached as an Annex to this Notice;

AND WHEREAS THEREFORE there is abundant evidence that many instances of serious violations of international humanitarian law within the jurisdiction of the Tribunal have been committed by NATO forces in the attack on Yugoslavia commencing March 24 and continuing to this day;

AND WHEREAS this evidence is readily available to the Prosecutor in eyewitness, videotaped, televised and publicly broadcast reports, in press reports and on the Internet, and in the evidence presented by the Federal Republic of Yugoslavia in its current complaint against the NATO countries before the International Court of Justice;

AND WHEREAS all of the above-named persons, Heads of State and Government of the 19 NATO countries, their Foreign Ministers and Ministers of Defence, and officials and military leaders of NATO, have admitted publicly to having agreed upon and ordered these actions, being fully aware of their nature and effects;

AND WHEREAS the above-named persons have acted in open violation of the United Nations Charter, which provides in so far as is relevant:

Article 2 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Article 33 1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. Article 37 1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council. 2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 39 The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 41 The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42 Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 51 AND WHEREAS the NATO bombing has done an estimated $100 billion dollars in property damage and completely destroyed or seriously damaged dozens of bridges, railways and railway stations, major roads, airports, including civilian airports, hospitals and health care centres, television transmitters, medieval monasteries and religious shrines, cultural-historical monuments and museums, hundreds of schools, faculties and facilities for students and children, thousands of dwellings and civilian industrial and agricultural facilities;

AND WHEREAS refineries and warehouses storing liquid raw materials and chemicals have been hit causing environmental contamination and exposing the civilian population to the emission of poisonous gases;

AND WHEREAS the NATO bombings have also made use of weapons banned by international convention, including cruise missiles utilizing depleted uranium highly toxic to human beings;

AND WHEREAS credible detailed reports of the civilian death and destruction inflicted by the NATO bombing are attached as an Annex to this Notice;

AND WHEREAS THEREFORE there is abundant evidence that many instances of serious violations of international humanitarian law within the jurisdiction of the Tribunal have been committed by NATO forces in the attack on Yugoslavia commencing March 24 and continuing to this day;

AND WHEREAS this evidence is readily available to the Prosecutor in eyewitness, videotaped, televised and publicly broadcast reports, in press reports and on the Internet, and in the evidence presented by the Federal Republic of Yugoslavia in its current complaint against the NATO countries before the International Court of Justice;

AND WHEREAS all of the above-named persons, Heads of State and Government of the 19 NATO countries, their Foreign Ministers and Ministers of Defence, and officials and military leaders of NATO, have admitted publicly to having agreed upon and ordered these actions, being fully aware of their nature and effects;

AND WHEREAS the above-named persons have acted in open violation of the United Nations Charter, which provides in so far as is relevant:

Article 2 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security;

AND WHEREAS the International Court of Justice has stated in ruling against United States intervention in Nicaragua:

In any event, while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with de mining of ports, the destruction of oil installations, or again with de training, arming and equipping of the contras.

(CASE CONCERNING THE MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST NICARAGUA (NICARAGUA v. UNITED STATES OF AMERICA) (MERITS) Judgment of 27 June 1986, I.C.J. Reports, 1986, p.134-135, paragraphs 267 and 268)

AND WHEREAS the above-named persons, Heads of State and Government of the 19 NATO countries, their Foreign Ministers and Ministers of Defence, and officials and military leaders of NATO have acted in open violation of the NATO Treaty which provides in so far as is relevant:

Article 1 The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

Article 7 This Treaty does not affect, and shall not be interpreted as affecting in any way the rights and obligations under the Charter of the Parties which are members of the United Nations, or the primary responsibility of the Security Council for the maintenance of

international peace and security;

AND WHEREAS the above-named persons have acted in open violation of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, which provides as follows:

NEXT

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THE HAGUE, Netherlands (AP) - A group of independent lawyers pressed the Yugoslav war crimes tribunal Wednesday to investigate allegations that NATO committed war crimes in the bombing campaign against Yugoslavia.

Chief prosecutor Louise Arbour met privately with lawyers from Britain, Canada, Greece and Switzerland to discuss evidence they claimed showed that the alliance violated ``international criminal law in causing civilian death, injury and destruction'' in bombing that began March 24.

The tribunal has focused its actions so far on the behavior of Yugoslav forces and the country's leaders, indicting President Slobodan Milosevic and four senior associates. But U.N. court has made it clear it also will evaluate the credibility of any evidence implicating the Western military alliance.

``No person is excluded from the authority of the tribunal,'' tribunal spokesman Paul Risley said.

Arbour and the lawyers discussed the formal launching of an investigation, Risley said. He did not elaborate on what kind of evidence, if any, the tribunal might have in hand.

The group made the presentation on behalf of unspecified peace groups, the Movement for the Advancement of International Criminal Law in Britain, and the American Association of Jurists.

Included in the presentation were allegations against President Clinton, Britain's Prime Minister Tony Blair and NATO Secretary-General Javier Solana.

``We have plenty of compelling evidence of war crimes committed by the bombing of Yugoslavia,'' said one of the lawyers, Alexander Lykourezos of Greece.

He said the charges involved ``the mass destruction of the civil infrastructure and general destruction of country'' and specifically stemmed from the bombing of bridges and a building that housed Serbian television.

The meeting came as the tribunal prepared to send its investigators for the first time into Kosovo along with a peacekeeping force. The investigators will be gathering evidence of Yugoslav war crimes to buttress reports from refugees of widespread murder, rape and plundering.

An accord reached in Germany on Tuesday gives the tribunal safe and swift access to Kosovo once the peacekeepers can remove mines and booby-traps left behind by departing Serb forces.

There was no immediate reaction from NATO.

It appeared unlikely the tribunal would do any more than the World Court, which last week dismissed as unfounded Belgrade's contentions that the NATO bombing raids amounted to a genocidal campaign.

Earlier Stories

- Tribunal Ready To Move Into Kosovo (June 8)

ICTY

FOR IMMEDIATE RELEASE
JUNE 7, 1999 9:00 A.M.

LAWYERS TO MEET WITH PROSECUTOR OVER WAR CRIMES CHARGES AGAINST NATO

Lawyers from three NATO countries and the American Association of Jurists will meet with Chief Prosecutor Judge Louise Arbour at The Hague on June 9 to discuss charging NATO leaders with war crimes for the way in which they have conducted the war against Yugolsavia.

The three separate complaints, originating from Canada, Greece and the United Kingdom, charge the individual NATO leaders with violations of international criminal law in causing civilian death, injury and destruction in the bombing campaign that started on March 24.

The crimes charged are similar to those for which the Tribunal issued indictments two weeks ago against Serbian authorities, including President Slobodan Milosevic . They include "grave violations of international humanitarian law" including "wilful killing, wilfully causing great suffering and serious injury to body and health, employment of poisonous weapons and other weapons to cause unnecessary suffering, wanton destruction of cities, towns and villages, unlawful attacks on civilian objects, devastation not necessitated by military objectives, attacks on undefended buildings and dwellings, destruction and wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences."

The Tribunal has compulsory jurisdiction over the individual leaders and the offences are punishable with up to life imprisonment.

The lawyers will meet with the Justice Arbour at Tribunal headquarters in The Hague on Wednesday to discuss their charges and to urge her to proceed upon them.

The Canadian complaint charges 67 named individual leaders including American President Bill Clinton, Secretary of State Madeleine Albright, Canadian Prime Minister Jean Chretien, NATO officials Javier Solana, Wesley Clark and Jamie Shea. It was drafted by law professors from Toronto's York University and lawyers with the American Association of Jurists.

The Greek complaint charges "NATO's political and military leaders and all responsible NATO personnel." It was drafted by international lawyer Alexander Lykourezos of Athens and has been signed by more than 1,000 Greek citizens.

The United Kingdom complaint was drafted by international lawyer Glen Rangwala of Cambridge University on behalf of the Movement for the Advancement of International Criminal Law. Its charges are directed against British Prime Minister Tony Blair, Foreign Secretary Robin Cook and Defence Secretary George Robertson.

Details of the complaints can be found at the following web-sites:
http://www.nato-warcrimes.gr/
http://www.jurist.law.pitt.edu/icty.htm/
http://ban.joh.cam.ac.uk/~maicl/

For further information, contact
Mr. Alexander Lykourezos in Athens (tel.: +301-3607913-4; e-mail: lykourez@otenet.gr)

Professor Michael Mandel in Toronto (tel.: 416-736-5039; e-mail: mmandel@yorku.ca)
Mr. Glen Rangwala in Cambridge (tel.: 44-1223-462187; e-mail: gr10009@cam.ac.uk.)
Mr. Alejandro Teitelbaum in Geneva (tel.: 33-4-78-30-87-78; e-mail: Assamjur@aol.com)

April 27, 1999

Her Excellency
Louise Arbour,
Chief Prosecutor,
International Criminal Tribunal for the Former Yugoslavia
Churchillplein 1, The Hague,
Netherlands

Dear Mrs. Arbour:

In my letter of April 8, 1999 to Judge McDonald, I drew attention to the fact that the NATO bombing campaign against Yugoslavia may involve war crimes as defined by the Statutes of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Court. I enclose a copy of my letter to which I regret to say I have not had the favor of reply.

Events over the past days have seen a further expansion of NATO targets to include Serbian TV stations, office buildings and civilian infrastructure. This has already resulted, by NATO's own admission, in tragic "accidents." If I may repeat the salient parts of my letter to Judge McDonald, the Statute of the International Tribunal for the Former Yugoslavia contains multiple articles that may apply to these acts:

Article 2 (a) willful killing; Article 2 (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; Article 3 (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; Article 3 (c) attack or bombardment by whatever means of undefended towns, villages, dwellings or buildings; Article 3 (d) seizure or destruction or willful damage done to institutions dedicated to religion; Article 5 (a) murder; Article 5 (i) other inhumane acts.

Article 7 sets out the scope of individual criminal responsibility establishing that the official position of any accused person, for example a member of NATO forces, shall not relieve such person of criminal responsibility nor mitigate punishment.

These acts may also fall within the scope of the Statute of the International Criminal Court adopted in Rome on July 17, 1998. Article 8 section 2 (b) specifically addresses the topic of attack on civilian targets and of incidental damage. In part this reads:

"For the purpose of this statute 'war crimes' means:

(b) Other serious violations of the laws and customs applicable in international armed conflict within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual citizens not taking direct part in hostilities;

(ii)Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects (emphasis added);

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives."

It should be noted that the statute makes no provision for 'accidents of war,' equipment malfunction, or targeting error.

As the NATO target lists expands to include sites where there is absolute certain pre-knowledge that civilian life will be at risk, my reading of the relevant law is that NATO's actions may well fall within the purview of the ICTY.

I am sure you will agree that for the future credibility of the ICTY it is of paramount importance that the ICTY upholds international law without fear or favor, not just the version in favor with the great powers. I would therefore be grateful for your considered view on this issue.

If, as I expect, you decide that there is a case to be answered here, you may also wish to take action with the NATO authorities to ensure that all relevant evidence with regard to the availability and preservation of targeting decisions and intelligence is available to the ICTY.

Sincerely,

Nikola Kostich
Vice-President and Legal Adviser,
Serbian Unity Congress

Styler, Kostich, LeBell, Dobroski & McGuire
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Van: Despotovic Ruza [despot@wishmail.net]
Verzonden: maandag 28 februari 2000 22:31
Aan: Ruza Despotovic
Onderwerp: Text of the indictment prepared by Ramsey Clark (http://www.iacenter.org/warcri

Text of the indictment prepared by Ramsey Clark.

The List of Charges <http://www.iacenter.org/warcrime/charges1.htm>

The Complaint

This Complaint is presented to end the scourge of war, prevent future violations of fundamental human rights, protect international and national organizations, governments and institutions and to hold those convicted of the violations alleged accountable for their acts.

The Governments, Organizations and Individuals named herein are charged with:

Crimes against Peace, War Crimes, Crimes against Humanity and Other Offenses in Violation of the Principles of the Nuremberg Tribunal (Nuremberg), the Hague Regulations (Hague) and Geneva Conventions (Geneva) and Other International and National Laws;

Grave Violations of the Charter of the United Nations (UN Charter), the North Atlantic Treaty (NAT), other international treaties, International Law, the Federal Constitution and Domestic Laws of the United States, the Basic Laws of Other Nations Including the United Kingdom, the Federal Republic of Germany, Turkey, the Netherlands, Hungary, Italy, Spain and other Governments of NATO members and the Federal Republic of Yugoslavia.

Grave Violations of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Genocide Convention, and Other International Covenants, Conventions, Treaties, Declarations and Domestic Laws named herein.

A. Defendants

1. President William J. Clinton, Secretary of State Madeleine Albright, Secretary of Defense William Cohen and Commanding Generals, Admirals, U.S. personnel directly involved in designating targets, flight crews and deck crews of the U.S. military bomber and assault aircraft, U.S. military personnel directly involved in targeting, preparing and launching missiles at Yugoslavia, the government of the United States personnel causing, condoning or failing to prevent violence in Yugoslavia before and during NATO occupation and Others to be named.

...e United Kingdom, Prime Minister Tony Blair, the Foreign Minister, the Defense ...nister and Commanding Generals, Admirals, U.K. personnel directly involved in designating targets, flight crews and deck crews of the U.K. military bomber and assault aircraft, U.K. military personnel directly involved in targeting, preparing and launching missiles at Yugoslavia, the government of the United Kingdom personnel causing, condoning or failing to prevent violence in Yugoslavia before and during NATO occupation and Others to be named.

3. The Federal Republic of Germany, Chancellor Gerhard Schroeder, the Foreign Minister, the Defense Minister and Commanding Generals, Admirals, German personnel directly involved in designating targets, flight crews and deck crews of the German military bomber and assault aircraft, German military personnel directly involved in targeting, preparing and launching missiles at Yugoslavia, the government of the Federal Republic of Germany personnel causing, condoning or failing to prevent violence in Yugoslavia before and during NATO occupation and Others to be named.

4. The Government of every NATO country that participated directly in the assaults on Yugoslavia with aircraft, missiles, or personnel and Commanding Generals, Admirals, NATO personnel directly involved in designating targets, flight crews and deck crews of the NATO military bomber and assault aircraft, NATO military personnel directly involved in targeting, preparing and launching missiles at Yugoslavia, the governments of the NATO countries' personnel causing, condoning or failing to prevent violence in Yugoslavia before and during NATO occupation and Others to be named.

5. The Governments of Turkey, Hungary, Italy and others who permitted the use of airbases on their territory to be used by U.S., or other military aircraft and missiles for direct assault on Yugoslavia.

6. The North American Treaty Organization (NATO), Secretary General Javier Solano, Supreme Commander, General Wesley K. Clark

7. For Condemnation: Each NATO member that voted to authorize military assaults on Yugoslavia.

B. The Charges

1. Planning and Executing the Dismemberment, Segregation and Impoverishment of Yugoslavia.

The United States, Germany, NATO and other defendants engaged in a course of conduct beginning in, or before 1991 intended to break the Federal Republic of Yugoslavia into many parts, segregate different ethnic, religious and other groups among and within newly balkanized borders, weaken the Slav, Serb, Muslim and other populations by causing and prolonging internal violence and by direct assaults by the United States and certain NATO members. As a consequence Yugoslavia, which had 25 million people in an integrated society and economy, is now comprised of many small nations, the largest of which is Serbia. Defendants intend to divide Yugoslavia until all parts of Yugoslavia have fewer than 5 million people, each to be overwhelmingly of a single ethnic origin and religion, to have severely impaired economies largely dominated by foreign interests, in which two groups, Orthodox Christian Serbs and Muslims suffer severest casualties, most extensive property damage, a vast reduction of productivity now down by three-quarters or more, and a generation of impoverishment.

harter; Declaration on the Inadmissibility of Intervention in the Domestic Affairs of ates and the Protection of their Independence and Sovereignty (Non Intervention Decl.), 1965 USGA Res. 2131.

2 . Inflicting, Inciting and Enhancing Violence between Muslims and Slavs.

The United States and other defendants engaged in a course of conduct beginning in or before 1991, to cause Muslims and Orthodox Christian Slavs to engage in protracted fratricidal violence, in wars of attrition, similar to conflicts in Afghanistan and Chechnya between Muslims and Russian Slavs, which caused death, destruction and division in Bosnia, Kosovo and elsewhere between the groups and dangerous frictions and enmity between two major enemies of the U.S., Slavic peoples and Muslims, in other regions, weakening both. Tactics included both providing and depriving select Muslim groups of arms to attack others, or adequately defend themselves in Bosnia; motivating, training and supplying KLA with arms to attack Yugoslav police and military to seize control of Kosovo during NATO occupation and attack Serbs and others; preventing outside efforts to prevent and control the violence; committing, causing and condoning violence against persons displaced by U.S. and NATO bombing campaigns, and by KLA and Yugoslav police and military ground actions; causing and supporting clashes between Yugoslav military/police/civilian groups and KLA/paramilitary/civilian groups; condoning and failing to prevent assaults on displaced persons returning to and persons who remained in Kosovo, both before and after the NATO/U.S. occupation of Kosovo. In 1999, the U.S. caused the largest numbers of deaths, injuries and destruction by aerial and missile assaults against all elements in the population and its life support systems.

UN Charter, Art. 2; Non Intervention Decl.; Resolution on the Definition of Aggression (Res. on Aggression), 1997 UNGA Res. 3314.

3. Preventing and Disrupting Efforts to Maintain Unity, Peace and Stability in Yugoslavia.

From the beginning of its efforts to implement its plans for dismemberment and destruction of Yugoslavia, the U.S. acted to prevent any interference, negotiation, or other efforts within Yugoslavia, or by other nations, leaders, or individuals to prevent the accomplishment of its intended purposes. Its techniques included political, military and economic threats and control of highly publicized peace negotiations much like those at Dayton, Ohio, during the Bosnia struggle, at Rambouillet, France, in 1999, which created an appearance of earnest peace negotiations, but offered Yugoslavia only two choices, agree to foreign military occupation, or expect a devastating military assault.

UN Charter; Non Intervention Declaration; Resolution on Aggression; Pact of Paris 1928, Art I and II.

4. Destroying the Peace-Making Role of the United Nations.

The United States acted and coerced other nations to act to block the United Nations from performing its duties under the UN Charter to prevent conflict, control violence and maintain peace in Yugoslavia in violation of the Charter of the UN and threatening its viability as a international institution capable of maintaining peace and ending the scourge of war.

UN Charter; Non Intervention Decl.; Resolution on Aggression, Pact of Paris 1928, Art I and II.

...sing NATO for Military Aggression against and Occupation of Non-Compliant ...oor Countries.

The United States acted and coerced other nations to act to cause NATO to authorize direct military assaults on Yugoslavia in violation of the UN Charter and the North Atlantic Treaty relying overwhelmingly on U.S. weaponry and military technology and to cause NATO members to provide and finance the majority of the military forces to occupy Kosovo for the foreseeable future thereby employing the wealth and power of the rich former colonial powers of Europe against the poor and defenseless people of Yugoslavia.

United Nations Charter; North Atlantic Treaty 1949, Art. I.

6. Killing and Injuring a Defenseless Population throughout Yugoslavia.

Beginning on, or before March 24, 1999, the United States, without a declaration of war by the Congress, aided and abetted by certain NATO members, including the United Kingdom, Germany, Turkey, Spain and the Netherlands, as well as Hungary, Croatia, Italy and others, commenced a war of missile and aerial bombing assaults, often indiscriminate in its targeting, against the populations of Yugoslavia, intentionally killing and injuring many thousands of Serbs, Albanians, Romas, Muslims, Orthodox Christians, Roman Catholics, foreign nationals throughout Yugoslavia with malice aforethought.

Hague, Art. 22 and 23; Geneva 1949, Art. 19; Nuremberg, Principle VI a, b and c; U.S. Constitution, Art. I, Sec. 8, cl. II.

7. Planning, Announcing and Executing Attacks Intended to Assassinate the Head of Government, Other Government Leaders and Selected Civilians.

The United States planned, announced and carried out missile and aerial bombardment attacks intended to assassinate the Head of Government of Yugoslavia, members of his family, other government leaders and selected civilians to destroy existing government leadership and terrorize it and its closest personal support into submission. *U.N. Charter, Art. 2, Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (Protected Persons Convention); U.S. Army Field Manual 27-10; U.S. Presidential Executive Order 12333 (Ex.Order 12333); Geneva Conventions 1977, Protocol I Additional (Geneva 1977), Art. 48, 51.*

8. Destroying and Damaging Economic, Social, Cultural, Medical, Diplomatic and Religious Resources, Properties and Facilities throughout Yugoslavia.

Beginning on, or before March 24, 1999, the United States, aided and abetted by certain NATO members, including United Kingdom, Germany, Turkey, Spain and the Netherlands and others including Croatia, Hungary and Italy, commenced a systematic missile and aerial bombing assault on resources, properties and economic, social, cultural, medical, diplomatic and religious facilities intentionally destroying and damaging them throughout Yugoslavia to crush the productive, economic, social, cultural, diplomatic and religious viability of the whole society.

Hague, Art. 22 and 23; Geneva 1949, Art. 19; Geneva 1977, Protocol I, Additional, Art. 48, 52, 53; UN Charter, Art. 2; Protected Persons Convention; U.S. Army Field Manual 27-10; Exec. Order 12333; Geneva 1977, Art. 48, 51; ICESCR.

9. Attacking Objects Indispensable to the Survival of the Population of Yugoslavia.

eginning on or before March 24, 1999, the United States, aided and abetted by others, for the specific purpose of depriving the population of Yugoslavia of food, water, electric power, food production, medicines, medical care and other essentials to their survival, engaged in the systematic destruction and damage by missiles and aerial bombardment of food production and storage facilities, drinking water and irrigation works for agriculture, fertilizer, insecticide, pharmaceutical, hospitals and health care facilities, among other objects essential to human survival.

Hague 1907, Art. 22 and 23; Geneva 1949, Art. 19; Nuremberg 1970, Principles Via, b and c; Geneva 1977, Art. 48, 54.

10. Attacking Facilities Containing Dangerous Substances and Forces.

The United States attacked chemical plants and storage facilities, petroleum and natural gas refining, processing and storage facilities, fertilizer plants and other facilities and locations for the specific purpose of releasing and scattering toxic, radioactive and other dangerous substances and forces into the atmosphere, soil, ground water and food chain to poison the environment and injure the population.

Nuremberg Principle VI, Hague, Art. 22 and 23, Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, Geneva 1925 (Poisonous Substances Protocol); Geneva 1977, Protocol I Additional, Art. 48, 51, 56.

11. Using Depleted Uranium, Cluster Bombs and Other Prohibited Weapons.

The United States used prohibited weapons capable of mass destruction and inflicting indiscriminate death and suffering against the population of all Yugoslavia. Despite knowledge of its deadly long-term effect on life and warnings of the U.S. Nuclear Regulatory Commission, the U.S. attacked Yugoslavia with depleted uranium missiles, bombs and bullets. These depleted uranium weapons spread radioactive matter into the atmosphere, soil, ground water, food chain and solid objects, placing the Yugoslav population at risk of death, genetic damage, cancers, tumors, leukemia and other injuries for generations. Cluster bombs were used extensively, spraying deadly razor sharp metal shards over wide areas against hospitals, churches, mosques, schools, apartment developments and other heavily populated places inflicting death, injury and property damage. The use of other illegal weapons is under continuing investigation.

Hague, Art. 22 and 23, Geneva 1977, Art. 48, 51, 54, 55, POONA Indictment for the Subversion of Science and technology 1978 (POONA Indictment).

12. Waging War on the Environment.

The United States aerial and missile assault intentionally created a widespread, long-term and severe environmental disaster in Yugoslavia. Air pollution from overflights alone multiplied normal impurities in the atmosphere. Thousands of tons of explosives unleashed enormous quantities of chemicals into the air, raised clouds of dust and debris from places hit and started fires that often raged for days. Chemical, petrochemical, oil and gas refinery, storage and transmission facilities purposely targeted in the vicinity of Belgrade, Novi Sad, Nis and other major cities exposed huge populations to dangerous and noxious pollution. Depleted uranium scattered across Kosovo and the remainder of Serbia will threaten life for generations.

Hague, Art. 22 and 23; Geneva 1977, Art. 48, 51, 54, 55; Stockholm Declaration of the United Nations Conference on the Human Environment 1972; Principles I, II, (UN Conf. on Human Environment), et al.

13. Imposing Sanctions through the UN that Are a Genocidal Crime against Humanity to Achieve Impoverishment and Debilitation of the People of Yugoslavia.

The United States began an economic attack on Yugoslavia designed to break it up politically and tear it down economically before 1989. It caused the International Monetary Fund (IMF) to use its strongest shock therapy to attack Yugoslav productivity, add to its foreign debt burden and expose national wealth to foreign capital by forcing removal of trade barriers and privatizing vital public industry, commerce, utilities and facilities. In May 1991 U.S. Secretary of State Baker stopped all U.S. aid programs to all six Yugoslav Republics and vetoed future IMF credits, creating an enormous economic incentive and powerful political argument for political opposition to Belgrade to separate other Republics from Serbia. The U.S. forced UN sanctions against Yugoslavia, but relieved Republics that seceded from Yugoslavia of sanctions. Such sanctions devastated the entire economy of Yugoslavia to the degree that a normal growth rate free of U.S. coercion would require 30 years to return Yugoslavia to its 1989 levels of productivity. Per capita production value for all six Republics of Yugoslavia in 1989 was $6220. Today for Serbia and Montenegro, the remaining Republics of Yugoslavia, it is $1510. Ninety percent of all trade was among the six republics before the break-up. All former republics have suffered economically, but Yugoslavia now, with barely 40% of its 1990 population, including Kosovo, has had a far greater decline economically than the favored northern Republics of Slovenia and Croatia, which are today more overwhelmingly Roman Catholic than before their secession. The sanctions against Yugoslavia continue and Serbia, excluding Kosovo, is barred from receiving any planned reparations and aid to rebuild from bomb damage and economic attrition. The sanctions have had a far more damaging effect on life, health, the economy and the quality of life in Yugoslavia than the military assault, increasing death rates, lowering life expectation, reducing nutrition and health care and driving production down. As in Iraq, and elsewhere, the sanctions are an economic crime, a crime against humanity and genocide.

Nuremberg, Principle VI c, Crimes Against Humanity; Genocide Convention; Geneva 1977, Art. 48, 54, 55.

14. Creating an Illegal Ad-Hoc Criminal Tribunal to Destroy and Demonize Serb Leadership.

The United States acting through defendant Madeleine Albright coerced the UN Security Council to create ad hoc criminal tribunals for Yugoslavia and Rwanda in violation of the UN Charter to destroy and demonize enemy leaders in those two countries and threaten leaders elsewhere. The UN Charter does not authorize creation of criminal tribunals. The U.S. strongly opposes the International Criminal Tribunal treaty approved by 120 nations at Rome in July 1998 and in the process of ratification by nations now, because it does not intend to subject its leaders or military forces to the jurisdiction of an independent international Court and the rule of international law. By targeting individual enemies in ad hoc courts and charging them with genocide, it achieves their isolation internationally, pressures their own countries to remove them from power, corrupts and politicizes justice and uses the appearance of neutral international law to adjudicate and punish enemies as war criminals and establish itself as an innocent champion of justice.

UN Charter, Statute of the International Court of Justice (Statute ICJ); UDHR; ICCPR.

15. Using Controlled International Media to Create Support for U.S. Assaults Anywhere and to Demonize Yugoslavia, Slavs, Serbs and Muslims as Genocidal Murderers.

The United States defendants have systematically controlled, directed, manipulated, misinformed and restricted press and media coverage concerning Yugoslavia and the U.S.

...ults on it to gain public support for the massive bombardment of a defenseless ...ugoslavia, including Kosovo, as had been done in Libya, Iraq, Afghanistan, Sudan and elsewhere. The international media has supported and celebrated U.S. political goals of further fragmentation of Yugoslavia and other areas, segregating each region; demonizing selected government officials, other leaders, generals, military officers and soldiers as genocidal murderers; controlling other nations by the threat of popularly supported missile and air assaults and crippling economic sanctions and stimulating acceptance and support from the U.S. public for future operations against other nations and to increase military budgets to support an expanding global role for U.S. military presence and control.

16. Establishing the Long-term Military Occupation of Strategic Parts of Yugoslavia by NATO Forces.

The United States has coerced defendant NATO members and others to provide and support military occupation forces for the occupation of Kosovo, as it did in Bosnia, in order to physically control key parts of Yugoslavia to enforce permanent separation and segregation of States and peoples, to further injure the populations, to create barriers to immigration from Asia Minor, Arab states in the Middle East, North Africa, and former southern republics of the USSR, and elsewhere; to provide a buffer between Europe and the regions described by controlling the territory of divided, segregated and impoverished Slavs, Serbs, Orthodox Christians, Albanians, and others; to exploit the resources of the region; and to prepare and condition NATO members for future participation against other nations.

UN Charter; NAT, Art. I; Non Intervention Decl.

17. Attempting to Destroy the Sovereignty, Right to Self Determination, Democracy and Culture of the Slavic, Muslim, Christian and Other Peoples of Yugoslavia.

The United States has attempted to destroy the Sovereignty of Yugoslavia, the rights of its people to self determination, the democratic institutions it has developed and its culture that defines the heritage, values and traditions of its people. The United States overthrew the democratically elected Mossadegh administration in Iran in 1953, which it replaced with the Shah of Iran, who ruled absolutely for 25 years; the democratically elected Arbeny government of Guatemala, which was followed by 40 years of brutal governments; the democratically elected Lumumba government of the Congo in 1962, which was followed by the violent dictatorship of Mobutu Sese Seko for 32 years; the democratically elected Allende government of Chile, which promised health, education, social and economic justice, which was replaced by a reign of terror and military dictatorship under General Pinochet now sought by Spain and other nations for human rights violations. Popularly elected leaders in Vietnam, Pakistan, the Philippines, Panama, Haiti and elsewhere were replaced by U.S. surrogates. The U.S. has opposed, assaulted and blockaded Cuba and its people for 40 years. The UN General Assembly voted 155 to 2 to condemn the U.S. for its blockade of Cuba in December 1998. The U.S. has maintained repressive governments on five continents in too many countries to name; all seeking to destroy the cultures that define the people, their history, character, values, arts, literature, music, with commercially exploitative products having no substantive worth and one overriding purpose — profits from the poor. A goal of U.S. policy is to entrench the belief that only one system works, capitalism, that only one culture has value, that of the U.S. and western European, and that history will end with the globalization of U.S. culture.

UDHR; ICCPR; ICESCR.

18. The Purpose of the U.S. Actions Being to Dominate, Control and Exploit Yugoslavia, Its People and Its Resources.

The long term purpose of all the acts complained of is to dominate, control and exploit the

...r nations of the world and the poor people of the U.S. and other rich countries to further ...nrich and empower concentrations of wealth and neutralize the whole population of poor, overwhelmingly darker skinned people with fear, powerlessness, poverty, bread and circus.

19. The Means of the U.S. Being Military Power and Economic Coercion.

The United States with a near monopoly on nuclear weapons, military aircraft, missiles, advanced armored vehicles, firepower, equipment, and highly sophisticated technology continuously expands its physical power to destroy, expending more on its military power than the rest of the UN Security Council members combined. This year, U.S. military expenditures will be near 300 billion dollars. The demonized People's Republic of China will spend 34 billion dollars, acquiring far less in destructive power for each dollar. The U.S. sells more destructive arms to other governments and groups seeking to overthrow governments than the rest of the arms selling countries combined. Often the intention is that they "kill each other," a preferred means of achieving domination. The U.S. does not sell arms it cannot destroy without incurring significant casualties. The U.S. uses its enormous economic power to coerce foreign governments to comply with its wishes, without regard to the interests of the people of those foreign countries. The threat of economic sanctions alone coerces countries to meet U.S. demands contrary to their sovereignty and self-interest.

C. Relief Sought

1. Freedom for all Balkan peoples to form a federation of their choice to provide political, civil, social, economic and cultural independence and viability for all the peoples of the region.

2. Comprehensive efforts to create mutual respect, common interests and bonds of friendship among and between Muslims, Slavs and all national, ethnic and religious groups in the Balkans.

3. Strict prohibition on all forms of foreign interference with or disruption of efforts to establish unity, peace and stability in the Balkans.

4. Restoration of peace-making functions of the UN and reform of the UN to make it effective.

5. The abolition of NATO.

6. Full accountability by individuals and governments for criminal and other wrongful military assaults and economic injustice, including sanctions inflicted on all the people of Yugoslavia, their lives, resources, properties and environment to include criminal prosecutions and reparations sufficient to place all the population in the condition it would be in had it not suffered the wrongs inflicted on it, together with resources with which to build a better future of the peoples' choice.

7. Abolition of the illegal ad hoc international criminal tribunal for Yugoslavia and reliance on a legal international tribunal of worldwide non-discriminatory jurisdiction capable of equal justice under the law.

8. Providing adequate media access to inform the world of the human destructiveness of the use of high technology weapons by the U.S. against poor and defenseless people and the practice of genocide by sanctions.

emoving all foreign troops from the Balkans at the earliest feasible moment and U.S. roops from NATO countries and elsewhere immediately.

roader range of relief and reform may be found in Chapter 12 of *The Fire This Time*. It is rawn from the experiences and recommendations of the Commission of Inquiry and the International War Crimes Tribunal, which heard evidence in 20 countries concerning the assault on Iraq in 1991, the continuing assaults on Iraq thereafter and the genocidal sanctions that continue to this day.

Scope of the Inquiry

The Commission of Inquiry will focus on U.S. criminal conduct, aided and abetted by NATO, because of the dominant U.S. role in the military and other wrongful acts against Yugoslavia. The U.S. did not incur a single casualty to itself while causing thousands of deaths in Yugoslavia. The U.S. is also the focus because of the peril of continuing U.S. conduct to all the people of Yugoslavia and the risk of aerial and missile strikes against other nations in view of its recidivist record.

The Commission of Inquiry will seek and accept evidence of criminal acts by any person or government, related to the conflict, because it believes international law must be applied uniformly. It believes that "victors' justice" is not law, but the extension of war by force of the prevailing party. U.S. propaganda and international media coverage demonized Yugoslavia, its leadership, Serbs and Muslims to fit its purposes, but rarely noticed the criminal destruction of Yugoslavia by U.S. acts as set forth in this complaint.

Comprehensive efforts to gather and evaluate evidence, objectively judge all the conduct that constitutes crimes against peace, war crimes and crimes against humanity and to present these facts for judgment to the court of world opinion requires that any serious fair effort focus on the United States. The Commission of Inquiry believes its focus on U.S. criminal acts is important, proper, and the only way to bring the whole truth, a balanced perspective and impartiality in application of legal process to this great human tragedy.

Ramsey Clark

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initial inquiry program <http://www.iacenter.org/warcrime/progtrib.htm>

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www.iacenter.org/iacaction.htm> <http://www.iacenter.org/depleted/du.htm>

Minister: volkenrecht vernieuwen

DEN HAAG, 18 MEI. Minister van Buitenlandse Zaken Van Aartsen pleitte vanmorgen bij de opening van de tweedaagse internationale conferentie ter herdenking van de Eerste Haagse Vredesconferentie voor modernisering van het volkenrecht. De minister wil dat er een „handzaam instrumentarium" ontstaat om iets te kunnen doen aan mensenrechtenschendingen in een land waarbij de „schendende" staat zich beroept op zijn soevereiniteit. Juristen zouden dat moeten oppakken.

De conferentie werd geopend door oud-minister van Buitenlandse Zaken Van Mierlo. Koningin Beatrix woonde de openingsceremonie bij, honderd jaar nadat haar grootmoeder koningin Wilhelmina op 18 mei 1899 de Vredesconferentie opende in Huis ten Bosch.

Van Mierlo begroette VN-secretaris-generaal Kofi Annan: „Aan uw organisatie is veel toevertrouwd van het erfgoed" van de Eerste Haagse Vredesconferentie.

Annan ziet de VN op een „gevaarlijk pad", nu de NAVO-landen zonder expliciete toestemming van de Veiligheidsraad zijn overgegaan tot militaire actie tegen Joegoslavië, ook al was die „nodig" door de massale schendingen van de mensenrechten in Kosovo.

De Ghanees betreurt dat er tot nu toe geen eensgezindheid is bereikt in de Veiligheidsraad over Kosovo: „Als de Raad het niet eens wordt, zullen wij de ideeën verraden die de oprichting van de VN hebben geïnspireerd." (ANP)

-Domenico Gallo -

Un aspect collatéral de l'agression de la OTAN: Les sanctions de l'Union Européenne.

La parabole des sanctions UE, de la prévention de la guerre à la punition collective des vaincus. Aspects politiques et légaux.

1. La politique étrangère et de sûreté de l'Union Européenne: objectifs, structures et instruments.

1. a) Les objectifs fondamentaux de l'Union.

Dans son processus de transformation de Communauté économique à Union politique,
l'UE s'est proposée, par le Traité de Maastrich de 1992, deux objectifs fondamentaux, confirmés par le Traité d'Amsterdam de 1997:

a) fortifier la cohésion économique-sociale à travers l'instauration d'une Union économique et monétaire qui conduit à l'adotion d'une monnaie unique;
b) définir une identité de l'Europe sur la scène internationale, grâce à la réalisation d'une politique étrangère et de sûreté commune, dans la perspective de parvenir à une défense commune.

La partie la plus importante du premier objectjf a été certainement atteinte avec succès. La naissance de l'EURO, le premier janvier 1999, marque un pas décisif en avant dans le processus de transformation d'une Communauté économique dans une Union de plus en plus étroite d'États. Bien qu'on ne puisse pas dire que la naissance de l'Euro a renforcé la cohésion économique et sociale, car les déséquilibres entre les différentes zones de développement économique et les facteurs de crise sociale ne se sont pas atténués, toutefois il n'y a pas de doute que la monnaie unique transforme plus d'États assimilés dans un marché unique, dans un nouvel organisme, un nouveau sujet dans les relations économiques, politiques, internationales.
Celle qui au contraire a du mal à s'affirmer, c'est juste l'identité de ce nouveau sujet, c'est-à-dire l'identité de l'Europe sur la scène internationale, celle qui devrait émerger de la réalisation d'une politique étrangère et de sûreté commune.
Il est vrai que l'Europe, dans ce processus de construction de sa propre identité internationale, a dû affronter ses premiers pas en se comparant avec une crise internationale, c'est-à-dire celle qui est née de la dissolution de la ex-Yougoslavie, de laquelle toutes les Organisations internationales sont sorties battues et discréditées, ainsi que l'ONU, l'OSCE et les différentes Conférences internationales de paix. Et pourtant les pas réalisés par l'Europe dans cette direction ont été incertains et contradictoires avec les buts imposés par les traités et par le droit communautaire, et les instruments utilisés se sont révélés insuffisants et à effet contraire. Cela est arrivé jusqu'au point d'empêcher pas seulement l'affirmation de l'identité de l'Europe sur la scène internationale, mais en plus de mettre en discussion, devant la prépondérante influence de la OTAN et des États Unis, l'existence même d'une identité européenne distinguée et séparée par rapport à celle des États Unis d'Amérique. Il suffit de penser à un instrument de grande valeur pour l'action étrangère de l'Europe, ainsi que le personnage du Haut représentant pour la politique étrangère et de sûreté commune, institué par le Traité d'Amsterdam de 1997, (nommé aussi le Ministre des Affaires Étrangères de l'Europe, ou Monsieur PESC), qui, à présent, est représenté par l'ex secrétaire de la OTAN, c'est-à-dire par une personne qui nous rend difficile de comprendre s'il représente vraiment l'Europe ou plutôt les conditionnements exercés sur l'Europe par les États Unis.

1. b) La politique étrangère et de sûreté commune: objectifs, instruments et procédures.

À ce point-là il est nécessaire de donner un bref aperçu sur les objectifs, les instruments juridiques et opérationnels et les procédures qui caractérisent la Politique étrangère et de sûreté commune de l'Union (PESC).

La capacité étrangère de l'Union représente le soi-disant IIème pilier sur lequel se base la construction européenne. L'art. 11 du TUE prévoit que l'Union " *établit et réalise une politique étrangère et de sûreté commune, dont les objectifs sont les suivants:*

- *défense des valeurs communes, des intérêts fondamentaux, de l'indépendance et de l'intégrité de l'Union en conformité avec les principes de la Charte des Nations Unies,*
- *renforcement de la sûreté de l'Union dans tous ses formes;*
- *maintien de la paix et renforcement de la sûreté internationale en conformité avec les principes de la Charte des Nations Unies, ainsi qu'avec les principes de l'acte final de Helsinki et les objectifs de la Charte de Paris, y compris ceux concernant les frontières étrangères;*
- *promotion de la coopération internationale;*
- *développement et consolidation de la démocratie et de l'État de droit, ainsi que du respect des droits de l'homme et des libertés fondamentales."*

Pour atteindre ces objectifs l'Union prend:

a) des stratégies communes;
b) des actions communes;
c) des positions communes.

Les *stratégies communes* sont décidées par le Conseil Européen à l'unanimité. Le Conseil Européen doit définir aussi les principes et les orientations généraux de la politique étrangère et de sûreté commune.

Le Conseil adopte les *actions communes*. Les actions communes lient les États membres dans leurs prises de position et dans la conduite de leur action.

Le Conseil adopte, aussi, les *positions communes*. Les positions communes définissent l'approche de l'Union sur une question particulière de nature géographique ou thématique. Les États membres agissent afin que leurs politiques nationales soient conformes aux positions communes.

Soit les *actions* soit les *positions communes* sont d'habitude adoptées par le Conseil à la majorité qualifiée (pour la délibération ont demande au moins 62 votes en faveur - sur 87 -, exprimés par 10 membres au moins). Toutefois un État membre du Conseil peut déclarer de s'opposer à cause d'importantes et précises raisons de politique nationale. En ce cas-là la décision n'est pas adoptée à la majorité qualifiée et la question peut être remise au Conseil Européen qui décide à l'unanimité (art. 23 TUE). L'art. 301 (ex art. 228 A) du TCE prévoit que, quand *une action commune,* ou bien *une position commune* adoptée dans le cadre de la PESC *prévoient une action de la Communauté pour interrompre ou réduire en partie ou complètement les relations avec un ou plus des pays tiers, le Conseil, en délibérant à la majorité qualifiée, prend les mesures urgentes nécessaires.*

En résumé, la politique étrangère de l'Union Européenne s'article de cette façon.

Le Conseil Européen (qui est l'organe composé par les Chefs d'État et de Gouvernement placé au sommet des Institutions de l'Union) définit les principes et les orientations généraux concernant la politique étrangère et de sûreté et, le cas échéant, adopte des stratégies communes. Donc le Conseil, dans le cadre de ces tendances générales, ou stratégies communes, met au point l'orientation de l'Union en relation à des problèmes précis, en adoptant *une position commune*, ou bien en décidant d'accomplir *une action commune*. Afin de réaliser les *positions communes*, ou bien *les actions communes*, au moins en matière de réduction des relations avec

les pays tiers, le Conseil peut adopter des *Règlements*, c'est-à-dire des actes qui ont valeur de loi et qui ont une immédiate et directe réalisation dans le système de chaque État membre et qui dépassent les lois du pays.

2. La PESC et le conflit dans les Balkans

2.a) Les précédents.

La Communauté économique européenne, même avant l'entrée en vigueur du Traité sur l'Union, est intervenue depuis le début dans le conflit né du processus de dissolution de la ex-Yougoslavie, en adoptant une série de mesures restrictives et de coercition économique à l'égard de la Yougoslavie à partir de 1991. En particulier, l'11 novembre 1991 on avait proclamé le Règlement 3300/91, qui causait la suspension des concessions commerciales prévues par l'accord de coopération et commerce en vigueur entre la Communauté et la Yougoslavie, le Règlement 3301/91 concernant le régime d'importation de quelques produits textiles originaires de la Yougoslavie, et le Règlement 3303/91 qui établissait l'exclusion de ce pays des bénéficiaires du schéma communautaire de préférences tarifaires généralisées pour l'année en cours.
Ces mesures restrictives ont eu sans doute l'effet d'accélérer le processus de dissolution de la RFY désormais en cours, ce qui a rendu, en même temps, la situation présente dans le pays plus complexe et plus difficile à contrôler.
En ce moment il ne nous intéresse que de prendre en considération les mesures prises, à partir de 1998, nous référant à la crise qui s'est développée dans la région du Kosovo.

2.b) Les sanctions adoptées concernant la crise du Kosovo.

L'Union Européenne a élaboré une toile de restrictions, par des actes de différente nature, dans le cadre de la PESC, qui ont un grand impact politique et économique sur la vie civile et sur l'économie yougoslave. Ces dispositions naissent d'une série de *positions communes*, à la suite desquelles des Règlements ont été promulgués par le Conseil ou la Commission.
Une première Position commune a été définie par le Conseil le 19 mars 1998 (n.240).
Par la **Position Commune n.240/98** on a introduit les dispositions restrictives suivantes:

1) confirmation de l'embargo, déjà en vigueur (Position Commune 96/184/PESC) sur la vente des armes;
2) défense de fourniture de n'importe quel équipement utilisable dans les buts de la répression intérieure;
3) blocage à tout soutien financier aux crédits à l'exportation, y compris le financement public aux privatisations;
4) défense de donner des visas aux fonctionnaires publics impliqués dans l'action de répression.

En exécution de cette Position commune on a promulgué le **Règlement n.926/98**, adopté le 27 avril 1998, par lequel on a réalisé les embargos déjà disposés par la position commune.

Le 7 mai 1998 une nouvelle **Position commune (98/326/PESC)**, concernant le blocage des capitaux détenus à l'étranger par les Gouvernements de la République Fédérale de la Yougoslavie et de la République de la Serbie, a été définie par le Conseil. Par une successive **Position commune (98/374/PESC)**, définie le 8 juin 1998, on a disposé l'interdiction de nouveaux investissements en Serbie.
Ces Positions Communes ont trouvé réalisation avec le **Règlement n. 1295/98** du 23 juin 1998 et avec le **Règlement n.160/98** du 25 juillet 1998.

Par une successive **Position Commune (98/426)** l'Union a décidé d'interdire les vols entre la Communauté et la Yougoslavie effectués par les compagnies aériennes yougoslaves. En exécution de cette Décision commune a été promulgué le **Règlement n.1901 adopté le 7 septembre 1998**, qui a interdit les vols effectués par les compagnies aériennes yougoslaves. Ce Règlement a été, par la suite, modifié pour permettre à la compagnie Monténégro Airains de gérer les vols sur charter sous de précises conditions avec le **Règlement n.214 du 25 janvier 1999.**

Le 23 avril 1999 (pendant que la guerre était en plein déroulement) on a pris une **position commune (1999/273/PESC)** concernant l'interdiction de fourniture et de vente du pétrole et des produits pétroliers à la RFJ.
Cette Position a été réalisée par le **Règlement n.900/99** du 29 avril 1999, qui a disposé l'embargo de la vente et de la fourniture des produits pétroliers.
Successivement, le 3 septembre 1999, le Conseil a pris une nouvelle **Position Commune (1999/604/PESC)**, qui a modifié la Position Commune n.273 et qui a introduit une dérogation à l'interdiction des fournitures pétrolières pour le Kosovo et le Monténégro.
Le Règlement n.900/99, à son tour, a été intégré par le **Règlement n.1084/1999**, modifié, sous certains détails, par le **Règlement n.1971/99** de la Commission, promulgué le 15 septembre 1999.
La matière a été l'objet d'une nouvelle discipline avec la promulgation du **Règlement n.2111/99** du 4 octobre 1999, qui interdit la vente et la fourniture du pétrole et de quelques produits pétroliers à quelques parties de la RFY et qui abroge le Règlement n.900/99. Par ce Règlement on a réduit l'interdiction de fourniture du pétrole et des produits pétroliers, en prévoyant que, par un régime d'autorisations, on permettra des fournitures adressées exclusivement au but humanitaire, et on permette les fournitures vers le Kosovo et le Monténégro, à condition que le pétrole et les produits pétroliers ne soient pas transférés vers les autres parties de la République de la Serbie.
Le 22 octobre on a pris une **Position Commune (1999/691/PESC)** sur le soutien aux forces démocratiques dans la République fédérale deYougoslavie, avec laquelle on a approuvé, du reste, le projet *"énergie en échange de la démocratie"*. En exécution de cette Position Commune on a adopté le **Règlement n.242/99** du 15 novembre 1999, avec lequel on a modifié le Règlement n.2111/99 pour permettre les fournitures de pétrole introduites dans le projet *"énergie en échange de la démocratie"*.

Le 10 mai 1999 le Conseil a pris une **Position Commune (1999/318/PESC)**, concernant d'autres mesures restrictives à l'égard de la République fédérale de Yougoslavie, à laquelle s'ensuivit le même jour une **Décision du Conseil (1999/319/PESC)**, par laquelle, en exécution de la Position Commune, on a promulgué une liste de personnes qui étaient défendues d'entrer dans les pays de l'Union. Cette liste a été agrandie par la **Décision du Conseil (1999/357/PESC)**, du 1 juin 1999. Par une autre **Décision du Conseil (1999/612/PESC)**, prise le 13 septembre 1999, on a ultérieurement augmenté la liste des personnes bannies. Enfin par une **Décision du Conseil du 6 décembre 1999 (1999/812/PESC)** on a effectué une autre mise à jour des personnes bannies de l'Union.

Le 21 mai 1999 on a adopté le **Règlement n.1064/99** par lequel on a disposé un embargo généralisé de tous les vols de et pour la Yougoslavie, étendu à tous les transports aériens (donc aux compagnies extra communautaires aussi.
L'11 octobre 1999 on a pris le **Règlement n.2151/99** par lequel on a abrogé le Règlement n.1064, mais on a gardé une interdiction généralisée des vols vers la

Yougoslavie, excepté les vols dirigés dans le Kosovo et le Monténégro, pour lesquels on a prévu un régime d'autorisations, qui continue à exclure la Jat.

Le 15 juin 1999 on a adopté le **Règlement du Conseil n.1294/99** concernant le blocage des capitaux et l'interdiction des investissements à l'égard de la République Fédérale de Yougoslavie et qui abroge les Règlements (CE) **n. 1295/98 et 1607/98.** Ce Règlement contient une discipline détaillée du blocage des fonds du Gouvernement et des entreprises yougoslaves à l'étranger et de l'embargo de tous les déplacements financiers vers les entreprises ou les administrations yougoslaves. Par un successif **Règlement n.1970/99** du 15 septembre 1999 on a modifié une pièce jointe, et par ça on a confirmé la structure des sanctions adoptées par le Règlement n.1294.

Sous le rapport rigoureusement technique, le plus grand défaut des dispositions restrictives prises par l'Union est qu'elles ne prévoient pas une échéance temporelle.
Pour qu'elles puissent être annulées ou modifiées, il est nécessaire, pourtant, selon la nature de la disposition, ou l'unanimité ou la majorité qualifiée.
Il y a donc le risque que pour la Yougoslavie, ainsi que pour l'Iran, les sanctions se prolongent à l'infini. D'ailleurs le prolongement à l'infini des sanctions dénature leur fonction d'instrument de conditionnement, car cette fonction implique une grande élasticité.
Un autre aspect pervers des sanctions est qu'une révocation effectuée de manière discrimiOTANire, favorisant le Monténégro, pourrait contribuer à augmenter le sillon entre Serbie et Monténégro, en favorisant le processus de sécession du Monténégro et en créant les conditions d'une nouvelle guerre.
Toutefois, puisque les sanctions transforment certaines instructions politiques dans les rapports entre les pays en actes de norme juridique, ces actes redonnent sous la règle du droit et doivent donc être pesés et contrôlés selon la logique de cohérence, de bon sens et de proportionnalité, propres du discours juridique.

3. Le fondement juridique des sanctions adoptées par l'UE vis à vis de la RFY.

3.a) Les sanctions au point de vue du droit international.

La question doit être examinée sous deux aspects, celui du droit international et celui du droit communautaire.
Sous l'aspect du droit international, on remarque que la Charte des Nations Unies (art.41) donne au Conseil de Sûreté la responsabilité de décider : « *quelles mesures n'impliquant l'emploi de la force armée, doivent être prises pour donner effet à ses décisions. Celles-ci peuvent comprendre une interruption totale ou partielle des relations économiques et des communications ferroviaires, maritimes, aériennes, postales, télégraphiques, radio-électriques et des autres moyens de communication, ainsi que la rupture des relations diplomatiques* ». Le Conseil de Sûreté peut prendre ces mesures de sanction quand il vérifie l'existence d'une menace à la paix, d'une violation de la paix ou d'un acte d'agression, aux termes du chapitre VII. Les sanctions adoptées par le Conseil de Sûreté obligent tous les États membres, mais elles n'ont pas un effet automatique parce que - comme on sait - pour qu'elles soient réalisées, il faut un ordre d'exécution en conformité avec les procédures constitutionnelles de chaque État membre.
Les sanctions vers les pays tiers, décidées par l'Union Européenne dans le cadre de la PESC, ne créent pas d'usurpation des fonctions réservées au Conseil de Sûreté, parce qu'elles n'ont pas (et elles ne pourraient pas l'avoir) effet erga omnes. Quand l'Union Européenne décrète des sanctions, celles-ci n'obligent que leurs

citoyens et les États membres, qui sont d'accord, à les adopter. Les sanctions éventuellement adoptées par l'UE ne sont pas un problème qui concerne toute la communauté internationale, mais elles concernent les rapports réciproques entre les États de l'UE et l'État tiers objet des sanctions.
Et bien tous les états sont liés les uns aux autres par un tissu connectif de relations économiques et juridiques basées sur des traités, des coutumes internationales, des pratiques consolidées, des accords transfrontaliers, etc. Imposer une réduction artificielle de ces relations pourrait emmener le plus souvent à une déchirure d'accords ou de pratiques internationales juridiquement obligeantes, en contradiction avec le principe fondamental du droit international général:*pacta sunt servanda*.
En réalité le problème des sanctions trouve sa véritable place à l'intérieur du principe *pacta sunt servanda*. Si tous les États doivent respecter les obligations internationales auxquelles ils sont assujettis, soit qu'elles émanent du droit international négocié ou du droit coutumier, il est évident que les États intéressés au respect de ces obligations peuvent réagir aux violations se séparant, à leur tour, des obligations précises auxquelles ils sont liés.
C'est à l'intérieur du principe *pacta sunt servanda* que l'on peut représenter la capacité de l'Union Européenne d'appliquer des sanctions à des États tiers, dans le cas où cela entrainerait la rupture ou la suspension d'obligations juridiquement obligeantes. En ces cas-là les sanctions ne peuvent être adoptées que comme représailles ou comme sanction pour la violation (de la part de l'État tiers) des obligations erga omnes, c'est-à-dire des règles et de principes d'importance fondamentale - ainsi que l'interdiction de faire recours à la force, ou les normes qui imposent le respect de l'autodétermination des peuples ou des droits de l'homme les plus élémentaires - à l'observance desquelles tous les États ont le droit, indépendamment du fait d'être directement et spécifiquement lésés au point de vue matérielle.
Il se dégage de cela que le pouvoir d'imposer des sanctions n'est pas illimité, ni libre dans son but et il est lié à des fondements juridiques dont il faut tenir compte. En particulier il n'est pas concevable l'adoption de sanctions adressées à abattre ou à modifier une particulière forme de gouvernement dans le pays tiers, ou à faire accéder ou exclure un particulier parti politique du Gouvernement de ce pays, parce que cela serait en contradiction avec le principe d'autodétermination des peuples, tel qu'il a été dessiné, surtout selon la Résolution n.2625, approuvée par l'Assemblée Générale des Nations Unies le 24 octobre 1970 et qui contient la *Déclaration sur les principes de droit international concernant les rapports amicaux et la coopération parmi les États selon la Charte des Nations Unies.*

3.b) ...et au point de vue du droit communautaire.

Au point de vue du droit communautaire, les sanctions, ainsi que tous les autres actes mis en place dans le cadre de la PESC sont étroitement liés aux buts qui doivent orienter la politique étrangère et de sûreté commune de l'Union. Ces sont les mêmes buts expressément énumérés dans l'art.11 (ex art. J.!) du Traité sur l'Union.
Pour ce qui concerne la politique à l'égard des BalKans, les buts, auxquels la politique étrangère de l'Union est liée, sont essentiellement deux:

- *le maintien de la paix et le renforcement de la sûreté internationale, conformément aux principes de la Charte des Nations Unies, ainsi qu'aux principes de l'acte final de Helsinki et aux objectifs de la Charte de Paris, y compris ceux qui concernent les frontières extérieures;*
- *développement et affermissement de la démocratie et de l'état de droit, ainsi que respect des droits de l'homme et des libertés fondamentales.*

Ces buts, naturellement, doivent être réalisés dans le contexte du droit international à l'intérieur duquel se développe, sur le plan des relations internationales, l'action de l'Union Européenne. Les principes, donc, du droit international, rappelés ci-dessus, constituent les fondements sur lesquels se posent les objectifs assignés par l'UE à la politique étrangère de l'Union, parce que celle-ci ne pourrait jamais obliger les États membres à des comportements en contradiction avec les obligations internationales prises par les États mêmes. Avec la conséquence que les actes juridiques mis en place en exécution de la PESC doivent dépasser une double condition requise de légitimité: être congrus avec le droit communautaire et il ne doive pas être en conflit avec les principes du droit international communément acceptés.

4. Aspects d'illégitimité des sanctions de l'Union Européenne

Pour évaluer le fondement de légitimité des sanctions données par l'UE il faut les partager en deux périodes. La ligne de partage est déterminée par le début de l'agression de la OTAN, le 24 mars 1999, et de la résolution du Conseil de Sûreté n.1244 du 10 juin 1999 grâce à laquelle on a mi-fin à la guerre et tout le Kosovo a été remis dans les mains d'une administration provisoire des Nations Unies (UNMIK).

Et bien, les sanctions adoptées avant le 24 mars - dans l'abstrait - pouvaient paraître comme des mesures visées à pousser une partie à collaborer avec la Communauté internationale pour trouver une solution pacifique du conflit. Des mesures préventives donc visées à conjurer la guerre, qui rentrent, pourtant, dans les buts de garder la paix et de confirmer non seulement la solidarité internationale, mais aussi les mesures de "enforcing" référant aux obligations *erga omnes* tirées des conventions internationales.

À la lumière des événements successifs, toutefois, il est évident que les pays de l'Union Européenne n'avaient aucune volonté de prévenir ou empêcher la guerre, puisqu'ils ont soutenu l'option de la OTAN de résoudre le conflit à travers la guerre même, en faisant échouer toute possibilité de garder la paix. Et pourtant ces mesures ne peuvent pas être jugées avec l'esprit de l'escalier, mais elles doivent être évaluées dans la situation temporelle et politique à l'intérieur de laquelle elles ont été prises. Dans cette situation-là elles pouvaient - dans l'abstrait - développer une fonction qui rentrait dans les buts du droit communautaire, dans le cadre du droit international.

Les mesures prises pendant le conflit trouvent leur partielle et temporaire justification dans la dureté des événements de guerre.

Ce sont les mesures adoptées et maintenues en vie après le 10 juin 1999 qui constituent le problème.

Par l'acceptation de la Résolution n.1244 la Yougoslavie a retiré toutes ses forces militaires et de police du Kosovo et a remis toute la région dans les mains d'une administration internationale des Nations Unies.

Il est objectivement impossible que ce pays réalise un sacrifice plus grand. Ce sacrifice a été rendu plus amer par les événements successifs qui ont vu l'expulsion du 90% de la population serbe résidant dans le Kosovo, à laquelle la Kfor n'a pas été capable d'assurer la sûreté, devant les vengeances organisées par l'UCK.

Après le 10 juin 1999, après que le problème du Kosovo a été résolu à la racine (au moins dans cette phase) avec la remise de toute la région entière dans les mains d'une administration internationale, après que la vie de la population dans la RFY a été fortement compromise à cause des bombardements de la OTAN, qui ont déchiré le tissu économique et productif, après que la Yougoslavie a dû se charger d'une successive vague de réfugiés provoqués par l'action de la Communauté internationale, les sanctions ont changé de sens et de nature.

D'instrument (ambigu) de prévention de la guerre elles se sont transformées en instrument d'humiliation et de punition collective des vaincus. De cette façon elles sont devenues profondément et radicalement illégitimes, soit sous l'aspect du droit communautaire, soit sous l'aspect du droit international.
Sous l'aspect du droit communautaire, elles n'ont plus aucun rapport avec l'objectif du maintien de la paix ou du renforcement de la sûreté internationale. Au contraire, loin de favoriser une paix véritable, qui ne peut que se fonder sur la réconciliation entre tous les peuples et les États impliqués par la tragédie des Balkans, elles constituent un instrument pour le **maintien de la guerre**, pour la continuation de la guerre avec d'autres moyens.
Elles ne peuvent néanmoins être interprétées comme un instrument adressé au développement et à l'affermissement de la démocratie et de l'état de droit, ainsi qu'au respect des droits de l'homme et des libertés fondamentales. En réalité la catastrophe économique et sociale causée par la guerre et affermie aux sanctions, constitue une situation qui empêche le développement même des droits de l'homme qui sont conçus par les chartes internationales comme des droits incarnés, établis dans un milieu économique et social qui peut les garantir. En particulier, grâce aux Pactes internationaux sur les droits de l'homme (art.11) les États doivent reconnaître à chaque individu le " *droit à un niveau de vie suffisant pour lui-même et sa famille, y compris une nourriture, un vêtement et un logement suffisants, ainsi qu'à une amélioration constante de ses conditions d'existence.*" Ça signifie que chaque État doit en garantir l'exercice à sa propre population et que les autres États ont le devoir de ne pas contrarier cet exercice. Au contraire le maintien et le prolongement des sanctions de la partie de l'Union Européenne constitue un véritable et insurmontable obstacle pour que la RFY garantisse l'exercice des droits sociaux fondamentaux à sa population. En ce cas-là les sanctions contreviennent profondément le but de protection des droits de l'homme que le Traité constitutif donne à la PESC. Dans ce contexte un aspect particulier d'illégitimité sort pour ces mesures, dictées par le projet " énergie en échange de la démocratie", qui créent des discriminations arbitraires, puisqu'elles ne permettent qu'à certaines villes de profiter de l'énergie, sur la base de l'orientation politique des administrations locales. Ces mesures contreviennent un principe constitutionnel sur lequel est fondée soit l'Union, soit la Communauté européenne, le principe de la non-discrimination, que le Traité d'Amsterdam a confirmé et consacré avec l'art.6/A.
Le fait que le prolongement des sanctions soit communément justifié - sous l'aspect politique - par l'exigence de provoquer un changement de gouvernement de la RFY et l'éloignement du pouvoir de l'actuelle classe dirigeante - constitue une évidente reconnaissance de leur caractère antijuridique sous l'aspect du droit international pour la violation soit du principe de l'autodétermination, soit du principe de l'égalité des Nations grandes ou petites, posé par la Charte de l'ONU. L'Union Européenne ne peut pas appliquer en Yougoslavie la doctrine de Breznev de la souveraineté limitée, sans contredire les valeurs, les règles et les principes auxquels le règlement communautaire est inspiré. Du reste l'expérience historique nous apprend qu'il n'est pas possible d'exporter la démocratie avec les bombes et les sanctions économiques, comme il n'est pas possible d'exporter le socialisme avec les chars blindés.

5. Le remède du droit.

Tout le monde sait que la Communauté Européenne est une Communauté fondée sur le droit, sur les principes essentiels de l'État de droit et de la *rule of law*, qui trouvent, d'une manière générale, un accueil soit dans le système juridique communautaire, soit dans les règlements constitutionnels des États membres. La présence dans le règlement communautaire des principes nommés ci-dessus et leur

valeur qui conditionne la solution de n'importe quel problème spécifique d'interprétation ou d'application qui peut naître à son intérieur sont largement reconnus dans la Jurisprudence de la Cour de Justice de la Communauté Européenne. Il vaut rappeler sur tous les autres l'arrêt du 23 avril 1986 (Parti écologiste " les verts" contre Parlement Européen, cause 294/83) dans lequel on affirme:"*La Communauté économique européenne est une communauté de droit au sens que ni les États qui en font partie, ni ses institutions ne peuvent se soustraire au contrôle de la conformité de leurs actes à la charte constitutionnelle de base constituée par le Traité.*"

Cela signifie que tous les actes juridiques adoptés par les institutions et par les organes de la Communauté (qu'il ne s'agit pas de recommandations ou d'opinions) et en particulier tous les actes destinés à produire des effets juridiques vers des tiers, sont exécutables, c'est-à-dire ils peuvent être soumis à un contrôle de légitimité (c'est-à-dire de conformité au droit en vigueur) de la part d'un organe judiciaire indépendant, ainsi que la Cour de Justice.

5. a) Le problème du caractère juridique de la PESC.

Le secteur de la politique étrangère et de sûreté commune, comme nous avons vu, constitue un système de coopération intergouvernementale extérieur à la construction juridique communautaire, bien qu'il fasse partie avec elle-même d'un projet unitaire. C'est pour ça que, nous référant à la PESC, on parle de deuxième pilier (de l'Union Européenne), car le premier pilier est le règlement communautaire.

C'est à cause de sa nature - encore hybride - de système de coopération inter gouvernementale que la PESC est soustraite à la compétence de la Cour de Justice de la Communauté européenne. En effet l'art.46 du TUE (ex art.L) exclut exprès que la Cour a le pouvoir de contrôler les délibérations prises dans le cadre du pôle de la politique étrangère de l'Union. Cela est inévitable, soit parce que les délibérations prises dans le cadre de la politique étrangère ont une prédominante valeur politique et donc, à cause de leur nature, elles ne peuvent pas être soumises à un contrôle de légitimité (comment on pourrait soumettre à un contrôle de légitimité - par exemple - la délibération d'une "stratégie commune"?), soit parce qu'elles se vérifient dans un cadre procédural hors du règlement communautaire. Cependant les tendances et les décisions politiques prises au moment de la PESC, au moins pour ce qui concerne les sanctions économiques, afin d'être attuées et rendues opératoires, il leur faut d'être transfusées dans le règlement communautaire. Le canal de transfusion des délibérations de la PESC dans le règlement communautaire est représenté par l'art. 301 (ex art.228A), introduit par le Traité de Maastricht dans le TCE, qui - comme nous avons vu - prévoit la transformation d'une *action commune ou position commune* en actes juridiques adoptés par le Conseil à la majorité qualifiée, sur proposition de la Commission. De cette façon la réalisation des délibérations prises au moment de la PESC rentre justement, à travers la promulgation de règles ou d'autres actes juridiques normatifs, dans le règlement communautaire.

On a déjà remarqué - au moment de la doctrine juridique (Angelo D'Avi, Comunità europee e sanzioni economiche internazionali, 1993, pagg. 542-543) - que *les mesures, qui peuvent être prises par le Conseil, sur la base des articles 228/A et 73G, pour donner exécution aux décisions prises par le Conseil même à l'intérieur du pôle politique de l'Union, sont des actes normatifs de la Communauté, voués tels qu'ils sont à produire des effets dans le cadre du règlement d'elle-même et susceptibles, en particulier d'apporter des limites à l'exercice de droits subjectifs et de libertés individuelles qui trouvent reconnaissance et protection dans d'autres normes du droit communautaire. Il est évident donc que la caractéristique péculiaire des mesures en question constituée*

par le fait que celles-là sont finalisées à la réalisation d'une délibération prise au moment de politique étrangère et de sûreté commune peut difficilement servir à ne pas tenir, à l'égard d'elles, les exigences de garantie et de conformité aux principes de la " rule of law" qui existent en général en relation à n'importe quel acte juridique des institutions. Plus spécifiquement il ne semble pas que les mesures en question puissent être jugées soustraites au contrôle de légitimité de la Cour de Justice, à laquelle, d'ailleurs, l'art. 230 (ex art. 173) du traité de Rome soumet explicitement et sans exception tous les actes du Conseil " qui ne soient ni recommandations ni opinions".

Du reste la possibilité de recourir à une instance de justice partielle pour obtenir la garantie des situations juridiques subjectives et des libertés individuelles à l'égard d'éventuelles utilisations arbitraires des pouvoirs publics constitue un droit fondamental de la personne humaine. Et la Cour de Justice même a plusieurs fois établi que le droit à la protection juridictionnelle est reconnu et protégé dans le règlement communautaire, non seulement par l'ensemble des normes écrites du Traité CE, mais aussi par un principe de droit pas écrit qu'on peut déduire des traditions constitutionnelles communes aux États membres et des articles 6 et 13 de la Convention européenne sur les droits de l'homme.

On doit donc affermir que les Règlements, adoptés par le Conseil dans le cadre de la PESC, qui apportent des sanctions et des mesures restrictives à l'égard de la RFY, sont parfaitement exécutables, comme tous les autres actes normatifs du Conseil.

5. b) Les moyens de contestation possibles.

Comme l'on sait bien, il y a deux canaux principaux à travers lesquels il est possible de provoquer l'intervention de la Cour de Justice de la Communauté en fonction de contrôle de la légitimité des actes juridiques promulgués par les institutions de la Communauté: le recours direct (prévu par l'art. 230, ex art. 173) et le recours à titre préjudiciel (prévu par l'art.234, ex art. 177).

Le recours direct peut être proposé pour cause d'incompétence, de violation des formes substantielles, de violation de la loi, ou pour cause de détournement du pouvoir. Ce sont les États membres, le Conseil ou la Commission qui sont autorisés à proposer le recours. Les particuliers aussi, c'est-à-dire n'importe quelle personne physique ou juridique, peuvent proposer le recours direct à la Cour de Justice, aux mêmes conditions. Mais dans ce cas-là le pouvoir de recours est limité aux décisions qui, même si elles se présentent comme un règlement ou une décision prise à l'égard d'autres personnes, concernent directement la personne intéressée.

Le recours direct est assujetti à un terme d'expiration. Il doit être proposé dans un délai de deux mois à partir de la publication ou de la connaissance de l'acte. Cela signifie que tous les Règlements qui apportent des sanctions contre la RFY, dont on a parlé, ne sont plus attaquables par un recours direct. Mais on aurait encore la possibilité recourir à la Cour de Justice, si les Règlements en question étaient modifiés ou remplacés par de nouveaux Règlements. Naturellement afin que ça puisse se passer, il faut un grave désaccord politique vers les sanctions exprimé par un des quinze États, au moins.

Un État membre qui décide de se dissocier de cette politique, pourrait proposer recours contre un nouveau Règlement hypothétique et provoquer le contrôle de la Cour de Justice.

Bien plus facile à parcourir c'est le chemin du recours indirect, même s'il est oblique, à la Cour de Justice, en demandant sa compétence à se prononcer à titre préjudiciel.

Ce chemin a l'avantage de ne pas être barré par le délai d'expiration et de pouvoir être mis en place par n'importe quelle personne physique ou juridique intéressée. Dans le domaine des restrictions commercielles il y a beaucoup de sujets qui

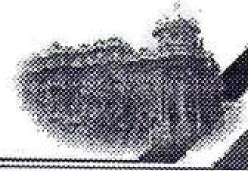
peuvent avoir l'intérêt, au sens juridique, de contester les Règlements promulgués par le Conseil. Il suffit de penser à la situation d'une entreprise qui commerce dans le champ des produits pétroliers. Cette entreprise, comme elle a passé un contrat de fourniture avec un sujet juridique résidant en Yougoslavie, devrait demander l'autorisation à l'exportation à l'Autorité compétente de son pays. Devant le refus de l'autorisation, l'entreprise pourrait s'adresser à un Tribunal national et soulever le problème de l'illégitimité du Règlement qui empêche la fourniture des produits pétroliers en Yougoslavie, et obtenir que le juge national s'adresse à la Cour de Justice de la Communauté, pour demander que celle-là se prononce, à titre préjudiciel, aux termes de l'art. 234 (ex art. 177) sur la validité du Règlement exposé en jugement.

6. Considérations conclusives.

Tous les évènements qui se sont passés et qui tournent autour de la guerre, qui, il y a un an, le 24 mars 1999, inaugurait une nouvelle aventure dans les relations internationales, sont caractérisés par un trait commun. La politique dans sa plus grande réalisation, c'est-à-dire la politique de puissance, se révolte au droit. De la révolte au droit naît un nouveau Leviathan, un pouvoir souverain et impérial, qui se place au dehors et au-dessus des règles qui organisent la vie de la Communauté internationale et qui garantissent la paix. C'est un défi très ancien, mais toujours actuel, qui se propose: celui entre la force et le droit. Le droit, c'est vrai, est produit par la politique. C'est donc la politique qui amène le droit. Le droit affirme et rend indisponible le patrimoine de conquêtes historiques réalisées à travers la politique, en soumettant la politique à une règle et à une limite. C'est pour ça que, même si elle produit le droit, la politique doit être soumise au droit. Quand la politique se révolte au droit, ça veut dire qu'elle aspire à la toute-puissance. Le siècle qui vient de passer nous a fait connaître jusqu'à la dernière limite les dégâts d'une politique qui poursuit un rêve de toute-puissance.
Contre cette politique il y a un seul antidote: c'est de reprendre la lutte pour le droit.
Aujourd'hui plus que jamais, la lutte pour le droit correspond à la lutte pour la paix et pour le plein développement des droits fondamentaux de l'homme.

Légenda :
PESC = Politique étrangère et de sûreté commune
TUE = Traité sur l'Union Européenne
TCE = Traité qui institue la Communauté Européenne

Federal Republic of Yugoslavia
Federal Ministry of Foreign Affairs



The Official Web Presentation of the Federal Ministry of Foreign Affairs

First anniversary of NATO aggression

International Conference
"Consequences of the NATO Aggression Against F.R. of Yugoslavia"

March 24. 2000

BELGRADE, March 24 (Tanjug) - A three-day International Conference "Consequences of the NATO aggression against Yugoslavia" started in Belgrade's conference center Sava on Friday.

More than 100 participants from all over the world will present analyses and estimates of the last year's aggression by 19 NATO countries on Yugoslavia (March 24 - June 10), from the legal, geopolitical and media points of view.

Those who take part in the conference, represent the world conscience and its highest humanitarian values, Yugoslav Foreign Minister Zivadin Jovanovic said in his opening address.

The people in this conference hall, in the heart of free-minded Belgrade expect new encouragement and inspiration for a better future, Jovanovic said.

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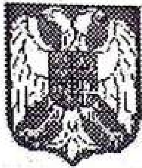

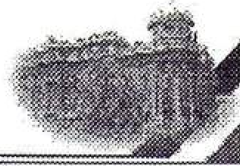

International Conference
"Consequences of the NATO Aggression Against F.R. of Yugoslavia"

March 26. 2000

NATO AGGRESSION ON YUGOSLAVIA PART OF U.S. GLOBALISATION POLICY - CONFERENCE

BELGRADE, March 26 (Tanjug) - The aggression on Yugoslavia that NATO launched last year under the pretext of the prevention of an alleged humanitarian disaster in Kosovo and Metohija was only a part of the policy of globalisation and domination in the world pursued by the United States since the disintegration of the former Soviet Union, participants in a panel discussion on geopolitics, held at the close of an international convention on the aggression, said on Sunday.

The participants said that no peace could be restored to Kosovo and Metohija without an unbiased approach to the resolution of the crisis in the Yugoslav Republic of Serbia's southern province, in which the Yugoslav Government must be included.

If the United States continues its political isolation of Serbia, no solution will be found for the Balkans, either, because Serbia is vital for the stabilisation of the situation in the region, the participants said.

Marek Waldenberg, a Krakow University professor, said that the fiasco of the policy pursued by the West and in particular the United States had reached it climax in the NATO aggression on Yugoslavia.

Angela Maestro of Spain's United Left said that the NATO aggression had only consolidated the social and national awareness in Europe that these were barbarism and the policy of interventionism at their worst and that leftist forces must develop new forms of resistance to them.

INTERNATIONAL CONFERENCE ON CONSEQUENCES OF NATO AGGRESSION RESUMES WORK

BELGRADE, March 26 (Tanjug) - It is vital to raise the issue of responsibility of U.N. Secretary-General Kofi Annan and the Security Council for transferring to NATO the authority for restoring peace in the world, according to participants in a three-day international conference on consequences of NATO's aggression on Yugoslavia.

Over 100 theoreticians, scholars and publicists from all over the world resumed on Sunday morning discussion on legal and geopolitical aspects of the aggression.

The conference ends in a plenary session on Sunday afternoon.

Director of Bulgaria's National Centre for Strategic Issues Stoyan Andreyev said in a panel discussion on geopolitics late on Saturday that no one had the right to impose on the Serbian people from outside ways of how they should rule their country.

Consequently, Andreyev proposed that the participants in the conference call for the lifting of the sanctions against Yugoslavia and for immediate assistance to the Serbian people in the reconstruction of all that destroyed by the alliance.

He also urged the Security Council to take into its hands the resolution of the crisis in the Yugoslav Republic of Serbia's Kosovo and Metohija province.

Commenting on links between politics, propaganda and media, Benjamin C. Works, Executive Director of the U.S. Institute for Strategic Issues Sirius, said that, during NATO's March 24-June 10 1999 aggression on Yugoslavia, Western media's main task had been to pin the blame on the enemy. He warned against fabrications used for the purpose. Works said that this was best reflected in the Racak affair, saying that some Western media and officials referred even today to the massacre allegedly committed in this Kosovo and Metohija village although all reports by experts in the field had shown that there had been no massacre.

Commenting on war propaganda, Anne Morelli, a Brussels University professor, said that its rule accuse the opponent

of wanting a war and to claim that those responsible for that propaganda campaign wanted peace.

Mircea Vaida Voevod, a Romanian publicist, said that, over the past few years, Yugoslavia had been the victim of a wide network of political hypocrisy and globalisation, practised through the use of force.

Jan Oberg of Sweden's Transnational Foundation for Peace Studies voiced confidence that the international community, embodied in at least five countries or at the most ten countries that had done nothing to help settle conflicts through peaceful methods, was most responsible for years-old tensions in Kosovo and Metohija.

Oberg said that the international community had been helping behind the scenes the forming of the ethnic Albanian terrorist organisation calling itself Kosovo Liberation Army (KLA) since 1993 and that it had only offered verbal support to ethnic Albanian leader Ibrahim Rugova with whom it had been vital to negotiate, the way it had been vital to negotiate with Belgrade.

Nico Steinen, a Dutch lawyer, apologised for the harm done by his country to Yugoslavia during the aggression, saying that court proceedings should be instigated at a more intensive pace in all NATO member states against all responsible for the aggression, saying that this should be done also to ensure the payment of war reparations to Yugoslavia.

Steinen said that quite a number of charges had been filed in his country in connection with the participation in the NATO aggression, saying that it was good that courts in the Alliance member states had been faced with the fact that such charges also existed.

President of the Belarus Academy of Sciences Alexander Voytovich said that, through its behaviour in the Balkans, NATO had plunged the world into a new arms race. Voytovich said that the alliance had resorted to militarist barbarism contrary to all civilisational values, saying that this had not helped solve a single problem but had rather triggered new ones.

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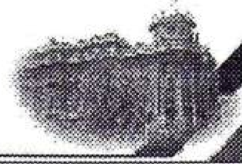
Federal Republic of Yugoslavia
Federal Ministry of Foreign Affairs



The Official Web Presentation of the Federal Ministry of Foreign Affairs

First anniversary of NATO aggression

BACK

International Conference
"Consequences of the NATO Aggression Against F.R. of Yugoslavia"

March 27. 2000

INTERNATIONAL CONFERENCE ON CONSEQUENCES OF NATO AGGRESSION ON YUGOSLAVIA ENDS

BELGRADE, March 27 (Tanjug) - An International Conference on the Consequences of NATO's Aggression on Yugoslavia ended here on Sunday after three days of fruitful work during which the far-reaching significance of Yugoslavia's struggle for independence was stressed.

More than 90 lectures, excerpts and papers that will be compiled and published by the Belgrade-based Institute for International Politics and Economy that organised the Conference, stressed that Washington's policy, demonstrated in the former Yugoslavia and in particular through the aggression on Yugoslavia, posed a threat to the entire world.

The participants in the Conference including scholars, publicists and other renowned persons from all over the world underlined that, through its military power and by violating all principles and rules of international relations, Washington wanted to impose a new world order that would be in the service of its interests but would be to the detriment of millions of peoples.

They noted that it was vital to encourage scholars, intellectuals and media to help shed light on the motives of the NATO aggression until NATO criminals were brought to justice and until Yugoslavia was paid war reparations.

Addressing the participants at the close of Conference, professor Blagoje Babic also made a statement to this effect, saying that the awareness that it was vital to place international relations and preservation of peace and security in the world again within the framework of international law and the U.N. Charter was growing.

Babic welcomed the fact that none of the participants backed international blockades and sanctions as foreign policy methods, saying that he was confident that the time would soon come for the Yugoslav people to develop normal cooperation, based on the principles of mutual respect and mutual benefit, also through efforts to this end by other peace-loving people in the world.

APPEAL OF THE INTERNATIONAL CONFERENCE ON THE CONSEQUENCES OF THE NATO AGGRESSION

BELGRADE (Tanjug) - The International Scientific Conference on the Consequences of the NATO aggression on Yugoslavia addressed several appeals and proposals to the United Nations, research fellows and academic communities stated below:

I . Dear Colleagues, Our three-day long discussion has inspired us, as scientists, humanitarians, members of the academic community, writers and people with conscience to send an appeal to the Security Council of the United Nations to reaffirm the universal value of the principles of equality of all States and nations, regardless of their size, of the inviolability of their territorial integrity and sovereignty, as well as to condemn and to reject the use of force as an inadmissible method to resolve international problems, to reaffirm the UN Charter, the irreplaceable role of this universal world Organization and of the principles it is based upon. We, as world intellectuals and scientists call upon the United Nations not to allow to be marginalized and solutions be imposed by illegal means, by use of force, blockade and sanctions.

Science will hold responsible all those who have rejected by the aggression against the FR of Yugoslavia, the basic principles of international law, protection and respect of peace, security and cooperation, jeopardizing thereby not only the human right to life and well-being of all Yugoslavs, but have endangered the peace and future for all people on our planet. If we remain silent and passive today faced with aggression and violation of the international legal order, then all, including those who are spared today, will become victims.

II. Participants of the International Conference meeting in Belgrade on 26 March 2000, inter alia, pointed out as follows:

"1. Note that the information on Yugoslavia were by and large presented in a biased way, without respect for the rules of even-handedness;

2. Express concern over international demonization, whose victim is Yugoslavia, the Serbian people in particular;

3. Call on intellectuals to reject outright the one-sided presentation of the conflict;

4. Voice concern about the spread to other "disobedient" countries of the strategy applied in the break- up of Yugoslavia and forcing it to join NATO;

5. Are concerned that the strategy of the force of US imperialism has caused the world over, and will cause perhaps tomorrow in other regions of Eastern Europe, fresh conflicts that may endanger all mankind in much the same way as did the Axis Powers before World War Two".

III. Professor Dr. Svetomir Škari_ of the University of Skopje and Prof. Dr. Elena Guskova, Director of the Centre for Yugoslav Crisis Studies in Moscow, also put forward a number of proposals concerning the future work on shedding more light on the motives and consequences of the NATO war on the FR of Yugoslavia.

First, I propose that the work on collecting data concerning motives and carrying out of the NATO aggression against the FRY be continued. It is very important that these data be pooled into certain studies and books. On the basis of these data we should continue our work on a broader clarification of the NATO aggression and exchange among ourselves these data and information.

Second, I propose that we gathered here today at this Conference be more engaged in our respective countries in encouraging scientists, intellectuals and media to clarify the motives and consequences of the NATO war at internal and international level. We should be more actively involved on this as long as the International Court of Justice in the Hague does it job rightly in the light of the yesterday statement of Admiral Schmelling.

Third, the consequences of the war and search for the solution of the problems should become topical issues in the studies of the international professional associations such as: International Association for Constitutional Law, International Peace Research Association (IPRA), International Political Science Association (IPSA), as well as of all other international associations in the field of social sciences.

Four, in our studies of the motives and consequences of the NATO war, and in finding the ultimate solutions for the prevention of future aggressions, we should engage broader scientific mission and public opinion of the Far East, an in particular the scientific thought and peace movement of Japan.

As the result of the nuclear bombing of Hiroshima and Nagasaki, and particularly as the result of the greater presence of the US troops in the Far East, the scientists of Japan have been working very successfully for already several decades on a global strategy of the world peace.

Five, I propose that this Conference continue its work the next year here or in some other country and become a permanent institution which will gather the consciousness of the mankind at scientific and intellectual level.

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29-6-99

CHARGES FOR THE HAGUE AGAINST THE NATO LEADERS - ONE OF THE INDICTMENTS
Part 2
June 29, 1999

BACK

Art 51. - Protection of the civilian population 1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances. 2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. 3. Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities. 4. Indiscriminate attacks are prohibited. Indiscriminate attacks are: (a) those which are not directed at a specific military objective; (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction. 5. Among others, the following types of attacks are to be considered as indiscriminate: (a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian

objects; and (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

Art 79. Measures or protection for journalists 1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.

Article 85 - Repression of breaches of this Protocol

3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health: (a) making the civilian population or individual civilians the object of attack; (b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a)(iii);

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

AND WHEREAS the above-named persons have acted in open violation of the Principles of International Law Recognized in the Charter of the Nüremberg Tribunal and in the Judgment of the Tribunal, as adopted by the General Assembly of the united Nations (1950), which provide in so far as is relevant:

Principle III The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

Principle IV The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principle VI The crimes hereinafter set out are punishable as crimes under international law: (a) Crimes against peace: (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; (ii) Participation in a common plan or conspiracy for the accomplishment of any of

the acts mentioned under (i). (b) War crimes: Violations of the laws or customs of war include, but are not limited to, murder wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

Principle VII Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law;

THEREFORE we respectfully request that the Prosecutor immediately investigate and indict for serious crimes against international humanitarian law:

THE FOLLOWING HEADS OF STATE AND GOVERNMENT, MINISTERS OF FOREIGN AFFAIRS AND MINISTERS OF DEFENCE OF THE NATO COUNTRIES: William J. Clinton, Madeleine Albright, William S. Cohen (United States of America), Tony Blair, Robin Cook, George Robertson (United Kingdom), Jean Chrétien, Lloyd Axworthy, Arthur Eggleton (Canada), Jean-Luc Dehaene, E. Derycke, J.-P. Poncelet (Belgium), Vaclav Havel, J. Kavan, V. Vetchy (Czech Republic), Poul Nyrup Rasmussen, N.H. Petersen, H. Haekkerup (Denmark), Jacques Chirac, Lionel Jospin, H. Védrine, Alain Richard (France), Gerhard Schröder, J. Fischer, R. Scharping (Germany), Kostas Simitis, G. Papandreou, A. Tsohatzopoulos (Greece), Viktor Orban, J. Martonyi, J. Szabo (Hungary), David Oddsson, H. Asgrimsson, G. Palsson (Iceland), Massimo D'Alema, L. Dini, C. Scognamiglio (Italy), Jean-Claude Juncker, J. Poos, Alex Bodry (Luxembourg), Willem Kok, J. van Aartsen, F.H.G. de Grave (Netherlands), Kjell Magne Bondevik, K. Vollebæk, D.J. Fjærvoll (Norway), Jerzy Buzek, B. Geremek, J. Onyszkiewicz (Poland), Antonio Manuel de Oliveira Guterres, J.J. Matos da Gama, V. Simão (Portugal), Jose Maria Aznar, A. Matutes, E. Serra Rexach (Spain), Bulent Ecevit, I. Cem and H. S. Turk (Turkey);

AND THE FOLLOWING OFFICIALS AND MILITARY LEADERS OF NATO: Javier Solana, Jamie Shea, Wesley K. Clark, Harold W. German, Konrad Freytag, D.J.G. Wilby, Fabrizio Maltinti, Giuseppe Marani and Daniel P. Leaf;

AND WHOEVER ELSE shall be determined by the Prosecutor's investigations to have committed crimes in the NATO attack on Yugoslavia commencing March 24, 1999.

Respectfully submitted, this 6th day of May, 1999

"Michael Mandel"

Michael Mandel (Professor) for W. Neil Brooks Judith A. Fudge H. J. Glasbeek Reuben A. Hasson (Professors)

Sil Salvaterra David Jacobs Brian Shell Christopher Black John Philpot (Barristers and Solicitors)

Peter Rosenthal (Professor, Barrister and Solicitor)

Roberto Bergalli (Professor)

Alejandro Teitelbaum Alvaro Ramirez Gonzalez Vanessa Ramos Beinusz Szmukler (American Association of Jurists)

ANNEX: CIVILIAN DEATH AND DESTRUCTION IN THE FORMER YUGOSLAVIA

The following are two reports from Ministry of Foreign Affairs of the Federal Republic of Yugoslavia (a designated source of information under Article 18.1 of the Stature of the Tribunal):

1) NATO Crimes Against Civilians and Civilian Infrastructure in the Federal Republic of Yugoslavia (MINISTRY OF FOREIGN AFFAIRS YUGOSLAV DAILY SURVEY - www.mfa.gov.yu/Bilteni/Engleski/si290499_1-e.html); and
2) Civilian Victims and Devastation in NATO Aggression on Yugoslavia (SERBIAINFO - www.serbia-info.com/news/1999-04/23/11210.html)

NATO CRIMES AGAINST CIVILIANS AND CIVILIAN INFRASTRUCTURE IN THE FEDERAL REPUBLIC OF YUGOSLAVIA (April 29, 1999)

The NATO criminal aggression represents the most flagrant violation of the Charter of the United Nations since the inception of the world Organization, a violation of the Helsinki Final Act and the undermining of the very foundations of the international legal order. At the same time, this aggression is a crime against peace, stability and humanity.

The Federal Republic of Yugoslavia has warned on time the United Nations Security Council of a possible aggression, and during the aggression itself it requested that it be immediately halted and most

strongly condemned. Had this legitimate request of the Federal Republic of Yugoslavia been met, enormous human sufferings and destruction would have been avoided. The most illustrative examples are given below.

KILLING AND PLIGHT OF THE CIVILIANS During the last thirty-six days of NATO aggression, the Federal Republic of Yugoslavia has been exposed to extensive civilian destruction, unprecedented in modern history of the world. NATO aggressors have focused their attacks primarily on civilian targets, directly threatening the lives and fundamental human rights of the entire population of the Federal Republic of Yugoslavia. By bombing relentlessly the cities, towns and villages throughout Yugoslavia, the NATO aggressor has killed so far, in nine hundred attacks, more than a thousand civilians, including a great number of children. Over five thousand people sustained injuries, many of whom will remain crippled for life. At the same time, several thousand private homes and flats have been ruined, mostly in Belgrade, Nis, Cuprija, Aleksinac, Pristina, etc. We shall present the most tragic instances of the killings and plight of the innocent civilian population. Fifty-five passengers were killed and twenty-six injured in an international passenger train on the Belgrade-Thessaloniki line. More than four hundred civilians were killed by NATO bombs in Kosmet: in the centre of Pristina, in Djakovica, Prizren, Kosovo Polje, Urosevac, Kosovska Mitrovica, in refugee camps in Orahovac and Srbica, Vitina, etc.

Thirteen civilians were killed and twenty-five wounded in an attack on Kursumlija.

Twelve civilians were killed and forty wounded in the bombing of Aleksinac. Sixteen RTS workers were killed and seventeen wounded in the bombing of the headquarters of this biggest Radio and Television outlets in the FRY. Unfortunately, the final number of victims has not been established yet since more victims have remained buried in the rubble.

In Pancevo, Cacak, Vranje and Nis the number of casualties has been increasing each day.

KILLING OF CHILDREN

Children are the most vulnerable category of the population, innocent and defenceless which suffer in particular due to the barbaric bombing of NATO aircraft, which is illustrated by the following examples:

The killing of seven children in Srbica from cluster bombs; The killing of five children from the Kodza family in the village of Doganovici near Urosevac on 24 April 1999 as a result of the delayed effect of bombs (Edon, aged 3, Fisnik, aged 9, Osman, aged 13, Burim, aged 14

and Vajdet, aged 15. Six other children were also injured in the same incident, two of them were seriously wounded.

The killing of a three-year old Milica Rakic in the Belgrade suburb of Batajnica;

The killing of six children in the refugee centre in Djakovica and 19 children in the refugee column on the Prizren-Djakovica road;

The death of a child in Kosovo Polje; The killing of five years old girl Arta Lugic while her brothers Neron and Egzon and her sister Arijeta were seriously wounded in Lipljane;

The killing of nine children in Kursumlija; The killing of two children in Aleksinac, as well as other numerous examples.

Children are most often victims of the sprinkle cluster bombs with delayed effect. The death toll on children would have been even more tragic, had the missile struck the biggest Maternity Hospital in Belgrade (It exploded some thirty metres away from the Hospital).

KILLING AND PLIGHT OF REFUGEES

Particularly tragic is the fate of refugees, who convinced that they should not believe the propaganda ploys on the alleged "ethnic cleansing" decided to return to their homes. Legitimate authorities of the FRY encourage them every day to do so and guarantee their safety. On the occasion of a return of a large group of refugees, on 14 April, on the Djakovica-Prizren road, NATO aircraft killed 75 citizens of the FRY and wounded 111. The attack of NATO aircraft was systematically prepared and lasted for three hours. In this way, NATO has in the most brutal way "demonstrated" that the story of "humanitarian catastrophe" suits it only if it fits in the legitimate aggression on the FRY, as well as that innocent civilians are constantly taken advantage of for NATO interests in the Balkans.

In addition, NATO bombed several refugee camps in which Serbs expelled from Croatia and Bosnia and Herzegovina were accommodated (Djakovica, Pristina, Kursumlija, etc). Several dozens of refugees were killed, mostly children and the frail, ruthlessly ending their tragedy which came about in the wake of the break-up of Yugoslavia.

BOMBING OF SURDULICA

The aggressors war planes bombed at noon, on 27 April 1999, the residential area of the town of Surdulica. On that occasion 16 citizens were killed (including 12 children), while several dozen were wounded out of which twenty persons remained in hospital for further medical treatment. Hundreds of houses were raised to the ground or damaged. Special teams are still clearing up the debris so that it is not possible at the moment to estimate the real proportions of this notorious crime.

ASSASSINATION ATTEMPT ON PRESIDENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA SLOBODAN MILOSEVIC

An assassination attempt on the President of the Federal Republic of Yugoslavia on 22 April 1999 represents an organised terrorist act without precedent in the history of modern Europe. This is not only a crime against a Head of a sovereign State, but primarily an attack on the democratically expressed will of a people and thus against the foundations of the democratic values of the civilisation. Although the residence of the President of the Federal Republic of Yugoslavia was targeted, this attack has also a symbolic meaning as if the targets had been the homes of all Yugoslav citizens. This crime has caused abhorrence and condemnation by international public. However, it is incomprehensible that the United Nations Security Council has remained silent and failed to condemn this terrorist act or the killings of civilians and children.

CRIME AGAINST THE FREEDOM OF SPEECH

The destruction of more than ten private radio and television stations, two dozen TV transmitters, as well as the bombing of the Radio and Television of Serbia building on 23 April 1999 represents the biggest aggression against freedom of thought and a disgrace to the civilization at the threshold of a third millennium. Transmitters at Iriski venac, Krnjaca, Mt Cer, Bukulja, Tornik, Crni vrh, Jasetrebac, Ovcar, Grmija and others were destroyed, so that the transmitter infrastructure at the entire territory of Serbia was severely damaged. Two times in six days the studios and transmitter located at the business centre "Usce" which housed TV stations: BK TV, Pink, Kosava and SOS Channel, as well as several other radio stations were bombed.

Transmitter of the TV station Palma was bombed and destroyed on 28 April 1999.

The satellite station "Yugoslavia" in the village of Prilike near Ivanjica was severely damaged.

BOMBING OF THE BUILDING OF THE RADIO AND TELEVISION OF SERBIA

The building was demolished taking a heavy toll during the bombing of the largest Radio and TV company in the Balkans with 7000 employees and the state-of-the-art infrastructure which was made available to hundreds of foreign correspondence. The aim of this crime, in which 16 RTS workers were killed and 19 wounded, was more than obvious: to suppress the right to a different opinion and its being publicly expressed with a view to pursuing further war-mongering manipulation with the world public. Clearly, the intention of NATO aggressors is to prevent the world public from learning the extensive scope of their crimes and to impose on the world their totalitarian and single-minded perception. Many newspapers in the world and renowned journalists have already raised their voice against the propaganda fabrications of the NATO aggressors.

For all champions of the freedom of speech and for all people committed to the right to freedom of expression, this destructive act represents the last warning alarm before NATO generals take control over the aggressors' media.

DESTRUCTION OF VITAL YUGOSLAV ECONOMIC FACILITIES

According to the assessment of experts from Western countries, the damage done to date by NATO air strikes is well in excess of one hundred billion US dollars. By the destruction of factories, business capacities and production facilities, more than half a million people have lost their jobs and over two million of them remained without any kind of income. Destroyed are the industrial complexes in Belgrade, Novi Sad, Kragujevac, Nis, Pancevo, Cacak, Kraljevo, Valjevo, Pristina, Vranje, Kursumlija, Krusevac, Kula, Gnjilane, Sremska Mitrovica and in other towns and cities. The petrochemical industry of the Federal Republic of Yugoslavia has been totally destroyed, as well as the largest Yugoslav factory of artificial fertilisers.

Private entrepreneurs are a particular target of NATO aggression and the most glaring example of it is the destruction of the "Usce" business centre in Novi Beograd which was hit on 21 and 27 April 1999. That was one of the biggest business centres in the Balkans, which housed more than a hundred newly established private firms in full business expansion, foreign representative offices, seven private Radio and TV stations and one of the most modern poli-clinics in the FRY. The building of this business centre is also one of the landmarks of modern Belgrade.

DESTRUCTION OF BRIDGES

On the false pretext of "neutralizing the military power of the Federal Republic of Yugoslavia", the NATO aggressor started systematic destruction of the major Yugoslav road and rail traffic routes. About 20 bridges have been totally demolished so far and a few dozen

of them have been damaged. Also, several dozen major and local roads, airports, railway tracks, railway stations, etc. have been destroyed. All ruined facilities were part of costly capital investments, into which the resources and the efforts of several generations of Yugoslav citizens were pooled. All the facilities are strategic part of the European traffic infrastructure, and some of them are of historical and cultural importance ("The Wailing Bridge " in Novi Sad, on which the Fascists killed several thousand Jews in the Second World War).

About 30 bridges have been destroyed including those at the strategic European E-75 corridor. By the destruction of the bridges on the Danube river the aggressors have blocked the entire river navigation at this traffic artery of the greatest importance for European economy and the shortest link between the Northern and Mediterranean sea (The Rhein-Mein-Danube route). Thus, the European shipping companies suffer each day the damage of over 20 million DM.

Examples: Sloboda Bridge, Wailing Bridge, Zezelj Bridge and the bridge in Beska (all in the city of Novi Sad), several bridges on the Ibar primary road and on the major railway lines.

ENVIRONMENTAL DISASTER

Concurrently with the humanitarian, NATO strikes have caused an environmental catastrophe which is endangering not only the Federal Republic of Yugoslavia, but also the neighbouring countries and the entire European continent. Ecology does not recognize boundaries. The NATO aggressor is thus teetering on the brink of another Chernobyl in the heart of Europe. The destruction of petrochemical installations, the warehouses storing semi-processed and finished products of the chemical industry have already caused significant adverse effects on the health of the population of the Federal Republic of Yugoslavia and the neighbouring countries. During some of the air strikes it was pure luck that an environmental catastrophe was not provoked spreading all over Europe. The aggressor's attacks did not spare even huge forests, tourist centres and the national parks on the mountains of Serbia (Kopaonik, Zlatibor, Divcibare, Tara, Prokletije, Sara, Fruska Gora). The ozone layer was depleted by the exhaust gases. The Black Sea, Aegean and the Adriatic basins, practically the entire Mediterranean, are threatened by environmental pollution.

Examples: Nitrogen factory in Pancevo, the oil refineries in Pancevo and Novi Sad, the chemical company "Prva iskra" in Baric and others.

HOSPITALS AND HEALTH INSTITUTIONS

The aggressors' bombings, calculated to provoke the greatest

possible confusion and panic among innocent people, have damaged many clinical and hospital centres, inflicting not only great material damage to property (destruction of buildings and expensive medical equipment), but also causing new health problems and intensifying psychological traumas among the sick people. The destruction of all the three bridges in Novi Sad totally cut off and left, without the supply of water, the largest Yugoslav centre for the treatment of cardiovascular diseases, to which several million people gravitate. The Maternity Hospital in Belgrade, and the biggest hospital in the Balkans (Military Medical Academy Hospital - VMA), and the Orthopaedic hospital of Banjica, the hospitals in Cuprija and Aleksinac, as well as the medical centres in Pristina and in many other towns were damaged.

DESTRUCTION OF PRE-SCHOOL INSTITUTIONS, SCHOOLS AND UNIVERSITIES

Since the outset of the aggression, NATO has put a stop to the education of close to one million pupils and students in Yugoslavia. Over three hundred facilities built for the education and upbringing of children and young people of all ages were destroyed. This will inevitably be reflected on the development and social integration of young people. Hard hit are university centre in Nis (Machine Engineering, Civil Engineering, Electronical, Technical, Law and Economics faculties), in Pristina (Agricultural and Machine Engineering faculty) and Novi Sad (Faculty of Philosophy).

DESTRUCTION OF WORLD CULTURAL HERITAGE ON THE SOIL OF THE FR OF YUGOSLAVIA

Kosovo and Metohija in particular, but also the entire territory of the FR of Yugoslavia, is a treasury of European culture and civilization since ancient times. By violating all international conventions on the protection of civilization and its heritage, and in the pursuit of the spirit of aggressive nihilism and new barbarity, more than 50 monasteries and churches have been severely damaged thus far, as well as a couple of dozen of other cultural and historic monuments, some under UNESCO protection. Severe damage was caused to the monastery of the Patriarchate of Pec (12th century), Zica (13th century), Decani and Gracanica (14th century, under UNSECO protection), medieval towns of Zvecan (13th century) and Smederevo (15th century), Petrovaradin fortress (18th century), seventeen monasteries on Fruska Gora (15-18th century) and many other priceless historical monuments. The bombs have even destroyed many cemeteries all across Yugoslavia.

USE OF PROHIBITED WEAPONS

In NATO attacks, the state-of-the-art weapons have been used, but also those prohibited under international conventions, such as cluster bombs and slow activating bombs. In a month-long attacks on civilian and other facilities in Serbia, NATO aircraft fired more than 3,500

missiles, including 60 containers with 14,400 cluster bombs. As many as 3,600 cluster bombs were used in the attacks against towns in Kosmet - Pristina, Urosevac, Djakovica, Prizren etc, and many other places and facilities in Serbia. Before the attacks, radio locators were dropped from the aircraft, found in the vicinity of many civilian and business facilities in Serbia.

CO-ORDINATION BETWEEN NATO AND TERRORISTS OF THE SO-CALLED "KLA"

While before the onset of the aggression Albanian terrorists counted on NATO aircraft as air support to their armed groups, now arming, equipping and transport of Albanians living in the USA and other western countries is under way, for actions in the FRY, with a view to making armed formations from them to serve as ground troops of the "Alliance". Albanian terrorists are being trained and armed in the camps in northern Albania - in Tropoje, Kukes and Bajram Curri (they are trained by British, US and Turkish commandos), and then illegally infiltrated into Kosovo and Metohija. Such activity, in direct violation of the resolutions of Security Council, has been particularly stepped up in April when concrete plans for ground invasion against the FRY started to be hatched. So far, several hundred terrorists have been transported from the USA to Albania. Plans are made to equip, arm and train for coordinated actions with NATO, around 6,000 Albanians. According to western sources, Albanian terrorists represent the main source of intelligence for NATO, of military character or those aimed at spreading propaganda against our country. At the moment it is difficult to perceive and evaluate all the humanitarian, economic, environmental, health and other consequences of the NATO criminal aggression against the FR of Yugoslavia. The greatest victim of the aggression is the entire Yugoslav people and its material and cultural resources. At the same time, the violation of the Charter of the United Nations, the NATO has created a precedent which may a cast a shadow over the future of all peoples and sovereign States. The cause for concern is all the grater because, by combining pressure and promises, NATO is drawing an increasing number of countries into its aggression against the FR of Yugoslavia, which will have long-term negative consequences on the future relations and co-operation between all Southeast European countries. Attempts by NATO to justify its brutal aggression by an alleged care for the refugees may bring about an irreversible degradation of the United Nations and involve this highest international forum in the crime against a country which is one of its founding members.

NEXT

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ICTY

If Slobo, Why Not Bill? , The Nation

The Nation
June 21, 1999
By Alexander Cockburn

I'm no fan of the International Criminal Tribunal, for the reasons Doug Lummis outlined in these pages on September 26, 1994, concluding reasonably enough that such a tribunal was designed to function as a star chamber for the New World Order, nabbing an occasional small fry but impotent to go after the big-time Western perps.

Nor is the tribunal's indictment of Slobodan Milosevic for war crimes any inducement to change my mind. The timing meshed all too nicely with NATO's desperate need to jack up public appetite for continued bombing, with maybe a bracing land war to follow.

Meanwhile, the tribunal's prosecutor, Judge Louise Arbour, has kept a contemplated indictment of those responsible for the single largest ethnic cleansing of the mid-1990s locked in her desk. I refer to Croatia's Franjo Tudjman and his forces--a senior KLA commander apparently among them--who drove 300,000 Serbs from their homes in the Krajina, bombarding and murdering them as they fled. This was carried out under the supervision of the US Ambassador to Croatia, Peter Galbraith, with US personnel offering Tudjman's cleansers targeting advice and appropriate mat=E9riel.

Arbour could impart some temporary credibility for the tribunal by indicting the cleansers of the Krajina. She'd do even better by sending up indictments of the NATO gang for war crimes committed during the bombing campaign. Thus far, three formal "complaints and requests for investigation and indictment" aimed at this gang have been lodged with Arbour. One has been filed by a Greek lawyer, with supporting signatures of a thousand Greek citizens. Another, specifically aimed at British Prime Minister Tony Blair, along with his foreign and defense secretaries, Robin Cook and George Robertson, has been filed by a Cambridge lawyer. The third has been prepared by a Canadian team of lawyers, charging sixty-seven persons with war crimes, said persons ranging from Bill Clinton to chief propagandist Jamie Shea.

One of the Canadians, Michael Melman of York University, tells me, "It will be a good test to see whether the law actually applies to powerful people." His team's charges? Willful causing of great suffering and serious injuries; extensive damage to property unjustified by military necessity; employment of weapons causing unnecessary suffering; wanton destruction of cities, towns or villages; damage to, or destruction of, religious, charitable and educational institutions; destruction of historic monuments. The tribunal can consider charges against anyone who plans, instigates, orders, commits or otherwise aids and abets such acts.

"They've admitted publicly the essentials of all these crimes," Melman says. "It's a no-brainer." The American Association of Jurists has joined the Canadian suit as a full participant. The three main groups of complainers are all in touch. Melman urges people to contact the tribunal directly, citing potential war crimes they think have been committed (nikiforov@un.org, or phone 31-70-416-5000). So let's see how

Arbour handles these complaints, and how the fourteen judges behave if she hands up indictments. The panel of judges, picked by the UN Security Council, includes five from NATO nations (Britain, France, Italy, the United States, Portugal), and the rest

from Australia, China, Guyana, Zambia, Colombia, Egypt, Malaysia, Morocco and Jamaica. The head judge is an American, Gabrielle Kirk McDonald.

Bill Clinton was only the second President to have been impeached. Now he can truly step into history as the first to be indicted for war crimes. Bill could have a busy final year, shuttling between The Hague and another impeachment proceeding in the Senate, this time for flouting the Constitution re warmaking powers. He'll still have time for a few fundraisers for Al Gore.

Either way we win, because if the tribunal refuses to consider NATO's war crimes, all suspicions of this body will be immensely fortified, and the institution properly discredited.

PERS!

Those Marketplace Bombings

A few weeks ago I mentioned that the Bosnian Muslims had deliberately shelled the marketplace in Sarajevo to draw in NATO. Christopher Hitchens mounted his high horse, shrieking that such assertions had shamed The Nation. Let me assure readers that there was at the time no shortage of serious sources for this view about the mortar shells dropped on Sarajevo markets on February 5, 1994, and August 28, 1995; also the breadline massacre on May 27, 1992. Hitchens claims that authority for all such charges derives from Michael Rose, a British general, and from the Canadian general Lewis MacKenzie, and that both have denied all to him directly. They weren't the sources I had in mind, though it's unclear to me why Hitchens should be so confident that these two politically seasoned officers developed an invincible passion for truth when questioned by him, a noted zealot for the Bosnian cause. And why should he affect such outrage at the notion that the Bosnians would have engineered these lethal provocations? They wouldn't be the first to decide that the higher good--in this case, NATO intervention--justified the sacrifice of some of their own. The fate of the Lusitania and of Pearl Harbor testify to that.

In a good article in The Nation for October 2, 1995, David Binder of the New York Times cited "four specialists--a Russian, Canadian and two Americans" as having "raised serious doubts" about the conclusions of a UN report blaming the Bosnian Serbs for the bombing in August 1995, killing thirty-seven. A Russian artillery officer, Col. Andrei Demurenko, flatly declared the report "a falsification." A Canadian specialist told Binder that he and fellow Canadian officers were "convinced" that the Muslim government dropped both marketplace shells. A US official noted the low trajectory of the 1995 shell, suggesting that it came from an area under Bosnian Muslim control. Other reports--in the Times, the London Independent, on French television TF-1 and from the UN Protection Force in Bosnia--have cited Muslim shootings and bombings designed to compromise the Serbs. The KLA has doubtless studied them with keen attention.

29-6-99

CHARGES FOR THE HAGUE AGAINST THE NATO LEADERS - ONE OF THE INDICTMENTS
June 29, 1999

IN THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

NOTICE OF THE EXISTENCE OF INFORMATION CONCERNING SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW WITHIN THE JURISDICTION OF THE TRIBUNAL;

REQUEST THAT THE PROSECUTOR INVESTIGATE NAMED INDIVIDUALS FOR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW AND PREPARE INDICTMENTS AGAINST THEM PURSUANT TO ARTICLES 18.1 AND 18.4 OF THE TRIBUNAL STATUTE.

TO:

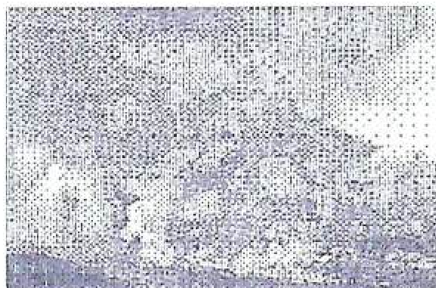
Madam Justice Louise Arbour,
Prosecutor,
International Criminal Tribunal for the Former Yugoslavia,
Churchillplein 1, 2501 EW,
The Hague,
Netherlands.

AND TO:

NATO aggression is demonstration of technological fascism, Oleynik says

June 10, 1999

Kiev, Jun 10 (Tanjug)- The aggression perpetrated by NATO on Yugoslavia is a demonstration of technological fascism in which the attacker kills unseen victims, President of Ukrainian parliament foreign policy committee Boris Oleynik said.



"NATO aggression is demonstration of technological fascism"

Oleynik told the Kiev paper Golos Ukraini that once the aggression ends, the names of the men who have perpetrated the crimes and of those who have helped them will be known.

This is genocide under the pretext of peacemaking, perpetrated by the Pentagon hawks, Oleynik said, underlining that all persons who had backed the "prevention of a humanitarian disaster" would one day have to be taken to justice and held accountable.

Oleynik added that the Ukraine's role staid on the top although the traitors who have been justifying the NATO's aggression on Yugoslavia emerged into its lines.

According to Oleynik, the crime committed against Yugoslavia reveled " two-faced nature of the social-democracy", while the greatest propagator of the aggression, that is "the state prolonging and using that kind of the fascism is obviously got mad from the feeling of its own non-punishment".

All persons who have been justifying the criminal adventure in Yugoslavia will be held accountable for their actions before the only true court - that of history and people, Oleynik said.

Wolfgang Braunschädel
Hustadtring 33
44801 Bochum

Bochum, den 18.5.1999

An den
Herrn Generalbundesanwalt
beim Bundesgerichtshof
Postfach 2702
76014 Karlsruhe

> *„26. Juni 1998... Klaus Kinkel hält daran fest, nur ein UN-Mandat dürfe zu einem Militäreinsatz führen, denn die damalige Opposition drohte mit einem Gang nach Karlsruhe. Heute regiert sie, das Klagerisiko ist entfallen. Mit ihr regiert aber auch die normative Kraft des Faktischen, und wie.“* (Gunter Hofmann, Wie Deutschland in den Krieg geriet, in: Die ZEIT 20/12.5.1999)

Sehr geehrter Herr Generalbundesanwalt,

hiermit erhebe ich Anzeige gegen die amtierende Bundesregierung, insbesondere gegen Bundeskanzler Gerhard Schröder, Außenminister Josef Fischer und Verteidigungsminister Rudolf Scharping, sowie gegen die für die militärischen Einsätze gegen die Bundesrepublik Jugoslawien verantwortlichen bundesdeutschen Militärs wegen Verstoßes gegen

1) Artikel 26, Abs. 1 Grundgesetz, demzufolge *„Handlungen, die geeignet sind und in der Absicht vorgenommen werden, das friedliche Zusammenleben der Völker zu stören, insbesondere die Führung eines Angriffskrieges vorzubereiten, verfassungswidrig (sind)“*. Solche Handlungen stellen einen Straftatbestand gemäß § 80 StGB dar und sind somit *„unter Strafe zu stellen“*;
2) § 10, Absatz 4 des „Soldatengesetzes“, der es militärischen Vorgesetzten untersagt, völkerrechtswidrige Befehle zu geben; sie dürfen *„Befehle... nur unter Beachtung der Regeln des Völkerrechts“* erteilen;
3) das geltende Völkerrecht, insofern die NATO für ihre militärischen Einsätze gegen die Bundesrepublik Jugoslawien kein Mandat der UNO bzw. des Sicherheitsrates der UNO besitzt. In Artikel 2, Absatz 4 der UNO-Charta heißt es, daß alle UNO-Mitglieder *„in ihren internationalen Beziehungen jede gegen die territoriale Unversehrtheit oder die politische Unabhängigkeit eines Staates gerichtete oder sonst mit den Zielen der vereinten Nationen unvereinbare*

Androhung oder Anwendung von Gewalt (unterlassen)"; in Artikel 42 der UNO-Charta ist dann explizit festgehalten, daß **nur** der Sicherheitsrat der UNO dazu berechtigt ist, militärische Sanktionsmaßnahmen *„zur Wahrung oder Wiederherstellung des Weltfriedens und der internationalen Sicherheit"* einzuleiten und entsprechende Luft-, See- oder Landstreitkräfte einzusetzen;

4) den NATO-Vertrag (insbesondere Artikel 5), demzufolge die NATO ein reines Selbstverteidigungsbündnis ist. Artikel 1 des Nato-Vertrages verpflichtet die der NATO angehörigen Staaten, *„sich in ihren internationalen Beziehungen jeder Gewaltandrohung oder Gewaltanwendung zu enthalten, die mit den Zielen der Vereinten Nationen nicht vereinbar ist"*; in Artikel 5 ist explizit davon die Rede, daß **nur** im Falle eines *„bewaffneten Angriffs"* *„gegen eine oder mehrere"* der NATO-Parteien gemäß Artikel 51 der UNO-Charta das Recht *„der individuellen oder kollektiven Selbstverteidigung"* in Anspruch genommen werden kann.

Die von der Bundesregierung sowie der Bundeswehr mitgetragenen und mit zu verantwortenden militärischen Aktionen gegen die Bundesrepublik Jugoslawien sind eindeutig nicht nur als Angriffskrieg, sondern insbesondere auch als ein Beitrag zu bezeichnen, der auf entscheidende und in seinen Dimensionen noch gar nicht absehbare Weise dazu beiträgt, das friedliche Zusammenleben der Völker auf unabsehbare Zeit zu stören. Dies gilt insbesondere im Hinblick auf die Tatsache, daß trotz gegenteiliger Ankündigungen zu Beginn des Krieges seit geraumer Zeit zunehmend zivile Ziele in der Bundesrepublik Jugoslawien bombardiert werden und in erschreckendem Maße zivile Opfer zu beklagen sind; im Rahmen dieser Eskalation wurden durch die zielgenaue Bombardierung der Botschaft Chinas in Belgrad die souveränen Rechte eines bis dahin völlig unbeteiligten Staates mit militärischen Mitteln in Mitleidenschaft gezogen.
Weder die Bundesrepublik Deutschland noch ein anderer NATO-Staat - im übrigen auch kein anderer souveräner Staat - ist von der Bundesrepublik Jugoslawien militärisch angegriffen worden, so daß von einem *„bewaffnete(n) Angriff gegen eine oder mehrere"* (Artikel 5, NATO-Vertrag) NATO-Parteien absolut keine Rede sein kann, infolgedessen also auch nicht von einer Selbstverteidigung seitens der NATO. Artikel 51 der UNO-Charta kann zur Begründung der militärischen Einsätze gegen die Bundesrepublik Jugoslawien von daher nicht herangezogen werden; ein Fall von gerechtfertigter Selbstverteidigung seitens der NATO liegt eindeutig nicht vor. Laut geltendem Völkerrecht ist im Falle innerstaatlicher Auseinandersetzungen (Bürgerkrieg) strikte Neutralität zu wahren; nur der UNO-Sicherheitsrat hat das Recht (UNO-Charta, Artikel 39 und 42) in solchen Fällen tätig zu werden. Die Berechtigung für einen sogenannten „out of area" - Einsatz von NATO-Truppen und damit gegebenenfalls auch der Bundeswehr wäre nur dann gegeben, wenn ein entsprechendes Mandat des Sicherheitsrates der UNO vorliegt - dies ist im Fall des bewaffneten Angriffs auf die Bundesrepublik Jugoslawien jedoch eindeutig nicht der Fall.
Der UNO-Sicherheitsrat hat in den beiden Resolutionen 1160 vom 31. März 1998 und 1199 vom 23. September 1998 die kämpfenden Parteien in Jugoslawien dazu aufgefordert, die Kämpfe einzustellen und sich die Prüfung *„weiterer Schritte und zusätzlicher Maßnahmen zur Erhaltung oder Wiederherstellung des Friedens und der Stabilität in der Region"* vorbehalten. Der UNO-Sicherheitsrat hat der NATO in der

Folge jedoch kein Mandat zum militärischen Eingreifen in der Bundesrepublik Jugoslawien erteilt; entgegen allen völkerrechtlichen Regelungen hat sich der NATO-Rat - ohne die angekündigten „*weitere(n) Schritte und zusätzliche(n) Maßnahmen*" des UNO-Sicherheitsrates abzuwarten oder überhaupt den Versuch zu unternehmen, unter Einbindung der Sowjetunion und Chinas einen weitergehenden Beschluß des UNO-Sicherheitsrates herbeizuführen - selbst zu einem solchen Eingreifen ermächtigt.
Das völkerrechtlich nicht legitimierte militärische Eingreifen der NATO in einen innerstaatlichen, mit militärischen Mitteln ausgetragenen Konflikt hat mittlerweile keineswegs zu einem deeskalierenden Effekt geführt, sondern genau das Gegenteil zur Folge: Sowohl die Vertreibungen aus dem Kosovo als auch die damit einhergehenden Gewalttaten und Menschenrechtsverletzungen haben ohne Zweifel zugenommen, nicht nur im Kosovo, sondern auch - im Zuge der Bombardierungen - in den übrigen Regionen der Bundesrepublik Jugoslawien. Das militärische Eingreifen der NATO hat somit auf entscheidende Weise zur Eskalation all dessen, was verhindert werden sollte, beigetragen; das in der Region ohne Zweifel gestörte friedliche Zusammenleben der Völker ist nicht gefördert, sondern zusätzlich gestört worden. Die damit verbundenen politischen Implikationen - der zukünftige Status nicht nur des Kosovo, sondern z.B. auch Montenegros, Mazedoniens oder auch Albaniens, die durch die von der NATO ausgehende Eskalation allesamt in Mitleidenschaft gezogen worden sind - sind überhaupt nicht absehbar; die gesamte Region erscheint politisch auf unabsehbare Zeit destabilisiert.
Insbesondere aber ist das Völkerrecht, so muß man schlußfolgern, durch die Selbstermächtigung bzw. Selbstmandatierung der NATO nicht nur geschwächt, sondern geradezu außer Kraft gesetzt worden; es gibt konsequenterweise zukünftig keine völkerrechtliche Garantie dafür, daß nicht auch andere Staaten ihre Interessen auf analoge Weise militärisch durchzusetzen und gegebenenfalls in innerstaatliche Konflikte einzugreifen geneigt sein werden. Mit dem gleichen Recht wie die NATO könnte z. B. auch China wegen der Unterdrückung der chinesischen Minderheit in Indonesien dort militärisch intervenieren oder die russische Regierung könnte auf die Idee verfallen, der menschenrechtswidrigen Verfolgung der Kurden in der Türkei mit militärischen Mitteln ein Ende zu setzen. Darüber hinaus dürfte es kaum verwunderlich sein, wenn zukünftig immer mehr Staaten verstärkt und mit allen Mitteln versuchen werden, in den Besitz von Atomwaffen zu gelangen, da dies der von der NATO wieder in Gang gesetzten militärischen Logik zufolge als Schutz gegen eventuelle militärische Interventionen von außen angesehen werden wird. Von daher ist das friedliche Zusammenleben der Völker auch auf dieser - über die jetzt unmittelbar betroffene Region weit hinausreichenden - weltpolitischen Ebene auf unabsehbare Weise gefährdet.
Durch die Selbstermächtigung der NATO und ihre Fähigkeiten, diese Selbstermächtigung mit entsprechender militärischer Gewalt durchzusetzen, ist der Krieg wieder einmal als Fortsetzung der Politik mit anderen Mitteln legitimiert worden. Das Völkerrecht, dessen Sinn doch gerade darin liegt, einem Politikverständnis, das den Krieg als Fortsetzung der Politik mit anderen Mitteln betrachtet, den Boden zu entziehen, ist an entscheidender Stelle geradezu ad absurdum geführt worden.

Bundeskanzler Gerhard Schröder hat am 26. März in seiner Rede vor dem Deutschen Bundestag die *„Luftschläge gegen militärische Ziele in Jugoslawien"* damit begründet, *„weitere schwere und systematische Verletzungen der Menschenrechte im Kosovo zu unterbinden und... eine humanitäre Katastrophe dort zu verhindern"*. Ohne Zweifel verstößt das völkische Milosevic-Regime mit den von ihm betriebenen ethnisch begründeten sogenannten Säuberungen und Vertreibungen und dem damit verbundenen Gewalttaten im Kosovo gegen die einfachsten Menschenrechte und es ist auch keine Frage, daß es Aufgabe der internationalen Politik ist, diese Menschenrechtsverletzungen zu ahnden und mit den entsprechenden Mitteln zu stoppen. Zu fragen ist allerdings, inwieweit die sogenannten *„Luftschläge"* überhaupt in der Lage sein können, die sogenannte *„humanitäre Katastrophe"* zu verhindern. Zu fragen ist dabei ganz nebenbei, wieso die NATO ausgerechnet die Menschenrechtsverletzungen im Kosovo mit sogenannten *„Luftschlägen"* glaubt beenden zu dürfen, während sie sowohl quantitativ als auch qualitativ ähnliche Menschenrechtsverletzungen in anderen Weltteilen - z.B. in dem NATO-Mitgliedsstaat Türkei - ohne entsprechende Reaktionen hinnimmt. Der bei den verantwortlichen Politikern und Militärs beliebte Gebrauch des grammatikalisch und sprachlich völlig verqueren Begriffs *„humanitäre Katastrophe"* - Katastrophen werden allgemein wohl kaum als humanitär empfunden - verweist im übrigen darauf, daß der Öffentlichkeit möglicherweise - bewußt oder unbewußt - suggeriert werden soll, daß die von den Bombenangriffen der NATO ausgelösten Katastrophen als - auch dies ist ein bei den politisch und militärisch Verantwortlichen beliebter Begriff geworden - *„humanitäre Aktion"* gerechtfertigt werden sollen, ein Begriff im übrigen, der völkerrechtlich völlig unbekannt ist.

Anzumerken ist in diesem Zusammenhang, daß die von Bundeskanzler Schröder in seiner Rede vom 26. März monierten *„schwere(n) und systematische(n) Verletzungen der Menschenrechte im Kosovo"* zumindest in der Bundesrepublik bis zu diesem Datum offiziell offensichtlich nicht zur Kenntnis genommen wurden. In einem „Bericht über die asyl- und abschiebungsrelevante Lage in der Bundesrepublik Jugoslawien (Stand: November 1998)" des Auswärtigen Amtes vom 18. November 1998 heißt es im Anschluß an eine kurze Schilderung der Auseinandersetzungen zwischen serbischen Militärs und der UCK, daß nach dem Rückzug der letzteren *„der Rückkehrprozeß"* der im Zuge der Auseinandersetzung geflüchteten Zivilbevölkerung *„offenbar in größerem Umfang in Gang gekommen (ist). Die Wahrscheinlichkeit, daß Kosovo-Albaner im Falle ihrer Rückkehr in ihre Heimat massiven staatlichen Repressionen ausgesetzt sind, ist insgesamt als gering einzuschätzen."* Dieser Einschätzung entsprechend wurde in der Bundesrepublik Deutschland in nahezu allen Fällen mit Asylanträgen von Kosovo-Albaner verfahren; symptomatisch ist der Fall eines 18jährigen Kosovo-Albaners, der im Oktober 1998 in Bochum einen Asylantrag stellte. Ausgerechnet einen Tag vor dem Beginn der Bombardierungen erhielt er den ablehnenden Bescheid des Bundesamtes für die Anerkennung ausländischer Flüchtlinge: Der Asylantrag wurde u.a. mit der Begründung abgelehnt, daß es *„ein staatliches Programm zur Vertreibung aller Albaner aus dem Kosovo oder... mit dem Ziel der Ausrottung aller Albaner"* nicht gibt.

Für politisch auch nur halbwegs interessierte Beobachter der seit Jahren anhaltenden und immer wieder eskalierenden Konflikte im Kontext des ehemaligen Jugoslawien

war von vornherein abzusehen, daß die sogenannten *„Luftschläge"* weder die ethnischen Vertreibungen noch die damit verbundenen Gewalttaten verhindern bzw. unterbinden würden. Tatsache ist, daß sowohl die Vertreibungen als auch die Gewalttaten im Zusammenhang der NATO-Bombardierungen ganz offensichtlich in extremem Maße zugenommen haben: Laut Angaben der UNCHR wurden seit dem Beginn des Bombenkrieges am 24. März 1999 ganz erheblich mehr Personen aus dem Kosovo vertrieben als im ganzen vorhergehenden Jahr; die damit verbundenen Gewalttaten werden wohl erst nach dem Ende des Krieges exakt zu eruieren sein. Kein auch nur halbwegs seriöser Beobachter bestreitet den Zusammenhang dieser extrem angestiegenen Vertreibungen und der damit zusammenhängenden Gewalttaten mit den Bombardierungen seitens der NATO. Die UNO-Menschenrechtskommissarin Mary Robinson hält es in der Zwischenzeit nicht mehr für ausgeschlossen, daß das Vorgehen der NATO vor dem Internationalen Gerichtshof in Den Haag zur Sprache kommen wird.

Ähnlich blauäugig war und ist die unter NATO-Politikern und -Militärs offensichtlich kursierende Meinung, daß man mit den Bombardierungen die jugoslawische Bevölkerung zum Widerstand gegen das Regime von Milosevic hätte aktivieren können. Insbesondere die bundesdeutschen Politiker und Militärs hätten wissen müssen, daß während des Zweiten Weltkrieges der entsprechende Versuch der Alliierten, mit den Bombardierungen deutscher Städte die Bevölkerung zum Aufstand gegen die Regierung zu motivieren, gescheitert ist: So wie sich seinerzeit die deutsche Bevölkerung mit ihrem Führer in völkischer Gesinnung solidarisierte, so solidarisiert sich heute die jugoslawische, unter den Bombardierungen leidende Bevölkerung auf ähnlich völkischer Basis mit ihrem Führer.

Dies verweist zudem auf eine weitere von bundesdeutschen Politikern und dabei ganz besonders von Verteidigungsminister Scharping, aber auch Außenminister Fischer vorgetragene Begründung für den Bombenkrieg gegen die Bundesrepublik Jugoslawien. Allen Ernstes werden platte Analogien zwischen Milosevic und Hitler sowie zwischen den Vertreibungen und Gewalttaten im Kosovo und deutschen Vernichtungslagern wie Auschwitz gezogen; dies zeugt nicht nur von einer geradezu peinlichen Unwissenheit bezüglich den Zielen und der Funktionsweisen des nationalsozialistischen Regimes, sondern von einer offensichtlich als notwendig angesehenen moralischen Überhöhung der NATO-Bombardierungen, die wiederum von den gravierenden Verstößen gegen Völkerrecht, NATO-Vertrag, Grundgesetz und Soldatengesetz ablenken soll. Man kann sich darüber hinaus der Vermutung nicht entziehen, daß einige bundesdeutsche Politiker einen reichlich verspäteten Krieg gegen Hitler an einem gerade zupaß kommenden Objekt führen; die damit einhergehende Relativierung der von Deutschen zu Zeiten des nationalsozialistischen Regimes begangenen Verbrechen darf man wohl als eine neue, eine rot-grüne Variante der Auschwitzlüge bezeichnen.

Der Bombenkrieg gegen die Bundesrepublik Jugoslawien begann, nachdem die Verhandlungen in Rambouillet gescheitert waren. Bundeskanzler Gerhard Schröder hat in seiner bereits erwähnten Rede behauptet, daß bei diesen Verhandlungen ein *„faires Abkommen"* anvisiert worden sei, das *„auch die territoriale Integrität der Republik Jugoslawien gewährleistet"*. Die Vertragsverhandlungen in Rambouillet sind unter für die Öffentlichkeit bis heute kaum nachvollziehbaren Umständen abgelaufen und

schließlich abgebrochen worden. Tatsache ist, daß die jugoslawische Regierung den zuletzt zur Diskussion stehenden Vertragsentwurf nicht unterzeichnet hat. Da dieser Entwurf vom Auswärtigen Amt bis heute nicht veröffentlicht worden ist und wohl auch nur einigen wenigen Bundestagsabgeordneten seinerzeit überhaupt zur Kenntnis gebracht wurde, läßt sich über die Motive der jugoslawischen Regierung nur spekulieren. Diesbezüglich äußerst anregend ist insbesondere der mittlerweile bekannt gewordene Appendix B des Vertragsentwurfs, der u.a. folgende Bestimmungen enthält:

Artikel 6:

„a) Die NATO genießt Immunität vor allen rechtlichen Verfahren - ob zivil-, verwaltungs- oder strafrechtlich.

b) Die zur NATO gehörenden Personen genießen unter allen Umständen und zu jeder Zeit Immunität vor der Gerichtsbarkeit der Konfliktparteien (Damit sind die Kosovo-Albaner und die jugoslawische Regierung gemeint) *hinsichtlich sämtlicher zivil-, verwaltungs-, straf- oder disziplinarrechtlicher Vergehen, die sie möglicherweise in der Bundesrepublik Jugoslawien begehen.*

Die Konfliktparteien sollen die an der NATO-Operation beteiligten Staaten dabei unterstützen, ihre Jurisdiktion über ihre eigenen Staatsangehörigen auszuüben..."

Artikel 8:

„Das NATO-Personal soll sich mitsamt seiner Fahrzeuge, Schiffe, Flugzeuge und Ausrüstung innerhalb der gesamten Bundesrepublik Jugoslawien inklusive ihres Luftraumes und ihrer Territorialgewässer frei und ungehindert sowie ohne Zugangsbeschränkungen bewegen können. Das schließt ein - ist aber nicht begrenzt auf - das Recht zur Einrichtung von Lagern, die Durchführung von Manövern und das Recht auf die Nutzung sämtlicher Regionen oder Einrichtungen, die benötigt werden für Nachschub, Training und Feldoperationen."

Artikel 10:

„Die Behörden der Bundesrepublik Jugoslawien sollen den Transport von Personal, Fahrzeugen, Schiffen, Flugzeugen, Ausrüstung oder Nachschub der NATO durch den Luftraum, Häfen, Straßen oder Flughäfen mit allen angemessenen Mitteln und mit Priorität ermöglichen.

Der NATO dürfen keine Kosten berechnet werden für die Starts, Landung oder Luftraum-Navigation von Flugzeugen.

Ebenso dürfen keine Zölle, Gebühren oder andere Kosten erhoben werden für die Nutzung von Häfen durch Schiffe der NATO.

Fahrzeuge, Schiffe oder Flugzeuge, die bei der NATO-Operation eingesetzt werden, unterliegen keiner Verpflichtung zur Genehmigung, Registrierung oder kommerziellen Versicherung."

Jedem politisch denkenden Menschen, erst recht jedem über Krieg und Frieden entscheidenden Politiker und/oder Diplomaten dürfte von vornherein klar gewesen sein, daß solche Bestimmungen von keiner souveränen Regierung dieses Planeten unterschrieben werden; solchen Bestimmungen, die in der politischen Realität nichts anderes darstellen, als ein Besatzungsstatut, wird eine souveräne Regierung, gleich was von ihrer Politik zu halten ist, erst - symbolisch gesprochen - am 8. Mai, also nach einer bedingungslosen Kapitulation zustimmen. Der Appendix B entspricht von daher in politischer Hinsicht einer impliziten Kriegserklärung an die völkerrechtlich

souveräne Bundesrepublik Jugoslawien. Der von der NATO gegen die Bundesrepublik Jugoslawien geführte Angriffskrieg hat offensichtlich die Absicht, diese bei den Verhandlungen von Rambouillet von der jugoslawischen Regierung verweigerte bedingungslose Kapitulation durch Bombardements herbeizuführen.

Resümierend läßt sich festhalten, daß das angestrebte und zur Begründung der Bombardierungen explizit angekündigte Ziel, die Menschenrechtsverletzungen im Kosovo zu verhindern, eindeutig nicht erreicht wurde. Im Gegenteil: Gewissermaßen unter dem Schutz der Bombardierungen ist eine ganz erhebliche Zunahme der Vertreibungen der kosovo-albanischen Bevölkerung und der damit einhergehenden Gewalttaten zu beobachten. Darüber hinaus hat die NATO mit zunehmender Kriegsdauer nicht nur - wie ursprünglich angekündigt - militärische Ziele, sondern immer mehr zivile Einrichtungen in der ganzen Bundesrepublik Jugoslawien bombardiert, wobei zahlreiche zivile Opfer zu beklagen sind. Ohne Zweifel sind auch diese Opfer - seitens der NATO unter den befremdlichen Begriff „Kollateralschäden" subsumiert - als Menschenrechtsverletzungen zu betrachten. Mit anderen Worten: Die NATO-Bombardierungen haben die Menschenrechtsverletzungen und die Gewalttaten nicht etwa gestoppt, sondern ganz im Gegenteil noch zu einer weiteren Eskalation beigetragen. Was verhindert werden sollte, ist geradezu verstärkt worden. Das politische Versagen gegenüber den Problemen im Kosovo und in der ganzen Region wurde durch die militärische Intervention nicht aufgehoben, sondern erst recht zum Vorschein gebracht. In der politischen Realität hat der Militäreinsatz der NATO gegen die Bundesrepublik Jugoslawien ganz im Gegensatz zu den intendierten Zielen einer möglichst schnellen Beendigung der Menschenrechtsverletzungen im Kosovo sowohl in der engeren Region als auch auf weltpolitischer Ebene zu einer erheblichen, geradezu bedrohlichen Störung des friedlichen Zusammenlebens der Völker geführt.

Mit freundlichen Grüßen

DER GENERALBUNDESANWALT
BEIM BUNDESGERICHTSHOF

Der Generalbundesanwalt • Postfach 27 20 • 76014 Karlsruhe

Herrn
Wolfgang Braunschädel
Hustadtring 33

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Aktenzeichen	Bearbeiter/in	☎ (0721)	Datum
3 ARP 255/99-3 (bei Antwort bitte angeben)	BA b. BGH v. Langsdorff	81 91- 133	01.06.1999

Betrifft: Ihre Strafanzeige gegen Bundeskanzler Gerhard Schröder u.a. wegen Vorbereitung eines Angriffskrieges

Sehr geehrter Herr Braunschädel,

auf Ihre Strafanzeige habe ich den Sachverhalt geprüft. Anhaltspunkte für das Vorliegen einer in die Verfolgungszuständigkeit des Generalbundesanwalts fallende Straftat sind nicht gegeben (§ 152 Abs. 2 StPO).

Der Straftatbestand der Vorbereitung eines Angriffskrieges nach § 80 StGB erfüllt den Verfassungsauftrag des Artikels 26 Abs. 1 GG. Wie die Bezugnahme auf das Grundgesetz zum Ausdruck bringt, hat sich die Auslegung des § 80 StGB nicht nur an dessen Wortlaut, insbesondere nicht allein am militärisch verstandenen Begriff des Angriffskrieges auszurichten. Vielmehr stellt der Straftatbestand ein Verhalten unter Strafe, das nach den historischen Erfahrungen aus der Zeit vor dem Inkrafttreten des Grundgesetzes als Störung des Friedens zu werten ist. Aus dem Wortlaut des Artikels 26 Abs. 1 GG ergibt sich, daß die Vorbereitung und die Führung eines Angriffskrieges nur einen Unterfall solcher Handlungen bildet, die geeignet sind und in der Absicht begangen werden, das friedliche Zusammenleben der Völker zu stören. Diese Merkmale sind deshalb bei der Auslegung des Begriffs „Angriffskrieg" in § 80 StGB zu berücksichtigen.

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Von einer derartigen Eignung und Absicht kann im Blick auf den NATO-Einsatz im Kosovo ersichtlich nicht die Rede sein. Unabhängig davon, ob bereits die UN-Resolutionen 1160 und 1199 oder der sich auf diese Resolutionen stützende Beschluß der NATO deren Intervention im Kosovo-Konflikt nach dem Völkerrecht zu rechtfertigen vermögen, haben die für den Einsatz der Bundeswehr Verantwortlichen im Rahmen des ihnen zustehenden politischen Ermessens zusammen mit ihren Bündnispartnern ausschließlich in dem Bestreben gehandelt, eine völker- und menschenrechtswidrige Unterdrückung und Vertreibung der Kosovo-Albaner abzuwenden und zu beenden (vgl. § 220a StGB). Dieser Beweggrund ist bereits in den Debatten des Deutschen Bundestages vom 16. Oktober 1998 und vom 25. Februar 1999 deutlich zu Tage getreten. Er ergibt sich überdies aus einer Vielzahl allgemeinkundiger Umstände.

Bundeskanzler Schröder hat am 26. März 1999 vor dem Deutschen Bundestag unter anderem folgendes erklärt:

> „... in der Nacht zum Donnerstag hat die NATO mit Luftschlägen gegen militärische Ziele in Jugoslawien begonnen. Das Bündnis war zu diesem Schritt gezwungen, um weitere schwere und systematische Verletzungen der Menschenrechte im Kosovo zu unterbinden und um eine humanitäre Katastrophe dort zu verhindern.
>
> Der Bundesaußenminister, die Bundesregierung und die Kontaktgruppe haben in den letzten Wochen und Monaten nichts, aber auch gar nichts unversucht gelassen, eine friedliche Lösung des Kosovo-Konfliktes zu erzielen. Präsident Milošević hat sein eigenes Volk, die albanische Bevölkerungsmehrheit im Kosovo und die Staatengemeinschaft ein ums andere Mal hintergangen.
>
> Monatelang haben der EU-Sonderbeauftragte Petritsch und sein amerikanischer Kollege Hill in intensiver Reisediplomatie mit den beiden Konfliktparteien Gespräche geführt und den Boden für ein faires Abkommen bereitet. In Rambouillet und Paris ist mehrere Wochen lang – wir alle waren Zeugen – hartnäckig verhandelt worden. Zu dem dort vorgelegten Abkommen, das die Menschenrechte der albanischen Bevölkerungsmehrheit im Kosovo, aber auch die territoriale Integrität der Republik Jugoslawien gewährleistet, gibt es nach meiner festen Auffassung keine Alternative. Das ist der Grund, warum alle Parteien diesem Abkommen hätten zustimmen müssen.
>
> ...
>
> Die Vertreter der Kosovo-Albaner haben dem Abkommen von Rambouillet schließlich zugestimmt. Einzig die Belgrader Delegation hat durch ihre Obstruktionspolitik alle, aber auch wirklich alle Vermittlungsversuche scheitern lassen. Sie allein trägt die Verantwortung für die entstandene Lage.
>
> Gleichzeitig hat das Milošević-Regime seinen Krieg gegen die Bevölkerung im Kosovo noch intensiviert. Unsagbares menschliches Leid ist die Folge dieser Politik. Mehr als 250.000 Menschen mußten aus ihren Häusern fliehen oder wurden gar mit Gewalt vertrieben. Allein in den letzten sechs Wochen haben noch einmal 80.000 Menschen dem Inferno, das es dort gibt, zu entrinnen versucht. Umgerechnet auf

die Bevölkerung der Bundesrepublik Deutschland wäre das die Einwohnerschaft einer Metropole wie Berlin. Es wäre zynisch und verantwortungslos gewesen, dieser humanitären Katastrophe weiter tatenlos zuzusehen.

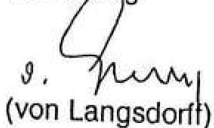
Bis zuletzt hat sich die Staatengemeinschaft bemüht, dem Morden auf diplomatischem Wege Einhalt zu gebieten. Außenminister Fischer als EU-Ratspräsident, der russische Außenminister Iwanow und der OSZE-Vorsitzende Vollebaek haben Präsident Milošević in Belgrad zur Annahme des Rambouillet-Abkommens gedrängt. Schließlich hat Richard Holbrooke als Sondergesandter der Vereinigten Staaten am Montag und Dienstag dieser Woche einen allerletzten Versuch unternommen, das Regime in Belgrad zum Einlenken zu bewegen – alles vergebens. Wir hatten deshalb keine andere Wahl, als gemeinsam mit unseren Verbündeten die Drohung der NATO wahrzumachen und ein deutliches Zeichen dafür zu setzen, daß wir als Staatengemeinschaft die weitere systematische Verletzung der Menschenrechte im Kosovo nicht hinzunehmen bereit sind." (Bulletin des Presse- und Informationsamtes der Bundesregierung Nr. 13/S. 137 vom 30. März 1999).

Die der Strafanzeige zugrundeliegende Einschätzung, bei der vom Deutschen Bundestag beschlossenen Beteiligung an einer von der NATO geführten Luftoperation handele es sich um einen Angriffskrieg bzw. um die Vorbereitung eines Angriffskrieges, wird danach den tatsächlichen Umständen nicht gerecht. Sie läßt außer Betracht, daß es der Bundesregierung und ihren NATO-Partnern allein darum geht, die Führung der Föderativen Republik Jugoslawien nach langen vergeblichen Verhandlungen zu bewegen, von einer Unterdrückung der albanischen Volksgruppe im Kosovo abzulassen und zu einer friedlichen Politik zurückzukehren. Der militärische NATO-Einsatz erweist sich als ultima ratio gegen die maßgeblich von der jugoslawischen Staatsführung zu verantwortende Friedensstörung im Kosovo. Er bezweckt letztlich die Wiederherstellung des Friedens in der Krisenregion, indem erklärtermaßen eine mit diplomatischen Mitteln zu findende friedensschaffende und friedenssichernde Lösung befördert werden soll. Dies wird vom Straftatbestand des § 80 StGB nicht erfaßt.

Soweit Sie Strafanzeige wegen Ereignissen erstatteten, die erst nach Beginn des Militäreinsatzes stattfanden, fehlt es an einer Verfolgungszuständigkeit des Generalbundesanwaltes, da § 80 StGB nur die Vorbereitung eines Angriffskrieges erfaßt, nicht dagegen die Führung eines solchen. Für Handlungen nach Auslösung eines Krieges gelten die allgemeinen Straf- und Zuständigkeitsvorschriften. Nach Ihrem Vorbringen wäre damit die Staatsanwaltschaft bei dem Landgericht Bonn zuständig. Ich stelle Ihnen anheim, sich insoweit dorthin zu wenden.

Mit freundlichen Grüßen

Im Auftrag



(von Langsdorff)

|/.

Wolfgang Braunschädel
Hustadtring 33
44801 Bochum

Bochum, den 5.7.1999

An den
Herrn Generalbundesanwalt
beim Bundesgerichtshof
z.Hd. Herrn/Frau BA von Langsdorff
Postfach 2720
76014 Karlsruhe

Betr.: Aktenzeichen 3 ARP 255/99-3
Meine Anzeige vom 18.5.1999 - Ihr Schreiben vom 1.6.1999

Sehr geehrte(r) Herr/Frau von Langsdorff,

im Zuge historischer Studien bin ich zufälligerweise auf zwei Bemerkungen des ehemaligen deutschen Reichskanzlers Adolf Hitler gestoßen, die, wäre man wortgläubig und geschichtsblind, zu der Annahme verführen könnten, es sei gute deutsche Tradition, mit militärischen Mitteln sogenannte friedensstiftende Maßnahmen durchzuführen und mal der einen, mal der anderen „*Volksgruppe*", insbesondere im südosteuropäischen Raum, zu erwünschter oder auch nicht erwünschter Hilfe zu eilen. Am 11. März 1938 ließ der genannte Kanzler verlauten, daß er beabsichtige, „*wenn andere Mittel nicht zum Ziele führen, mit bewaffneten Kräften in Österreich einzurücken und dort verfassungsmäßige Zustände herzustellen und weitere Gewalttaten gegen die deutschgesinnte Bevölkerung zu unterbinden*". Fast auf den Tag genau ein Jahr später, am 15. März 1939, teilte der Reichskanzler in einer „Proklamation an das deutsche Volk" diesem mit, daß er sich entschlossen habe, „*mit dem heutigen Tage deutsche Truppen nach Böhmen und Mähren einmarschieren zu lassen. Sie werden die terroristischen Banden und die sie deckenden tschechischen Streitkräfte entwaffnen, das Leben aller Bedrohten in Schutz nehmen und somit die Grundlagen für die Einführung einer grundsätzlichen Regelung sichern...*"
Wiederum fast auf den Tag genau sechzig Jahre später, am 26. März 1999, begründete Bundeskanzler Gerhard Schröder die Aufnahme von „*Luftschlägen gegen militärische Ziele in Jugoslawien*" mit dem Argument, „*weitere schwere und systematische Verletzungen der Menschenrechte im Kosovo zu unterbinden und... eine humanitäre Katastrophe dort zu verhindern*".
Ihre Ablehnung meiner Strafanzeige vom 18.5.1999 haben Sie im wesentlichen mit einem Rückgriff auf diese Rede Schröders begründet, was schon rein quantitativ darin zum Ausdruck kommt, daß Auszüge aus dieser Rede von den zweieinhalb Seiten, die Sie zu Ihrer Ablehnung benötigen, eine ganze Seite beanspruchen. Ihre Argumentation, derzufolge eine nicht einmal ansatzweise hinterfragte Aussage des Angeklagten zur

Ablehnung der Anklage führt, ist wahrlich verblüffend: Konsequenterweise müssen Sie in jedem beliebigen Mordverfahren einen Mordverdächtigen allein aufgrund seiner Aussage, daß er nicht der Mörder sei, frei sprechen. Sie werden mir erlauben, in der Tatsache, daß Sie offensichtlich nicht einmal in Betracht gezogen haben, daß eine solche Aussage wie die von Bundeskanzler Schröder zur ideologischen Rechtfertigung einer Straftat - in diesem Falle der Vorbereitung und Durchführung eines Angriffskrieges unter Bruch des Grundgesetzes, des Soldatengesetzes, der UNO-Charta und des NATO-Vertrages - dienen könnte, eine Bankrotterklärung juristischer Ermittlungstätigkeiten zu sehen.
Ihr reichlich salopper Verweis auf eine *„Vielzahl allgemeinkundiger Umstände"*, mit dem Sie Ihren Verzicht auf auch nur halbwegs seriöse Ermittlungen bemänteln, verstärkt diesen Eindruck. Es ließe sich ohne weiteres darüber spekulieren, was unter „allgemeinkundigen Umständen" zu verstehen ist. Ein solcher Umstand ist ohne Zweifel die Tatsache, daß man im bundesdeutschen Außenministerium bis zum Beginn des Bombenkrieges explizit davon ausging - entsprechende Papiere sind mittlerweile veröffentlicht und, da somit „allgemeinkundig", ohne Zweifel auch Ihnen bekannt -, daß *„eine völker- und menschenrechtswidrige Unterdrückung und Vertreibung der Kosovo-Albaner"* **nicht** vorlag; das führt natürlich zu der Frage, wie man in diesem Ministerium von einem auf den anderen Tag auf die Idee verfallen konnte, etwas *„abzuwenden und zu beenden"*, was den eigenen Erkenntnissen zufolge doch gar nicht stattfand. Möglicherweise liegt hier eine besonders bemerkenswerte Variante von Außenminister Fischers angewandter Dialektik vor, vielleicht handelt es sich bei den entsprechenden Einschätzungen des Außenministeriums aber auch nur um eine Art politischer „Not"lüge, um der bundesdeutschen Justiz eine Rechtfertigung für die Ablehnungen der Asylanträge von Kosovo-Albanern zu geben. Ein anderer „allgemeinkundiger Umstand" ist die Tatsache, daß entgegen der Ankündigung Schröders vom 26. März 1999 nicht nur *„militärische Ziele"*, sondern auch zivile Ziele in Jugoslawien bombardiert worden sind, die in NATO-spezifischer medialer Aufbereitung kurzerhand unter den berüchtigten Begriff „Kollateralschäden" subsumiert und verharmlost worden sind. Ein weiterer mittlerweile längst schon bekannter „allgemeinkundiger Umstand" ist die Tatsache, daß es zumindest höchst fragwürdig ist, ob in Rambouillet, so Schröder, der *„Boden für ein faires Abkommen bereitet"* worden ist; der berüchtigte Appendix B des Vertragsentwurfs spricht ohne Zweifel eine ganz andere Sprache. Ein weiterer „allgemeinkundiger Umstand" ist die Tatsache - Sie können dies zur Zeit tagtäglich in den Medien verfolgen -, daß die sogenannte friedensstiftende Mission im Kosovo auch nach dem offiziellen Kriegsende offensichtlich keinen durchschlagenden Erfolg zeigt, was im übrigen bereits vor Beginn der Bombardierungen nicht nur für Balkan-Experten absehbar war. In der Logik der NATO und der entsprechenden Argumentation in Ihrer Ablehnung meiner Anzeige müßte jetzt wohl ein weiterer Bombenkrieg geführt werden, diesmal gegen die UCK und sonstige albanische bewaffnete Kräfte, um zur Abwechslung einmal die *„völker- und menschenrechtswidrige Unterdrückung und Vertreibung"* der serbischen *„Volksgruppe"* im Kosovo zu verhindern.
Sie haben es offensichtlich nicht einmal für nötig befunden, diese wenigen hier genannten „allgemeinkundigen Umstände", die ich zum Teil bereits in meiner Anzeige vorgetragen hatte, überhaupt zur Kenntnis zu nehmen, ganz abgesehen davon, daß es

Ihre Aufgabe gewesen wäre, auf dem Hintergrund dieser „allgemeinkundigen Umstände" nicht nur die von Ihnen so ausführlich zitierte Rede Schröders, sondern insbesondere die Taten Schröders und der anderen für den Krieg verantwortlichen bundesdeutschen Politiker zu hinterfragen.
Ihrer Behauptung, daß Sie den *„Sachverhalt"* geprüft haben, kann ich auch nach mehrmaliger Lektüre Ihres Schreibens leider keinen Glauben schenken, nicht zuletzt auch deshalb, weil Ihre Ablehnungsbegründung bis auf zwei kleine unwichtige Ergänzungen mit einer mir zufälligerweise bekannt gewordenen anderen - nicht von Ihnen, sondern von einem(r) Ihrer Kolleg(inn)en unterschriebenen - Ablehnung einer meiner ähnlichen Anzeige übereinstimmt. Ich darf wohl zurecht vermuten, daß Sie - statt, wie behauptet, den *„Sachverhalt"* zu prüfen - Ihre Fähigkeit in der Montage von Textbausteinen erprobt haben; mit seriöser Justiz hat dies meiner Ansicht nach nicht das geringste zu tun.
Ganz besonders bemerkenswert ist im übrigen Ihr Hinweis darauf, daß in die *„Verfolgungszuständigkeit des Generalbundesanwaltes... nur die Vorbereitung eines Angriffskrieges..., nicht dagegen die Führung eines solchen"* fällt. Das, so erlaube ich mir abschließend als Nichtjurist zu vermuten, gehört wohl dann in jene spezifische deutsche Tradition von Gewaltenteilung, derzufolge der Führer zwar nicht zu jeder Zeit das Recht, dafür aber die Justiz in jedem Fall die Politik schützt.

Mit freundlichen Grüßen

LATimes, Tuesday, May 11, 1999

International Law May Halt the Bombing

Serbia: NATO attacks on nonmilitary targets, deliberate or otherwise, may be deemed war crimes.

By JONATHAN M. MILLER

International law now constrains U.S. military operations in Serbia in ways that the United States has never faced before. The Clinton administration's plan of constantly increasing bombing pressure until Serbia submits will fail, not because air power cannot bring a nation to its knees, but because long before that point, international law will force the bombings to a halt.

In 1993, the United Nations Security Council created the International War Crimes Tribunal for the Former Yugoslavia. Responding to initiatives from the U.S. and its NATO allies, the Security Council acted to end the impunity of the perpetrators of atrocities in the former Yugoslavia. The tribunal is the first international war crimes tribunal since Nuremberg. It now has an active trial calendar, with 26 individuals in custody, and has issued indictments against more than 80 suspects. All major NATO countries have actively supported the tribunal. However if NATO is not careful, its leaders could find themselves threatened with indictments.

The initial premise of NATO's bombing campaign was that if it inflicted sufficient damage on the Serbian military, the Serbians would eventually withdraw their forces from Kosovo to escape further punishment. Moreover, an extreme variant of this proposition, that the infliction of enough damage on Serbia will force its withdrawal from Kosovo, is undoubtedly correct. An indiscriminate NATO bombing campaign, targeting not just the Serbian military, but gradually including all Serbian infrastructure, factories and government buildings, would probably produce results. After enough suffering, any nation will surrender.

The catch is that simply inflicting suffering without the justification of military necessity violates the law of war. An air force may reasonably bomb a bridge to impede military supplies and may bomb a refinery to block the supply of fuel for military vehicles, regardless of the discomforts the loss imposes on the civilian population.

At a certain point, however, bombing crosses the line from merely causing collateral effects on the civilian population to being directed at the civilian population. Recent decisions to temporarily deprive most of Serbia of electric power and to bomb a cigarette plant, a television station and a political party headquarters are hard to describe as military necessity. Moreover, errors like the bombing of the Chinese Embassy (in seeking to bomb a nondescript government building) will increase as nonmilitary urban sites get targeted.

The war crimes tribunal has jurisdiction over any individual responsible for serious violations of the law of war in the former Yugoslavia since 1991. Among the crimes to be prosecuted is the war crime of "wanton destruction of cities, towns or villages, or devastation not justified by military necessity." NATO officials, senior military

closely with the NATO allies in gathering evidence on the crimes being committed by the Serbian forces in Kosovo. She recently met with the U.S. secretary of State and the secretary of Defense to receive further commitments of assistance. However the need to maintain impartiality will inevitably also require her to caution NATO officials on their bombing targets, if she has not already.

Judge Arbour's warnings will carry weight. The United States and its NATO allies recognize that under the U.N. Charter, they are legally bound to cooperate with the tribunal. For the first time in its history, the United States finds itself engaged in an armed conflict in which an international court may correctly insist that it may try U.S. officials and servicemen.

Not that the tribunal would likely issue indictments to make its point. Long before any indictments would come a public pronouncement that in itself would split the alliance.

The result is good for international law, but bad in terms of President Clinton's options. Because bombings must satisfy a military necessity, bombing as a form of pressure is illegal--and that increases pressure on NATO to either free Kosovo using ground troops or to accept a Russian compromise.

International law does not allow a war directed against a people. NATO is constrained by the international legal order it has pushed to establish, especially in a war fought for humanitarian principles.

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Kosovo and Metohija

BELGRADE, November, 17 1999
ACO JOVICIC

GOALS OF NATO AGGRESSION AGAINST YUGOSLAVIA MEDICO-PSYCHOLOGICAL ASPECT

Like any other war, this one as well - the aggression of NATO forces on Yugoslavia - can be viewed from different aspects. I am personally most engaged in an effort to understand essential, primary goal of this war. I can understand what I see: historical facts and concrete events during the aggression.

From a historical point of view, it is indisputable that our national and state territory bridges different cultural, religions, economic and national groupings, collective experience and prospects for the future. All these factors are crucial and instrumental in the creation of two dominant polarized forces within ourselves: one, that at any signal of danger releases a freedom-loving spirit and the other, with engrained engrams which imply willingness for subordination and accepting colonial status.

Concrete events during the aggression unfolded in line with the following pattern: aggressors were actively contemplating crimes, then committing them and then making the victim responsible for it. Since there is no absolution for crimes, the victims are punished for the crime that the victim is made responsible for. Everything happens according to the principle of repetition, reinforcement and multiplication. In the process of devising and executing this scenario, they are using electronic means of communications (television, internet, radio, etc.). The height of cynicism is the fact that the victims are given humanitarian assistance which amounts to nothing more than getting rid of out-of-date and expired food and medical supplies.

Furthermore, it is a fact that bombing raids were carried out all over our historical and State territory, at times without any purpose whatsoever (bombing of tourist resorts, repeated air strikes against already hit targets). Media attacks were launched to affect the minds of people with a clear goal of deepening inherited divisions mentioned above, of augmenting the pressure on the most vital mechanisms of psychological defence. It is striking that in our national being, they "uncover" some archaic layers, "impure blood" which as a rule belongs to our historical enemies, which implies absolution of their crimes in advance. On the other hand, these characteristics and tendencies are ascribed to those in our people who represent resistance forces, particularly those who are leaders of resistance. This is a several-year long, continuous process and during the aggression it has

reached the boiling point.

In this way, NATO became not only the force of aggression but an arbiter of a monstrous moral of a sort, i.e. destruction of all moral values representing a condition for the survival of human civilization, whereas pompously proclaimed moral of the western, technically highly developed countries, is just a great hypocrisy.

If one analyses the order, choice, character, significance and importance of the bombed targets for people's daily lives, it can be perceived that there was a combination of surprises - at erratic, irregular, unpredictable intervals with the element of surprise, generating the feeling of helplessness; the loss of historical, national and personal dignity and uselessness of resistance. Thus, in the very beginning, it was the bridges on the Danube that were destroyed, then TV centre was bombed, then the President's residence, the religious shrines, hospitals including repeated exhausting strikes on the factories, and "in the end" on sources of energy which should enshroud in darkness all that means healthy life. The goal is to make life in big cities impossible and affect psychological endurance.

Taking all of the above together and in view of the aggressor's overall might, one can claim that the goal was attrition and destruction of resistance forces within the entire State, national and historical territory. The fulfilment of that goal would open the door to eliminating all barriers for taking over and organizing natural and living space according to their own standards.

It is certain that the designers of this demonic enterprise knew well what all that they systematically organized and executed would provoke. They knew for certain that it would cause the state of chronic stress. If we know that too, and if we take into account the fact that the stress will be perpetuated uninterrupted and be increased by frequent and unpredictable acute surprises, from the medical point of view, it is clear that this is how the ability to adapt and resist is being stretched or ultimately depleted.

Acute attacks cause extreme damage to cardio-vascular system including a degree of acute malfunction. Chronical tensions are linked to increased production of adaptation hormone - cortisol which over a prolonged period of action affects the immunological system, causes bone thinning and causes or worsens come so called psychosomatic deceases (ulcus, diabetes, asthma, tyroid malfunction, etc). So, the above described stress condition, if protracted, causes a series of functional and organic damage. On the psychological level, it leaves an unpleasant feeling of anxiety and depressive mood, resulting in psycho-physical exhaustion, helplessness, apathy and diffuse pain, particularly in muscles and bones. These malfunctions may occur in line with the principle of mutual conditionality and reinforcement -for example, pains reinforce depressive mood, whereas depression increases the intensity of pain.

All these processes are affecting primarily persons with predisposition or persons whose health had been affected in other way. Ultimately, there is continued

decrease in the quantity and quality of resistance enabling adverse effects to take root.

These activities on the whole cannot be qualified simply and purely as genocide. It was a systematic action of planned and absolute annulment of a historical, national, material and spiritual identity. All this brings to mind the way some empires according to the Old Testament were established. If that were to be accepted even hypothetically it would open many questions which would certainly bring us closer to certain truths - knowledge would become experience and that has already become truth, a multi-layered one, right across the heart.

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