Milosevic & Aanklachten

Map 5C

LOADED QUESTIONS: MR. NICE'S CROSS-EXAMINATION OF PROFESSOR MARKOVIC

www.slobodan-milosevic.org - January 20, 2005

Prosecutor Geoffery Nice continued his cross-examination of Professor Ratko Markovic at the Hague Tribunal's trial of Slobodan Milosevic on Thursday.

Mr. Nice did not challenge the evidence put forward by the witness during his examination-in-chief, instead Nice embarked on an unsuccessful quest to assassinate the character of the witness.

Professor Markovic's examination in chief dealt almost exclusively with verifiable facts. He testified to facts and introduced documents corroborating those facts. Almost none of his evidence had to do with his personal opinions or beliefs. Professor Markovic essentially served as a vehicle that President Milosevic used to produce documents and prove facts for his defense.

Because of the irrefutable nature of Professor Markovic's testimony in chief, Mr. Nice cross-examined him in an underhanded fashion. Mr. Nice adopted the "are you still beating your wife?" approach to cross-examination. Mr. Nice based questions on a false premise, and then tried to trap the witness.

When dealing with Kosovo Mr. Nice frequently based his questions on the premise that it was exclusively the Albanians who suffered during the war, and that all of their suffering was the result of policies pursued by the Serbian Government.

Many of Mr. Nice's questions would be formulated in the following fashion. Mr. Nice would establish a premise by asserting (falsely in most cases) that a certain crime was perpetrated against Kosovo Albanians, then he would ask the witness which policy of the Serbian government caused the alleged crime to be committed.

In philosophical terms the strategy employed by Mr. Nice is known as *the fallacy of presupposition*. Mr. Nice's questions presupposed a definite answer to another question which had not even been asked, or they asked for an explanation of something which was untrue or not yet established.

The only way to effectively answer the types of questions that Mr. Nice was asking is to refute the premise that they're based on. Unfortunately, whenever Professor Markovic attempted to correct the false premise of the prosecutor's questions, Mr. Nice would complain to the judges that the witness was being non-responsive to his questions.

In one case, Nice referred to the fact that Milosevic had said that Markovic was "undoubtedly the best expert in constitutional law in the former Yugoslavia." Then the prosecutor asked the witness if that was how he describes himself. This was a typical example of Mr. Nice's conduct, if the witness says "no" then his qualification to testify is called into question, and if he says "yes" then he looks arrogant and pretentious.

Mr. Nice's entire strategy was to try and trick the witness into saying something incriminating. Watching the court proceedings (if you can call them that) was like watching a linguistic version of a "Wiley Coyote & Roadrunner" cartoon. Mr. Nice, playing the part of Wiley Coyote, would carefully lay a trap by putting a loaded question the witness. But the witness, playing the part of the Roadrunner, never fell for the trap.

In addition to asking loaded questions, Mr. Nice wasted a lot of time asking the witness about events where he wasn't present and therefore had no knowledge. Mr. Nice also asked a number of hypothetical questions about events that could have happened but ultimately never did.

Mr. Nice did not complete the cross-examination. Professor Markovic will have to come back and conclude his testimony on Monday.

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Sagittarius

Van: "R.Despotovic" <despot@tiscali.nl>
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Onderwerp: Fw: Illegal seccession and joint criminal enterprise

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From: nebojsa
To: R.Despotovic
Sent: Thursday, January 20, 2005 11:11 AM
Subject: Illegal seccession and joint criminal enterprise

ILLEGAL SECESSION AND JOINT CRIMINAL

In Slobodan Milosevic's opinion, testimony of Professor Ratko Markovic on constitutional cases that precede the break-up of Yugoslavia is relevant because it shows that the conflicts in which war crimes were committed were the result of "illegal and violent secession" and not of any "joint criminal enterprise" that the prosecutor has charged Milosevic with

THE HAGUE, 18.1. (SENSE) - ICTY will not rule on whether the secession of some republics of the former Yugoslavia was illegal or not, but on the events that followed and that were described in the indictments against Slobodan Milosevic. Judge Robinson made this remark today as Professor Ratko Markovic, Miloevic's defense witness, continued his testimony.

Judge Robinson then invited the parties to state whether in their opinion the legality of the secession had any significance in the case before the Chamber.

Milosevic considers that it has, because, as he said, **"the illegal and violent secession caused armed conflicts... in which all sides committed crimes."**

According to defense counsel Steven Kay, the issue is important considering the "position of the accused as the head of state, his state of mind and the context in which he reacted to the developments."

Prosecutor Geoffrey Nice, however, considers that this issue "has no bearing on the legal responsibility of the accused," since, as he noted, "the illegality of the secession, or his belief that the secession was illegal, cannot be used to justify war crimes." In his opinion, the only legally relevant issue in this area is the date when Croatia gained independence, because as of that date internal hostilities turned into an international conflict in which the Geneva Conventions apply. Milosevic has been charged with grave breaches of the Geneva Conventions.

After the parties presented their views, Judge Robinson asked Milosevic whether it was his argument that the "acts he has been charged with are the result of the secession and unconstitutional actions of some republics and not the result of joint criminal enterprise, as the prosecution alleges."

Milosevic, however, denies that this has anything to do with his acts, or the acts of Serbia. The war in the former Yugoslavia, he contends, was a "conflict between illegal paramilitary formations of the republics and the then JNA, not Serbia," whose president he was at the time. Milosevic asks: "What does Serbia have to do with the fact that the Croatian paramilitary formations blocked the barracks and thus provoked a conflict with the JNA?"

The Judge observed that the constitutional issues that Professor Markovic was testifying about were relevant for the Milosevic case to a certain extent, but he told the witness that there was "no need to present so many details which might sidetrack the Chamber."

Professor Markovic then spoke in detail about the amendments to the Serbian Constitution, adopted in 1989 – he himself participated in the drafting of the constitution as a "representative of the profession and science." He confirmed Milosevic's argument – which is contrary to the claims made by the prosecutor – that those amendments did not abolish the autonomy of Kosovo and Vojvodina. The provinces, he said, were merely "stripped of their right to veto amendments to the Serbian Constitution." In Markovic's opinion, the amendments "prevented the secession of Vojvodina and Kosovo."

For the remainder of his examination-in-chief, which will continue tomorrow, Professor Markovic is going to discuss the negotiations in Pristina in 1998 and in Rambouillet in 1999, where he headed the delegation of the Serbian government.

Sagittarius

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From: nebojsa
To: R.Despotovic
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Subject: "Hamlet's dilemma" of Professor Markovic

"HAMLET'S DILEMMA" OF PROFESSOR

On the third day of his testimony at the trial of Slobodan Milosevic, Professor Ratko Markovic spoke about the dilemmas he had been faced with in March 1999 during the negotiations in Rambouillet and Paris and some ten years earlier, during the anti-bureaucratic revolution and the campaign to amend the Serbian Constitution. What has made Markovic "attractive" to the accused Milosevic, as the prosecutor contends?

THE HAGUE, 19.1. (SENSE) - As the head of the delegation of the Serbian government at the negotiations in Rambouillet and Paris in February and March 1999, Professor Ratko Markovic was faced with a "Hamlet's dilemma: **occupation or bombardment**", as he described today. His choice was to refuse to sign the Rambouillet agreement on the political settlement for the Kosovo problem, which according to him, would be tantamount to an "occupation of the FRY." Although NATO bombardment followed, Markovic still believes he did the right thing. True, he admits, "many lives were lost, but not our face."

According to Markovic's testimony today, the then president of the FRY Slobodan Milosevic was in no way involved in the resolution of the "Hamlet's dilemma". Markovic claims that the decision to reject the agreement was taken independently and unanimously by all members of the delegation, which was headed by him and the then president of Serbia, Milan Milutinovic, without "any instructions from Belgrade."

Milosevic and his witness went through the list of names of the members of the delegation several times, in order to stress its multi-ethnic composition, i.e., the fact that all ethnic communities living in Kosovo were represented: Albanians, Serbs, Turks, Gorans, Muslims, Roma and Gypsies. At one point, Markovic described members of the delegation as "ordinary people", but Milosevic did not agree with the description and the defense witness quickly "corrected" himself and said that those people "were not just picked up in the street", but were "leading figures and political leaders in their ethnic communities."

Markovic claims that "there were no negotiations" in Rambouillet, that the international mediators simply "gave them parts of the agreement one by one", that they did not show them key military and security annexes before the last day, leaving them three and a half hours to give their views on them. He said that in effect it was a "dictate" behind which was the former US Secretary of State Madeleine Albright and not the Contact Group composed of six nations, including Russia, whose representative refused to accept the military and security annexes.

At the beginning of the cross-examination, prosecutor Nice quoted a text written by the witness at the time of the so-called anti-bureaucratic revolution and the campaign to amend the Serbian constitution, in which Markovic advocates that "all attributes of statehood be stripped" off the provinces and that any "direct links of the provinces and the federation" be discontinued.

In that document, Markovic wrote about yet another "Hamlet's dilemma": what would happen if the Serbian constitution cannot be amended in a constitutional manner and whether in that case the preference should go to "the respect of the Constitution or the survival of the state?" In the text Markovic resolved the dilemma in a way similar to the one in 1999. He wrote that "it should not be allowed that law triumphs at the expense of the collapse of the state."

The prosecutor's claim that such a "liberal view" of the rule of law had made Markovic "attractive to this accused," and that in the intervening ten years Milosevic used him to "adapt the law as he saw fit". Markovic indignantly rejected this claim by the prosecutor, accusing Nice of treating his "scientific opinion" like an "inquisitor".

Sagittarius

Van: "Global Reflexion"
Aan: <sagitar@hetnet.nl>
Verzonden: vrijdag 21 januari 2005 12:42
Onderwerp: artikel

Hallo Nico,

Ik heb je stuk ietwat bewerkt, b.v. verneldt dat na het bezoek van albright de plannen voor het aanstellen van een advocaat bekend werden en wat het betekent als een advocat de zaak overneemt. Verder heb ik eer een slotzin aan toegevoegd en de kop veranderd. Hier is het stuk.
Groetjes,
Nico

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De rechtsverkrachting van het Joegoslavië tribunaal

Door Nico Steijnen
Milosevic is momenteel bezig om voor het Joegoslavië tribunaal zijn tegenbewijs te presenteren. Dit nadat jarenlang de aanklager aan het woord was geweest om bewijsmateriaal tegen hem in te brengen. Milosevic heeft, om zijn kant van het verhaal uit de doeken te doen en zelf getuigen naar voren te brengen, precies 150 werkdagen toegemeten gekregen. En elke dag dat het proces stil zal liggen omdat hij ziek is, gaat daar nog van af.
Alleen al dit absurde gebrek aan evenwicht tussen de tijd die de aanklager in de schoot geworpen kreeg om zijn klachten tegen Milosevic te onderbouwen en de tijd die Milosevic wordt gegund om getuigen te laten horen, bewijst hoe brutaal het Joegoslavië tribunaal inmiddels zijn ware gezicht durft te tonen.
In een klimaat waarin, als het gaat om de zogenaamde strijd tegen het terrorisme, in toenemende mate regelrechte liquidatiepraktijken, doodseskaders, martelingen en levenslange opsluiting zonder vorm van proces openlijk als toelaatbare methodes worden gepropageerd en ook daadwerkelijk in praktijk worden gebracht, verliest ook een door de NAVO gecontroleerde institutie als het Joegoslavië tribunaal steeds meer het geduld om zelfs maar de schijn op te houden de fundamentele rechtsnormen in acht te nemen.

Recht op verdediging
De laatste loten aan de stam van de fundamentele mensenrechten die het zogenaamde tribunaal aldus gekapt heeft, als was het dood hout, zijn het recht van Milosevic om zichzelf te verdedigen, alsmede het recht op een gelijkwaardige behandeling. Dit laatste betreft dan het afschaffen van gelijkwaardigheid inzake het verlenen van faciliteiten, tussen de aanklager en Milosevic als verdachte, ook wel aangeduid als het recht op 'equality of arms'. Het eerstgenoemde recht, het recht om zelf zijn 'eigen verdediging te voeren, is een grondrecht dat in alle importante mensenrechtenverdragen is terug te vinden en ook uitdrukkelijk is opgenomen in het statuut van het Joegoslavië tribunaal zelf.
Dit fundamentele mensenrecht, het recht om zichzelf te verdedigen, was Milosevic aanvankelijk volledig ontnomen, zogenaamd omdat hij te ziek en te zwak zou zijn om dat recht nog langer uit te oefenen. Maar voor iedere onbevangen waarnemer was het van meet af aan glashelder dat de pogingen van het tribunaal om Milosevic te beroven van zijn recht om zijn eigen verdediging te voeren niets met diens gezondheidstoestand te maken hadden.
Waar het tribunaal voor vreesde waren de onthullingen waarmee Milosevic en de door hem opgeroepen getuigen zouden komen over de rol van de westerse wereld bij de ontmanteling van de Joegoslavische federatie, de bewijzen die door hem gepresenteerd zouden worden omtrent de systematische westerse leugencampagne met betrekking tot het zogenaamde streven naar een Groot-Servië en de misdaden van de NAVO, begaan in de agressieoorlog tegen Joegoslavië en Servië, die door hem voor het voetlicht zouden worden gebracht.

Leugens

Want de ongelooflijke leugens waarmee de oorlog tegen Irak werd gerechtvaardigd, vormden geen op zichzelf staand incident. Maar vonden een onmiskenbare voorganger in de westerse leugens over de gewelddadige afbraak van Joegoslavië, met als sluitstuk de NAVO-agressieoorlog tegen wat toen al teruggebracht was tot klein-Joegolavië.
Zoals de herkolonisatie van Irak bewust op de agenda werd gezet om de dominante westerse positie in het voor de olievoorziening cruciale Midden-Oosten voor de komende decennia veilig te stellen, zo vormde ook de liquidatie van de voormalige Joegoslavische federatie een belangrijk onderdeel van de westerse geopolitieke aspiraties.
Het voormalige Joegoslavië moest uit elkaar gespeeld worden en verbrokkeld worden tot een serie door het westen bezette of van het westen afhankelijk gemaakte cliëntstaten. En de schuld daarvoor moest bij Milosevic gelegd worden.
Ook die afbraak van Joegoslavië vormde een doelbewuste strategie. Tot heil van westerse controle over belangrijke aanvoer routes en knooppunten inzake olie- en gasvoorraden uit zowel het Kaspische zeebekken als uit het Midden-Oosten. En tot heil van een steeds verder terugdringen van de Russische invloedssfeer, een proces dat in hoog tempo doorgaat. Nog maar kort geleden was Georgië aan de beurt en zeer onlangs hebben we de pro-westerse 'revolutie' in de Oekraïne zich zien voltrekken.
Het verschil tussen enerzijds de oorlog tegen Irak, gekoppeld aan de daarop volgende bezetting van dat land, en anderzijds de westerse agressie tegen Joegoslavië is dat, wat dit westerse optreden tegen Irak betreft, de daarover geventileerde leugens zichzelf hebben achterhaald. De uitstekend geregisseerde leugencampagnes, die door het Westen over Joegoslavië werden gevoerd, worden daarentegen voor een breed publiek nog steeds in stand gehouden. Het Joegoslavië tribunaal speelt hier een belangrijke rol in.

Botheid

Om te voorkomen dat Milosevic wat dit betreft te veel roet in het eten zou kunnen gooien, vond het tribunaal het de hoogste tijd worden om Milosevic van zijn handelingsbevoegdheid te ontdoen. Dit door hem diens recht om zijn eigen verdediging te voeren te ontnemen en hem een advocaat op te leggen. De invloed van zo'n advocaat gaat verder dan strikt genomen het optreden in de verhoren. Zo'n advocaat heeft ook een beslissende rol in welke getuigen zullen worden opgeroepen. Het feit dat Milosevic had aangekondigd top militairen en politici van de NAVO-landen op te roepen, moet een ware nachtmerrie zijn geweest.
Juist op het moment dat hij, na al die jaren dat de aanklager aan het woord was geweest, zijn eigen verdediging zou mogen gaan brengen, en hij daarmee dus een belangrijk aandeel in de regie van het proces zou kunnen gaan opeisen. Opvallend genoeg kwamen de eerste berichten over de plannen van het tribunaal direct nadat Madeleine Albright, de voormalige Amerikaanse minister van Buitenlandse zaken, in juli van het vorig jaar een bezoek bracht aan het tribunaal.
De botheid waarmee het zogenaamde tribunaal Milosevic weer achter de coulissen meende te kunnen manoeuvreren riep een wereldwijde golf van afkeuring op. Met als gevolg een totale staking van de door Milosevic beoogde getuigen om voor het tribunaal te verschijnen, zolang diens recht om zichzelf te verdedigen hem ontnomen zou blijven.
En zo kwam het proces, bij gebrek aan getuigen die kwamen opdagen, tot een absolute stilstand. Het tribunaal zag zich daarop gedwongen om Milosevic in zijn fundamentele recht om zichzelf te verdedigen te herstellen.
Natuurlijk was dit een grote overwinning voor Milosevic. En een verder gezichtsverlies voor het zogenaamde tribunaal. Maar hoewel Milosevic zodoende de regie over zijn verdediging weer terugveroverd heeft, blijft een nieuwe aanval op een ongestoorde uitoefening van dit recht dreigend in de lucht hangen.

Mr. Kay

Een cruciale rol wordt hierbij gespeeld door de persoon die het Joegoslavië tribunaal Milosevic als advocaat had willen opdringen, namelijk mr. Kay. Deze Kay was hem al vanaf het begin van het proces toegewezen als 'amicus curiae', een soort pseudo-verdediger die moest waken over de eerlijkheid van het 'proces'. Als zodanig had Kay nooit veel te vertellen gehad, maar nu, door het

tribunaal als gedwongen advocaat aan Milosevic toegevoegd, rook hij zijn kans.
Als loopjongen van het tribunaal deed hij zijn uiterste best om zijn meesters in het tribunaal ter wille te zijn en de vaart erin te houden. Maar zijn pogingen mochten niet baten, want noch Milosevic noch 99% van de getuigen die Milosevic op het oog had, wilden ook maar enig contact met hem. Kay kon dus geen kant op. Uit de verhoren die hij enkele getuigen die wel waren gekomen, werd al duidelijk dat Kay aangesteld was om de verdediging te saboteren.
Vervolgens voltrok zich een klucht waarmee zowel Kay als het tribunaal zich de gelegenheid verschaften tot herpositionering. Kay ging, bij wijze van potsierlijke vertoning, tegen zijn eigen benoeming als advocaat van Milosevic in beroep. Omdat er zo voor hem niet te werken viel en omdat hij, door tegen de zin van Milosevic al zijn opgedrongen advocaat te fungeren, de integriteit van de advocatenstand zou ondermijnen.
Die manoeuvre, duidelijk vooropgezet in overleg met Kay's broodheren bij het tribunaal, bood enerzijds het tribunaal de gelegenheid om in hoger beroep te bepalen dat Milosevic in principe weer zelf zijn eigen verdediging ter hand zou mogen nemen. Maar anderzijds werd de zogenaamde 'ontslagaanvraag' van Kay door het tribunaal geweigerd. Kay kreeg te horen dat hij, als gedwongen advocaat van Milosevic, achter de hand moest blijven. Om direct weer als diens opgedrongen advocaat naar voren te kunnen treden als Milosevic zich ziek zou melden. Zodat hij dan de zaak weer over zou kunnen nemen.
Natuurlijk wordt hier een theaterstuk opgevoerd, met Kay als acteur in de hoofdrol. Kay doet het voorkomen alsof hij zich als aangewezen advocaat van Milosevic zou willen terugtrekken. Maar in plaats van het eerste de beste vliegtuig te nemen terug naar huis, naar Engeland, stort hij zich in een pseudo-procedure en onderwerpt zijn al of niet aanblijven als opgedrongen advocaat aan een zogenaamde beslissing van het tribunaal. Dat besluit vervolgens dat hij niet weg mag en 'stand by' moet blijven. Hetgeen Kay dan op zijn beurt weer de gelegenheid biedt om zijn handen ten hemel te heffen en uit te roepen: 'Zie, ik kan niet anders, het tribunaal dwingt mij om aan te blijven !'

Klacht
Het zal duidelijk zijn dat Milosevic van deze wanvertoning niet gediend is. Ik heb dan ook, namens hem, inmiddels een klacht tegen Kay ingediend bij het tuchtcollege van de Nederlandse Orde van Advocaten.
Op het eerste gezicht lijkt het vreemd dat Kay, als Brits advocaat en als Brits onderdaan, onderworpen zou kunnen zijn aan het tuchtrecht dat geldt voor Nederlandse advocaten. Maar als praktizerend advocaat op Nederlandse bodem is dit nu eenmaal, in Europees verband, zo geregeld. De eis is dat tuchtmaatregelen tegen Kay worden getroffen.
Kay heeft, door het recht van Milosevic te usurperen om zijn eigen verdediging te voeren, inbreuk gemaakt op het onvervreemdbare recht van Milosevic om zichzelf te verdedigen.
En hij blijft zich inmiddels gereed houden om opnieuw tot een dergelijke schending over te gaan. Dat komt neer op schending van Milosevic' mensenrechten.
Kay schendt daarmee bovendien het eerste gebod voor iedere advocaat, namelijk om niet als advocaat op te treden tegen de zin van enige cliënt. Alsmede het tweede gebod dat evenzeer voor iedere advocaat geldt, en wel om niet een zaak op zich te nemen waarmee hij of zij zich niet naar eer en geweten kan verenigen.
Alles bij elkaar reden genoeg voor het tuchtcollege van de Orde van advocaten om Kay een verbod op te leggen om nog langer op Nederlands grondgebied zijn beroep uit te oefenen.
Kay voert een komisch nummer op waar hij zegt: ' Ik kan niet anders, want het Joegoslavië tribunaal beveelt mij nu eenmaal om aan te blijven'. Dat het Joegoslavië tribunaal Kay een dergelijk bevel heeft gegeven is waar. Maar natuurlijk is zo'n bevel geen cent waard.
Allereerst is het allemaal handjeklap tussen Kay en het Joegoslavië tribunaal onderling. Waarom dat zo zeker is? Omdat Kay zelfs niet de moeite neemt om tegen het verbod om zijn biezen te pakken in beroep te gaan. En als Kay echt zoveel bezwaar zou hebben tegen deze gang van zaken dan was dit, ook binnen de show die hier wordt opgevoerd, toch wel het minste geweest wat hij had kunnen doen.
En vervolgens is het natuurlijk volkomen onaanvaardbaar dat het zogenaamde tribunaal bepaalde advocaten, tegen hun uitdrukkelijke wil, zou kunnen vasthouden en zou kunnen verplichten om op te treden. Dit komt er immers neer op een soort lijfeigenschap.

27-1-05

Intussen leidt de totale fixatie van het zogenaamde tribunaal op een zoveel mogelijk controleren en aan banden leggen van Milosevic tot een degelijke absurde vertoning dat het door het zogenaamde tribunaal als een soort lijfeigenen manipuleren van advocaten als een legitiem handelen wordt voorgesteld. We zijn hiermee weer teruggeworpen in de Middeleeuwen, de tijd van de meest duistere inquisitie. De zelfontmaskering als een volstrekt malafide genootschap waarmee het Joegoslavië tribunaal nu al zolang bezig is bereikt hiermee een totaal nieuwe dimensie.

Furieus

De reacties van het Joegoslavië tribunaal en Kay op de namens Milosevic ingediende klacht waren furieus. Eerst weigerden zij eenvoudig om aan te nemen dat deze klacht van Milosevic afkomstig was, maar nadat zij zich daarvan hadden vergewist, lieten de betrokken 'rechters' hun woede hierover op een zitting openlijk de vrije loop.
Kay kondigde aan mij met alle beschikbare middelen te zullen bevechten. Inmiddels heeft hij tegen mij persoonlijk een klacht ingediend omdat ik hem beledigd zou hebben.
Het Joegoslavië tribunaal heeft inmiddels de Minister van Buitenlandse Zaken voor zijn kar gespannen en hem ertoe gebracht om schriftelijk te interveniëren bij de Nederlandse Orde van Advocaten. Dit met de eis om zich van verdere actie tegen Kay te onthouden. En wel omdat aan Kay, als advocaat bij het Joegoslavië tribunaal, immuniteit met betrekking tot tuchtrechtelijke vervolging zou toekomen.
De minister van Buitenlandse Zaken heeft zich aldus niet alleen laten misbruiken voor een kwaadwillige interventiepoging van de zijde van het Joegoslavië tribunaal. Maar dit ook nog eens, willens en wetens, met rechtsargumenten die nergens op slaan. Want in de terzake geldende regelgeving wordt voor wat betreft de voor advocaten bij het Joegoslavië tribunaal toepasselijke immuniteit immers uitdrukkelijk een uitzondering gemaakt voor het tuchtrecht.
Niettemin acht de Deken van de Orde van Advocaten het zaak dat deze gezamenlijke poging van het Joegoslavië tribunaal en de Minister van Buitenlandse Zaken om de procedure voor de tuchtrechter te beïnvloeden volop zijn beslag al kunnen krijgen.

Vertraging

Inmiddels werd aldus ook de behandeling door de tuchtrechter van de klacht van Milosevic tegen Kay steeds opnieuw vertraagd. Al staat aan de andere kant vast dat van uitstel zeker geen afstel zal komen en dat het moment van daadwerkelijke behandeling door de tuchtrechter nadert.
Inmiddels is bekend gemaakt dat de deken het vooronderzoek als afgerond beschouwt en de zaak vóór 15 januari 2005 definitief bij de Raad van Discipline zal worden aangebracht.
Intussen zorgt Milosevic voor de ene getuigenis na de andere, waarin allerlei topgetuigen de mythe van een samenzwering om tot een Groot-Servië te komen ondubbelzinnig als kwaadaardige laster naar het rijk der fabelen verwijzen en krachtige bewijzen naar voren brengen voor de vooropgezette bedoelingen van de NAVO om Joegoslavië, koste wat het kost, met oorlogsgeweld te lijf te gaan. Daarbij zal getuigenis worden afgelegd over de oorlogsmisdrijven die daarbij opzettelijk werden gepleegd, zoals de afschuwelijke en systematische bombardementen die door de NAVO op burgerdoelen werden uitgevoerd om Joegoslavië op de knieën te dwingen. Hoezeer het tribunaal ook zal manipuleren, intimideren of saboteren, voor het oog van de wereld zal de waarheid boven tafel komen en zullen toekomstige geschiedenisboeken het NAVO-optreden en al die politici die het verdedigd hebben en nog doen, als misdadig omschrijven.

27-1-05

PROFESSOR MARKOVIC CONCLUDES HIS TESTIMONY

www.slobodan-milosevic.org - January 24, 2005

Written by: Andy Wilcoxson

Professor Ratko Markovic concluded his testimony at The Hague trial of Slobodan Milosevic on Monday. Prosecutor Nice made his best effort to discredit the witness over the course of the cross-examination.

Professor Markovic has written a number of scholarly papers over his 40-year career in constitutional law. Mr. Nice's cross-examination generally went to show that Markovic raised criticisms of the 1974 constitution. However, this does not damage the credibility of the witness, on the first day of his examination-in-chief Professor Markovic said he was "no fan of the 1974 constitution."

In order to damage the credibility of the witness Mr. Nice would have had to demonstrate that Professor Markovic improperly applied constitutional law when he was a judge on the Constitutional Court. Or that he acted outside of the law when he was the Deputy Prime Minister of Serbia. Mr. Nice demonstrated neither. The only thing Mr. Nice demonstrated was that Professor Markovic exercised his right, as a scholar, to raise criticisms of the constitution at times when he did not hold public office.

Mr. Nice's cross-examination tactics were particularly underhanded. In one case Mr. Nice read from an article that Professor Markovic had written for a Belgrade magazine called "Legal Life." In the article Markovic wrote of the possibility that lands inhabited by Serbs could be unified. Mr. Nice claimed that this article was a platform for the establishment of Greater-Serbia.

When Milosevic re-examined the witness the parts of the article that Mr. Nice had not read were read out. It turns out that the article advocated one political option, and that option was the preservation of Yugoslavia. The article said that Yugoslavia was the best solution for the south Slav peoples. The part of the article that made reference to the unification of Serbian lands was put forward as a possible scenario. On top of that it was presented as an unattractive scenario, according to the article any attempt to implement this scenario would lead to war and sanctions from the international community.

This is only one example of manipulation by the prosecutor, Mr. Nice claimed that the article advocated Greater-Serbia, when the article advocated Yugoslavia's preservation and cautioned against attempts to establish Greater-Serbia, since this would lead to war and sanctions.

Mr. Nice took liberties with the truth regarding the talks in Rambouillet. Professor Markovic had testified that the NATO occupation of Yugoslavia mandated by the so-called "Rambouillet Agreement" was one of the major stumbling blocks that caused the talks to breakdown. Markovic said that the demand for NATO occupation had not been disclosed until the last day of the Rambouillet conference.

In a feeble attempt to refute that claim, Mr. Nice read an extract from a letter that Markovic sent to the Contact Group prior to the talks, indicating a readiness to discuss the presence of the international forces in Kosovo.

Markovic, stuck to his original testimony, insisting that he referred to international forces, "but not military forces, as they can be civilian forces too." He also noted that the document presented at Rambouillet called for the wholesale occupation of Yugoslavia, not just the international presence in Kosovo that his letter indicated a willingness to discuss.

Mr. Nice, now desperate to save NATO's reputation, resorted to telling outright lies. Mr. Nice claimed that the "international community" was well intentioned at Rambouillet. Mr. Nice based that claim firmly on the testimony of Zoran Lilic.

President Lilic never testified to these alleged "good intentions" of the international community at Rambouillet. Quite the contrary, he testified that he had no direct knowledge, and that the indirect knowledge he did have went to show that no proper negotiations had taken place.

This is what Lilic said about Rambouillet when he testified on July 9, 2003 (see transcript page 23997): "When it comes to Rambouillet and everything that went on there, I know about that from the press, actually, from the media. I wasn't included in that whole process." Lilic's comment about the process was as follows, "there wasn't any proper negotiating between two sides that should have negotiated. For an agreement to exist, there must have been two sides."

As we can see from Lilic's own words, things are not the way that Mr. Nice put them. No well meaning person could use that testimony to make claims that the international community had good intentions at Rambouillet.

Mr. Nice's attempts to challenge Professor Markovic were unsuccessful, and usually completely nonsensical. One example of a nonsensical attack was Mr. Nice's line of questioning regarding the 30th and 40th personnel centers of the Yugoslav Army, which Markovic knew nothing about. Mr. Nice exploited Professor Markovic's lack of knowledge of

garding the personnel administration of the federal army to suggest that he was an incompetent official.

Professor Markovic was the Deputy Prime Minister of Serbia; in other words he held an office on the level of the republic, not on the level of the federal government. The federal government administers the army. Therefore, the army was not in his sphere of activities. Expecting Professor Markovic to know about personnel administration in the federal army is like expecting the lieutenant governor of Iowa, or Minnesota to know about personnel administration policies in the U.S. Army.

During cross-examination Mr. Nice claimed that Milosevic and Tudjman entered into a conspiracy to carve-up Bosnia at a meeting held in Karadjordjevo in 1991. Professor Markovic denied this, and President Milosevic ripped this conspiracy theory to shreds when he reexamined Markovic.

Milosevic and Markovic both agreed that acceptance of the Cutliero Plan, a year after the Karadjordjevo meeting, negated the possibility that Serbia had designs to carve-up of Bosnia.

The Cutliero Plan, which had been agreed to by all three sides before the Bosnian war started, called for a unified and independent Bosnia. If Milosevic were attempting to execute some conspiracy that he had concocted at Karadjordjevo with Tudjman, then he would not have voiced his support for the plan. The only reason the war started in the first place was because Alija Izetbegovic withdrew his signature from the plan.

Professor Markovic's testimony took-up the entire day. The trial will resume tomorrow with a fresh witness.

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"NOBODY SHOULD BEAT YOU" – *SLOBODAN MILOSEVIC*

www.slobodan-milosevic.org - January 25, 2005

Written by: Andy Wilcoxson

"*In April 1987, Slobodan Milosevic, who had been elected Chairman of the Presidium of the Central Committee of the League of Communists of Serbia in 1986, travelled to Kosovo. In meetings with local Serb leaders and in a speech before a crowd of Serbs, Slobodan Milosevic endorsed a Serbian nationalist agenda...*" or so says The Hague's indictment against him.

According to the Prosecution case, Western intelligentsia, and the mainstream Western media this is the moment when Slobodan Milosevic rose to power on a wave of Serbian nationalism. Mitar Balevic's testimony at The Hague Tribunal's trial of Slobodan Milosevic, put this Western myth to bed once and for all today.

Mr. Balevic, was an official in the Kosovo Polje branch of the League of Communists, and he chaired the meeting that Milosevic attended on April 24, 1987.

It was at this meeting that Milosevic uttered the famous sentence: "Nobody should beat you." This sentence has since been branded as a sort of battle cry, but Balevic, who was standing right next to Milosevic when he said it, explained why it could not have been a battle cry.

The Kosovo Police had begun beating people in the crowd with clubs, and the crowd defended itself by throwing rocks at the police. Milosevic and Balevic went outside to see what the commotion was about, as they were coming out the door, some people came up to Milosevic and told him that the police were beating them. Milosevic responded to those people by saying, "nobody should beat you."

Milosevic did not address this remark to the entire crowd; he did not have a loudspeaker to address the crowd. He was only speaking to the people who were talking to him.

When he saw what the situation was, he had a loudspeaker set up and he addressed the crowd. He asked the crowd to calm down, and the situation calmed down. There was no battle cry, all Milosevic did was appeal for calm.

A joint investigation conducted by provincial, republican, and federal authorities determined that the police had provoked the incident, by beating-up people in the crowd who hadn't done anything wrong.

At the meeting, Milosevic and other LCY officials, listened to for 13 hours to 76 citizens who addressed their concerns to them. These citizens spoke of the desperate situation they were facing in Kosovo. They complained that their rights were being denied, that they were being forced from their land, and that they were the victims of violent crimes.

After listening to the concerns of the citizens, Milosevic gave a speech. It was in this speech that the indictment claims he "endorsed a Serbian nationalist agenda." In fact, Milosevic did the exact opposite of what the indictment says. Milosevic condemned nationalism on more than one occasion in that speech. Milosevic said that brotherhood and unity were and equality among peoples was the only solution for Kosovo.

All of these facts were very easy for President Milosevic and Mr. Balovic to prove. They had the transcripts from all 13 hours of the meeting, and they had videotape of the meeting. The videotape included footage of the disturbance outside of the hall, when Milosevic appealed for calm, and when he told those people "nobody should beat you." The tape included some of the speakers who addressed the party officials, and the tape included Milosevic's entire speech.

This tape was not some secret tape that was buried in somebody's attic. The tape was the Belgrade TV newscast, and it exists in the archives of the TV station. Milosevic played the entire tape at the trial on Tuesday. There is no question about what happened. Milosevic did not promote a Serb nationalist agenda, he did the exact opposite. Slobodan Milosevic vehemently condemned nationalism and cautioned, especially the Serbs, against nationalism.

All of these so-called "intellectuals" and the so-called "journalists" who told the Western public that Milosevic gave a nationalist speech, and exploited nationalism to come to power are lying through their teeth. The remarkable fact is that they all lie with such unanimity when the truth is so easy to ascertain.

The text of the speech is very easy to ascertain. It was broadcast on TV, and it was published in Milosevic's book. In fact, I have the Serbian transcript of the speech posted right here on this web site.
(See: http://www.slobodan-milosevic.org/news/milosevic-1987-3.pdf)

In addition to clearing-up the massive misinformation surrounding Milosevic's activities in Kosovo Polje in 1987, Mr. Balevic gave factual eyewitness testimony regarding life in Kosovo from WWII until the present day.

Mr. Balevic, was born in Montenegro, but he grew-up in Kosovo. The first persecution he could remember against

Kosovo's non-Albanian population occurred during World War II. According to his testimony, Axis forces that had allied with the Kosovo-Albanians forced 200,000 Serbs and Montenegrins to leave Kosovo during the war.

To add insult to injury, when the war ended, the Yugoslav Government would not allow Serb and Montenegrin refugees return to their homes in Kosovo. Thousands of Albanians who had infiltrated Kosovo from Albania during the war were allowed to continue squatting on the land they had stolen, while the rightful owners were banned from ever returning.

Mr. Balevic said that he became aware of an Albanian-nationalist plan to create an ethnically pure greater-Albania on Kosovo's territory in the 1950s.

Mr. Balevic testified that the 1968 demonstrations, which occurred on Albanian Flag Day, were aimed at the establishment of Greater Albania.

Mr. Balevic gave numerous examples of suffering that Kosovo's non-Albanian population had to endure throughout the 60s, 70s, and 1980s. Examples included murders, expulsions, rapes, the desiccation of holy sites, and medical discrimination at the Pristina Hospital's maternity ward.

The defense witness testified about the 1981 riots in Kosovo. He said that the riots were aimed at Kosovo's secession from Serbia, and that violence against non-Albanians in Kosovo increased with those riots. According to his testimony, 20,000 Serbs and Montenegrins fled from persecution in Kosovo between 1981 and 1989.

The witness testified that it was difficult for a Serb to find work in Kosovo. He said that the employment ratio used in Kosovo was done by the system: 7 Albanians hired for every 1 Serb, adding that Serbs were generally poorer than Albanians were.

Another witness has to testify tomorrow morning for medical reasons. After that witness testifies, Balevic will resume his testimony. It is expected that his testimony will last into next week.

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NO EXECUTIONS AT RACAK

www.slobodan-milosevic.org - January 26, 2005

Written by: Andy Wilcoxson

German journalist Bo Adam took the stand at the trial of Slobodan Milosevic today. Mr. Adam is an investigative reporter who wrote a series of articles about the alleged Racak massacre for the Berliner Zeitung newspaper.

On January 15, 1999 a massacre was said to have taken place in the Kosovo village of Racak. Western politicians exploited the alleged event to galvanize public opinion against Serbia, and give NATO a pretext to bomb Yugoslavia.

On February 19, 1999 Bill Clinton went on television and told the world that, "We should remember what happened in the village of Racak back in January – innocent men, women, and children taken from their homes to a gully, forced to kneel in the dirt, sprayed with gunfire – not because of anything they had done, but because of who they were."

On February 21, 1999 Sen. Joe Biden went on the ABC News program "This Week" and told America that "An entire village was massacred. The Finnish [forensic investigators] came in and acknowledged that they had people sitting on their knees and put guns at their heads, and blew their brains away. . . Massacring is taking place, genocide is taking place."

The Serbian government denied that a massacre had taken place. According to their account, there was a firefight between the state authorities and the KLA, and the people who died were killed in the fighting.

Mr. Adam was skeptical of Western claims that a massacre had taken place in Racak. He testified today that he was skeptical because the Serbian authorities had invited an Associated Press TV crew to come with them and film the operation. Logically, if they wanted to massacre civilians they would not have invited a TV crew to come and film it.

Because of the KLA's presence in the area, it is widely suspected that they gathered their casualties together and put them in a ravine near the village in order to stage the scene and make it appear as if a mass-execution or massacre had taken place.

After a lot of difficulty, Mr. Adam managed to obtain the autopsy documents from the investigation led by Finnish pathologist Helena Ranta. The documents revealed that the people found in the ravine had not been shot at close range. Claims, such as those made by Clinton and Biden that people were executed were wrong.

In spite of Serbian assertions that the bodies in the ravine were those of armed combatants, the documents obtained by Mr. Adam found that Ranta's team had not done any tests on the bodies to determine if they had been firing weapons.

Serbian and Byelorussian investigators, using the "paraffin glove" test, determined that those people had been firing weapons. Unfortunately, the results of that test were not accepted by the international community.

The Milosevic trial has already learned from the testimony of prosecution witness Shukri Buja that the KLA was active and had a base of 5 or 6 houses in Racak. Mr. Adam's testimony re-enforced that fact.

In March of 2000 Mr. Adam visited Kosovo. He visited a KLA cemetery in the village of Malopoljce. According to his testimony, the cemetary was guarded by a KLA soldier who showed him the graves of KLA soldiers who had died during the fighting in Racak.

Mr. Adam visited Racak and spoke to several people who lived there. He wanted to speak to Helena Ranta, who was there at the time, but she would not talk to him.

Mr. Adam asked the villagers show him around, and they showed him how a number of people had been killed, including a woman and a 13-year old boy, everybody else who died were adult males.

The woman was killed on the main road. According to the villagers, gunfire was coming from a hill, approximately 300 meters away from her and she got hit. The boy was on a side street and he was hit by gunfire coming from a hillside approximately 100 meters away from him.

While it is extremely sad that this woman and this boy were killed, Mr. Adam pointed out that they had not been "forced to kneel in the dirt, and sprayed with gunfire" as Bill Clinton had claimed.

Mr. Adam said that he received confirmation from the villagers that some people in the village had died in combat. He even took a photograph of one of the villagers who was showing him the foxhole where one of the men had been killed with his rifle still in his hands.

The Milosevic trial has already seen evidence of combat in Racak. On May 13, 2002 Milosevic played a videotape for the tribunal. The tape showed the activities of the Serbian police in the village. From the tape, it is clear that the police were pinned down under enemy fire, which makes it all the more unlikely that they could have rounded people up, took them up to that ravine, and executed them.

During cross-examination by prosecutor Daniel Saxon, Mr. Adam told the court that he was surprised by the sloppy nature of Ms. Ranta's investigation. He said that he went up to the ravine right after her team had been there and found a number of shell casings that were just left lying on the ground.

Mr. Adam also noted that a number of foxholes and trenches had been dug in the area around the ravine.

After Mr. Adam concluded his testimony, Mitar Balevic resumed his testimony from the previous day.

As a member of the League of Communists in Kosovo, Mr. Balevic was present at Milosevic's famous 1989 speech at Gazemestan, where the 600th anniversary of the Battle of Kosovo was being commemorated.

Many Western journalists and intellectuals say that Milosevic stoked nationalistic hatred with this speech, and that it was a call to war.

To prove those journalists and intellectuals wrong, Milosevic played the entire videotape of that speech for the court today. After playing the tape of the speech he put questions to Mr. Balevic. He asked Balevic if it was a nationalistic speech, and the witness responded that the speech explicitly promoted peace, and interethnic tolerance.

After playing the tape, Milosevic asked the witness about the crimes of the KLA. Mr. Balevic became aware of the KLA when he was an eyewitness to an attack on the Pristina police station on August 2, 1995.

Mr. Balevic will continue his testimony when the trial resumes next Tuesday.

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Sagittarius

Van: "R.Despotovic" <despot@tiscali.nl>
Aan: "Nico & Neeltje Steijnen" <sagitar@hetnet.nl>
Verzonden: woensdag 26 januari 2005 1:25
Onderwerp: Fw: Milosevic Ally Suggests Serbs Rectified

---- Original Message ----
From: nebojsa
To: R.Despotovic
Sent: Tuesday, January 25, 2005 11:33 AM
Subject: Milosevic Ally Suggests Serbs Rectified Wrongs

Milosevic Ally Suggests Serbs Rectified Wrongs

http://www.iwpr.net/index.pl?archive/tri/tri_390_1_eng.txt

Ex-Serbian leader seems to hope testimony will portray him as a responsible politician, protecting his nation's interests.

By Ana Uzelac in The Hague (TU No 390, 21-Jan-05)

Slobodan Milosevic's former close ally Ratko Markovic continued his long testimony at the Hague tribunal this week, painting the accused as a political leader who strived to protect Serbia from victimisation by other Balkan republics and the international community alike.

Using the arguments and the rhetoric exploited by the Milosevic regime throughout the Nineties, Markovic - a former Serbian judge and politician - tried to show that throughout the different Balkan crises that eventually led to three bloody wars, the Serbs had only been rectifying wrongs done to them by others.

Milosevic seems to be hoping that this testimony would portray him as a responsible politician, protecting his nation's interests, and not a member of a "joint criminal enterprise" to reshape the ethnic map of the former Yugoslavia, as the indictments against him allege.

Markovic's testimony - the longest yet in this defence stage of the trial - remained consistently focused on the context and the factual background of the indictments against Milosevic without ever addressing the specific charges contained within.

By far the most dramatic part of Markovic's testimony came at the end of the examination in chief, when he spoke of the failed political negotiations between the Serbian government and Kosovo Albanians in 1999 in Rambouillet and later in Paris.

At these talks, the Serb delegation decided to refuse a political agreement on the future of its Albanian-populated province of Kosovo and opted to face the threatened NATO air strikes instead.

Markovic, who was at the time the deputy prime minister in the Serbian government and a leader of the state delegation at the talks, seemed as convinced this week that he was doing the right thing as he must have been at the time.

"Many people were killed in the aftermath," Markovic said flatly. "But we kept our honour and dignity. **Serbs always considered loss of life better than the loss of dignity."**

This triggered an immediate and furious reaction from the usually restrained prosecutor Geoffrey Nice, who insisted that "it was the Albanian civilians who paid with their lives for Serb dignity".

The prosecutors accuse Milosevic of overseeing an operation to expel Kosovo Albanians from the territory, which they allege started immediately after the beginning of the NATO bombing campaign.

Controversy still surrounds the actual number of Serbs and Albanians killed during this period. Belgrade estimates that around 2,000 Serb civilians fell victim to stray NATO bombs, while the Kosovar Albanians claim that 10,000 Albanians

ed. As many as 3,000 bodies have been discovered to date in mass graves in Kosovo and Serbia proper.

Markovic insisted that the ill-fated Rambouillet talks were "not real negotiations" as the Serb and Albanian sides never met face to face, and the talks were conducted by a team of international negotiators.

"[The negotiators] kept presenting [the Serb delegation] with new versions of the documents, that [were] previously agreed upon with the Albanians," Markovic said plaintively.

The witness said that in the end, the Serb delegation was given the final version of the agreement on the evening before the talks were supposed to end, and refused to accept it at such short notice.

A few weeks later in Paris, during last-minute talks to prevent the looming conflict, the Serb delegation was faced with the same final document they had rejected.

"[The paper] kept Kosovo formally within Serbia but in fact expelled the state of Serbia from the territory of [the territory]," the witness told the court.

The document demanded that responsibility for law and order be placed in the hands of Kosovo's local government and also asked for NATO forces to be stationed in the area. The latter was "unacceptable" for Belgrade, Markovic said.

He insisted that the main architect of this ultimatum was then US Secretary of State Madeleine Albright. The witness could not offer any evidence of this, but insisted it was the feeling he built through the negotiations. He also claimed that the delegation had worked on its own without consulting Milosevic, who was at the time the president of rump Yugoslavia, consisting of Serbia and Montenegro.

Also this week, the witness spoke at length about Belgrade's attempts in the late Eighties to strengthen its control over Kosovo and Vojvodina, which held the status of autonomous provinces within Serbia.

Markovic was a member of the Serbian Constitutional Commission, which in 1989 drafted the amendments that abolished many of the territory's political rights – but argued that these changes were necessary in order to prevent Kosovo and Vojvodina from seceding.

The prosecution allege that abolishing this autonomy was the first step Milosevic made in establishing Belgrade's absolute control over territory in former Yugoslavia which he would later try to expand to include parts of Bosnia and Croatia.

However, this background information pre-dates the actual charges contained in the indictments. The 62-year-old former Yugoslav president is charged with crimes committed during the wars in Croatia and Bosnia that started in 1991 and 1992 respectively.

Observers believe that Milosevic is trying to dismantle the prosecutor's theory of the case and show that what they labelled joint criminal enterprise was in fact a policy of self-defence against secessionist enemies and manipulative international politicians alike.

"[Milosevic] is trying to prove that he was a president doing his job," said Heikelina Verrijn Stuart, a Dutch legal journalist and a long-term observer of the Milosevic case.

"But the issue is whether he will be able to get any further than the theory of the case and present hard facts to challenge the actual core of the indictment - the existence of war crimes and his knowledge of them."

The prosecutors insisted that the bulk of Markovic's testimony was only "marginally relevant" to the case. But during the cross examination that started at the end of this week, the lead prosecutor appeared unusually hostile towards the witness, embarking on an elaborate exercise to undermine his reliability.

Prosecutor Nice insisted that Markovic was a part of the very group that helped Milosevic run his policies, and described him as a man "attractive to the accused", due to his readiness to "adapt the laws [of the country] as [Milosevic] saw fit".

He also insisted Markovic was deliberately misleading the court in his testimony and managed to compel the witness to concede that he helped draft some of the laws of the Serb-controlled areas in Croatia in the beginning of hostilities there – something that Markovic initially tried not to admit.

...ce also revealed relatively close personal ties between Markovic and the Serbian ultra nationalistic politician Vojislav Seselj, who is currently awaiting trial in The Hague on war crimes charges.

Both Markovic and Seselj were deputy prime ministers in the government that ruled Serbia on the eve of the NATO air strikes in 1999.

The cross examination will continue on January 24, when Markovic's testimony is scheduled to end after full five court days.

Ana Uzelac is IWPR's project manager in The Hague.

Milosevic trial resumes with Mitar Balevic's Testimony

www.slobodan-milosevic.org - February 8, 2005

Written by: Andy Wilcoxson

The trial of Slobodan Milosevic resumed Tuesday before the Hague Tribunal after hearings were cancelled last week because Milosevic had the flu.

Milosevic looked healthy and well-rested as he questioned Mitar Balevic, a former official of the SPS in Pristina.

Balevic told the court that the Albanian terrorists targeted non-Albanians, Albanians who were loyal to the state, and Albanians who were in ethnically mixed-marrages.

He testified that Albanian Terrorists exploited the cease-fire established under the Milosevic-Holbrooke agreement. Balevic said that the cease-fire was only binding on the Serbian side, and that the KLA continued its activities while the police and the army went back to their barracks.

Balevic's testimony jibes with the testimony of prosecution witness, and KLA commander, Shukri Buja who confirmed that the KLA exploited the cease-fire in order to obtain weapons and conduct training exercises. (see Milosevic Trial transcript page 6360, June 6, 2002)

Balevic testified regarding KLA atrocities. He testified about a KLA camp in Klecka, near Pristina. He said that in 1998 the KLA executed more than twenty Serb civilians there, including women and children. He said that the KLA used kilns, similar to those used by the Nazis, to cremate and dispose of the victims' remains.

He also testified regarding a massacre of civilians at the Panda Cafe in Pec. Balevic said that on December 14, 1998 the KLA attacked the Panda Cafe with grenades and six Serbian youths were killed.

As for the Yugoslav and Serbian forces, Balevic testified that they "protected the Albanian and the Serb population equally." He said that he never saw any of the state security forces acting improperly towards the Albanians. He even testified that aid, which had been destined for Serbian refugees from Bosnia and Croatia, was given to ethnic-Albanian refugees in Kosovo.

Balevic, at age 76, is currently a refugee himself. In late June 1999, after the arrival of KFOR, Balevic was chased out of his home in Kosovo, and everything he ever owned has been looted or destroyed.

This is the second time that Balevic has been expelled from Kosovo. In 1941 Balevic and his family were expelled from Kosovo by Kosovo-Albanian Nazi SS troops.

Milosevic asked Balevic which occupation was worse; the NATO occupation or the Nazi occupation? Balevic replied that the Albanian terrorism is more intense under the NATO occupation.

After Balevic concluded his examination-in-chief, he was cross-examined by Prosecutor Geoffery Nice.

Mr. Nice began his cross-examination by unsuccessfully trying to paint Balevic as an anti-Albanian racist. Mr. Balevic was always careful to differentiate between normal Albanians and the Albanian terrorists.

Mr. Nice, citing information given by Nazi occupation troops in Belgrade, accused Balevic of exaggerating the number of Serbs expelled from Kosovo by the Nazis. Balevic, and most Serbian historians, claim that the Nazis expelled some 200,000 Serbs. Meanwhile, Mr. Nice, and the Nazi officer who's word he relied on, claim that only 40,000 were expelled.

After attempting to minimize the crimes of the Nazis, Mr. Nice embarked on a feeble campaign to challenge the credibility of the witness. Mr. Nice read out documents from the International Crisis Group, and excerpts from the OSCE's "As Seen As Told" report. When the witness was not able to corroborate what was written in the documents Mr. Nice accused him of having a "selective memory."

In spite of Mr. Nice's insulting accusations, not being able to corroborate claims made by the ICG does not mean that Mr. Balevic has a "selective memory," it could easily mean that the ICG has its facts wrong, or that its making-up that don't exist.

Mr. Nice persisted in his claims that Milosevic's 1987 visit to Kosovo Polje, and his 1989 speech at Gazimestan were designed to provoke a wave of Serbian nationalism that he rode to power on. However, all of Mr. Nice's claims are for not, since Milosevic already played the complete video tapes from both of these events during Mr. Balevic's examination-in-chief, and anybody who watches the tapes can see that Milosevic was not provoking any nationalism. He was doing the opposite.

VLADISLAV JOVANOVIC TESTIFIES FOR THE DEFENSE

www.slobodan-milosevic.org - February 14, 2005

Written by: Andy Wilcoxson

Vladislav Jovanovic took the stand at the trial of Slobodan Milosevic on Monday, February 14th. Jovanovic is a career diplomat with more than 40 years experience in the diplomatic corps of Yugoslavia. He served as both the Serbian and Yugoslav Foreign Minister in 1991 and 1992.

Jovanovic began his testimony with his recollections of the Hague Conferences on Yugoslavia held in 1991. According to his testimony, the European Community had offered to provide facilities so that the leaders of the Yugoslav republics could find a peaceful way out of the political crisis that was facing the country.

Jovanovic testified that he had gone to France with Slobodan Milosevic to meet with former French president, Francois Mitterrand.

Mitterrand told them that Serbia would have a very strong position at the upcoming peace conference. He said that history and international law were on Serbia's side. Mitterrand added that Robert Badinter, who was to chair the conference, was his personal friend and that he considered that Serbia and France to have the same interests.

Unfortunately, things did not turn out the way Mitterrand said they would. The European Community did not act in good faith. Instead of trying to find a negotiated political settlement to the crisis, Lord Carrington, the president of the conference, determined that Yugoslavia was in a state of disintegration, and that all of its federal units should be turned into independent countries.

When Serbia and Montenegro refused to accept the disintegration of the country, sanctions were imposed against them.

During the conference, the Yugoslav government submitted three very simple questions to the arbitration commission, through Lord Carrington. They asked:

- Is secession legal?

- Who has the right to self-determination, peoples or territories?

- Which borders can be internationally recognized, internal administrative borders or external federal borders?

Unfortunately, according to Jovanovic, Lord Carrington reformulated the questions before handing them over to the commission and they were gutted of all of their substance.

Jovanovic testified that Germany, Austria, and the Vatican strongly backed the secessionist regimes in Slovenia and Croatia. He said that they granted recognition to those republics before the peace negotiations had been concluded.

Jovanovic said that the premature recognition of those republics torpedoed the peace process, and took away any incentive that Slovenia and Croatia had to remain at the negotiating table. After all, they had what they wanted, why should they stay at the negotiating table?

Lord Carrington, who was doing his level best to destroy Yugoslavia, has even come to acknowledge that this premature recognition was a mistake.

Jovanovic testified that certain actions of the German diplomatic corps gave Croatia reason to further provoke and intensify the war. He made reference to the statements of Hans-Dietrich Genscher, and Helmut Kohl where they said that intensified armed conflict would accelerate international recognition of Croatian independence.

Jovanovic said that these statements, although aimed at threatening the JNA and the Federal Yugoslav Government, had the effect of encouraging the Croats to provoke further war.

To draw further attention to the destructive role played by Germany, Jovanovic pointed out that Genscher had asked for Croatian independence to be recognized on June 23, 1991 – two days BEFORE Croatia declared its independence from Yugoslavia.

Jovanovic also drew attention to the actions of Cardinal Sodano, who on the Vatican's behalf, circulated a memorandum to various governments encouraging recognition of Croatian independence before the end of the peace conference.

Jovanovic also testified about cease-fire violations by the Croats. To bear this out an intercepted telephone

conversation was played. The conversation was between Franjo Tudjman and JNA chief Veljko Kadijevic. Kadijevic is calling Tudjman to demand that he respect the cease-fire agreement he had signed at Igalo.

The intercept also cast doubt on the credibility of Ante Markovic, who testified against Milosevic as a prosecution witness. From the intercept it emerges that both Tudjman and Kedijevic regarded Markovic as a failure who blamed everybody else for his own shortcomings. About the only thing that Tudjman and Kedijevic agreed on was that Ante Markovic was "a son of a bitch."

Jovanovic's testimony exposed the absurdity of the indictment against Milosevic. Jovanovic pointed out that Serbia was not a party to the conflicts in Slovenia, Croatia, or Bosnia, and that Milosevic, who was the president of Serbia, did not have control over anybody in those wars.

Jovanovic, who was a diplomat at the time, testified that Milosevic supported the Vance Plan in Croatia, and the Cutliero Plan, the Vance-Owen plan, the Owen-Stoltenberg Plan, the EU Action Plan, and the Dayton Accords in Bosnia.

The fact that Slobodan Milosevic and the Serbian government supported all of these peace plans, all of which eliminated any possibility of "greater Serbia," totally refutes the prosecution's thesis that Milosevic was trying to create "greater Serbia."

Jovanovic also made note of the FRY's statement that it had no territorial ambitions towards any of the former Yugoslav republics. The FRY made that statement when it promulgated its constitution in 1992.

Jovanovic also recalled Radovan Karadzic's support for the Vance-Owen plan. Jovanovic had been sent to deliver a letter from Milosevic, Cosic, and Bulatovic, to the Bosnian-Serb Assembly prior to President Karadzic's trip to Athens. The letter urged the Bosnian-Serb Assembly to support the Vance-Owen plan. Karadzic also urged the assembly to support the plan before he went to Athens with Milosevic to sign the plan.

Unfortunately, Bijlana Plavsic did not support the plan and she accused those who supported it of being traitors. She managed to convince the Bosnian Serb assembly to reject the plan. Of course it emerged later who the traitor really is.

The main points of Jovanovic's testimony are that Serbia was not a party to the conflicts in Slovenia, Croatia, and Bosnia. Also that Serbia, and Milosevic personally, supported every peace initiative to come down the pike, and that all of those peace initiatives negated any possibility to create greater Serbia.

At this point it is worth noting that the entire indictment against Milosevic hinges on the concept of a "Joint Criminal Enterprise." The prosecution alleges that Milosevic led a massive conspiracy aimed at creating an ethnically pure greater Serbia. Therefore, under the concept of "Joint Criminal Enterprise," he is being charged with every alleged crime that is said to have arisen from the pursuit of the alleged conspiracy.

The main pillar of the indictment is the "Joint Criminal Enterprise." If the conspiracy theory contained in the indictment is wrong, if there was no conspiracy to create an ethnically pure greater Serbia, then the entire indictment collapses. Everything in the indictment rests on the existence of a conspiracy.

Milosevic's defense strategy is clear. Milosevic is destroying the prosecution's conspiracy theory. Everything Milosevic does is aimed at refuting the idea that a conspiracy, or "Joint Criminal Enterprise," even existed in the first place. It's all very simple, if there was no conspiracy, then Milosevic, and the entire Serbian political leadership, are innocent.

It seems that the Judges are either unwilling or unable to understand Milosevic's very simple defense. Judge Bonomy said today that "it didn't matter who started the war," and Judge Robinson said that Milosevic was "beating the point to death" when he was asking Jovanovic questions aimed at showing that Croatia and Slovenia, through their illegal secession and attacks on the JNA, started the war conflict. Mr. Nice intervened at one point to say that it didn't matter, as far as the indictment was concerned, whether the secession of the republics was legal or not.

Well it does matter, in fact it's the only thing that matters. If the Serbs didn't start those wars, if the wars came about because of the belligerence of the other side, then the thesis of a massive Serb conspiracy is seriously called into question. After all, no Serbian conspiracy could be dependent on the actions of the opposing side.

Mr. Jovanovic will continue his examination-in-chief on Tuesday.

###

JOVANOVIC CONTINUES HIS EXAMINATION IN CHIEF

www.slobodan-milosevic.org - February 15, 2005

Written by: Andy Wilcoxson

Vladislav Jovanovic continued his testimony at the trial of Slobodan Milosevic on Tuesday. President Milosevic put questions to Jovanovic regarding the war in Bosnia-Herzegovina.

According to the indictment there was an "international armed conflict" and a "partial occupation" in Bosnia-Herzegovina.

Jovanovic, who was a diplomat for more than 40 years, testified that the indictment is wrong. According to his testimony there was a civil-war in Bosnia, not an international armed conflict. He pointed out that the UN Security Council, in all of its resolutions, never determined that an international armed conflict was taking place in Bosnia.

Jovanovic testified that Belgrade had no troops in Bosnia after the withdrawal of the Yugoslav Peoples Army in May of 1992.

To bear this point out, Milosevic read from a report of the UN Secretary General dated 30 May 1992. According to the report of the Secretary General, the JNA was withdrawing all of its soldiers who were not residents of Bosnia-Herzegovina. The report said that the JNA was even attacked, by the Bosnian-Muslims, as it was attempting to withdraw.

The Secretary General's report said that the soldiers who lived in Bosnia, and who logically remained in Bosnia, were not under the command of Belgrade that they were under the command of Gen. Mladic.

The report also observed that Croatia, unlike Serbia, had a military presence in Bosnia. The report cast doubt on Zagreb's claims that it was not controlling the members of its armed forces who went to Bosnia.

Jovanovic said that this report was supposed be discussed by the UN Security Counsel before sanctions were imposed against Yugoslavia. Unfortunately, the report was delayed and did not reach the Security Counsel until one day after the sanctions were imposed.

The Milosevic trial has already heard evidence that the Secretary-General's report was held back by an Austrian diplomat, Mr. Peter Hohenfellner, who was the presiding officer of the Security Council at the time. He received the report from the Secretary-General on time, but did not distribute it to the rest of the Security Counsel until the day after the Security Counsel imposed sanctions against Yugoslavia.

Jovanovic listed Austria as a key ally of the Croatian and Slovenian secessionists during his testimony. The obvious conclusion is that Austria, through Mr. Hohenfellner, withheld vital information from the Security Counsel to protect Croatia, and to put increased pressure on what remained of Yugoslavia.

From his vantage point in the diplomatic corps of Yugoslavia, Jovanovic was able to testify about American policy towards Yugoslavia.

According to Jovanovic, Warren Zimmerman began telling federal and republican officials in Yugoslavia that the country was no longer of strategic interest to the United States when he became the U.S. Ambassador to Yugoslavia.

Jovanovic quoted James Baker as saying that Croatia and Slovenia's unilateral secession was the trigger that unleashed war in Yugoslavia.

Jovanovic characterized U.S. policy towards Yugoslavia in 1991 as hypocritical. On the one hand the U.S. pledged not to recognize republics that seceded unilaterally. On the other hand the U.S. said that Yugoslavia could not use its army to prevent such unilateral secession. The United States leaked a CIA report that "predicted" the bloody break-up of Yugoslavia. The United States blocked economic cooperation with Yugoslavia, while fostering economic cooperation directly with its republics. Finally, the United States deleted Yugoslavia from the list of Most Favored Nations.

Essentially the United States supported Yugoslavia with political rhetoric, while carrying out policies that undermined it.

Mr. Jovanovic, who worked closely with Milosevic, testified regarding Milosevic's attitudes towards war crimes and ethnic cleansing. He said that Milosevic issued public statements condemning criminal acts committed by all sides in Bosnia.

Jovanovic testified to the fact between 50,000 and 70,000 Bosnian-Muslim refugees were given safe-haven in Serbia during the Bosnian war. He said that Serbia provided shelter for 700,000 to 800,000 refugees in total. Most of the refugees were Serbs, but according to Jovanovic Croats and Muslims were among the refugees, and they were treated

same as the ethnic Serb refugees.

Jovanovic reiterated the fact that Serbia, and Milosevic personally, supported the Cutliero Plan in Bosnia. The plan, which was signed by all three sides before the war broke out, called for an independent Bosnia divided into autonomous cantons. Unfortunately, Alija Izetbegovic opted for war and withdrew his signature from the document.

The fact that Serbia supported the Cutliero Plan goes to show that there never was a plan to establish greater Serbia. If such a plan had existed, Serbia never would have supported the Cutliero plan, whereby Bosnia became an independent state.

In addition to his testimony about the numerous peace initiatives that Milosevic supported, Jovanovic testified to the statements made by other leaders in the former Yugoslavia.

Jovanovic recalled Tudjman's speech on Ban Jelacic Square on May 24, 1992 when he said "The war would not have happened if Croatia had not wanted it. It was, however, our judgment that only through war can we achieve the independence of Croatia. That is why we conducted political negotiations, and behind those negotiations we set up military units. Had we not done so, we would never have reached our goal. That is to say, the war could have been avoided if only we had given up on our goals, that is, the independence of our state."

Jovanovic also recalled Izetbegovic's statement to the Bosnian parliament on February 7, 1991 (before the war started) when he said "I would sacrifice peace for a sovereign Bosnia-Herzegovina... but for that peace in Bosnia-Herzegovina I would not sacrifice sovereignty."

The fact that Izetbegovic announced his intentions to go to war before the war broke out, goes to show that he bears responsibility for the war. Likewise, the fact that Tudjman openly admitted that Croatia negotiated in bad faith because it wanted a war goes to show that he bears responsibility for that war. The absurdity of accusing Serbia for those wars is self-evident.

Jovanovic will continue his examination in chief on Wednesday.

###

Advocaten in lijfeigenschap bij het Joegoslavië tribunaal

Door Nico Steijnen, advocaat Febr 2005

Milosevic is momenteel bezig om voor het Joegoslavië tribunaal zijn tegenbewijs te presenteren. Dit nadat jarenlang de aanklager aan het woord was geweest om bewijsmateriaal tegen hem in te brengen. Milosevic heeft, om zijn kant van het verhaal uit de doeken te doen en zelf getuigen naar voren te brengen, precies 150 werkdagen toegemeten gekregen. En elke dag dat het proces stil zal liggen omdat hij ziek is, gaat daar nog van af.

Alleen al dit absurde gebrek aan evenwicht tussen de tijd die de aanklager in de schoot geworpen kreeg om zijn klachten tegen Milosevic te onderbouwen en de tijd die Milosevic wordt gegund om tegengetuigen te horen, bewijst hoe brutaal het Joegoslavië tribunaal inmiddels zijn ware gezicht durft te tonen.
In een klimaat waarin, als het gaat om de zogenaamde strijd tegen het terrorisme, in toenemende mate regelrechte liquidatiepraktijken, doodseskaders, martelingen en levenslange opsluiting zonder vorm van proces openlijk als toelaatbare methodes worden gepropageerd en ook daadwerkelijk in praktijk worden gebracht, verliest ook een door de NAVO gecontroleerde institutie als het Joegoslavië tribunaal steeds meer het geduld om zelfs maar de schijn op te houden de fundamentele rechtsnormen in acht te nemen.

De laatste loten aan de stam van de fundamentele mensenrechten die het zogenaamde tribunaal aldus gekapt heeft, als was het dood hout, zijn het recht van Milosevic om zichzelf te verdedigen, alsmede het recht op een gelijkwaardige behandeling. Dit laatste betreft dan het afschaffen van gelijkwaardigheid inzake het verlenen van faciliteiten, tussen de aanklager en Milosevic als verdachte, ook wel aangeduid als het recht op 'equality of arms'.

Het eerstgenoemde recht, het recht om zelf zijn eigen verdediging te voeren, is een grondrecht dat in alle importante mensenrechtenverdragen is terug te vinden en ook uitdrukkelijk is opgenomen in het Statuut van het Joegoslavië tribunaal zelf.

Dit fundamentele mensenrecht, het recht om zichzelf te verdedigen, was Milosevic aanvankelijk volledig ontnomen, zogenaamd omdat hij te ziek en te zwak zou zijn om dat recht nog langer uit te oefenen.

Maar voor iedere onbevangen waarnemer was het van meet af aan glashelder dat de pogingen van het tribunaal om Milosevic te beroven van zijn recht om zijn eigen verdediging te voeren niets met diens gezondheidstoestand te maken hadden.

Voor de gevangenis van Scheveningen: in '40-'45 zaten hier de vrouwen van de Nederlandse 'partizanen'

Waar het tribunaal voor vreesde waren de onthullingen waarmee Milosevic en de door hem opgeroepen getuigen zouden komen over de rol van de westerse wereld bij de ontmanteling van de Joegoslavische federatie, de bewijzen die door hem gepresenteerd zouden worden omtrent de systematische westerse leugen-campagne met betrekking tot het zogenaamde streven naar een Groot-Servië en de misdaden van de NAVO, begaan in de agressie-oorlog tegen Joegoslavië en Servië, die door hem voor het voetlicht zouden worden gebracht.

Want de ongelooflijke leugens waarmee de oorlog tegen Irak werd gerechtvaardigd, vormden geen op zichzelf staand incident. Maar vonden een onmiskenbare voorganger in de westerse leugens over de gewelddadige afbraak van Joegoslavië, met als sluitstuk de NAVO-agressieoorlog tegen wat toen al teruggebracht was tot klein-Joegolavië.
Zoals de herkolonisatie van Irak bewust op de agenda werd gezet om de dominante westerse positie in het voor de olievoorziening cruciale Midden-Oosten voor de komende decennia veilig te stellen, zo vormde ook de liquidatie van de voormalige Joegoslavische federatie een belangrijk onderdeel van de westerse geopolitieke aspiraties.
Het voormalige Joegoslavië moest uit elkaar gespeeld worden en verbrokkeld worden tot een serie door het westen bezette of van het westen afhankelijk gemaakte cliënt-staten.
En de schuld daarvoor moest bij Milosevic gelegd worden.

Ook die afbraak van Joegoslavië vormde een doelbewuste strategie. Tot heil van westerse controle over belangrijke aanvoerroutes en knooppunten inzake olie- en gasvoorraden uit zowel het Kaspische zee-bekken als uit het Midden-Oosten. En tot heil van een steeds verder terugdringen van de Russische invloedssfeer, een proces dat in hoog tempo doorgaat. Nog maar kort geleden was Georgië aan de beurt en zeer onlangs hebben we de pro-westerse 'revolutie' in de Oekraïne zich zien voltrekken.

Het verschil tussen enerzijds de oorlog tegen Irak gekoppeld aan de daarop volgende bezetting van dat land en anderzijds de westerse agressie tegen Joegoslavië is dat, wat dit westerse optreden tegen Irak betreft, de daarover geventileerde leugens zichzelf hebben achterhaald. Terwijl de uitstekend geregisseerde leugen-campagnes die door het Westen over Joegoslavië werden gevoerd voor een breed publiek nog steeds stand houden.
Het Joegoslavië tribunaal speelt hier een belangrijke rol in.
Om te voorkomen dat Milosevic wat dit betreft te veel roet in het eten zou kunnen gooien, vond het tribunaal het de hoogste tijd worden om Milosevic van zijn handelingsbevoegdheid te ontdoen. Dit door hem diens recht om zijn eigen verdediging te voeren te ontnemen.
Juist op het moment dat hij, na al die jaren dat de aanklager aan het woord was geweest, zijn eigen verdediging zou mogen gaan brengen. En hij dus een belangrijk aandeel in de regie van het proces zou kunnen gaan opeisen.

De botheid waarmee het zogenaamde tribunaal Milosevic weer achter de coulissen meende te kunnen manoeuvreren, precies op het moment waarop hij op het punt stond om, gebruikmakend van het onvervreemdbare recht om zijn eigen verdediging te voeren, daaruit naar voren te treden, riep een wereldwijde golf van afkeuring op. Met als gevolg een totale staking van de door Milosevic beoogde getuigen om voor het tribunaal te verschijnen. Zolang diens recht om zichzelf

te verdedigen hem ontnomen zou blijven. En zo kwam het proces, bij gebrek aan getuigen die kwamen opdagen, tot een absolute stilstand.
Het tribunaal zag zich daarop gedwongen om Milosevic in zijn fundamentele recht om zichzelf te verdedigen te herstellen.
Natuurlijk was dit een grote overwinning voor Milosevic. En een verder gezichtsverlies voor het zogenaamde tribunaal.

Maar hoewel Milosevic zodoende de regie over zijn verdediging weer terugveroverd heeft, blijft een nieuwe aanval op een ongestoorde uitoefening van dit recht dreigend in de lucht hangen.

Een cruciale rol wordt hierbij gespeeld door de persoon die het Joegoslavië tribunaal Milosevic als advocaat had willen opdringen, namelijk mr. Kay. Deze Kay was hem al vanaf het begin van het proces toegewezen als 'amicus curiae', een soort pseudo-verdediger. Als zodanig had Kay nooit veel te vertellen gehad, maar nu, door het tribunaal als gedwongen advocaat aan Milosevic toegevoegd, rook hij zijn kans.

Als loopjongen van het tribunaal deed hij zijn uiterste best om zijn tribunaal-meesters terwille te zijn en de vaart erin te houden. Maar zijn pogingen mochten niet baten, want noch Milosevic noch 99% van de getuigen die Milosevic op het oog had wilden ook maar enig contact met hem.
Kay kon dus geen kant op.

Vervolgens voltrok zich een klucht waarmee zowel Kay als het tribunaal zich de gelegenheid verschaften tot herpositionering.
Kay ging, bij wijze van potsierlijke vertoning, tegen zijn eigen benoeming als advocaat van Milosevic in beroep. Omdat er zo voor hem niet te werken viel en omdat hij, door tegen de zin van Milosevic als zijn opgedrongen advocaat te fungeren, de integriteit van de advocatenstand zou ondermijnen.

Die manoeuvre, duidelijk vooropgezet in overleg met Kay's broodheren bij het tribunaal, bood enerzijds het tribunaal de gelegenheid om in hoger beroep te bepalen dat Milosevic in principe weer zelf zijn eigen verdediging ter hand zou mogen nemen. Maar anderzijds werd de zogenaamde 'ontslagaanvraag' van Kay door het tribunaal geweigerd. Kay kreeg te horen dat hij, als gedwongen advocaat van Milosevic, achter de hand moest blijven. Om direct weer als diens opgedrongen advocaat naar voren te kunnen treden als Milosevic zich ziek zou melden. Zodat hij dan de zaak weer over zou kunnen nemen.

Natuurlijk wordt hier een theaterstuk opgevoerd, met Kay als acteur in de hoofdrol.
Kay doet het voorkomen alsof hij zich als aangewezen advocaat van Milosevic zou willen terugtrekken. Maar in plaats van het eerste de beste vliegtuig te nemen terug naar huis, naar Engeland, stort hij zich in een pseudo-procedure en onderwerpt zijn al of niet aanblijven als opgedrongen advocaat aan een zogenaamde beslissing van het tribunaal. Dat besluit vervolgens dat hij niet weg mag en 'stand by' moet blijven.
Hetgeen Kay dan op zijn beurt weer de gelegenheid biedt om zijn handen ten hemel te heffen en uit te roepen: 'Zie, ik kan niet anders, het tribunaal dwingt mij om aan te blijven!'

Het zal duidelijk zijn dat Milosevic van deze wanvertoning niet gediend is.
Ik heb dan ook, namens hem, inmiddels een klacht tegen Kay ingediend bij het tuchtcollege van de Nederlandse Orde van Advocaten.
Op het eerste gezicht lijkt het vreemd dat Kay, als Brits advocaat en als Brits onderdaan, onderworpen zou kunnen zijn aan het tuchtrecht dat geldt voor Nederlandse advocaten. Maar als praktiserend advocaat op Nederlandse bodem is dit nu eenmaal, in Europees verband, zo geregeld.

De eis is dat tuchtmaatregelen tegen Kay worden getroffen.
Kay heeft, door het recht van Milosevic te usurperen om zijn eigen verdediging te voeren, inbreuk gemaakt op het onvervreemdbare recht van Milosevic om zichzelf te verdedigen.
En blijft zich inmiddels gereed houden om opnieuw tot een dergelijke schending over te gaan.
Dat komt neer op schending van Milosevic' mensenrechten.
Kay schendt daarmee bovendien het eerste gebod voor iedere advocaat, namelijk om niet als advocaat op te treden tegen de zin van enige cliënt. Alsmede het tweede gebod dat evenzeer voor iedere advocaat geldt, en wel om niet een zaak op zich te nemen waarmee hij of zij zich niet naar eer en geweten kan verenigen.
Alles bij elkaar reden genoeg voor het tuchtcollege van de Orde van advocaten om Kay een verbod op te leggen om nog langer op Nederlands grondgebied beroep uit te oefenen.

Kay voert een komisch nummer op waarin hij zegt: 'Ik kan niet anders, want het Joegoslavië tribunaal beveelt mij nu eenmaal om aan te blijven'. Dat het Joegoslavië tribunaal Kay een dergelijk bevel heeft gegeven is waar. Maar natuurlijk is zo'n bevel geen cent waard.

Allereerst is het allemaal handjeklap tussen Kay en het Joegoslavië tribunaal onderling. Waarom dat zo zeker is? Omdat Kay zelfs niet de moeite neemt om tegen het verbod om zijn biezen te pakken in beroep te gaan. En als Kay echt zoveel bezwaar zou hebben tegen deze gang van zaken dan was dit, ook binnen de show die hier wordt opgevoerd, toch wel het minste geweest wat hij had kunnen doen.

En vervolgens is het natuurlijk volkomen onaanvaardbaar dat het zogenaamde tribunaal bepaalde advocaten, tegen hun uitdrukkelijke wil, zou kunnen vasthouden en zou kunnen verplichten om op te treden. Dit komt er immers neer op een soort lijfeigenschap.

Intussen leidt de totale fixatie van het zogenaamde tribunaal op een zoveel mogelijk controleren en aan banden leggen van Milosevic tot een degelijke absurde vertoning dat het door het zogenaamde tribunaal als een soort lijfeigenen manipuleren van advocaten als een legitiem handelen wordt voorgesteld.
We zijn hiermee weer teruggeworpen in de Middeleeuwen, de tijd van de meest duistere inquisitie.
De zelfontmaskering als een volstrekt malafide genootschap waarmee het Joegoslavië tribunaal nu al zolang bezig is bereikt hiermee een totaal nieuwe dimensie.

De reacties van het Joegoslavië tribunaal en Kay op de namens Milosevic ingediende klacht waren furieus.
Eerst weigerden zij eenvoudig om aan te nemen dat deze klacht van Milosevic afkomstig was, maar nadat zij zich daarvan hadden vergewist, lieten de betrokken 'rechters' hun woede hierover op een zitting openlijk de vrije loop.

...digde aan mij met alle beschikbare ...len te zullen bevechten. Inmiddels ...t hij tegen mij persoonlijk een klacht ...ediend omdat ik hem beledigd zou heb...en.

Het Joegoslavië tribunaal heeft inmiddels de Minister van Buitenlandse Zaken voor zijn kar gespannen en hem ertoe gebracht om schriftelijk te interveniëren bij de Nederlandse Orde van Advocaten. Dit met de eis om zich van verdere actie tegen Kay te onthouden. En wel omdat aan Kay, als advocaat bij het Joegoslavië tribunaal, immuniteit met betrekking tot tuchtrechtelijke vervolging zou toekomen.

De Minister van Buitenlandse Zaken heeft zich aldus niet alleen laten misbruiken voor een kwaadwillige interventiepoging van de zijde van het Joegoslavië tribunaal. Maar dit ook nog eens, willens en wetens, met rechtsargumenten die nergens op slaan. Want in de terzake geldende regelgeving wordt voor wat betreft de voor advocaten bij het Joegoslavië tribunaal toepasselijke immuniteit immers uitdrukkelijk een uitzondering gemaakt voor het tuchtrecht.

Niettemin acht de Deken van de Orde van Advocaten het zaak dat deze gezamenlijke poging van het Joegoslavië tribunaal en de Minister van Buitenlandse Zaken om de procedure voor de tuchtrechter te beïnvloeden volop zijn beslag zal kunnen krijgen.

En inmiddels werd aldus ook de behandeling door de tuchtrechter van de klacht van Milosevic tegen Kay steeds opnieuw vertraagd. Al staat aan de andere kant vast dat van uitstel zeker geen afstel zal komen en dat het moment van daadwerkelijke behandeling door de tuchtrechter nadert. Inmiddels is bekend gemaakt dat de deken het vooronderzoek als afgerond beschouwt en de zaak vóór 15 januari 2005 definitief bij de Raad van Discipline zal worden aangebracht.

Intussen zorgt Milosevic voor de ene getuigenis na de andere waarin allerlei topgetuigen de mythe van een samenzwering om tot een Groot-Servië te komen ondubbelzinnig als kwaadaardige laster naar het rijk der fabelen verwijzen. En waarin van de andere kant krachtig bewijs wordt geleverd voor de vooropgezette bedoelingen van de NAVO om Joegoslavië, koste wat het kost, met oorlogsgeweld te lijf te gaan. En waarin tenslotte getuigenis wordt afgelegd van de oorlogsmisdrijven die daarbij opzettelijk werden gepleegd. Zoals de afschuwelijke en systematische bombardementen die door de NAVO op burgerdoelen werden uitgevoerd om Joegoslavië op de knieën te dwingen.

Het persoonsbewijs

Door Celine

Toen de ouderen onder ons en in het bijzonder de oorlogsslachtoffers en mensen uit het toenmalig verzet hoorden dat wij ongeveer 63 jaren na de Duits-fascistische bezetting weer in het bezit moeten zijn van een persoonsbewijs zullen de meeste van hen heel erg geschrokken zijn. Zelf behoor ik ook tot die ouderen die Auschwitz overleefd hebben. Hieronder een gebeurtenis die lang geleden aan dat persoonsbewijs uit de bezettingstijd vooraf ging.

Vanaf 1926 wordt van de Nederlandse bevolking hun hele levensloop van de wieg tot het graf geregistreerd. Het begon in bovengenoemd jaar toen een kleine ambtenaar in Den Haag, Jacobus Lentz, was zijn naam, "een echte dienstklopper met ellebogen", zoals Jan Rogier in zijn boek "De geschiedschrijver des Rijks" schrijft, de opdracht kreeg van zijn chef zich te verdiepen in de systematiek van de bevolkingsregisters. Hij ging aan het werk om een volledig waterdichte registratie van het Nederlandse volk te realiseren. Deze registratie bestaat nog steeds, al gaat het tegenwoordig hoofdzakelijk via computers.

Een korte herinnering uit de bezettingstijd

Toen de Duitse bezettingsmacht ons land in 1940 binnenviel, konden zij zonder veel moeite hun politieke vijanden, zoals communisten en sociaaldemocraten, zowel van Nederlandse als van Duitse nationaliteit, in hun huizen arresteren. Uiteraard speelde verraad van Nederlandse kant ook een rol, maar de Duitse bezetter bezat ook de lijsten met namen en adressen van de meeste gearresteerden.

Deze perfecte mensenregistratie heeft gedurende de oorlog afschuwelijke gevolgen gehad, vooral voor joden, zigeuners (Sinti en Roma) en homofielen. Het persoonsbewijs is voor het eerst tijdens de Duitse bezetting ingevoerd, op uitdrukkelijk verzoek van de Duitse politie-autoriteiten. Zoals vermeld was dit mogelijk gemaakt door de voorbereidingen die de "bezeten registrator" Lentz al voor de oorlog mogelijk getroffen had. Jammer voor hem werd het invoeren van een (zoals men dat toen ook al noemde) identiteitsbewijs door het kabinet de Geer afgewezen (bron: de geschiedschrijver des Rijks (Rogier)).
In 1942 werd het persoonsbewijs door de Duitsers officieel ingevoerd. In het persoonsbewijs van de joden werd een J gedrukt, wat voor 78% van de Nederlandse joden en Duits-joodse emigranten fataal is afgelopen. De meeste van hen zijn in Auschwitz en Sobibor vergast. Maar ook de Sinti en Roma, die evenals de joden niet tot het Arische ras behoorden hebben hetzelfde lot ondergaan.
In geen enkel bezettingsland in West-Europa zijn procentueel zoveel joden weggevoerd als in ons land, omdat in andere landen die registratiewet nooit heeft bestaan.

Nu, 60 jaar na de Tweede Wereldoorlog, wordt het Nederlandse volk verplicht weer met een persoonsbewijs (een uitvinding van de nazi's) op zak te lopen. De Nederlandse overheid is schijnbaar volkomen in paniek geraakt. In geen enkel land in Europa, waar ook godsdienstextremisten kunnen toeslaan, heeft men zo'n pas verplicht gesteld.

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KOSTIC TESTIFIES THAT MILOSEVIC DID NOT SUPPORT PARAMILITARIES OR ADVOCATE GREATER SERBIA

www.slobodan-milosevic.org - February 6, 2005

Written by: Andy Wilcoxson

The trial of Slobodan Milosevic resumed on Monday with the continued testimony of Prof. Branko Kostic, the former Montenegrin representative in the SFRY state presidency.

Kostic began the day by testifying about the adoption of the Vance Plan. He explained that Croatia did not want to adopt the plan, nor did Milan Babic want to adopt the plan. Kostic explained that Milosevic eventually won over the Krajina Serb leadership to support the plan.

Under the Vance plan, UN Peacekeeping troops would control the areas of Croatia where the Serbs were the majority or a significant minority. These areas, called "UN Protected Areas," were demilitarized.

Under the Vance Plan the Krajina Serbs gave their weapons to the UN peacekeepers. UN peacekeepers put the weapons in warehouses and kept the access keys.

Kostic testified that he could not think of a single instance when the Krajina Serbs violated the Vance plan. Unfortunately, he could not say the same thing about the Croatian side.

The witness commented that the Vance Plan was completely incompatible with any plan to create "Greater Serbia."

In 1992 Milan Babic, the Krajina-Serb president, announced that the RSK would be annexed to Serbia. Milosevic produced the response from the Serbian assembly. The Serbian government rejected Babic's declaration uniting Serbia and the RSK. The Serbian government expressed its view supporting the UN mission and held that a political solution had to be negotiated with the Croats.

The fact that Serbia rejected territory when it was offered proves beyond any doubt that neither Milosevic nor Serbia had any territorial aspirations towards Croatia or any other republic. This one fact alone negates the entire thesis put forward by the indictment. Prof. Kostic testified that Milosevic never advocated any form of "greater Serbia."

The indictment accuses the JNA of "occupying" Croatian territory. Prof. Kostic repeated many times during his evidence that the JNA was the only legal armed force in Yugoslavia, and as such could not be accused of "occupation" on its own territory.

Neither could the Krajina Serbs be accused of occupation. Milosevic read out a passage from Lord Owen's book "Balkan Odyssey" where he states that the Krajina Serbs had been living on that territory for several centuries. The Krajina Serbs could not be accused of occupying Croatia any more than the Dutch can be accused of occupying Holland.

The fact that the Vance Plan totally disarmed the Krajina Serbs, as well as the fact that Croatian paramilitary groups had the JNA blockaded in its barracks is further proof that there was no occupation.

Kostic pointed out that everything the Krajina Serbs did was in response to Croatian or foreign provocations. None of it was instigated by a mythical Serbian conspiracy as is alleged by the prosecution. When Croatia announced that it was suspending the Yugoslav constitution, the Krajina Serbs responded by establishing autonomous districts (the SAOs) in which Yugoslav law did apply.

When the European Community reneged on its promise not to recognize the secessionist republics and offered to illegally grant Croatia recognition, the Krajina Serbs responded by announcing their secession from Croatia.

Kostic also gave testimony about Dubrovnik. He testified that the JNA had not had an armed soldier in Dubrovnik for decades before the war. He explained that the General Staff of the JNA made the decision to remove Croatian paramilitary forces in Dubrovnik after the Croats launched attacks from there.

Kostic credited JNA action in Dubrovnik with stopping the war from spreading into Montenegro (which borders Dubrovnik).

The indictment accuses the JNA and the Serbian leadership of undertaking a conspiracy to expel the Croatian population from 1/3 of Croatian territory. Kostic conceded that there were instances when Croats were mistreated, but he insisted that such incidents were isolated and did not come about at the initiative of the Yugoslav or Serbian leadership. To prove this point he showed the court statistics that Croatia was 77.9% Croat and 12.2% Serb in 1991 vs. 89.6% Croat and 4.5% Serb today.

The statistics prove that Croatia ethnically cleansed the Serbs. The indictment has the facts turned completely upside down. To bear this point out Milosevic read-out a passage from Lord Owen's book where he calls Croatia's Operation Storm the biggest ethnic cleansing operation in all of the Balkan wars.

The indictment says that Milosevic controlled the JNA, several paramilitary groups, the SFRY state presidency, and the Krajina-Serb leadership.

Professor Kostic dismissed the assertions dismissed by the indictment as total nonsense. Kostic testified that Slobodan Milosevic was the president of Serbia and as such he did not control the JNA, the SFRY presidency, or the Krajina Serb leadership. Kostic, who was a member of the SFRY state presidency himself, said that Milosevic neither had de jure nor de facto control over these institutions.

Kostic testified that Milosevic was opposed to paramilitary groups. He said that Serbian paramilitary groups were always under the control of Milosevic's political opponents, such as Vuk Draskovic, who hoped to use these units to forcibly overthrow Milosevic. Kostic added that the vast majority of war crimes committed by Serbs could be attributed to these illegal paramilitary formations.

Kostic will resume his testimony tomorrow. He is expected to testify about Bosnia.

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Sagittarius

Van: "Ian Johnson" <i-johnson@lineone.net>
Aan: <SAGITAR@HETNET.NL>
Verzonden: vrijdag 18 februari 2005 21:50
Onderwerp: CDSM: CDSM Statement 18th February

STATEMENT FROM COMMITTEE TO DEFEND SLOBODAN MILOSEVIC – UK

As we write this piece Slobodan Milosevic and other Yugoslav political prisoners are on trial at the US sponsored Hague 'tribunal' for no other reason than they had the courage to defy Nato and the New World Order and attempted to protect the independence of their country and the interests of its citizens.

Slobodan Milosevic is currently conducting his own defence, a fundamental right for any accused, but a right that he and his supporters have had to fight tooth and nail to protect, as anyone following the 'trial' process will be aware.

Although suffering from life threatening health problems his defence presentation is being hampered by artificial time restrictions imposed by the 'tribunal', restrictions that were not imposed on the prosecution, resulting in both insufficient rest periods and preparation time.

Followers of the 'trial' will also know that Mr Milosevic is not using his defence to defend himself but is using it to defend his country and its people and to accuse the Western powers of deliberately financing, aiding and abetting the destruction of the Federal Republic of Yugoslavia. It is in that sense that this 'trial' is of immense importance.

The bogus charges against him have not stood up to close examination but on the contrary, they have revealed the political nature of these proceedings.

To understand events in the world today, the occupation of Iraq, the interference in elections in Georgia, Belarus and the Ukraine, the fictitious 'war on terror' and the butchering of international law, it is essential to understand what was done to the sovereign state of Yugoslavia.

What this means in other words is that to support the defence of Slobodan Milosevic is not only supporting the President, is not only supporting the slandered citizens of Yugoslavia, but is supporting all those who cherish true freedom and democracy, who cherish truth and justice, and it is supporting those who oppose the idea that the world should be organised and run for the benefit of a tiny financial elite at the expense of the vast majority of the world's population.

It is for these reasons that we ask you to support this struggle, to support the International Committee to Defend Slobodan Milosevic (ICDSM) and its national sections.

Please make every effort to support the forthcoming public meetings in Britain, details of which will be announced shortly.

And please permit us to leave you with the following quote:

"First they came for the Jews, and I did not speak out – because I was not a Jew.

Then they came for the communists and I did not speak out – because I was not a communist.

Then they came for the trade unionists and I did not speak out – because I was not a trade unionist.

Then they came for me – and there was no one left to speak out for me."

Pastor Niemoeller (victim of the Nazis).

For further information please visit the web sites: www.free-slobo-uk.org and www.icdsm.org

18th February 2005.

Ends.

International Conference

The Hague Proceedings against Slobodan Milosevic: Emerging Issues in International Law

The Hague, Saturday, 26 February 2005
Golden Tulip Bel Air hotel, Johan de Wittlaan 30

Conference admission is 10 EUR. Admission for media representatives is free.

Conference Presidium: Christopher Black (Chair), Professor Velko Valkanov, Dr Branko Rakic

Timetable:

14:00-14:30 Ramsey Clark (USA) - keynote address
14:30-15:00 Professor Hans Koechler (Austria)
15:00-15:30 Tiphaine Dickson (Quebec)
15:30-16:00 Dr Branko Rakic (Serbia)

16:00-16:20 Coffee Break

16:20-16:40 Professor Velko Valkanov (Bulgaria) - keynote address
16:40-17:00 Dr John Laughland (UK)
17:00-17:20 Professor Aldo Bernardini (Italy)
17:20-17:40 Christopher Black (Canada)

17:40-18:00 Coffee Break

18:00-19:00 Panel Discussion
Panelists: Tiphaine Dickson, Christopher Black, Dr John Laughland, Dr Branko Rakic

*Notes: Each of the speeches ends with five minute discussion. The only

language of the speeches and discussion will be English. Presence of Dr Alexandar Mezhyaev (Russia) has not yet been confirmed. In the case of his absence, copies of his paper will be available. If the conditions will allow, it is expected that speakers meet President Milosevic on Friday, 25 February afternoon.

JOVANOVIC CONCLUDES HIS EXAMINATION IN CHIEF

www.slobodan-milosevic.org - February 16, 2005

Written by: Andy Wilcoxson

Slobodan Milosevic concluded his examination of Vladislav Jovanovic on Wednesday. The last part of his examination-in-chief dealt with Kosovo and the NATO aggression against Yugoslavia.

Jovanovic, who was a Yugoslav diplomat serving at the UN, testified that the KLA was defined as an international terrorist organization before the war. To bear this out he made reference to Robert Gelbard, the U.S. Special Envoy for Kosovo's, statement that the KLA was "without question a terrorist group." [See: AFP, Feb. 23, 1998]

Jovanovic said that Kosovo had been put on the agenda of the Security Counsel because the Contact Group had taken an interest in it. Normally the internal affairs of a country would not have been placed on the Security Counsel's agenda.

Milosevic attempted to introduce the White Books as exhibits through the witness, since the witness worked in the Ministry of Foreign Affairs and was responsible for their distribution to the UN.

The White Books are collections of police reports, photographic evidence, and judicial findings of fact that detail crimes committed against civilians by the NATO aggression on Yugoslavia. The documents contained in the White Books were collected and compiled by the Ministry of Foreign Affairs and distributed to the international community by the witness personally.

In spite of the witness's direct involvement with the White Books, the tribunal would not allow them to be tendered into evidence on the grounds that the witness did not personally compile each document.

Milosevic offered to exhibit each and every document contained in the White Book individually through various witnesses if the tribunal would give him time to do so. This drew a rebuke from Judges Robinson and Bonamy, who accused him of not taking the trial seriously, and thereby wasting the court's time.

In spite of Judge Robinson's stern admonition to take the trial seriously, he engaged in some tomfoolery of his own about ten minutes later.

Milosevic was discussing the definition of aggression with the witness, and sought to introduce the UN document that defines aggression as an exhibit. Judge Robinson remarked that he had helped to draft that document, and quipped that Milosevic should call him as a witness. Robinson's remark was met with boisterous laughter throughout the court room.

Milosevic dismissed Robinson's offer, and Robinson again offered saying, "do you want to call me as a witness or not?" Of course being the presiding Judge in the trial, Robinson can not testify as a witness, obviously he only made that remark because he's a smartass. One wonders how Robinson can expect Milosevic or anybody else to take the trial seriously when he is cracking smartass jokes from the bench during the middle of the proceedings?

After the examination in chief was concluded, Mr. Nice began his cross-examination. Mr. Nice's cross-examination did not bear any fruit for him.

Mr. Nice had obtained stenographic notes from meetings that Jovanovic had attended with officials from the FR Yugoslavia, Serbia, and Republika Srpska.

In these stenographic notes they discussed a phenomenon that was occurring during the Bosnian war. Namely that the war was causing an ethnic homogenization to take place. Serbs were migrating to areas under Serb control, Muslims were migrating to areas under Muslim control, and Croats were migrating to areas under Croat control.

In relation to the phenomenon of ethnic homogenization, ethnic cleansing was discussed. Nobody in these stenographic notes advocated ethnic cleansing, and Jovanovic explicitly condemned the practice.

What Jovanovic did was suggest that an organized exchange of populations should take place so that nobody on any side would be subjected to violent ethnic cleansing by any of the opposing military factions.

Jovanovic was floating ideas, in a private discussion, on how to stop the practice of violent ethnic cleansing, which was an unfortunate component of the Bosnian war. His idea was to establish a program whereby people who wished to migrate could do so in an organized fashion by exchanging property with peoples of other ethnicity, without fear of violent action being taken against them.

Mr. Nice saw things differently. Mr. Nice said that Jovanovic's proposal was proof that Serbia advocated an ethnically

pure greater-Serbia. Jovanovic denied this, pointing out Serbia is the only part of the former SFRY to retain its multi-ethnic character, and that Serbia's position was that the SFRY should have been preserved as a single state with all of the ethnicities living together in it.

Mr. Nice will continue his cross-examination next Tuesday.

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MR. NICE CROSS-EXAMINES JOVANOVIC

www.slobodan-milosevic.org - February 22, 2005

Geoffery Nice continued to cross-examine Vladislav Jovanovic at the trial of Slobodan Milosevic on Tuesday.

The prosecutor asked the witness about information that was outside of his sphere of activities, and then accused him of being a liar when he did not know the answers to such questions.

Jovanovic was Yugoslavia's representative to the UN, and Mr. Nice asked him about the personnel and salary administration policies in the Army. Jovanovic did not deal with military personnel administration and could not answer the prosecutor's questions, so Mr. Nice accused him of being a liar.

Mr. Nice also asked the witness what he knew about the destruction of Dubrovnik, and the witness said that knew nothing about it. It is logical that the witness would not know about any destruction of Dubrovnik since the JNA has always denied that it shelled the old city. Videotape recorded in Dubrovnik's old city after the alleged shelling proves that the city was never destroyed, in spite of the tribunal's verdict against Gen. Strugar.

Mr. Nice resorted to insulting the witness. The prosecutor called his testimony "absurd", and said that he was "leading the Chamber astray" because he wanted to protect Milosevic.

Jovanovic took offense to the prosecutor's insults and said that Mr. Nice did "not have the right to call him a liar." He offered the names of other witnesses who he said could corroborate his testimony and provide testimony about events that he did not have knowledge about.

Mr. Nice read out selective portions from stenographic notes taken at meetings of the governments of Serbia, Yugoslavia, and Republika Srpska. On many occasions the prosecutor would only read out fragments of sentences.

Mr. Nice's tactic was to put the witness off balance by insulting him, and then to try and discredit him by reading fragments of sentences out of context. Undoubtedly everything will be put in its proper context when President Milosevic re-examines the witness on Wednesday.

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KOSOVO ALBANIANS FAKED POISON GAS ATTACK IN 1990

www.slobodan-milosevic.org - February 23, 2005

Written by: Andy Wilcoxson

Slobodan Milosevic re-examined Vladislav Jovanovic on Wednesday. During cross-examination Jovanovic had claimed that "the KLA was NATO's infantry." The prosecutor met this claim with skepticism. During re-examination Milosevic exhibited a newspaper interview with Ramush Haradinaj in which the former KLA chief says, "NATO and the KLA are the same army."

Throughout the cross-examination Mr. Nice accused the Bosnian Serbs of pursuing a policy of ethnic cleansing. To refute this claim Milosevic exhibited the orders issued by Radovan Karadzic in August 1992. Karadzic's orders called for the scrupulous protection of the civilian population, and they required the soldiers of the Bosnian Serb Army to respect the Geneva Conventions at all times.

The re-examination also dealt with Srebrenica. It was Mr. Nice's contention that the witness was aware, in July of 1995, of what had supposedly happened in Srebrenica. The witness, for his part, denied having any idea that anything bad had happened there. To demonstrate that the witness could not have had knowledge, Milosevic exhibited documents issued by the UN in July 1995 that stated that there had been no physical mistreatment of anybody at Srebrenica. Also exhibited was an August 1995 memo from the Secretary General of the UN asking that an inquiry be conducted to determine what had happened in Srebrenica.

The Tribunal did not allow Milosevic to complete his re-examination of this witness. Because they cut him off prematurely he could not deal with all of the matters that arose from Mr. Nice's cross-examination.

Milosevic vehemently objected to being cut-off. His objections were of no consequence. The Tribunal quite simply would not allow him to fully re-examine his witness.

After Jovanovic was sent home, the tribunal expressed its view regarding the use of time. The Judges accused Milosevic of making inefficient use of the court's time. They suggested that he use Rule 89(F) and 92 bis to introduce witness testimony into evidence without having to orally examine the witness.

Milosevic rejected the idea of using witness statements since that would conceal the witnesses' testimony from the public. Since Slobodan Milosevic is innocent it is in his interest for the public to be as well informed about his trial as possible.

Unlike the prosecution, whose case is largely hidden from public view because of the use of secret witnesses, closed sessions, and confidential written statements, Milosevic's defense has been open and transparent.

Milosevic's defense has been fully visible to the public. There have been no secret defense witnesses, nobody has testified via written statement, and there have only been two closed sessions both were less than five minutes long and they were both aimed at protecting the identity of Kosovo Albanians who opposed the KLA.

The next witness to testify was Dr. Vukasin Andric, M.D. Dr Andric, was born and raised in Kosovo. He has worked as a medical doctor, a university professor, and as the Health Secretary in the Kosovo-Metohija Provisional Executive Council.

The indictment against Milosevic alleges that the Serbian authorities fired Albanian medical workers from their jobs en-masse during 1990 and 1991.

Dr. Andric, as the Health Secretary in the province, compiled statistics regarding the ethnicity of persons working in the field of health services in Kosovo. According to the data he compiled, on December 31, 1998 there were 12,599 people were employed in the field of health services: 5,591 Serbs, 5,301 Albanians, 455 Montenegrins, 420 Muslims, 196 Turks, 69 Gorani, 316 Romanies, 18 Yugoslavs, 14 foreign nationals, and 219 others.

Obviously the Albanians were not fired from their jobs in 1990 and 1991 if there were 5,301 of them working in Kosovo's hospitals and clinics at the end of 1998.

While the Albanians were not fired, a number of them did leave their jobs. Dr. Andric said that they were under pressure to leave from the Albanian secessionists. He said that the secessionists wanted them to leave their jobs in the state institutions so that they could establish their own parallel institutions.

According to his testimony, the families of Albanians who worked in the state health system were threatened. He based his testimony on his own contacts with his Albanian co-workers.

Dr. Andric testified that Albanians were not denied medical treatment at state health facilities in Kosovo. He said that

played videotapes of interviews with Albanian refugees who were leaving Kosovo. The refugees said that they were fleeing because of the NATO bombing and the fighting between the KLA and Yugoslav forces.

The videotapes Milosevic played were from an Albanian-language newscast dating from the first part of April 1999. The refugees on the videotapes said that nobody had mistreated them.

Dr. Andric said that NATO regularly bombed civilian targets including hospitals, churches, cemeteries, refugee centers, and private homes. A NATO bomb even killed Dr. Andric's mother in law while she was in her home.

President Milosevic exhibited numerous videotapes and photographs of the destruction caused by the NATO bombing in Kosovo through this witness. President Milosevic is expected to conclude Dr. Andric's examination-in-chief on Thursday.

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90% of his patients were Albanians, and that many of them had not been able to obtain proper medical treatment at the parallel Albanian medical centers set-up by the secessionists.

Dr. Andric gave some very interesting testimony regarding an alleged "poison gas" attack that the Albanians accuse the Serbs of unleashing against them in March of 1990.

In March of 1990 several thousand Albanian teenagers were brought to hospitals and clinics across Kosovo. Andric said that they were brought to the medical centers en masse with great urgency, and with great publicity.

The Albanians claimed that the Serbs had poisoned the teens with gas while they were attending school. According to press reports, between 4,000 and 7,000 ethnic Albanian teenagers were admitted to hospitals in Kosovo complaining of a mysterious illness.

Dr. Andric said that the sudden flood of Albanian teenagers forced the hospitals to discharge existing patients some of whom were seriously ill. Dr. Andric testified that toxicology tests performed on the teens revealed no traces of poison gas in their blood or urine.

Dr. Andric, who was a doctor treating these people, noted that the alleged illness became more severe when TV cameras were around. He said that the Albanians would be up walking the hospital corridors when there were no cameras, but as soon as the press would show up they were suddenly struck ill and had to return to bed.

It was Dr. Andric's conviction that these Albanian teenagers were faking. He based his conviction on the fact that no Serbian students, who were studying in the same schools at the same time, fell ill. It was exclusively Albanians who were effected.

Dr. Andric is not the only one who believes that the Albanians were faking. The Yugoslav Government conducted an inquiry into this event. The government commission was led by doctors from Zagreb and Ljubljana. The commission determined that there was no poison gas, and that the Albanian teenagers were all faking illness for political purposes.

Dr. Andric said that several Albanian doctors also believed that the illness was fake, and condemned the incident. To bear this out he listed the names of several Albanian doctors who condemned this fraudulent incident. He was forced to give their names to the court in closed-session in order to protect them from reprisals by the KLA.

In October of 1998, Dr. Andric was an eyewitness to another case of mass-Albanian deception. On October 29, 1998, approximately 25,000 ethnic Albanian civilians were trucked to the courtyard of a mosque near Vucitrn. They demanded to see Mrs. Sadako Ogata who was the UN high commissioner for refugees at the time.

This crowd of Albanians told her that they were refugees and that they had been forced from their homes by a savage campaign of Serbian repression. Several minutes after Mrs. Ogata and the international media left the scene, so did this crowd of Albanians. After they told her their story they all simply went back home.

Dr. Andric, as the public health secretary, dealt with the various humanitarian agencies that operated in Kosovo. For the most part they operated above board but some of them, according to Andric, were engaged in nefarious activities.

Doctors Without Borders was singled out as an NGO that did not conduct itself properly. According to Andric those doctors would only treat Albanians, and all other ethnicities were refused treatment. Dr. Andric pointed out that such conduct violated the Hippocratic Oath.

Dr. Andric testified that the KLA recruited Albanians to work for Doctors Without Borders. He mentioned one case in particular when an ethnic Albanian doctor, who worked for a state hospital, refused the KLA's invitation to quit his job and go to work for Doctors Without Borders. According to Andric, the KLA killed that Albanian doctor for refusing their demand.

Dr. Andric was in Kosovo during the NATO bombing. He testified that he was in Pristina when the bombing started. He said that everybody, not just Albanians, fled from the NATO bombs.

Dr. Andric was recruited by the government to oversee the distribution of humanitarian assistance to the population of Kosovo during the NATO aggression.

It was Dr. Andric's task to provide aid to the refugees and to convince them to remain in their homes if he could. Most refugees ignored his advice and fled from Kosovo anyway.

One unfortunate group of Albanian refugees from Djakovica decided to heed his advice and return to their homes. To assist them in their return Dr. Andric went to fetch busses to transport them, but while he was gone getting the busses, NATO launched an attack against their convoy, killing scores of the refugees.

Dr. Andric said that he never saw the Army or the police mistreating the Albanian population. To bear this out Milosevic

International Criminal Tribunal (Former Yugoslavia)

4 pm

Mrs. Alice Mahon (Halifax) (Lab): I asked for this debate for three main reasons. When the tribunal was established, I was firmly of the view that it would not heal wounds or bring people together. On the contrary, I thought that it would drive communities in the former Yugoslavia further apart, that it would be conducted on a low threshold of evidence and that it would pit neighbour against neighbour.

I have travelled extensively in the former Yugoslavia, before the various wars and since. I took a great interest in the truth and reconciliation commission established in South Africa. My second reason for securing the debate is that it seems to me that after something as vile and vicious as apartheid, or as vicious as a civil war, such a commission is more likely to succeed than a criminal tribunal.

My third reason for asking for the debate is that it is time to draw a line under the tribunal at The Hague and allow individual countries to arrest, charge and punish their citizens if they believe that they have committed crimes against the community. I notice that the occupying coalition in Iraq, led by the United States, has decided to allow the Iraqi people to try Saddam Hussein and his former Government; there are to be no charges against the warlords and no tribunals in Afghanistan. Yugoslavia seems to be singled out for this kind of treatment, and one must ask why. The United States was one of the main countries to set up the tribunal, and it gives the tribunal money, yet it refuses to sign up to the International Criminal Court. So a lot of double standards hang around the issue.

I have followed the tribunal at The Hague very closely. It is my belief that it delivers a biased system of justice and that the decisions taken by the chief prosecutor are largely based on the nationality of the accused, rather than on what evidence there is against them. In short, the tribunal has turned out as I said it would: it is a victors' court, set up mainly to punish one nationality—the Serbs.

A few years ago, I visited the tribunal with Mark Littman QC, a Serbian colleague who opposed, as I did, the illegal bombing of Yugoslavia. I am pleased to say that we were granted an interview with Carla del Ponte, the chief prosecutor. We were able to raise some of our concerns about how the indictments had been issued and why there was such emphasis on the Serbs. After all, there had been a civil war in Yugoslavia. When I went to The Hague, I had just returned from Croatia, where I had been looking at the plight of Serb returnees. We were shown mass graves there. In Operation Storm, there had been a lot of fighting; the Croatian army had driven out about 200,000 Serbs, and that was the first mass ethnic cleansing of the various wars. I was very up to date on what had gone on there, and I raised the issue of the mass graves with the prosecutor. We took photographs that matched up with the people who were missing. Carla del Ponte was not interested and said that she was short of resources.

I also raised the issue of Nasser Oric. With another organisation—not the NATO Parliamentary Assembly—I went to the siege of Sarajevo and visited

eb 2005 : Column 137WH

ot only the Muslim areas but some of the predominantly Serb villages. All the evidence there was about Oric and his raiding band, and how they had killed lots of people. He was, by any standards, a war criminal and there were videotapes and lots of evidence. Members of this House who went to the same area also know that. The chief prosecutor said that she had no plans to indict him and would not discuss the issue. However, she admitted that the whereabouts of that man were known. Only now, in the face of overwhelming protests and as a result of people putting evidence forward has he been arrested. He has now been sent for trial at The Hague, but until then he had led rather a pleasant life. I think that there were double standards operating in that case.

In the same year I visited Banja Luka with the NATO Parliamentary Assembly. I was chair of the sub-committee at that time. We talked to many people and, in particular, to a policeman who worked for the chief prosecutor at The Hague. Interestingly, the policeman came from Preston, in the north of England, not very far from where I live. When he was questioned closely he told us that he had instructions to go after Serb war criminals only. Moreover, on the wall of the office of the prosecutor at The Hague—she is supposed to be impartial and to look for war criminals from every ethnic group in the former Yugoslavia—there was a big cartoon showing Serb criminals wanted for war crimes. Those war criminals probably do need to end up in The Hague, or being tried in their own country, but it seemed to us that the prosecutor showed an overwhelming bias.

We asked about the crimes of one or two of the Kosovo Albanians—Hashim Thaci, Agim Ceku and Ramush Haradinaj, who is now the Prime Minister of Kosovo—but no indictments have been published for them. Everyone agrees that those people took part in some very unpleasant practices during the bombing of Yugoslavia; newspaper articles are written about it, and no one bothers to deny it.

The Croatian general, Gotovina, has recently made it known that he has no intention of surrendering himself to the tribunal at The Hague, although he is willing to appear in Zagreb and be questioned by the tribunal. It is clear that there are laws for some participants in the civil war and not for others. Let us imagine the outcry if Belgrade had hung on for so long to a war criminal or an indicted person who was living openly in Belgrade or one of the other cities. Let us imagine what would have been said in a case similar to that of the general.

The more closely one examines the decisions taken by the chief prosecutor and the conduct of the hearings at the tribunal, the more it becomes clear that the tribunal is not a triumph for law and justice. It is a court founded by the west, funded largely by the west, and staffed at very senior levels by the west.

Many senior professors of law and others take the same view as me; I shall quote only one of them because I have so much material from people who share my view. Robert M. Hayden, from the Woodrow Wilson International Centre for Scholars, in the United States, commented, in relation to the tribunals, on the

> "failure of the ICTY Prosecutor to indict NATO leaders for the use of cluster bombs. This prosecutorial standard was set in July 1995, when Milan Martic, president of the self-proclaimed Serb

23 Feb 2005 : Column 138WH

> Republic in Croatia, was indicted for violations of the laws and customs of war on the grounds that he had ordered the May 1995 missile attack on Zagreb."

He continues:

> "According to the indictment, what made the bombardment a war crime was that the missiles had been

itted with cluster warheads. Seven civilians were killed and many more wounded, and damage was done to a home for the aged and to a children's hospital.

> Why, then, have there been no indictments of NATO's May 7 attack on the city of Nis, where cluster bombs fell on the market, killing fifteen people, and hitting also the city's main hospital? It is not acceptable to say that NATO was only aiming at military targets and missed; after all, Martic maintained that he was aiming at military targets in Zagreb . . . While the Prosecutor says that Martic targeted cities intentionally, this is also true of NATO generals, especially the American ones, who were even complaining that French politicians did not permit them to attack more sites in Yugoslav cities."

I stood on the last bridge over the Danube—the railway bridge—at Novi Sad the night before it was bombed by NATO. That was a civilian target, because the bridges bring water supplies and other things across to the other half of the city. There was no doubt that that was deliberately targeted by NATO—it took out all the bridges. I visited the Crvena Zastava car and tractor factory and spoke to the workers just a few days after they had been bombed. That civilian target was hit by 21 cruise missiles. Many people were injured and I have photographs in which there is blood on the floor from the sit-in. The workers did not want to be bombed and they sent their stated position to every country in NATO. I do not know how they survived—people were only injured and not dead—because it was such a complete mess after the bombardment. From my hotel bedroom window I watched NATO bomb the oil refinery at Pancevo. I visited people who were grieving for colleagues who died. There are no charges against NATO for any of these offences. NATO took action that did not have the approval of the United Nations.

In late 1999 the tribunal prosecutor said that she was investigating NATO's conduct during the Kosovo war, including the question of the use of cluster bombs, but within days she produced a preliminary document that to my knowledge has never been published—and I have been trying to get hold of it. There was a press release, of which Robert M. Hayden said:

> "The prosecutor had said that if the report indicated that NATO broke the Geneva conventions she would indict those responsible; however, four days later she issued a press release stating that NATO is 'not under investigation by the Office of the Prosecutor . . . There is no formal inquiry into the actions of NATO during the conflict.'"

It was never going to happen. Carla del Ponte, like her predecessor the Canadian, Louise Arbour, is a creature of NATO. Just listen to what Jamie Shea, the official press officer, said in answer to a question about NATO's liability for war crimes before the court at The Hague:

> "NATO is the friend of the Tribunal. NATO countries are those that have provided the finances to set up the Tribunal, we are among the majority financiers."

23 Feb 2005 : Column 139WH

The ICTY was set up to try to convict Serbs. Serbs resisted the western Governments who had taken sides.

Mr. John Randall (Uxbridge) (Con): Does the hon. Lady agree that whatever the motives for setting up the tribunal, it is now perceived in the region—particularly in Serbia—as more of a hindrance to advancing democracy, because of the feeling of victimisation?

Mrs. Mahon : I certainly do agree with that, and I will be coming to that. The decision was taken that the Serbs had to be punished collectively and that a veneer of legality would be provided by—in my view—an incompetent tribunal, not one where justice is handed out freely and fairly. If the people in South Africa, Iraq and Afghanistan can try their own people, why cannot the people of the former Yugoslavia do exactly the

urn briefly to the ongoing trial of Mr. Milosevic, and note that paragraph 58 of the newly produced Foreign Affairs Committee report on the western Balkans says:

> "we also heard that the badly run Milosevic trial permitted the former leader to present himself as a martyr for Serbia."

Whether he does that or not, I agree with the comments about the trial being badly run; anybody who follows those events will be horrified.

Mr. Milosevic wants to conduct his own trial. The right for somebody to conduct their own defence is a basic right in all our national systems, it is identified as a basic human right in most international conventions and it is explicitly granted in the International Criminal Tribunal for the Former Yugoslavia. There is a precedent for imposing legal counsel when people are so violent that they would disrupt proceedings. However, there is no precedent for imposing legal counsel for ill health. Mr. Stephen Kay, the British lawyer, has tried to get himself dismissed, but has now been imposed by the court. The whole matter has developed into a farce.

Mr. Milosevic, who has been preparing his case for almost two years, will not co-operate with Mr. Kay. Most witnesses refuse to co-operate with what they regard as a fraudulent process. However, Mr. Stephen Kay, despite voicing misgivings about conducting a case against a client's will, has accepted a position of imposed counsel. Mr. Milosevic has been preparing his case with the help of two legal advisers. He has now seen the whole case handed over to a British lawyer who was not involved in the preparation. The timetable is tight. It was an unlimited timetable for the prosecution, but not for the defence. What kind of justice can anyone expect when such legal chicanery is allowed in a court to which we have put our name?

The agony for the Serbs is continuing. I have looked briefly at today's Foreign Affairs Committee report. On page 27, under the heading of "Co-operation with The Hague Tribunal", it refers to criticism once again of the Government of Serbia. I desperately want the whole region to be regenerated. I want a good, safe democratic future for all the people who live in the former Yugoslavia. The tribunal in The Hague is a festering sore at the heart of Yugoslavia. It is preventing any progress from being made for all its people.

23 Feb 2005 : Column 140WH

I wish to quote Professor Jianming Shen at St. John's university in Canada. He argues that the tribunal system

> "is a lopsided one. Whom to indict, when to indict, and what evidence to collect and use, are all under the control of one single individual"—

in my view, a very incompetent and biased individual—

> "and there is no checking and review mechanism except for the judges of the chambers of the Tribunal who in theory may reject a prosecution."

He concludes that the tribunal should not be placed in the hands of one prosecutor and goes on to suggest ways in which that could be overcome. I want a complete end to this process.

The cost of administering the tribunal is absolutely staggering. The 2004–05 budget was nearly $300 million. For incompetence and bias, the countries in the west are paying out such money. Let us just consider how much better that money could be spent regenerating the area. It should go into Serbia, Montenegro, Macedonia and Kosovo, where people have been without electricity in some of the Serb villages for a couple of months. People are still being murdered there. It still has a war criminal that the tribunal refuses to indict. Much better use could have been made of the money. It could have rebuilt the bridges over the Danube that were destroyed deliberately. It could rebuild some of the hospitals.

the weekend in Brussels with the NATO Parliamentary Assembly. I was surprised and a little shocked n, on receiving a report on Afghanistan, senior NATO politicians and members of the military, scussing the warlords, the poppy trade and opium, said that, for the good of Afghanistan, there must be no rials, but that they must bring in the warlords. They said that those people had committed mass murders and killed thousands, and that they must be brought into the civic and political process. The double standards when applied to Serbia and Montenegro are absolutely breathtaking.

The tribunal should be abolished and then all the people of Yugoslavia could start to heal the wounds that separate them. The children are now being punished. The next generation will have to bear the guilt. Let us ensure that the children—the young people—can take their place in the heart of Europe where they belong.

4.20 pm

The Minister for Trade and Investment (Mr. Douglas Alexander) : I congratulate my hon. Friend the Member for Halifax (Mrs. Mahon) on securing the debate and on raising this important subject today.

This year marks the 10th anniversary of the Dayton accords and the end of the bloodiest conflict in the former Yugoslav Federation. We should remember that in the past 10 years so much has changed for the better. Free and fair elections have been held throughout the region, large-scale conflict no longer threatens and the European Union and other international partners are united in working with the region to maintain stability and create prosperity. The dark days of the early 1990s thankfully now seem a distant memory.

However, a shadow remains and will do so as long as the truth is suppressed and denied. It is cast by the war crimes committed during the bloody conflicts in the early 1990s and it will not be removed until those

23 Feb 2005 : Column 141WH

responsible for the appalling atrocities committed during the conflict are held to account. That is why the United Kingdom remains a firm supporter of the International Criminal Tribunal for the Former Yugoslavia. We will continue to lend our political, financial and practical support for an efficient tribunal that can deliver effective justice for the thousands of victims who suffered so much during the conflict.

At the same time, we recognise concerns about the operation of the tribunal, in particular its cost, slowness and geographical distance from the victims. Others have alleged, as we have heard today, that it is biased against Serbs. I will seek to address those questions. The tribunal has so far cost United Nations member states some $860 million since its inception in 1993, of which the UK's share is some $54 million. We have taken a close interest in the efficient management of the tribunal and will continue our policy of bearing down on its costs.

However, we must recognise that international justice is an expensive process. The complexity and nature of the cases before the tribunal make them inherently expensive. Cases arising from three separate conflicts are being prosecuted and indictees often face multiple counts. The Lockerbie trial, by way of comparison, cost UK taxpayers some £60 million.

Mr. Randall : I hear what the Minister is saying, but will he explain why a similar tribunal has not been set up for Iraq? Why is Saddam Hussein to be tried by his own people?

Mr. Alexander : It is fair to say that the basis on which the actions were taken, the nature of the conflicts and the circumstances of the conflicts in the former Yugoslavia and Iraq are fundamentally different. The consequences for the judicial processes that follow on from that conflict reflect the fact that there are very different circumstances in Iraq and Yugoslavia.

Mrs. Mahon : The Minister will be aware that my hon. Friend the Member for Cynon Valley (Ann Clwyd), who is now the special envoy on human rights to Iraq, chaired an organisation, Indict, which collected evidence for years with the express view of having such a tribunal. Now that prospect is gone. Why?

lexander : I maintain the position that the Government have advanced: assistance is being rendered to raqi authorities in bringing forward a proper system of judicial authority, which will allow in turn for osecutions to take place, not least in relation to Saddam Hussein. I return to the substantive point that I am conscious that the issue of Iraq has divided both this Chamber and some within our party. However, it is only common sense to recognise that there are distinctive circumstances at work in the former Yugoslavia and in Iraq, which gave rise to the action that was taken.

On fugitives from justice, we have made clear our belief that the ICTY should plan its work within the deadlines that it has set out. However, its progress is also clearly subject to factors outside its control, the most

23 Feb 2005 : Column 142WH

important of which is co-operation from states in the region in apprehending fugitive indictees, and providing access to documents and witnesses. The president and prosecutor have both made it clear that lack of such co-operation will affect the tribunal's final closure date. We take that lack of co-operation extremely seriously and will take action to support the tribunal. There can be no closure until all the accused have been brought to The Hague to face trial.

Many of the accused have voluntarily surrendered and pleaded guilty; others have been tried and sentenced. Three individuals stand accused of ordering and orchestrating the most serious crimes: Ratko Mladic, Radovan Karadzic and Ante Gotovina. They remain fugitives from justice. The charges against Mladic and Karadzic include the massacre at Srebrenica where more than 7,000 Muslim men and boys were killed in cold blood because in the views of those who perpetrated the action they held the wrong religious beliefs. Their refusal to surrender, while others face trial, is shameful.

Even worse is the refusal of the relevant authorities in Bosnia and Herzegovina and Serbia and Montenegro to take all possible steps to secure their arrest. We have welcomed recent transfers of lower-level indictees and provided co-operation at a bureaucratic level, but there remains in the Serb body politic a refusal to face up to the past. That has tragic consequences for the people of Serbia and Montenegro and Bosnia. Their future prosperity is held hostage by a few fugitives and by their elected representatives' refusal to grasp the nettle and accept their international legal and moral obligations.

The authorities in Belgrade and Banja Luka are not alone. Croatia is on the cusp of an historic step: opening accession negotiations with the European Union. As a champion of enlargement, the United Kingdom is committed to helping all the countries of the western Balkans to take their rightful place within Europe, but that can not be at the expense of political conditionality. All countries, including our own, are under an obligation to co-operate fully with the tribunal.

Since gaining candidate status last June, the Croatian authorities have failed to satisfy the chief prosecutor that they are doing everything they possibly can to locate and apprehend the fugitive general, Ante Gotovina. The European Council conclusions in December 2004 made it clear that accession negotiations could begin only when the authorities were co-operating fully with The Hague. However, the Croatian Government seem unwilling to meet their obligations. Instead they indulge in cosmetic measures and public relations campaigns in the hope that negotiations will begin anyway. We continue to make it clear that they need to take action now to enable negotiations to begin in March. The importance of conditionality policy and the tribunal is not just about Gotovina, Karadzic or Mladic; it is about the rule of law, about European norms of behaviour and about these countries' willingness to confront the past in order to be able to face the future.

The tribunal has brought a sense of justice to many thousands of victims across the region, guaranteeing that their suffering is acknowledged and not ignored. More than 3,500 witnesses have had the chance to tell their stories while testifying in court. For many, though not all, that has helped the process of personal closure.

23 Feb 2005 : Column 143WH

heard in the debate, the tribunal has been criticised by some for concentrating more on one ethnic up—the Bosnian Serbs—than any other. However, it is important to remember that the indictments are gainst individuals, not groups. The emphasis on individual responsibility dispels any notion of collective punishment of the Serbs as a group, as has been suggested.

The tribunal's influence will continue after its closure. It will have left an historic record of the atrocities and of jurisprudence. It is not possible for the tribunal to hear every case against every individual, but its experience will be an invaluable resource for the regional courts, such as the special war crimes chamber of the Bosnian state court, which will continue to prosecute suspected war criminals. Together with its sister tribunal, the International Criminal Tribunal for Rwanda, it will leave a legacy of ground-breaking case law, which is already proving an important resource for the newly established International Criminal Court.

The international community has learned valuable lessons from the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for

23 Feb 2005 : Column 144WH

Rwanda. They are likely to be the last tribunals of their kind. More recent tribunals such as the special court for Sierra Leone are smaller and more tightly focused in terms of the number of indictees and counts, which makes for a much shorter lifespan and much lower costs.

For the future, the United Kingdom will work together with like-minded partners for the widest possible jurisdiction of the International Criminal Court so that we can ensure that there is no impunity for those who commit the most serious violations of international humanitarian law and crimes against humanity. The court, which the UK regards as a milestone in the development of international justice, was founded in part to avoid the need to set up such ad hoc tribunals as that in Yugoslavia. We believe that over time the permanent court will develop into a powerful deterrent against would-be perpetrators of the most heinous crimes, which it is the shared responsibility of the international community to punish.

Question put and agreed to.

Adjourned accordingly at twenty-nine minutes past Four o'clock.

Index Home Page

Sagittarius

Van: "Ian Johnson" <i-johnson@lineone.net>
Aan: <SAGITAR@HETNET.NL>
Verzonden: woensdag 23 februari 2005 21:57
Onderwerp: CDSM: Announcement: Three

1. Peace in the Balkans Seminar. Tuesday 1st March 2005
2. 6th Anniversary of Nato Bombardment - Commemorative Rally. Wednesday 23rd March 2005.
3. CDSM Public Meeting. Wednesday 30th March 2005.

Details of all these meetings below.

Peace in the Balkans Public Seminar

ICTY: parliamentary debate report back

Alice Mahon has been allocated time for a parliamentary debate on the International Criminal Tribunal on Former Yugoslavia on Wednesday 23rd February. This seminar will report back on that debate. It takes place as follows:

TUESDAY 1ST MARCH

With **Alice Mahon MP** and **John Randall MP**

7pm to 8.30pm in the Grimmond Room, Portcullis House, London SW1

(above Westminster tube station)

6th Anniversary of NATO Bombardment

Commemorative Rally

This commemoration will take place on the eve of NATO beginning its bombardment of Yugoslavia six years ago. Our speakers will be notified by email and a message left on the Peace in the Balkans phone line (020 7582 6263) at a later date. The meeting takes place as follows:

WEDNESDAY 23RD MARCH

With **Alice Mahon MP** and **John Randall MP**

6.30pm to 8pm, Grand Committee Room, House of Commons, London SW1

Please note: in the event that a general election is called and parliament closes, we will aim to find an alternative venue in central London for this rally. In this eventuality, please check our answer phone.

COMMITTEE TO DEFEND SLOBODAN MILOSEVIC – UK

PUBLIC MEETING

CONWAY HALL
RED LION SQUARE
HOLBORN
LONDON

WEDNESDAY 30th MARCH 7.30p.m.

Speakers include:

NEIL CLARK **(Broadcaster & Journalist)**

MISHA GAVRILOVIC **(British/Serbian Alliance)**

IAN JOHNSON **(CDSM-UK)**

"THE AGGRESSORS SHALL NOT WRITE OUR HISTORY"

24-2-05

DR. ANDRIC CONCLUDES HIS EXAMINATION-IN-CHIEF

www.slobodan-milosevic.org - February 24, 2005

Written by: Andy Wilcoxson

Dr. Vukasin Andric concluded his examination-in-chief on Thursday. His testimony resumed with an account of another NATO attack on Kosovo refugees.

On May 14, 1999 a column of predominantly Albanian refugees from Suva Reka was bombed by NATO forces. 80 people, including women and children, were killed. Like the column from Djackovica, these refugees were returning to their homes.

Milosevic played a videotape of the grizzly aftermath of that NATO attack. Limbs were blown off of peoples' bodies; the fire from the bombing was so intense that their maimed and mutilated corpses were charred and black.

Dr. Andric, who visited the scene shortly after the attack, said that the only vehicles in the convoy were farm tractors. He said that there were no military instillations close by, and that the NATO aggressors could not possibly have mistaken that group of refugees for the Army.

Dr. Andric, who traveled throughout Kosovo during the NATO bombing in his capacity as provincial health secretary, said that the Army and the police strove to protect Kosovo's population regardless of their ethnicity, and that he never saw them mistreating the Albanian population.

Dr. Andric did say that there were some Serbian criminals who mistreated Albanians, but he said that the police arrested these people and they were sentenced to prison.

To prove that the Serbian government strove to help the Kosovo Albanian refugees Milosevic played a large number of videotapes.

The videotapes depicted Dr. Andric and his team distributing food, medicine, and other humanitarian aid to Albanian refugees. The tapes also featured numerous unedited interviews with Kosovo-Albanian refugees.

The refugees said that they were fleeing because of the NATO bombing and the fighting between the Yugoslav Army and the KLA. None of the refugees said that the state authorities mistreated them or chased them from their homes.

In addition to videotapes of Albanian refugees, tapes of Serbian refugees were also played. The Serbian refugees also said that they were fleeing from the NATO bombs and the fighting between the KLA and Yugoslav forces.

Milosevic pointed out the UNHCR's statistics on Kosovo refugees, which shows that during the time of the NATO aggression 100,000 Serbs fled Kosovo. Based on the ethnic structure of Kosovo's population, a greater percentage of Serbs fled Kosovo than Albanians at precisely the time when Serbia is accused of ethnically cleansing the Albanians.

In addition to his testimony about why the refugees fled, Dr. Andric testified about where the refugees fled to. Tens of thousands of ethnic Albanian refugees fled to Montenegro and to central Serbia. Dr. Andric said that if the Albanians were leaving Kosovo to escape from the Yugoslav Army, then they would not have gone to other parts of Yugoslavia.

Dr. Andric testified very briefly about the situation in Kosovo since the NATO occupation which began in June 1999. According to his testimony, KFOR did not lift a finger to protect Kosovo's non-Albanian population. The hundreds of thousands of non-Albanian refugees who have fled from Kosovo since NATO occupied it would seem to corroborate that testimony.

Dr. Andric said that the non-Albanian population that remains in Kosovo lives in near concentration-camp conditions, and that they have no freedom of movement outside of the northern part of Kosovska Mitrovica.

Following the examination-in-chief Dr. Andric was cross-examined by Mr. Nice. Mr. Nice did not ask many questions, because most of the remaining time was taken-up by legal argument and procedural matters.

Dr. Andric's testimony will be resumed next Monday.

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International Conference

The Hague Proceedings against Slobodan Milosevic: Emerging Issues in International Law

26 February 2005 • 1:30-7:00 pm • The Hague

Golden Tulip Hotel Bel Air, Johan de Wittlaan 30

Speakers include

Ramsey Clark (USA)
Former U.S. Attorney General

Prof. Aldo Bernardini (Italy)
Professor of International Law, Teramo University

Prof. Hans Köchler (Austria)
President of the International Progress Organization, Head of the UN observer mission of the Lockerbie trial

Dr. Branko Rakic (Serbia)
International Law, Belgrade University, legal associate to Slobodan Milosevic before the International Criminal Tribunal for former Yugoslavia

Maitre Tiphaine Dickson (Quebec)
International Criminal Lawyer, former lead defense counsel in one of the first UN-trials prosecuting genocide before the International Criminal Tribunal for Rwanda

Prof. Velko Valkanov (Bulgaria)
Chairman of the Bulgarian Commission for Human Rights, hon. Chairman of the Bulgarian Antifascist Alliance

Dr. John Laughland (UK)
Journalist, Author of "The International Criminal Tribunal: Guardian of the New World Order"

Conference admission: 10 EURO

Organized by Vereinigung für Internationale Solidarität e.V. (Association for International Solidarity) and the International Committee to Defend Slobodan Milosevic (ICDSM)

ViSdP: Peter Betscher, Holzhofallee 28, Darmstadt

International Committee to Defend Slobodan Milosevic*ICDSM

International Conference

The Hague Proceedings against Slobodan Milosevic:

Emerging Issues in International Law

The Hague, Saturday, 26 February 2005

International Law Turned Upside Down:

The Yugoslavia Crisis and President Milosevic's case

by Professor Aldo Bernardini

1. The most indecent "international" (in a wide sense) trials of the last years are those held before an exceptional organ, the ICTY, established by a decision of the U.N. Security Council.

Although the international legal system has its own characteristics, since it is an interstate system of rules, it is necessary to understand that the fundamental principles of a rule of law system, the legality principles, must be strictly respected, at least when international norms, of course in an indirect way, concern individuals: I'm speaking of international norms either created by agreements or, if possible and legitimate, what is not always sure, by international decisions of a derivative organ, such as U.N. Security Council. These principles may be held to pertain to the general principles recognized by civilized nations (art. 38 Statute of International Court) and to the system of human rights, and are certainly

part of the legal system of the U.N., binding on all its organs. These principles imply that whenever interstate rules are aimed at regulating individual situations, even the interstate rules proper, in the context of which the former rules are created or have to operate, should be in a strict sense valid and legitimate.

The context in which ICTY is operating is characterized by an absolute and total turning upside down of international law.

Among the Purposes of U.N. Charter, art. 1.1. affirms that "to maintain international peace and security, [U.N. have] to take effective collective measures for the prevention and removal of threats to the peace, and to the suppression of acts of aggression or other breaches of the peace, and to bring about, by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace".

In a general way it is usually stated that this principle according to the letter doesn't concern measures ex Chapter VII (the establishing of ICTY is erroneously supposed to be one possible measure of this kind): but the real meaning of this limitation is that measures ex Chapter VII, as they are shaped in the Charter (and not in the way they are illegally extended in the U.N. practice in an unacceptable way) may not in themselves have such a scope as to be contrary to justice and international law: they must be purely executive, "police" measures, to stop and remove the dangerous situations of article 39 that are actually to be faced. Some writer says also that the reference to justice (a substantial concept, depending on subjective interpretation) lessens the rigidity of the reference to international law. In reality, the reference to justice is only meant in the sense that the U.N. action can also aim at a modification of international law (the problem of treaty revision), but clearly in the way of Chapter VI (recommendations followed by States agreements). The reference to international law (and to justice in the sense now explained) in the activity of U.N. and particularly of Security Council (directly for action ex Chapter VI; indirectly, as an implicit limitation, in relation to Chapter VII: see art. 24.2) is a bearing pillar of the U.N. system.

But, particularly since 1989-91, this pillar has been, and is continually being, illegitimately disrupted. International law, not to mention justice, has been, and is being, overthrown, turned upside down in fundamental issues. From the strength of the law to the law of the strength. That Security Council and subsidiary organs act *against* international law and even justice (in a substantial sense) should be unthinkable, but this thought is unfortunately reality.

2. In the Yugoslav crisis, first of all the correct definition and approach with regard to the interrelated issues of sovereignty and self-determination of peoples have been at stake.

Contrary to widespread theories, in the U.N. system and in general international law self-determination of peoples as a rule cannot be

regarded to be a principle clashing with State sovereignty and territorial integrity. The sovereign State, subject of international law, is free to defend itself against secessions, and interventions in its inner affairs by other States are forbidden. The only acceptable and in international law positively accepted exception is the (so-called outer) self-determination as won and developed in the course of the struggles and wars of national liberation by colonial peoples or peoples in a similar situation: under illegitimate foreign occupation or, even in the national territory proper of a State, in a situation of discrimination (apartheid). In other words, only when a population or part of a population, territorially compact, united, in a region or constituting the majority of the population of a State, is under "national oppression" or discrimination, so that its sovereign State appears, on the basis of objective, structural grounds and factors, not to be really representative of that sector of population (representative not in a Western sense), not to be the State of that population. This is the prerequisite of the "right" of self-determination. A written norm, which defines the possible cases of self-detrmination in this sense, is article 1.4 of 1977 I Protocol to the 1949 Geneva Conventions: "The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination".

I think this has nothing to do with the so-called inner self-determination, that is the problem of the nature of a State regime or government, the relation government-people and so on, which in my opinion is an inner affair. In the case of "national discrimination or oppression" instead, since the sixties, a so-called right of (outer) self-determination is born in international law, so that a people (under national discrimination), which strives to get a change in its situation, even up to secession, may be supported in various forms of action, even military help, in its struggle or war, by third States, without infringement of the prohibition of intervention. Doubtful is whether the central State is or is not legally free, with regard to international law, to react with military means against the liberation war, at least when this struggle has reached a given development degree or international recognitions (naturally, not abusive recognitions, premature or in any case outside the mentioned prerequisite of self-determination). The legitimate repression of an illegitimate secession is in no case a prerequisite for authentic self-determination.

But all this is true only in the cases of struggles against a constituted State. In situations where a State entity doesn't exist or is extinguished or sovereign power over a territory and its population is dismissed or waived, the "right" of self-determination isn't confronted with a constituted sovereignty, the "right" of self-determination of that population, territorially compact and united, is full and unlimited and cannot legitimately be contrasted by foreign or outer intervention. The different territorial parts of a region without constituted sovereign power are equal in their juridical position and have the same "right" to create, to constitute, their own State (or to determine in another way their status). When a sovereign power is not yet existent, but is involved in a

constituting process, every part of the territory and population has the same right to constitute its own State. The principle of *uti possidetis juris* is not a general rule of international law: historically, it is limited to Latin America and to Africa in the process of decolonisation. I mention a meaningful historical precedent: West Virginia in the American (U.S.) Civil War. One thing is to deny the existence of a self-determination "right" of a (not nationally discriminated) population in a constituted State, quite another thing is to impose on a population or part of it the forced participation in a State, whose constituting process is still going on. In such a case, self-determination is State auto-constitution (or another outcome not hetero-directed). A channelled, embedded self-determination is a contradiction in itself.

In the Yugoslav crisis the secession of some Republics has to be considered a matter of insurgency of local groups against the sovereign State. I examine here this problem from a pure juridical viewpoint. There was certainly not the prerequisite for self-determination, that is a discrimination against the population of the secessionist Republics. In such a situation, every interference from outside was strictly forbidden. No doubt the Yugoslav Federation legally still existed, when recognitions of Slovenia, Croatia, Bosnia-Herzegovina were declared by Western Powers.

The fundamental characteristic of the Yugoslav Federation was given by the fact that it was a union of constituent peoples (the ones which gave the names to the different Federate Republics) plus other nationalities and minorities: but there was not always coincidence between the one people which gave the name and the Republic. In other words, Croatia and Serbia were constituted each of them by two constituent peoples (respectively, Croats and Serbs and Serbs and Croats), while Bosnia-Herzegovina had three constituent peoples (Muslims, Serbs, Croats). This system had been established by Yugoslav Federal Constitutions, up to the 1974 Constitution. This Charter in its preamble recognized a right of secession not to the Federate Republics, but to the constituent peoples, without in any case regulating it. Possibly to be exercised in a transversal way in relation to the single Federate Republics: in the sense that a single constituent people could be split up in different Republics, so that its self-determination process, after the end of the central State, might concern more than one Republic and realize a division or a separation from the single Federate Republics. As for the Federate Republics themselves, there was a very complicated constitutional procedure to modify their respective (inner) borders, an operation which would have needed the consent of all the Republics. It is doubtless that secession by single Republics has been totally illegitimate according to the Federal Constitution, as has been stated by the Yugoslav Federal Constitutional Court. The intervention of Yugoslav Federal Army after the declaration of independence by Slovenia (25 June 1991) was therefore absolutely legitimate.

The interference by the European Community, that at the Brioni Conference obtained the withdrawal of the Federal Army from Slovenia, accompanied by pressures of every kind, had no doubt serious aspects of

international illegality.

In Croatia, in front of the gradual steps for secession, culminating in a declaration of independence (also 25 June 1991), the Serbs predominating in the Krajina and other parts proclaimed their Republics and were attacked by Croatian Police Forces. Also there the Federal Army acted legitimately (July 1991).

The secessionist Republics provoked the paralysis of the Federal institutions: then the Serbia-Montenegro bloc, faced with the danger of disintegration, assumed the powers of these institutions (3 October), with the protest of Western States: on 8 October Slovenia and Croatia declared definitively their secessions.

Although for some time defending the maintenance, the survival of the Yugoslav Federal Republic, the European States began very soon (already on 2 August 1991) to give vent to their real but illegitimate political line: in the absence of agreement between the Federate Republics, the international, but also the inner boundaries in Yugoslavia were to be respected. This line was confirmed in other international meetings and even by Security Council Res. 713 (1991) of 25 September, which *inter alia* defined the Yugoslav situation as a threat to international peace.

Particularly under pressure by Germany, Austria, Holy See, on January 15, 1992, Slovenia and Croatia were recognized as independent State, than Bosnia-Herzegovina and Macedonia followed and there was the admission to the U.N. (22 May). This process had been stimulated by the Ministers of Foreign Affairs of the States of the European Community, who (16 December 1991) had published the guide-lines "for the recognition of new State in Eastern Europe and Soviet Union": an incredible initiative, inviting such "States" to apply for recognition. Western Powers (Badinter Commission) stated that the Yugoslav Socialist Federation had come to an end, whilst there were factors and elements (a Federal Presidency although truncated; the Federal Army) of that Federation still active in the defence of its integrity. The position of Yugoslav authorities and Milosevic (President of Serbia since Dec. 1989) was in a first time that Yugoslavia could not be crossed out by a stroke of the pen and later that the Federation had to survive for all peoples and regions that wanted to stay in it (what has been, probably in bad faith, misunderstood as an idea of Great Serbia).

In this context the Western States reaffirmed the principle of the respect of the inner boundaries, especially in relation to Krajina and to Serbian-Bosnia, where the Serbs had proclaimed their own States: they had not participated in the independence referendum in Bosnia.

In point of fact, a dissolution process of the Yugoslav Socialist Federal Republic was doubtlessly in progress, but it was not consolidated, stabilised, which is the condition for effectiveness. A first moment of the cessation of an active opposition with regard to the new developing situation by a legitimate authority has probably been the "residual" Yugoslavia new Constitution of 26 April 1992 and then the withdrawal

of the Federal Army from Bosnia and Croatia. This means that, in any case before such moments, all the action by the Western States has been illicit: it was an interference in the inner affairs of a State, to help inner insurgents in their separatistic aims. Crime against the peace, not by chance excluded from ICTY Statute. On the other side the consolidated, stabilized condition of the new "States" was also not yet established: their forming, constituting process was not definitive, they had no free and full control over the whole territories which they claimed (except Slovenia and perhaps Macedonia). The premature recognitions (and the consequent activities of support and the condemnations, sanctions, limitations to the constitutional action of the Federal Army) were elements of international unlawful conducts by Western States. I will mention later the II Protocol to the Geneva Conventions.

Intervention in an inner conflict, premature recognition of (not yet completely formed) State entities: a young Italian scholar (Tancredi, *Secessione*, p. 464) expresses very clearly the turning upside down of the fundamental criterion of effectiveness: a non existent (on the international level) right of secession was created by the political will of a group of foreign States through the recognitions, which have given to the entire question the character of an international affair of self-determination without the relevant necessary conditions. "Recognition in Yugoslavia has played a new role, no more passive acceptance of a *fait accompli*, but an instrument to steer the course of events". With all the illegal consequences: the "prohibition" for the central authorities to contrast the secessions, the prohibition for third States to give assistance to the central legitimate State, the legal possibility for the secessionists to receive help, even military, from outside.

Well then, not the fact of independence affirming itself definitively up to the corresponding juridical situation, but an artificially created juridical situation which helps decisively to constitute the fact of independence – not yet completely established in point of fact. So that Yugoslavia has been passed off as the aggressor (in a first time in the conflict to maintain the State integrity, in a second time in relation to the in principle legitimate help and assistance to the denied self-determination of the Serbian Republics in Croatia and Bosnia). Clearly, if in a conflict occur episodes of cruelty and even with a criminal character by every side, it is natural, almost automatic, to ascribe them preferably to the "aggressor", to the side slandered as such and to amplify them for the benefit of mass-media and their manipulators.

After the absolute overturning of the relation between sovereignty and self-determination in the respective situation of Federal Yugoslavia and secessionist Republics, we have the denial of self-determination within the secessionist Republics themselves, in so far these were not yet formed, constituted States. As already said, when a State entity is involved in a process of formation, all parts of its population (of course, territorially compact, united) have the same right to constitute their own State, or to refuse a secessionist process and remain in the old State or, still, to accede to another State. In this point too there has been an overturning of international law: the imposition of the *uti possidetis*

principle, elevating inner boundaries in the Federal Republic to international boundaries, has been completely outside the law, contrary even to the Yugoslav Constitution (which spoke, I repeat, of secession in relation to the constituent peoples, while the procedures to modify the boundaries of the Republics were founded, in the same way as these boundaries in themselves, and the conditions of the living together of different peoples in the single Republics, on the Federal Constitution and their validity consequently ceased with the end of this Constitution). By this trick the repression of the (denied) self-determination of Serbs in Croatia and Bosnia was considered an inner affair of the secessionist Republics (not yet definitively constituted), the aid to such self-determination (by Yugoslavia) illicit and consequently the even armed intervention of third States or organizations legitimate against such (supposedly illicit) Yugoslav assistance.

Absolutely erroneous, better to say shameful, even from the viewpoint of international law, must be considered the forced (from outside) formation of the so-called Federation of Bosnia-Herzegovina, an artificial entity, not even really independent. But the moderating action of President Milosevic in the Dayton process cannot be forgotten.

3. Another point of overturned international law: the denial of continuity of the Yugoslav Federation of 1992 in respect to the Socialist Federation and the assumption that it was a new State, loosing its membership and therefore the character of original U.N. Member, needing therefore a new application for a new membership. It is here enough to say that, on the contrary, it was a case of progressive restriction, not of radical modification and substitution, of the pre-existing political-social substratum: there was not dismemberment, but a series of secessions of some Republics (these became new States, of course after consolidation): secessions which have been up to a certain time actively (and legitimately) opposed by the central State, Yugoslavia, although gradually diminishing its factual (not consolidated, as distinct from effective) control over parts of the territory, until factually suspending or waiving its sovereignty pretension or, perhaps better, its exercise over such territorial fragments, but not, at least at once, for the benefit of the seceding Republics. And there had not properly been social-economic counterrevolution, as in other Republics. But what is most shocking is the different standard reserved to Russia, considered as the continuing entity of Soviet Union even for the permanent seat in Security Council. Perhaps there would have been more theoretical support for the thesis of the dismemberment of Soviet Union, where no active opposition against the separation of the Republics took place in 1991 and, on the contrary, Russia was active in the extinction process of Soviet Union.

An important fact should not be forgotten about "residual" Yugoslavia: that the Serbian and Yugoslav Constitutions (1990 and 1992), thanks to the active political commitment of President Milosevic, have been formulated in a not nationalistic way, giving equal citizenship rights to every inhabitant, unlike for example the Croatian Constitution, which

provides that Croatia is the State of Croats, while other groups are minorities (Serbs included, which had been under Yugoslav Constitution a constituent people in Croatia).

4. Still a new item of overturning: the aggression of 1999, the so called Kosovo war. I do not consider the problems of fact, the issue of the restriction of the regional autonomy in 1989-90 (which was juridically established by Federal decisions, not by Milosevic!), the alleged genocide or other crimes. It is sufficient to quote the interview to General Heinz Loquai of the German Representation to the OSCE. "With the genocide allegation, a genocide not only planned but perpetrated by Yugoslav Government, members of Bundestag and of the German Government have given vent to an enormous exaggeration. What Iraq's mass destruction weapons have been for Bush, the so called humanitarian catastrophe in Kosovo has been for Germany in order to justify the war". And he mentions also that, the day before the aggression, experts from the German Defence Ministry had affirmed that "no ethnical cleansing is up to now to be stated". And still: in Kosovo "there was a civil war. NATO has unilaterally intervened against one of the sides, namely Yugoslavia: the war has caused the true humanitarian catastrophe: 70.000 refugees from Kosovo in the neighbour countries at the beginning of the war, 800.000 at the end".

In this severe description of facts we find over again the turning upside down of international law. Humanitarian intervention – as allowed by international law – is an invention of the new times of imperial dominance. Intervention in a civil war, or inner conflict, which is a typical internal affair of a State, is in principle absolutely forbidden (and there was not even a decision by Security Council, which in any case would have been highly questionable). There is a really pertinent written international rule, that confirms all this: art. 3 of 1977 II Protocol to the 1949 Geneva Conventions, relative to the Protection of Victims of Non-International Armed Conflicts: "Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State. – 2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs". This Protocol is in force since 7 December 1978 and has been ratified by Yugoslavia and, *inter alia*, United States, Germany, Italy, Great Britain. And we can state a meaningful analogy with the Chechnya issue.

It has been an aggression, for the benefits of criminal groups of terrorists: now Kosovo is illegally separated in fact from Yugoslavia (Serbia), ethnical cleansing against Serbs and other minorities is going on: no one will pay before "international courts" for the crime of aggression (by NATO States and their leaders) and other Western war crimes and for the

crimes of the presently ruling groups in Kosovo.

5. Legality, *imperium* of the rule of law is before all the predictability of crimes definitions and sanctions, of juridical procedures, of the ways and means of creating new rules and organs. This is particularly true in the case of international norms and decisions concerning individual – not pure interstate – activities. Human rights items, as emerging at least in the U.N. system, cannot be overlooked. With regard to so-called *delicta juris gentium*, that is individual conducts, definition and sanction of which are provided for in international acts, the legality of these acts on the international plane (and, I add, the correctness of their implementation by State legal orders, through which only the concerned individuals can be juridically hit, reached) must be assured. I underline a point which is generally overlooked: in the U.N. system the acceptation of international obligations by the States is expressly bound for certain hypothesis to the constitutional correctness of the State ratifications (art. 108, 109, 110, 43.3). And this corresponds to a fundamental principle, as enunciated for example by the great Austrian international law scholar, Alfred Verdross: the U.N. have no sovereign rights over individuals as such. And in this context State sovereignty must be respected, so that a direct U.N. action on individuals – without passing through State legal systems – is to be excluded.

This is the essential, structural reason why an initiative such as ICTY is to be repelled as totally illegal. But we are in a historical phase where the law of strength is prevailing over the strength of the law.

Which is, according to the *vulgata*, the legal basis for the creation by Security Council of such an extraordinary, better to say up to now unprecedented organ as ICTY (and the Rwanda Tribunal)? First of all, its allegedly boundless discretionary power in defining threat or breach of peace (one speaks no more of *international* peace, as we read instead in the norms) in the sense of article 39 Charter. An erroneous assumption according to a correct systematic construction and to *travaux préparatoires*, unfortunately corroborated by an misleading practice and acquiescence by States, which in no case makes law. Secondly, on the basis of that determination in a specific case, the allegedly unlimited possibility for Security Council to adopt every kind of measures it deems necessary and useful. This too is borne out, in recent years, by illegal practice, but is likewise false. Articles 41 and 42 Charter outline two respective types of measures (without or with use of force), doubtlessly in an exemplifying, not absolute way, but in such a way that circumscribes the typologies, connected with the function of self-help (*autotutelle*), which is forbidden (in the armed form) on the individual plane of the States, and must be replaced by action of States collectively decided (art. 41) or collectively decided and implemented (art. 42). The activities of the kind the single offended State could have put into being according to former general international law, usually included in State activities as countermeasures, reprisals, self-help and so on, are to be replaced by collective initiatives always of the same kind. For the

function of collective self-help is to avoid the individual (doubtlessly, if armed) self-help of States and to stop and back, remove situations of (real or imminent) threat or breach of peace, not to impose solutions, terms of solution or so on (which is the task of Chapter VI, but only with recommendations). In this sense, a purely executive, "police" function. Therefore no modification of the existing legal order, no creation of rules or organs, no international law-making function vested in U.N. and particularly in Security Council on the basis of Chapter VII (and no judicial function, interstate or least of all on individuals).

The institution of a so-called international tribunal to judge crimes by individuals is in my opinion always a highly doubtful issue. But the minimum prerequisite is that such an organ must be instituted by an interstate agreement and, I add, that such an agreement, particularly in the frame of U.N., must respect constitutional conditions of the States parties and the fundamental principles of human rights. The 1948 Convention on Genocide, to be obviously accepted by States, provides for a criminal court, which has never been constituted, whose jurisdiction should have been specifically agreed to by States parties. Other successive international criminal courts have been always established by international agreements.

The creation of ICTY (and Rwanda Tribunal) by a Security Council decision is totally inadmissible from a pure juridical viewpoint. The opposite view, which is generally accepted and corresponds of course to the opinion of ICTY self, is based on the sequence I have described before (discretionary power ex art. 39 – discretionary choice of measures ex art. 41 and 42). The acceptance of this opinion is tantamount to accepting an (at least potential) world dictatorship by Security Council over the whole planet, peoples, individuals, and (then no more) sovereign States. We know that we are really on the road to such a dictatorship: resolutions by Security Council on Iraq testify thereto; the same has been the case with res. 827 establishing ICTY. These are sheer acts of justice of the strong ones, of the victors, expression of the law of strength opposite to the strength of the law. Formally a real *Führerprinzip* on the planetary level.

How could such an institution be subsumed into the legal provisions of U.N. Charter? Into the categories of measures ex articles 41 and 42 correctly construed? Res. 827 is neither a collective decision on activities and behaviours (without force) by States (art. 41) nor a collective decision on collective measures implying the use of force. Nor in a general way can be considered as a means of collective self-help to avoid (or also to avoid) individual self-help by States: have you ever seen the institution of such a tribunal as a countermeasure or reprisal by an offended State? (it could perhaps be conceivable only as reaction to a similar action by an offender State)

According to a correct construction, Security Council has not such a power: the institution of an organ of this kind is no executive, "police" measure, but a really normative, law-making decision, implying also a judicial power even on individuals, which is not vested in Security

Council.

A fundamental essay by Gaetano Arangio-Ruiz, "On the Security Council's 'Law-Making'" – he is a former member of the U.N. International Law Commission and is one of the leading and prominent scholars in the Italian doctrine –, states: "The impression remains that international lawyers are inclined, on the whole, to be satisfied with marginal criticism and marginal procedural suggestions aimed at making the Security Council's action legally less questionable and politically more palatable... one does not see, in the literature, an adequate treatment of a legal problem of Charter interpretation and application which has remained for about half a century under the sway of questionable Charter readings... One perceives, at times, in scholarly attitudes on the subject, an inexplicable renunciation by the legal commentator of his duty in the face of power politics and 'realism'". Arangio-Ruiz's conclusion about ICTY are to be considered definitive: "Clearly, the establishment of a tribunal with tasks comparable to those entrusted to the ICTY would inevitably have a very serious impact on the rights or obligations of the States whose sovereignty and criminal jurisdiction would be affected by the carrying out of those tasks. Two possibilities – assuming the impracticability of a treaty – were thus theoretically open as a matter of law to the Council. One was to take action by armed force in the territory involved, thus opening the way to the possible establishment of a criminal law court within the framework of military operations carried out by the U.N. or given States under article 42 or article 51... The other way was to set up the criminal court *per se*, as an isolated measure affecting the involved States' prerogatives of criminal jurisdiction outside the framework of any military operations under the Charter and general international law. Unable or unwilling to pursue the former course, and led astray by legal experts, the Council chose to pursue the latter course. In so doing the Council did not take a legitimate peace-enforcement measure under any article or articles of Chapter VII, notably under article 41. It took, simply, a law-making (not to mention law-determining and law-enforcing) measure which fell outside its functions under Chapter VII or any other provision of the Charter or general international law. The U.N. ignored, in so doing, the capital distinction established in the Charter between peace-enforcement, on the one hand, and law-making, law-determining or law-enforcing, on the other hand: the latter "functions" not having been attributed to U.N. bodies beyond specified areas".

I add that – *nemo dat quod non habet* – Security Council cannot establish a subsidiary organ (art. 29), entrusting to it powers which the Council self doesn't have (judiciary powers, even on individuals).

So ICTY is a sheer instrument of political violence. I leave aside every comment about its Statute, on its specific way of acting, the infamy of having refused to judge NATO crimes (bombings, depleted uranium etc.), the shameful kidnapping of President Slobodan Milosevic, the violation of State and State organs immunities (at least as stated by the award of International Court of Justice of 14 February 2002: *Case concerning the arrest warrant of 11 April 2000 – Democratic Republic*

of the Congo v. Belgium) and so on and so on, and the indictments against Slobodan Milosevic, contrary to all principles of criminal law.

The Milosevic trial (and the other ones before ICTY) are political trials: the real crime by Milosevic is not to have accepted Western dictations and conditions. The trials, which are held mainly against Serbs (no leader of other Republics has been ever really threatened, Todjman, Izebetgovic, and now Albanian Kosovo leaders), are meant to warn peoples and leaders not to withstand imperial order: they are needed to impudently camouflage the aggression and embellish it, since their aim is to condemn supposed crimes of a supposed monster. Resolution 36/103 of 9 December 1981 by U.N. General Assembly (*Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States*) asserts "The duty of a State to abstain from any defamatory campaign, vilification or hostile propaganda for the purpose of intervening or interfering in the internal affairs of other States" and "The duty of a State to refrain from the exploitation and the distortion of human rights issues as a means of interference in the internal affairs of States, of exerting pressure on other States or creating distrust and disorder within and among States or groups of States". Can you recognize the behaviours of Western Powers and mass-media?

Never has been double standard more evident: a State which refuse even to accept the conventional International Criminal Court of Rome and its allies are supporting a kangaroo trial against the victims of the aggression and a leader who tried to defend its country.

Such a complete lack of legality is tantamount to unconditional violence. It is not surprising that violence and terrorism (real or supposed) are widespreading on the planet, if the most elementary conditions of legality and justice are so heavily infringed even by U.N. selves.

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International Conference

The Hague Proceedings against Slobodan Milosevic:

Emerging Issues in International Law

The Hague, Saturday, 26 February 2005

Lawyer's Experience with ad-hoc Tribunals

(transcript)

by Christopher Black

I'm not going to address the same points everybody else has, because they have been so well said. It is self-evident that these tribunals are illegal and an attack on the sovereignty of the world. Watch what will happen to you if you resist the new world order.

I will make my remarks about my personal experience at not only this tribunal in The Hague, but mainly about my experience at the Rwanda Tribunal which is a sister tribunal to the Hague Tribunal and which up until last year shared the same prosecutor. Mr. Clark will echo everything which I will say to you as he has done a trial there as well, or what was called a trial. The experience of most lawyers in fact, I think, all lawyers that work at these tribunals is one of shock, depression, dismay, anger and sometimes a feeling of insanity, because these trials are inquisitorial proceedings in which there is only one objective and that is, to put the accused in prison and use them as examples to their home peoples. The trials themselves are something to see. At the Rwanda Tribunal, perhaps, it's even worse than The Hague tribunal because in that instance the people that took apart Rwanda, the Rwanda Patriotic

Front or RPF, are a proxy for and backed by the United States and its allies. They have now, through several of their officers who fled the regime, admitted that they killed in twelve weeks two million people both Hutus and Tutsis. The genocide didn't happen except insofar as the invading army killed two million people in these twelve weeks. But yet not one member of that invading army has been charged, not one member of the American, Canadian, Belgian or other allied countries who were involved in that war have been charged. Not one member of the United Nations Military Forces in Rwanda at that time in 1994 to maintain peace while a transition government was formed and who were involved overthrowing the regime has been charged.

So we have an exactly parallel situation to what happened in Yugoslavia in which Yugoslavia was targeted in Eastern Europe at the same time the US and Britain targeted Rwanda in Africa. They wanted to control Central Africa and they used the same techniques, same strategies, broke up the country, caused all sorts of trouble inside the country and demonized the existing regime as criminals and of abusing human rights.

Now, in these trials you don't have indictments with specific charges which the accused know they are facing. The indictments are multiple. They continually change. In my case now we have had three indictments, the last one issued one month before the trial began – so after four years of doing this case, I still do not know the real charges against my client, who was the head of the National Police there, and there have been cases in which people have been convicted of crimes not included in the indictments. We were told that we are allowed to defend these people and we are given resources, but we are not. Many times lawyers are not paid for months, sometimes up to a year, I haven't been paid now for over a year – except my expenses, I made no money – many lawyers are the same. We are only allowed part time investigators, part time legal assistance. Investigators have been arrested. There are several cases in which our investigators from Rwanda have been arrested and charged with war crimes themselves in order to sabotage our defense. Investigators have been accused of war crimes and their contracts suspended but never charged and last week, an investigator was found poisoned in a hotel room in Malawi and I know this man. He worked on two cases there and on mission on Malawi he was found poisoned and we suspect who did it. Not only was he poisoned, several other investigators working for lawyers on the so called Military 1 Trial, which is the Milosevic trial, the big trial, several other investigators have been threatened when they have gone to conduct investigations in Rwanda. All the witnesses they have seen have been picked up by the Military Police and Intelligence Service in Rwanda and detained and threatened and now we have investigators who've fled to France and seek refugee status because they are afraid even to work or live in Africa anymore. Lawyers have been threatened. I was threatened by two ministers of the RPF government and told that if I didn't keep my mouth shut that I had a very dim future. So you can't defend people under those circumstances. You can't prepare a defense. Not only are the lawyers not paid which is perhaps something we have to suffer but we don't get any money to do

investigations. We have to apply every time we want to send an investigator to a different country to speak to a witness – many of them are in Europe – you have to apply for permission. And often they say no, we are not going to pay for that trip without any reason. Or they approve a trip and then cancel it. There is no right to counsel. They say there is a right to counsel but if I'm an accused and I'd like Ramsey to be my lawyer, he first has to be put on a list and that's a process which they have to approve them and they resist certain lawyers, those they know will fight them. And then if you do get on the list an accused may ask for Ramsey but they tell me to give three names to them and they will give me the third name on the list. If Ramsey is first, they won't give me Ramsey, they'll give me somebody else, or if they don't like anybody on this list they say, we don't like this list give us another list. In turn they get somebody that they like and then that's who I'll get. There have been cases where accused have selected counsel from different countries and they have deliberately given them counsel who have never been on the list in order to prevent certain counsel from representing these people. And this occurs at the ICTY as well.

The trials are impossible because there is no disclosure to speak of. All the witnesses at the ICTY are testifying under secret names. These codenames are supposedly to protect these witnesses from retribution by the accused. How can President Milosevic take retribution against some witness who appears for the prosecution. He has no power. And the same applies to the Hutu, the entire Hutu leadership in prison. They have no power to affect anything inside Rwanda, the Military dictatorship that exists there now, and yet they insist on not telling us who these witnesses are until a few days before they appear. And that secret witness aspect is put in place in order to dramatize that these people are scary people. They want the world to think that these people, President Milosevic, these Hutus, are dangerous people even while they are in prison and that's how bad they are. So the witnesses can't testify or appear in their real name, because they may be assassinated or murdered or God knows what. None of it is true but the whole thing is theatre, it's all about theatre. The practical effect though is, that when they come to testify, we have no idea who they are. We cannot go and check their backgrounds to see if they actually were in the places, they say they were, or saw the things they say, they saw. It turns out that most of the witnesses at the ICTR are small people, peasants, drivers, shop assistants, people who somehow pretend to have overheard conversations between generals and leaders. In the Rwanda situation I say 80 % of the witnesses are prisoners from the jails in Rwanda, most of them picked up on unspecified charges and held for years at a time. We had one guy two days ago tell us that he had been picked up in 1997 at 19 years of age, held on charges he was never told about. He tried to confess to some charges. They wouldn't let him. He's still been held in prison in a cell 5 by 7 meters with a 120 people for the last seven years. And they've all done deals in order to get out and they've all been scripted. He even told us that investigators had told him what to say at the hearings. And I'm sure this is what goes on at the ICTY Most of these witnesses are scripted. There are three cases in the Rwanda tribunal in which witnesses have been brave enough to come

in saying that all the witnesses in this trial testifying in this to judge, all of us had been told what to say, all of us had been given scripts and we were told to say this, otherwise we'd be shot. The famous one is the media trial. Now, these people have been sent back to Rwanda and we don't know what's happened to them. But that's probably what's happening at the ICTY. Most of the witnesses, who are small people, are being forced to testify to scripts, because if you examine those testimonies, they know things they couldn't possibly know, they saw things they couldn't possibly have seen.

Then you have the situation in which you can't cross-examine. The judges don't want us to discuss the actual context of the wars involved. Mr. Milosevic can't tell, can't discuss NATO actions. He can't, he is not allowed to discuss what Clinton did and what everybody else did. That's not relevant. In the Rwanda tribunal you can't discuss what the RPF did, what the UN did, that's not relevant. So the enemy is never considered. There is a war but the enemy forces are never discussed, never allowed to be mentioned. They are just ghosts on the wall, shadows.

The use of hearsay is infamous. Most of the witnesses come in and say, I don't know anything myself but I heard from X who told me, that Z told him this. And that's the basis of most of the convictions. It's all double, triple, and quadruple hearsay. Very few witnesses have come to this tribunal and have direct observations. As with Mr. Milosevic, there's not been one scintilla of evidence that the crimes they say were committed even existed. In the Rwanda tribunal there is not one scintilla of evidence yet after eight years that there was a plan to commit genocide, not one. Not one document, not one telephone call, not one fax or communicate order, nothing. And yet these trials go on.

One famous example happened in September, and this, I think, shows you exactly what is going on in both these tribunals. As you may remember, the 1994 so-called genocide in Rwanda, began the day the President's plane was shot down, we know now by the RPF and other forces. 13 Belgian soldiers were killed at a military base. They were picked up at a certain place, taken to a military base by the Rwandan army and attacked and killed. The prosecution theory is that the government planned to kill Belgian soldiers in order to force the Belgian contingency of UN Forces to leave, so the UN would leave the country and therefore they could go ahead with their plan to commit genocide. This whole theory falls apart though if there wasn't a plan to kill Belgian soldiers. The prosecution has charged two officers in my trial with planning to kill Belgian soldiers. And they bring in a corporal who was at their camp and who said, I saw them encourage the soldiers to kill these Belgians. The man was never there. He was never at that camp. His story is completely fabricated. But the prosecution gave us disclosure on a CD-Rom which they never read, but which we did. In that CD-Rom is the entire UN Force Report on the death of those soldiers, and in that Report they speak to UN Military observers who were based at that camp, saw the Belgians arrive and saw them being attacked. The UN Military observers and some Ghanaian UN soldiers who were there state that when mutinous soldiers who thought the Belgians shot down the plane –

and it's probably true, they helped shoot down the plane – were so angry that they killed their President, attacked these soldiers, all the senior officers at that military base tried to stop that attack. They came and tried to stop their men from killing these Belgians. The soldiers turned their guns on their own officers and forced them to back off. So, the UN has in its hands information from UN Officers – one is a captain – which completely exonerate these soldiers from the crime for which they are held now for five years in prison. They will never bring those soldiers, those UN soldiers to testify. They will never alert the judges to the fact that these men have a complete defense. They lay these charges knowing that they are not guilty of them and they have to lay that charge because if they don't, the entire thesis that there was a plan to commit genocide falls apart. If the Hutu government didn't want to kill Belgians that means that they did not want to drive the Belgians out. If they didn't want to drive the Belgians out, the UN Forces didn't have to go and therefore they couldn't have planned to commit genocide. So they continue this absurd logic of going after charges they know not to be true in order to – in the eyes of the public – condemn this whole government. We gave the judges the statements by the UN soldiers who were at that camp and saw what really happened. The judges looked at it and then just thrust it aside, so it wasn't relevant. So you ask yourself, can these men get a fair trial - no. Can President Milosevic get a fair trial if he is not allowed to present what really happened in the Balkans in the 90s? No. Can the world ever know if he is guilty or if he is not guilty if he is not allowed to discuss history; what really happened. Can these men in Rwanda do that if they are not allowed to discuss what really happened? And the answer is - no. And to show you how – as Professor Bernardini said, it is political violence – how serious this is, there is now a move by the Rwandan tribunal to send these prisoners for trial to their enemies in Rwanda, the RPF regime and to make them serve their sentences in Rwanda. It'll be akin to handing over President Milosevic to the KLA, to hand him directly over to Agim Ceku. That's what they want to do. The UN says it's neutral, but in fact it is now planning to deliver these men over to their enemies in Rwanda, this military dictatorship. Professor Philip Reyntjens who is a very famous man in the university in Antwerp and who is an expert on the Great Lakes region in Africa and was a prosecution witness for many years wrote a letter just one month ago saying, as with witnesses at the ICTY, he is now refusing to cooperate with the ICTR anymore because of its policy of selective prosecution. And so, in fact they can't have fair trials, and therefore he is withdrawing his services with them. He has stated that if they are sent back to Rwanda, they will be dead within one year. Every one of these prisoners will be dead. Because they are the entire former regime and they represent the intellectual class of Hutus in Rwanda. So the UN which says it's neutral, is using this tribunal to not only demonize and condemn this former leadership and allow the United States and Britain to control Central Africa through this proxy regime in Rwanda, they are going further than that and further than the ICTY. They are now going to hand these men over to the invading army which attacked them in the first place. And you can imagine what you would feel if you found out today, that they're going to hand over Milosevic, if he is convicted, they are

going to hand him over directly to the KLA? What would you think? And that's exactly what they are going to do. And I wouldn't be surprised if something like that happens to President Milosevic because if Kosovo is broken off and joins Albania, I wouldn't be surprised if he has to serve his sentence in Greater Albania and how long will he last there? So – it's hard to explain – the horror of what's really going on. The prisoners know they are condemned. They are intelligent men and women. They wrote a long letter to the Secretary General and the Security Council complaining about them being sent back to their death in Rwanda – if I can find the passage, but I can't – but there is a, it's a long letter I'd to read to you, I have it up here, you can read it, I can't find it now but it doesn't matter – but they are basically saying that if these tribunals were just tribunals, then the UN tribunal would not want to send them to Rwanda, they would send them to places where they've already agreed to be sent which is France, Mali, Italy. But now they want to send them back to Rwanda. So the only thing I can say is that most of us who have done trials wonder why we are there, because in one way we make the tribunal look legitimate by being there so that they can say, they have defense counsel. The prisoners asked us to stay, despite that ethical problem and said to us that may be true but on the other hand, if we don't have you people here, the world will never know the true story of what happened in Rwanda, will never know what we really did. And our only hope is to have you and hope to get some truth out, so we ask you to stay. So we have. But it's very difficult and it doesn't sit easy with the conscience to sit there and take part in trials which we know are unfair and cannot possibly be fair.

International Committee to Defend Slobodan Milosevic*ICDSM

International Conference

The Hague Proceedings against Slobodan Milosevic:

Emerging Issues in International Law

The Hague, Saturday, 26 February 2005

Global Justice or Global Revenge?

International Criminal Justice and the Role of the United Nations Security Council**

**Revised excerpt from chapter I/5/d/bb of the book "Global Justice or Global Revenge? International Criminal Justice at the Crossroads" (Vienna/New York: Springer, 2003).

by Professor Hans Koechler

"*Courts try cases but cases also try courts.* ... You must put no man on trial before anything that is called a court ... under the forms of judicial proceedings if you are not willing to see him freed if not proven guilty ..."[1]

The famous dictum of Supreme Court Justice Robert H. Jackson, U.S. Chief Prosecutor at Nürnberg, made in April 1945 in connection with the Nürnberg Tribunal, expresses the basic challenge faced by any ad hoc court, whether established by the victor(s) after a war or in the context of an unequal power constellation resulting from or related to actual armed conflict. The concerns about fairness and impartiality, expressed in 1945, are highly relevant for the evaluation of the ongoing ad hoc tribunals for Yugoslavia and Rwanda, established by resolutions of the Security

Council. Spectacular cases such as that of Slobodan Milošević before the Yugoslavia Tribunal in The Hague have demonstrated the predicament of universal jurisdiction, when exercised in the context of military conflicts and political disputes, to a wider international public. International criminal justice faces nearly insurmountable difficulties when it has to be practiced under conditions in which power politics – in the form of the national interests of the most powerful members of the Security Council – determines not only the setting up of a tribunal, but, at least indirectly, the conduct of the proceedings. We shall deal here with the Yugoslavia Tribunal as an exemplary case. Its political-legal characteristics and problems are also indicative of the problems of the Security Council tribunal for Rwanda.

The author has highlighted the political-legal dilemma of such ad hoc bodies in the 1999 *Memorandum on the Indictment of the President of the Federal Republic of Yugoslavia, the President of the Republic of Serbia and Other Officials of Yugoslavia by the International War Crimes Tribunal for the Former Yugoslavia*, which is reprinted in the annex below. We shall deal here only with some of the basic questions of legitimacy and procedure.

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* (ICTY)[2] was established by Security Council resolution 827 on 25 May 1993. The resolution was adopted on the basis of Chapter VII of the UN Charter, which implies that it is binding upon all UN member states. The Chapter VII aspect of the resolution essentially guarantees the authority of the court[3] – though it does not provide legitimacy of its jurisdiction. The Statute of the Tribunal was amended by Security Council resolutions 1166, adopted on 13 May 1998, and 1329, adopted on 30 November 2000.

In its actual version, the Statute cannot ensure the independent functioning of the Tribunal. It falls short of meeting even the basic requirements of the separation of powers. This can be explained by the fact that the interests of some of the Security Council's permanent members substantially influenced the drafting of the Statute. One of the decisive weaknesses, in this regard, are the provisions for the appointment of the functionaries of the Tribunal.

The procedures for the appointment of the *judges* of the Tribunal (Art. 13 *bis* of the Statute) leave room for international power politics. Permanent judges are first proposed (nominated) by UN member states and non-member states maintaining permanent observer missions at the UN, whereby each state may nominate up to two candidates. Out of these nominations, the Security Council establishes a list of at least 28 and at most 42 candidates, "taking due account of the adequate representation of the principal legal systems of the world" (Art. 13 *bis* [1] [c]).[4] In a further step, the General Assembly of the United Nations elects 14 permanent and – on the basis of an identical procedure outlined in Art. 13 *ter* – 27 *ad litem* judges by absolute majority. According to Art. 13 *ter*

(2), *ad litem* judges are appointed by the Secretary-General of the United Nations, upon request of the President of the Tribunal, to serve in the various Trial Chambers of the Tribunal. The President of the International Tribunal is elected by the permanent judges (Art. 14 [1]). He decides about the composition of the Trial and Appeal Chambers. The respective procedures in the *Statute of the International Tribunal for Rwanda* (Arts. 12 and 13), adopted as Annex to Security Council resolution 955 (1994) on 8 November 1994, are almost identical.[5]

It is obvious, from the sequential order of the procedural steps leading to the appointment of the judges, that the Security Council – the supreme executive organ of the United Nations – wields decisive power in this process. By virtue of the provision of Art. 13 *bis* 1 (c), the Council – and in particular its permanent members – can prevent anyone from being elected. Because of the veto power enshrined in Art. 27 of the UN Charter, no one can be elected as judge of the International Tribunal if his nomination is rejected by a permanent member. Candidates must not only enjoy the confidence of the statutory majority of the Council members (nine out of fifteen states), but also of all five permanent members. It needs only basic common sense to realize that such selection procedures do not bode well for the independence and impartiality of the judges. The screening procedures provide the guarantee that no one who is not politically acceptable to a permanent member will ever be elected. The performance of the British judge Robert May in the Milošević trial is a clear case in point. Not only belongs judge May to one of the countries that were parties in the war against the country of which the defendant was President at the time[6] – a fact of *bias* which in any national jurisdiction would be reason for exclusion –, he performed his duties as presiding judge of the International Tribunal in the Milošević trial in such a way that he was perceived more as prosecutor – or political inquisitor – than as independent judge.[7]

The procedure for the appointment of the prosecutor of the Tribunal is even more directly under the control of the Security Council. According to Art. 16 (4) of the Statute, the prosecutor is appointed by the Security Council "on nomination by the Secretary-General" of the United Nations. Because of the implications of the veto rule of Art. 27 of the UN Charter,[8] this means unrestrained superpower control over the appointment; the procedure *de facto* excludes the possibility of a politically independent person being chosen. The performance of prosecutors Louise Arbour and Carla Del Ponte has been a vivid illustration of the intricate connection of the Tribunal with international power politics. (The political character of the Tribunal is referred to in more detail in the author's Memorandum reprinted in the annex below.) The Tribunal's prosecutor, directly appointed by the Security Council and – almost unavoidably – "screened" in regard to the national interests of the Council's permanent members, enjoys full powers and quasi-independence under the Statute. According to Art. 18 (1) he/she shall initiate investigations *ex officio* – a formal independence which, in view of the appointment procedure, is not really "risky" for the Council's permanent members. Under Art. 15 (3) of the Statute of the International

Tribunal for Rwanda, the prosecutor of the Yugoslavia Tribunal also serves as prosecutor of the Rwanda Tribunal. The statutes of both tribunals contain identical formulations about the prosecutor's independence: "The Prosecutor shall act independently as a separate organ of the International Tribunal. He or she shall not seek or receive instructions from any Government or from any other source."[9] The actual prosecutorial practice, however, has proven the opposite to be true. In the case of the Yugoslavia Tribunal, the prosecution has, in reality, acted as extended arm of the NATO alliance, initially complementing the military campaign in Yugoslavia (1999) and later following up on the NATO-dominated policy of "pacification" for the region of the former Yugoslavia. In our analysis, the Tribunal has so far not been able to demonstrate that it acts as an organ of universal jurisdiction. In regard to the impact of power politics, similar problems are evident in the setup and proceedings of the International Criminal Tribunal for Rwanda.[10]

The basic flaw in the setup of both ad hoc tribunals consists in the fact that the supreme executive organ of the United Nations, the Security Council, establishes a court and promulgates an elaborate statute for such a court by virtue of a resolution adopted under Chapter VII of the Charter. Resolutions under Chapter VII are legally binding upon all member states and may be enforced by "all necessary means," including the use of armed force (Art. 42 of the UN Charter). However, those powers are entrusted to the Council to carry out its responsibility "to maintain or restore international peace and security" (Art. 39). Thus, in creating international criminal courts, the Security Council supposedly acts on the basis of its mandate to maintain or restore peace and security (sic!). The question of personal criminal responsibility is dealt with as if it were a question of international peace and security. Undoubtedly, as pointed out by the ICTY's first President, Antonio Cassese, "justice is one of various means of achieving peace;"[11] but this possible – not necessary – consequence of criminal proceedings does in no way entitle the United Nations Security Council to act as creator of international courts.

As early as 1949, Judge Radhabinod Pal, the Indian member of the Tokyo War Crimes Tribunal, in his landmark Judgment (dissenting opinion) emphasized that the provisions of Chapter VII of the Security Council cannot be applied for action against individuals. He stated that Chapter VII "provides for 'action with respect to threats to the peace, breaches of the peace, and acts of aggression'. The provisions of this chapter do not contemplate any steps against individuals. It may safely be asserted that the coercive actions envisaged by chapter VII would not be invoked individually against those who might be responsible for the functioning of the offending collective entity."[12]

In our analysis, the Security Council's acting as creator of judicial institutions is a classical case of a decision *ultra vires*, of an arrogation of powers the Council does not possess under the Charter. Questions of personal criminal responsibility can in no way be construed as being matters of international peace and security. According to the provisions

of the UN Charter, the latter relate to states, not individuals. In the context of the respective Security Council resolutions, criminal courts are rather artificially – and arbitrarily, for that matter – seen as part of non-armed enforcement measures under Chapter VII.

This interpretation is much more in line with the justification of the practice of victors' justice after the two world wars than with modern international law. In the debate on the legitimacy of the Tokyo War Crimes Tribunal, for instance, reference was made to the provisions of Art. 43 of the Fourth Hague Convention of 1907: "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."[13] In a way similar to the present argument in favour of acts of criminal prosecution being part of the Security Council's measures to restore peace and security under Art. 39 of the UN Charter, it was argued that the setting up of a criminal tribunal by the victorious nations after a war was part of their right – and duty – to restore "public order and safety" according to Art. 43 of the Hague Convention of 1907.

In the case of the ad hoc tribunals, the Security Council not only acts as creator of a court – as a kind of supreme judicial authority, arrogating to itself powers it does not possess under the Charter; the Council *directly* determines the procedures for the setting up of the respective court and, thus, *indirectly* interferes into the functioning of the court. The Council – through its right to establish a list of candidates – exercises decisive control over the appointment of judges and directly appoints the prosecutor. The respective resolutions of the Security Council, setting up the two ad hoc tribunals on Yugoslavia and Rwanda, have constituted a double interference of (international) executive power into the affairs of the judiciary in the sense described above. Furthermore, the power of the Secretary-General of the United Nations – under Art. 13 *ter* (2) of the Statute of the Yugoslavia Tribunal – to appoint *ad litem* judges to serve in Trial Chambers constitutes another interference of executive power into the independent functioning of a court.

These statutory realities make the rather undeveloped and rudimentary state of international criminal law when exercised by such ad hoc courts drastically obvious. Even the most rudimentary elements of the rule of law are lacking in such tribunals. The separation of powers is virtually non-existent; international criminal justice is being practiced as part of power politics.[14] Through these tribunals the administration of justice is undertaken on an openly *discriminatory* basis: the decision for *which* countries international criminal tribunals are being created – and, by implication, the officials of which countries are *eo ipso* spared the scrutiny of their behavior in procedures of criminal law – as well as the decision *which* officials or members of *which* groups in the respective country are prosecuted depends on the actual constellation of political interests in the Security Council.

In the context of the ICTY, the principle of impartiality has been

compromised from the very beginning. Because of the prevailing international power balance after the end of the Cold War, the Western countries that were involved in military actions on the territory of the former Yugoslavia were, in 1993, able to induce a resolution in the Security Council providing for the establishment of a court with the mandate to judge the actions of those countries' adversaries. The circumstances of the creation of this court resemble very much the victors' justice of the post-World War II tribunals. The driving force behind the creation of the Tribunal were the NATO countries, first and foremost the United States. Those countries exercised decisive influence over the setup, financing and operation of the Tribunal, and still continue to do so. The discrediting of the idea of international criminal justice has been an almost unavoidable consequence of the political circumstances under which the Tribunal was created and continues to operate.

Through its participation in the selection of judges and by virtue of its power to appoint the prosecutor, the Council exercises an indirect influence on the conduct of the court's affairs. Thus, individuals may be indicted according to criteria of political convenience, not of universal justice. In the case of the Yugoslavia tribunal, no formal investigation or prosecution was ever initiated of officials of NATO countries (in spite of the many well documented cases of serious violations of international humanitarian law in the course of the NATO air campaign in Yugoslavia in 1999).[15] It is mainly members of the defeated Serbian leadership (from Bosnia and Yugoslavia) who were indicted and/or brought before the court in The Hague – a fact which is widely known at least in Europe.

What is less known is that in the case of the Rwanda Tribunal in Arusha (Tanzania) virtually all those indicted are members of the ethnic Hutu community. Apart from one European who cooperated with members of the Hutu tribe in the genocide of 1994, only Hutus have been indicted before the ICTR. This amounts to selective justice on an enormous scale. It is well documented that not only Hutus have committed genocidal crimes against members of the Tutsi community, but that the Tutsi-dominated *Rwandan Patriotic Front* (RPF) also killed thousands of civilians.[16] The RPF is a former rebel army that overthrew the Hutu-led government which was mainly responsible for the 1994 genocide. The former rebel commander, Paul Kagame, is currently the President of Rwanda. If the crimes committed by those presently in power "cannot be investigated by the Tribunal," suggested South African researchers Gerhard Erasmus and Nadine Fourie, "the danger of 'selective justice' poses a serious obstacle to reconciliation and reconstruction."[17] Up to the present moment, the Security Council has not used its coercive powers to make sure that all the crimes enumerated in the Statute of the International Tribunal for Rwanda as falling under the Tribunal's jurisdiction – and not only the crime of genocide – are prosecuted on an *equitable* basis in regard to suspects from *both* ethnic communities without distinction.[18] The reasons for this lack of commitment to the principles of *universal* and *non-selective* jurisdiction are obviously political and stem from the national interests of certain permanent members of the Security Council.

It is no wonder that ad hoc tribunals created by resolutions of the Security Council are seen as the only acceptable form of the exercise of universal jurisdiction by all advocates of great power politics – and in particular by those who participated themselves in the conduct of their countries' foreign politics. Henry Kissinger, for instance, suggests – in an article apparently written *pro domo* – that (a) the Security Council (sic!) should set up a "Human Rights Commission" or special sub-committee to document international crimes; (b) the Council should consider to establish an ad hoc tribunal if the conditions for criminal prosecution on the national level are not acceptable in terms of genuine judicial proceedings; (c) the procedures for such tribunals and the scope of prosecution should be precisely defined by the Security Council.[19] Essentially, his proposals are meant to *tame* international criminal justice by making its exercise compatible with U.S. national interests. The unspoken expectation in Kissinger's treatise on what he calls the "pitfalls" of universal jurisdiction is that criminal law on the international level should be practiced in such a way that incumbent as well as former United States officials – including himself – can never be brought to justice before an international court. This can only be ensured in a Security Council framework where the veto power offers protection – indeed virtual immunity – for officials of the five permanent members, including the United States.

In his evaluation of contemporary efforts towards a system of universal jurisdiction, Benjamin B. Ferencz, former U.S. prosecutor at the Nürnberg Tribunal, points to the veto power as the decisive factor preventing the establishment of a genuinely independent and impartial tribunal: "As long as the Permanent Members of the Security Council have a right of veto, it is unlikely that agreement can be reached on creating an international tribunal to prosecute crimes that might be alleged against the leaders of Permanent Member states."[20] The privileged statutory position of the permanent members of the Security Council also explains why the United States totally rejects the jurisdiction of the International Criminal Court while it has supported, at the same time, the role of the Security Council as creator of ad hoc tribunals.

Ferencz further emphasizes the lack of legal consistency and credibility of ad hoc tribunals created by the Security Council. Referring to the newly assumed role of the Security Council as creator of courts of law he said: "Yet the Council was not a judicial but a political body some of whose members, indeed the most capable of committing aggression, held a veto power. How could the veto power and the prosecutorial role of the Security Council be reconciled with a fair and impartial trial?"[21] These doubts raised by one of the leading advocates of post-World War II universal jurisdiction and supporter of the International Criminal Court underline the basic legitimacy problem of any such judicial undertaking in the power-dominated framework of the Security Council.

The practice of ad hoc tribunals – whether set up by a military alliance or the Security Council – has never been in conformity with Kelsen's

maxim, referred to earlier, of "peace through law"[22] (or "peace through justice"). The tribunals have even proven counterproductive in that regard. In real terms, the creators of such courts have often tended to use judicial proceedings for the purpose of setting political scores. This is evidenced in the practice of selective prosecution in regard to the nationality of the suspects and in a further discrimination as to which individuals from which political or ethnic groups are to be prosecuted.

The handling of cases – and particularly the dismissal of cases – by the respective prosecutor of the ICTY is a clear case in point. Ms. Arbour and, so far, also Ms. Del Ponte have more acted like political officials – or public inquisitors – than as protagonists of an independent tribunal. In many prosecutorial decisions the prosecutors have not proven their commitment to the universal application of the norms of criminal law, but documented their loyalty vis-à-vis the most influential permanent members of the Security Council. The political bias of their prosecutorial decisions is directly related to the Security Council's control over the appointment of the Prosecutor. No one could have been chosen for this politically sensitive position who was not acceptable to the permanent members.

Furthermore, because of the creation of the tribunal by the Security Council – a political body – on the basis of Art. 39 of the UN Charter, the ICTY has been described as closely linked with the "political process for the restoration of peace in Yugoslavia"[23] whereby "its very duration may depend on the prevailing political situation."[24] In his comprehensive analysis of the Yugoslavia Tribunal, Hazel Fox diagnosed a "politicized process substituted for trial by a criminal court"[25] and stated that the "politicization of the function of the Tribunal must undermine its impartial judicial status."[26]

Ideally, the International Criminal Court should, in future, take over all such cases as are presently being handled by the Yugoslavia and Rwanda tribunals and should finally make ad hoc tribunals of the Security Council unnecessary. This view was also expressed by the first President of the Yugoslavia Tribunal, Professor Antonio Cassese: "... justice cannot be selective, the present ad hoc Tribunals should soon be replaced by a *Permanent* Criminal Court with general jurisdiction."[27] According to his analysis, international criminal justice must be "truly international, truly impartial and truly fair justice."[28] However, because of the provisions of Art. 11 of the Rome Statute, the ICC – unlike the two ad hoc tribunals – does not have retroactive jurisdiction – which means that the two tribunals cannot simply be phased out and integrated into the ICC. It is noteworthy that the Yugoslavia as well as the Rwanda tribunal *have* retroactive jurisdiction,[29] which means that, as regards jurisdiction *ratione temporis*, different legal standards are being applied in the statutes created by the Security Council on the one hand and in the Statute of the ICC on the other. In general, the legal standards of the Rome Statute are much higher – and more elaborate – than those of the two tribunals.

Numerous analyses have been published and a lot of material has been

made available documenting the lack of impartiality and the political nature particularly of the Yugoslavia Tribunal. (The author summarized his concerns in the I.P.O. Memorandum of 27 May 1999 addressed to the United Nations Organization.) One of the most revealing documents is the transcript of a joint press conference by then U.S. Secretary of State, Madeleine Albright, and then Prosecutor of the ICTY, Justice Louise Arbour, in Washington, DC on 30 April 1999. At the height of the NATO "air campaign" in Yugoslavia, Justice Arbour, a citizen of Canada, had visited Western capitals for consultations in her capacity as Prosecutor of the Yugoslavia Tribunal.[30] It is worthy to note that, at the time, she visited London, Washington, Paris, and Bonn, but not Moscow or Beijing. In view of her independent status according to Art. 16 (2) of the Tribunal's Statute, it is legitimate to ask what Ms. Arbour actually had to consult about. The Prosecutor is supposed "to act independently as a separate organ of the International Tribunal." The Article states unambiguously: "He or she shall not seek or receive instructions from any Government or from any other source."

The answers given in the course of the press conference conveyed quite a different impression. When asked whether they did discuss an indictment of Slobodan Milošević, then President of the Federal Republic of Yugoslavia, Madeleine Albright replied:

"Well, obviously, the question of what is going to happen to Mr. Milosevic is a subject that is very much on our minds, and Justice Arbour knows what we have said both publicly and privately; that she and the Tribunal need to follow out the trail of evidence to its conclusion. We, as I said, are supportive of her efforts ..."[31]

And Prosecutor Arbour added:

"We are here, and elsewhere, to ensure that we get the assistance to move the cases forward in that direction. Whether it points to any particular individual, I think the law is very clear: there is no immunity before our Tribunal for heads of state."[32]

A few weeks later, at the height of the NATO campaign in Yugoslavia, Ms. Arbour issued the indictment against President Milošević and other members of the Yugoslav and Serbian leaderships. Secretary Albright may have inadvertently revealed too much when she hinted at what Ms. Albright was told – "publicly and privately" – what she would "need to follow."

Even more revealing is an answer given by NATO Spokesman Jamie Shea to a question over the actual jurisdiction of Justice Arbour as "chief prosecutor" of the ICTY. To Ms. Arbour's credit it must be said that, in a speech delivered at the launch of the International Criminal Court Coalition's global ratification campaign, she had claimed that the NATO countries are under the jurisdiction of her court; she had explained quite enthusiastically that the ICTY, in regard to the NATO military operations in Yugoslavia in 1999, is "a pre-existing International Tribunal, ... whose reach is unqualified by nationality, whose investigations are triggered at the sole discretion of the Prosecutor and

who has primacy over national courts."[33] Answering the question whether NATO recognizes Prosecutor Arbour's jurisdiction over their activities, Jamie Shea made a rather cynical statement which leaves no room for illusions about the possible independence of the ICTY and its Prosecutor:

"... I think we have to distinguish between the theoretical and the practical. I believe that when Justice Arbour starts her investigation, she will because we will allow her to. It's not Milosevic that has allowed Justice Arbour her visa to go to Kosovo to carry out her investigations. If her court, as we want, is to be allowed access, it will be because of NATO so NATO is the friend of the Tribunal, NATO are the people who have been detaining indicted war criminals for the Tribunal in Bosnia."[34]

This blunt statement – made a few days before Ms. Arbour announced the indictment of President Milošević – is not only an extreme humiliation of the supposedly independent "Chief Prosecutor," it says more about the bearing of power politics on international criminal proceedings than many theoretical treatises. The statement has done away, once and for all, with the naïve assumptions, harboured by some idealists, about impartiality and due process in the context of a court that *de facto* operates on the basis of military power. Unintentionally and because he was surprised by a sharp question, Mr. Shea has revealed more about the real nature of the Security Council's ad hoc tribunals than the official documents of the United Nations ever could.

The independence of the ICTY Prosecutor's role has been compromised ever since. The performance of Ms. Del Ponte, Ms. Arbour's successor as "chief prosecutor," has still strengthened the appearance of the Yugoslavia Tribunal as a political court in which the decisions on indictments are determined by the interests of those Security Council member states that have initiated the Tribunal and where the Prosecutor, accordingly, interprets her duties in a political manner. This became again obvious in Ms. Del Ponte's address to the Security Council in New York on 29 October 2002, where she reported on the difficulties she encountered in obtaining evidence and securing the appearance of prosecution witnesses, and where she briefed the Council on the obstacles to the handing-over of indictees to the Yugoslavia and Rwanda tribunals. Apparently in order to convince the Security Council to take action on these issues, Ms. Del Ponte tried to assume the role of political analyst or commentator, something which is not compatible with the strictly judicial function of a criminal prosecutor. In her address to the Council she said: "Mr. Chairman it is obvious to me, as an interested observer of the political and security situation in the Balkans and in the Great Lakes Region, that there is an enormous danger in allowing the rule of law to be undermined. ... Impunity fosters political intrigue, profiteering and corruption, widespread criminality, and a culture of violence and terror."[35] By presenting herself – in an official appearance before the Security Council – as "interested observer" of the political situation, Ms. Del Ponte arrogated to herself a quasi-political role, apparently trying to influence the Security Council in issues of

international peace and security. According to Art. 39 of the UN Charter, the determination of threats to the peace is at the discretion of the Council. Because of the provisions of Chapter VII of the Charter, any such determination and any decision about related compulsory measures is the responsibility of the Security Council alone, acting as supreme executive organ of the United Nations. In the exercise of her mandate as Prosecutor, Ms. Del Ponte has constantly obfuscated the border line between international politics and the area of criminal prosecution. In her address to the Security Council, she may also have unintentionally revealed the political pressure under which she acts, when she referred to calls for an expedient processing of indictments: "We cannot be asked to complete soon our indictments and trials of top leaders and, at the same time, be told to be patient and not to rock the boat. This is an obvious contradiction."[36]

The political dimension of these ad hoc proceedings of criminal law has not only become obvious in the actions of the prosecution, but also of independent judges. In the case of the trial of former President Milošević, the political bias of the presiding judge Robert May has been well documented through repeated live transmissions on television. What has become apparent to independent observers is that Mr. May conducted the sessions more like a public inquisitor than as an independent judge. He acted as a kind of censor of the statements of the indicted former President Milošević and intervened, at the same time, in support of prosecution witnesses. Altogether, very often he appeared playing the role of prosecutor. As Ian Johnson wrote in his report on the trial, "[p]roceedings were taking a predictable course. It didn't take much insight to grasp the following: A) The witnesses told a well-rehearsed story. B) If the witnesses got into difficulties during the cross-examination the Judge would intervene."[37]

The Tribunal's "relaxed" rules of evidence further encourage the arbitrary conduct of proceedings by the judges.[38] The comments on the Tribunal's rules of evidence, contained in the Tribunal's *First Annual Report* (28 July 1994), resemble very much the respective formulations of the Nürnberg and Tokyo war crimes tribunals referred to earlier and reveal a certain arrogance and complacency on the part of those who should be seriously concerned about the application of the highest possible legal standards. Because of the highly controversial matters before the Tribunal, the overall aim should have been that of avoiding the politicization of the proceedings. However, expediency seems to be of greater importance than due process. The Annual Report openly admits that, "as at Nürnberg and Tokyo, there are no technical rules for the admissibility of evidence."[39] The Report further states: "This Tribunal does not need to shackle itself to restrictive rules which have developed out of the ancient trial-by-jury system. There will be no jury sitting at the Tribunal, needing to be shielded from irrelevancies or given guidance as to the weight of the evidence they have heard."[40]

In addition to the lack of impartiality, fairness and due process, the legitimacy of ad hoc tribunals is marred by the political *selectivity* determining their establishment. As it seems, there exists deliberate

confusion between the levels of justice and politics. In one case, criminal prosecution is presented as a means towards restoring peace and security, in another case, that same avenue is portrayed as detrimental to that very purpose. Such duplicity is nearly unavoidable when matters of international criminal justice are handled by a political body such as the Security Council.

In the light of the inconsistent practice of the Security Council, the apory as to the basic rationale of universal jurisdiction remains. Is the proper guideline for establishing international criminal tribunals that of "*fiat justitia, pereat mundus!*" or "*fiat justitia ne pereat mundus*"? One maxim is the negation of the other. The first principle emphasizes the need that justice be done irrespective of the political consequences; the second stresses the preservation – or restoration – of peace and stability as basic justification for criminal justice. The affirmation of the validity and eventual application of either maxim may depend (a) on the specific political circumstances in a given country and (b) on the constellation of interests in the Security Council. In each specific case, history will finally judge the method chosen by the "international community." According to the principles of the United Nations, the choice can only be in favour of the second maxim; but more than one initiative of universal jurisdiction since the beginning of the 20th century seems to have pointed into the direction of the first principle. This state of affairs is rather unsatisfactory in philosophical terms. It reveals the rudimentary state of international law – and of our thinking about international law.

By establishing ad hoc tribunals in certain cases and not establishing such courts in other similar cases, the Security Council has introduced an element of arbitrariness and legal anarchy into the system of international relations. The Council may have further discredited the principle of universal jurisdiction by trying to exercise a kind of – albeit indirect – political control over the ad hoc tribunals established through resolutions under Chapter VII. Since the end of the Cold War, the Security Council has dealt with issues of international criminal law in the context of power politics; this is documented in the Council's handling of the Lockerbie case (having brought about the establishment of a special court in the framework of a national jurisdiction) as well as in the Council's "judicial" action – or non-action respectively – in major national or international armed conflicts such as those in Rwanda, Cambodia, Sierra Leone, or the former Yugoslavia. Thus, the Council has done a disservice to the international rule of law.

When acting as self-appointed guarantor of justice, indeed as creator of international criminal courts, the Security Council has made the legitimacy problems of international criminal justice even worse. Ad hoc jurisdiction in the framework of the permanent members' national interests – i.e. of old-fashioned power politics – will not advance the standards of international law enforcement. In such a framework it will not be possible to ensure the independence of the courts and to guarantee the impartiality of criminal proceedings. To the contrary: through the by now well established practice of creating courts of law through Chapter VII resolutions, the Council *restrains* the exercise of universal

jurisdiction – according to political criteria mainly defined by its permanent members – and thereby *undermines* the universal mission and authority of the International Criminal Court, now in its incipient stage.

ANNEX

(I)

MEMORANDUM

on the Indictment of the President of the Federal Republic of Yugoslavia, the President of the Republic of Serbia and Other Officials of Yugoslavia by 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"

The International Progress Organization would like to refer to its statements of 7 April and 23 April 1999 outlining the grave breaches of the United Nations Charter and of the rules of international humanitarian law through the undeclared war against the Federal Republic of Yugoslavia. The International Progress Organization hereby presents the following legal observations on today's "indictment" by the "International Criminal Tribunal":

1. The "indictment" issued by the "Chief Prosecutor" of the so-called "International Criminal Tribunal for the Former Yugoslavia" is legally invalid because this "Tribunal" has no jurisdiction whatsoever in the present or any other case.

2. The "Tribunal" derives its *raison d'être* exclusively from Security Council resolution 827, adopted at the Council's 3217th meeting on 25 May 1993. In this resolution, establishing the so-called "International Criminal Tribunal," the Security Council states that it acts "under Chapter VII of the Charter of the United Nations."

3. When adopting the above resolution, the Security Council acted *ultra vires*. According to the provisions of the U.N. Charter, the Council has no competence whatsoever in judicial matters. The provisions of Chapter VII determine the Council's competence in matters of international security but not in matters of criminal justice or other judicial matters. The sole authority in international judicial matters rests with the International Court of Justice.

4. The "determination," in the preamble of Security Council resolution 827, paragraph four, that the "widespread and flagrant violations of international humanitarian law" on the territory of the former Yugoslavia "constitute a threat to international peace and security" does not provide a sound legal basis for the Security Council acting as a surrogate judicial authority or establishing an international court with jurisdiction in this or any other case.

5. It is regrettable that the institution of the Security Council, while

being unable to stop the undeclared war waged by NATO countries against Yugoslavia in violation of international law, and while being prevented, because of the veto power of countries conducting the present war, from restoring international peace and security in Yugoslavia, is now being used to take a so-called "judicial" action against the legitimate Head of State and other high officials of the country under attack.

6. Under the present circumstances, the move by the "Chief Prosecutor" of the so-called "Tribunal," Ms. Louise Arbour, can only be considered of political nature. This interpretation is confirmed by today's statement of the President of the United States who declared that the "indictment" by the "Tribunal" can be seen as an endorsement of NATO's campaign.

7. The purely political nature of the "indictment" and the lack of any legal validity of this decision can further be seen from the fact that the "President" of the so-called "Tribunal," Ms. Gabrielle Kirk McDonald (United States of America), the "Chief Prosecutor," Ms. Louise Arbour (Canada), and the investigating "judge" in the present case, Mr. David Anthony Hunt (Australia), are citizens either of NATO member countries directly responsible for the undeclared war against Yugoslavia or of a country fully endorsing the NATO war. If the "Tribunal" would have taken general legal standards of impartiality seriously, it would have been obliged to determine that there is a conflict of interest for "judges" from countries waging an undeclared war against Yugoslavia to sit on such a panel initiating "judicial" action against the Head of State of the country under attack.

8. The political nature of the "indictment" was further made obvious by the "Chief Prosecutor's" press statement earlier today in which she expressed her view that the "indicted" Head of State cannot be considered a partner of any negotiations about a peaceful settlement of the conflict. Such a statement makes a mockery of whatever legal standards the so-called "Tribunal" claims to adhere to. By her statement, the "Chief Prosecutor" has tried to act as a surrogate politician and to influence political events in the interest of those NATO countries presently waging war against Yugoslavia.

9. When, in violation of the United Nations Charter, a self-appointed group of states claiming to act on behalf of international peace and human rights, wages an all-out war against a sovereign member state of the United Nations and deliberately destroys the civilian infrastructure of that country with impunity, the present move by functionaries of the so-called "Tribunal" to declare the legitimate leaders of the country under attack as criminals, can only be seen as an act to hamper the international community's efforts to settle the conflict in Yugoslavia by peaceful means. This move undermines all efforts to settle the conflict within the framework of the United Nations and only prolongs the suffering of the people of Yugoslavia including the Kosovar Albanians.

10. It would be fitting that the so-called "Tribunal"– if it wants, at least, to prove its credibility in terms of basic moral standards, in spite of its

legal incompetence as explained above – should also turn its attention to the practices applied by the NATO coalition in its undeclared war against the people of Yugoslavia (including the province of Kosovo). The provisions of Article 3 of the so-called "Tribunal" identify, among others, the following practices as "violations of the laws or customs of war": (a) "employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;" (c) "attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;" etc. NATO's use of depleted uranium missiles and of cluster bombs, NATO's attacks on villages, civilian buses etc. fall clearly within the definition of "violations of the laws or customs of war" as given in the Statute of that very "Tribunal" not to speak of the numerous grave breaches of the Geneva Conventions of 1949 committed by the NATO alliance, for which the "Tribunal" also claims to be competent according to Article 2 of its Statute. As long as the "Tribunal" does not take action against those NATO politicians and military officers responsible for these grave breaches of international humanitarian law, the "Tribunal" can only be considered as one more futile exercise in the political use of judicial procedures within the framework of a "policy of double standards" which seems to be the essence of power politics in NATO's "New World Order."

11. A dangerous precedent is being created by this new use of judicial procedures for the purposes of power politics. The separation of powers, one of the basic requirements of the rule of law, is being completely neglected when a purely political organ of the United Nations, the Security Council, arrogates to itself judicial powers by establishing an "International Criminal Tribunal," and when the functionaries of this "Tribunal" act as surrogate politicians effectively hindering a political settlement of an international armed conflict. The sole responsibility for whichever judicial matters in international affairs rests with the International Court of Justice. It is this institution alone that decides on the legal questions related to aggression by one state or a coalition of states against another state, and that decides on issues of international humanitarian law.

12. Because of the regrettable paralysis of the Security Council, the member states of the United Nations as represented in the General Assembly should take immediate action on the basis of the "Uniting for Peace Resolution" (res. 377 A [V] of the General Assembly) in order to prevent a further dangerous deterioration of the situation in Yugoslavia. When otherwise invalid legal procedures are being used to prevent a just political settlement and when the ongoing large-scale bombing of Yugoslavia causes an ecological disaster rendering large areas uninhabitable, urgent action is required by the international community. If this new form of self-righteous power politics is not being checked, similar action may be taken in the time to come against other sovereign countries and their leadership. In this case, the "rule of force" will replace whatever remains of the "rule of law" in international relations. International anarchy will be the inevitable result. All political leaders and people of good will should unite against this most serious threat to

the international order since the end of the Cold War.

Caracas, 27 May 1999

Dr. Hans Köchler
President

International Progress Organization **(II)**

INTERNATIONAL PROGRESS ORGANIZATION

News Release

Extradition of former Yugoslav President Milošević:

Violation of international law and of the Constitution of the Federal Republic of Yugoslavia

Vienna, 1 July 2001/P/RE/17210c-is

In an exclusive interview for the German daily *Junge Welt* (Berlin), the President of the International Progress Organization, Professor Hans Köchler, strongly condemned the extradition of former Yugoslav President Slobodan Milošević to the so-called "International War Crimes Tribunal" in The Hague.

Professor Köchler described the extradition – which was carried out without the knowledge of the President of Yugoslavia and against an express order of the Constitutional Court of Yugoslavia – as an act of piracy committed by NATO forces (in collusion with the administration of Mr. Zoran Djindjić) via the NATO airbase at Tuzla.

By this action, Mr. Djindjić has put himself and his administration not only outside the Constitution of the Federal Republic of Yugoslavia; by "selling" the former Head of State on the eve of the so-called "donors conference" for Yugoslavia he has set an unprecedented act of humiliation of an entire nation. Whether he has committed an act of high treason will have to be judged by the competent authorities of the Federal Republic of Yugoslavia.

The extradition of former President Milošević was not only illegal in terms of the Yugoslav Constitution – insofar as it occurred in violation of a ruling of the Constitutional Court –, it was also illegal in terms of international law because of the violation of the sovereignty of the Federal Republic of Yugoslavia, Professor Köchler explained. The fact that the administration of Mr. Djindjić assisted in this de facto abduction of the former Head of State does not give it even the semblance of

legality. An administration that acts in violation of the country's Constitution and delivers the former Head of State – or any citizen for that matter –, under conditions of economic blackmail, to a coalition of foreign governments (acting under the umbrella of a so-called "International War Crimes Tribunal") cannot claim constitutional legitimacy for any of its further actions, Professor Köchler explained.

The President of the I.P.O. referred to his earlier Memorandum of 27 May 1999 concerning the illegal indictment of President Milošević by the so-called "International War Crimes Tribunal" in The Hague and reiterated his view that there is no legal basis for the existence of this Tribunal. The respective resolution of the UN Security Council establishing the Tribunal was ultra vires. According to the UN Charter and to general principles of international law, the Security Council as the supreme executive organ of the United Nations has no competence at all in judicial matters including matters of criminal justice.

By the indictment of President Milošević in 1999 and his de facto abduction in 2001 (with the use of NATO infrastructure on the territory of former Yugoslavia), under conditions of economic blackmail of the government of Yugoslavia, the so-called "International War Crimes Tribunal for Former Yugoslavia" has set a dangerous precedent in relations between sovereign states that has to be opposed by all nations. This "Tribunal" is not only lacking legal validity of its actions, it has made the *policy of double standards* the basic principle of its operation. The "Chief Prosecutor" of the "Tribunal" refuses to deal with the illegality of the war of aggression led by NATO forces against Yugoslavia in 1999 and with the well-documented war crimes and violations of international humanitarian law by NATO forces, having acted on orders of their commanders and of the political leaders of NATO member countries. By the discriminatory application of legal principles, i. e. by rendering legal immunity to the perpetrators of the war of aggression against Yugoslavia, the "Tribunal" has documented to the entire world that it acts on the basis of power, not of law, and that it engages in the exercise of "victors' justice." Those powers who control the Security Council – on top of them the United States – do not need to fear the "Tribunal" which has been set up under their control. Such is the predicament of present-day international law that legal principles can only be enforced according to the interests of the powerful members of the self-declared "international community."

Professor Köchler further emphasized that the "extradition" of former President Milošević occurred under peculiar and scandalous geo-strategic circumstances: The NATO alliance, without the initial approval of the Security Council, had waged a war of aggression against the Federal Republic of Yugoslavia in 1999, had impoverished the country by deliberately destroying the civilian infrastructure and industrial base, and now has been trying to force Yugoslavia into submission by linking the issue of reconstruction aid with the extradition of the former President and other officials of Yugoslavia. In terms of international law, the countries of the NATO alliance are liable for full compensation of Yugoslavia for all damages caused by their illegal war; the political

leaders of those countries have to be held accountable – in terms of international law and of their personal criminal responsibility – for their actions.

An "International Criminal Tribunal," established through an incompetent body of the United Nations system and operating under the de facto control of those who waged the war against Yugoslavia, can never be the proper legal forum to deal with issues of personal criminal responsibility. Because of its structure and the way it was set up, it can only deliver "victors' justice." If a court cannot act in a sovereign and independent manner and lacks the legal title of its jurisdiction, it will only render disservice to the international rule of law and should be disbanded, Professor Köchler explained.

In the absence of a *division of powers* – the basic requirement of the rule of law – in the present system of international law, issues of personal criminal responsibility of the citizens of Yugoslavia, including the former President and other governmental leaders and officials, can only be dealt with by the judicial authorities of Yugoslavia. A government that delivers its officials under duress (i.e. under conditions of economic blackmail) to a coalition of foreign governments cannot claim legitimacy vis-à-vis the people subjected to its rule. An ad hoc tribunal (court) set up by the victors of a conflict can never be the basis for legal action against the officials of the country that is the victim of the aggression.

The President of the I.P.O. stated that those UN member states that still believe in the principles of the UN Charter, first and foremost the principle of the sovereign equality of nations, should unite in the UN General Assembly and call for the disbanding of the ad hoc tribunals set up by the Security Council in violation of the UN Charter. The future of international law, including international criminal law, will be determined by the stand taken by United Nations member states on issues of national jurisdiction and sovereignty. If they accept the illegal extradition of the former President of Yugoslavia as fait accompli, there will be no legal counter-arguments in the future when a country is forced to deliver its leader to a coalition of powerful states – as long as this coalition manages to set up a structure with a semblance of legality and United Nations backing, even if derived from decisions adopted ultra vires as in the present case. This is the reason why the majority of UN member states should not allow the NATO coalition against Yugoslavia to set a precedent in terms of international law and to carry out acts of "abduction" unchallenged, Professor Köchler concluded. **(III)**

INTERNATIONAL PROGRESS ORGANIZATION

Statement on the Assignment by "Trial Chamber III" of the so-called "International Tribunal" of Counsel to the former President of Yugoslavia against His Will

Vienna, 8 September 2004/P/RE/18849c

In reference to the Memorandum, dated 27 May 1999, on the lack of legal validity of the indictment of the former President of Yugoslavia by the so-called "International Tribunal" and lack of legitimacy of said tribunal under basic rules of international law, the International Progress Organization would like to emphasize the following points in regard to the assignment of counsel by oral order of the so-called "Trial Chamber III" to the former President of Yugoslavia against his will:

1. 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" lacks moral as well as judicial legitimacy. Its creation by the UN Security Council was an act *ultra vires*; decisions of the "Tribunal's" officials have no legal validity.

2. Apart from its intrinsic illegitimacy, the decision to impose counsel upon Mr. Milošević against his will is in blatant violation of the "Tribunal's" own "Statute" Art. 21 (Rights of the accused), Par. 4 (d) of which states that the accused shall be entitled "to defend himself in person or through legal assistance of his own choosing." It is to be noted that the "Statute's" additional provision ("to have legal assistance assigned to him, in any case where the interests of justice so require") is not applicable in this particular situation.

3. The fact that there is no written order, outlining the "Trial Chamber's" legal reasons for the imposition of counsel (the communiqué of 2 September, CC/P.I.S./889-e, announcing the wording of the "oral order" appears to omit two paragraphs), while there exists a detailed written "Order on the modalities to be followed by court assigned counsel," dated 3 September 2004, further underlines the arbitrariness and political nature of this decision.

4. The imposition of counsel against the declared will of the former President of Yugoslavia constitutes a serious violation of the accused's basic human rights as enshrined in international covenants.

5. The "Trial Chamber's" decision has documented one more time that this "International Tribunal" is not a court of law, but a political undertaking.

6. The reservations expressed by the former President of the Council of Ministers of the USSR, Mr. Nikolai Ryzhkov, according to wich "Slobodan Milošević didn't get an assigned counsel, but another prosecutor who will only act using other means" are well founded. Mr. Ryzhkov's refusal to appear, under these circumstances, as a defense witness is fully understandable.

7. The operation of the "Tribunal" in the Hague, as an essentially political project, is further undermining the important cause of universal jurisdiction as represented by the International Criminal Court.

Dr. Hans Köchler

President

[1] Quoted according to Telford Taylor, *The Anatomy of the Nuremberg Trials*. New York: Alfred A. Knopf, 1992, pp. 44f. (Emphasis by the author)

[2] The acronym ICTY stands for "International Criminal Tribunal for Yugoslavia," which has become the most widely used version of the tribunal's name.

[3] See Antonio Cassese, "On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law," in: *European Journal of International Law*, vol. 9, no. 1 (1998), p. 14: "... the ICTY's requests for surrender are always binding upon states pursuant to ICTY's Statute, to UN Resolution 827 (1993) establishing the ICTY, and to Chapter VII of the UN Charter. Such requests override national legislation."

[4] This provision is of a mere philosophical nature as it has proven impossible to establish rules of procedure that would combine, in a consistent manner, basic elements of often contradictory legal systems and traditions. The problem has existed since the time of the post-World War II tribunals. In a debate about the punishment for war crimes and the setting up of an international tribunal, the Lord Chancellor of the House of Lords (London) has pointed to the complexities of the problem. He emphasized that for any international tribunal one has to agree first on "the code of law which it is going to apply;" in illustrating the problem, he referred to the fact that "the procedure which is understood and followed in a British Court is completely unlike the methods which are followed elsewhere." ([Inter-Allied Information Committee] *Punishment for War Crimes (2). Collective Notes Presented to the Governments of Great Britain, the U.S.S.R. and the U.S.A. and Relative Correspondence*. London: His Majesty's Stationery Office [no date], pp. 11f.) It cannot be explained what other importance the balanced composition of an international court's chambers (in the sense of this provision) may have if not that of incorporating the major legal systems in the respective court's rules of procedure and evidence – something which has proven not only impracticable, but impossible in terms of normative consistency.

[5] For a detailed description and analysis of the history, functioning and political context of the Rwanda Tribunal and a structural comparison with the Yugoslavia Tribunal see Virginia Morris and Michael P. Scharf, *The International Criminal Tribunal for Rwanda*. Irvington-on-Hudson, NY: Transnational Publishers, 1998. 2 vols. For a general evaluation see

George S. Yacoubian Jr., "The Efficacy of International Criminal Justice. Evaluating the Aftermath of the Rwandan Genocide," in: *World Affairs*, vol. 161 (Spring 1999), pp. 186-192.

[6] For details see the author's Memorandum in the annex below.

[7] See Ian Johnson, *The Judge as Prosecutor: Two Days at the "Trial" of Slobodan Milosevic*, at emperors-clothes.com/articles/ian/day.htm , 19 June 2002.

[8] The specific implications of the veto rule for the functioning of the Security Council and for the legitimacy of Security Council resolutions in general are outlined in the author's analysis on "The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations," in: Hans Köchler, *Democracy and the International Rule of Law. Propositions for an Alternative World Order. Selected Papers Published on the Occasion of the Fiftieth Anniversary of the United Nations*. Vienna / New York: Springer Verlag, 1995, pp. 85-116. [9] Art. 16 (2) of the Statute of the Yugoslavia Tribunal; almost identical formulation in Art. 15 (2) in the Statute of the Rwanda Tribunal. [10] See Emmanuel Nyemera, "One-Sided Justice At The Rwanda Tribunal," in: Emperor's Clothes, 21 November 2000, at emperors-clothes.com/analysis/rwanda.htm; Christopher Black, "Racism, Murder and Lies in Rwanda," *in: Emperor's Clothes*, 6 September 2001, at emperors-clothes.com/letters/racism.htm. See also the news release "Military trial: 'We will not be party to an unfair trial,' defense lawyers state" by Mary Kimani. Arusha: Internews. *ICTR Reports*, April 2002. – For procedural details of the two tribunals see John R.W.D. Jones, *The Practice of the International Criminal Tribunals for the Former Yugoslavia and Rwanda*. Irvington-on-Hudson, NY: Transnational Publishers, 1998. See also Mark R. Von Sternberg, "A Comparison of the Yugoslavian and Rwandan War Crimes Tribunals: Universal Jurisdiction and the 'Elementary Dictates of Humanity'," in: *Brookings Journal of International Law*, vol. 22 (1996), pp. 111-156.

[11] Antonio Cassese, "Reflections on International Criminal Justice. XXVth Chorley Lecture, London School of Economics," in: *The Modern Law Review*, vol. 61, no.1, January 1998, p. 9.

[12] B. V. A. Röling and C. F. Rüter (eds.), *The Tokyo Judgment. The International Military Tribunal for the Far East (I.M.T.F.E.), 29 April 1946 – 12 November 1948*. Volume II: *Judgement of the Member from India. Opinion of the Member from the Netherlands*. Amsterdam: APA – University Press Amsterdam BV, 1977, p. 1037.

[13] *Convention Respecting the Laws and Customs of War on Land* (Hague Convention IV: 1907). Quoted according to the official version published in: *Treaties and Other International Agreements of the United States of America 1776-1949*. Compiled under the direction of Charles I. Bevans LL.B., Assistant Legal Advisor Department of State. Vol. 1: *Multilateral 1776-1917*. Department of State Publication 8407.

Washington, DC: Government Printing Office, 1968.

[14] On the problem of the politicization of such courts see Johnny Byrne, *UN War Crimes Tribunal – Show Trials of the New World Order*, published at the web site of the Balkan Repository Project, 20 October 1995, at *www.balkan-archive.org.yu/politics/tribunal_watch/html/byrne.html*.

[15] See Michael Mandel et al., *In the International Criminal Tribunal for the Former Yugoslavia. Re: William J. Clinton et al., 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, ICTY, The Hague*. 6 May 1999. See also the documentation by Seán Mac Mathúna, *Lawyers serve indictment on NATO leaders for war crimes*. At *www.flamemag.dircon.co.uk* (1999).

[16] See the report by Steven Edwards: "UN Confirms Secret Probe of Tutsi War Crimes," in: *National Post*, Toronto, 15 December 2000.

[17] Gerhard Erasmus and Nadine Fourie, "The International Criminal Tribunal for Rwanda: Are all issues addressed? How does it compare to South Africa's Truth and Reconciliation Commission?" in: *International Review of the Red Cross*, No. 321, 31 December 1997, pp. 709f.

[18] See [Human Rights Watch], "Rwanda: Deliver Justice for Victims of Both Sides." *Letter Sent to US Ambassador John Negroponte, President of UN Security Council*. August 9, 2002, at *hrw.org/press/2002/08/Rwanda-ltr0809.htm*.

[19] Henry A. Kissinger, "The Pitfalls of Universal Jurisdiction," pp. 95f.

[20] Benjamin B. Ferencz, "An International Criminal Code and Court: Where They Stand and Where They're Going," in: *Columbia Journal of Transnational Law*, vol. 30 (1992), p. 382 (footnote).

[21]Op. cit., pp. 381f.

[22] Hans Kelsen, *Peace through Law*.

[23] Hazel Fox, "The Objections to Transfer of Criminal Jurisdiction to the UN Tribunal," in: *International and Comparative Law Quarterly*, vol. 46 (1997), p. 438.

[24] Op. cit., p. 439.

[25] Op. cit., p. 435 (title of chapter I of the article).

[26] Op. cit., p. 439.

[27] Antonio Cassese, "Reflections on International Criminal Justice.

XXVth Chorley Lecture, London School of Economics," p. 10.

[28] Ibid.

[29] Art. 8 of the Statute of the Yugoslavia Tribunal establishes jurisdiction for a period beginning nearly two and a half years before the actual creation of the Tribunal; Art. 7 of the Statute of the Rwanda Tribunal establishes jurisdiction for a period beginning approximately 10 months before the creation of the Tribunal.

[30] For details see Charles Trueheart, "Milosevic To Be Indicted for War Crimes," in: *Washington Post Foreign Service*, Thursday, May 27, 1999, Page A1.

[31] *Secretary of State Madeleine K. Albright and Justice Louise Arbour, International Criminal Tribunal for the Former Yugoslavia, Joint Press Conference, Washington, D.C., April 30, 1999.* As released by the Office of the Spokesman, U.S. Department of State. (USIS Washington File, *EPF515 04/30/99: "Albright reaffirms support for the War Crimes Tribunal.")

[32] Loc. cit. [33] Louise Arbour, "Despair and Hope: Kosovo and the ICC": *Introductory Statement by Justice Louise Arbour, Prosecutor ICTY and ICTR at the Launch of the ICC Coalition's Global Ratification Campaign*, The Hague Appeal for Peace, 13 May 1999. Press Release, The Hague, 13 May1999/JL/PIU/401-E.

[34] Press Conference given by NATO Spokesman, Jamie Shea and SHAPE Spokesman, Major General Walter Jertz, Brussels, NATO Headquarters, 16 May 1999, at *www.nato.int/kosovo/press/p990516b.htm*.

[35] [Carla Del Ponte], *Address by the Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, Mrs. Carla Del Ponte, to the United Nations Security Council* [29 October 2002]. Press Release, Office of the Prosecutor, The Hague, 30 October 2002, JJJ/P.I.S./709-e.

[36] Loc. cit. – In spite of her proven "political expediency" as Prosecutor, even Ms. Del Ponte has been facing severe criticism over her decision also to prosecute citizens of Croatia, a country closely allied with the United States. See Grace Vuoto, "Sleepwalking in the Balkans," in: *Washington Times*, 30 December 2002, who insists, in connection with the investigation of Croatians by the ICTY, on the establishment of a mechanism "to curtail the arbitrary power of The Hague," implicitly advocating the application of double standards for prosecutorial decisions of the ICTY. A similar attitude is expressed in an unsigned op ed article in the *New York Post*: "When the World Courts Abuse," 24 June 2002, p. 26, where the ICTY is being reproached for "its typical contempt for American sensibilities."

[37] Ian Johnson, *The Judge as Prosecutor : Two Days at the "Trial" of Slobodan Milosevic*. At *emperors-clothes.com/articles/ian/day.htm* , 19

June 2002.

[38] Christopher Black has pointed to the lack of due process and impartiality in the setup and functioning of the Tribunal: "An Impartial Tribunal, really?" at *emperors-clothes.com/analysis/impartial.htm* (2000; posted 16 June 2002).

[39] "The Annual Report of 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" ("The Tribunal's First Annual Report [28 July 1994]"), Chapter IV: The Adoption of the Rules of Procedure and Evidence, Par. 72, in: *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. Yearbook 1994*. United Nations / ICTY, 1995, p. 99.

[40] Ibid.

International Committee to Defend Slobodan Milosevic*ICDSM

International Conference

The Hague Proceedings against Slobodan Milosevic:

Emerging Issues in International Law

The Hague, Saturday, 26 February 2005

The Hague: Contravening the Principles of Nuremberg

(transcript)

by John Laughland

The concept the new world order dates from 09.11. because it was on the 11th of September 1990 that the elder President Bush proclaimed it. He proclaimed a new world order just after Iraq occupied Kuwait and thus the Warsaw Pact and the Soviet Union were collapsing. And when he proclaimed it, what he meant was, that the world would no longer be divided into two halves as it had been since 1945 and also that henceforth, because of the end of the division, international law could be used in a radically new way. And in particular it could be used in a criminalizing way and in order to punish states who disobeyed it.

The first implementation of that new understanding of international law was of course the war against Iraq and while one could argue that the attempt to repel Iraqi troops from Kuwait fitted into the old system of international relations in the sense that Iraq had committed a violation of national sovereignty – I will leave aside for the purpose of this discussion facts, which I'm sure, many of you are aware concerning the role of the

Americans in the original invasion and indeed of course Iraq's own offer to withdraw before the war started. But for the purposes of this judicial discussion we could perhaps say that the action taken of the proclamation of the new world order fitted into the old system of international relations whereby the primary rule was the protection of national sovereignty. However, as we know, that rapidly became something totally different, in particular after the Iraq war, the notion of crimes against humanity, ethnic cleansing, was invoked for the first time after Kurds fled to the mountains in Turkey to justify the regime of punitive sanctions under which Iraq suffered for the next decade. And of course, legally speaking, it was – if we can use the word legally in the context of the Iraq war of 2003 – it was those resolutions voted at the time of the proclamation of the new world order which the allegedly provided the legal justification for the attack in 2003. In other words, the key point about the new world order from a judicial point of view is that it criminalizes international relations. It turns international law from a contractual arrangement between sovereign states with no superior enforcement powers into something which is effectively indistinguishable from the criminal procedure of a domestic state. And that is what he has meant, that is what President George Bush senior meant when he proclaimed a new world order. And we can see the effects of that very clearly.

Everybody knows about Guantanamo Bay. What is shocking about Guantanamo Bay – again, I'm leaving aside as much as it's possible a certain number of factual consideration – but what is shocking from a legal point of view, from an international law point of view is that the prisoners in Guantanamo Bay are considered to be criminals. This is a radical departure from the traditional laws of war. The traditional laws of war do not consider that a soldier fighting in a hostile army is by definition a criminal. On the countrary, the Geneva Conventions which provide for the treatment of prisoners of war, clearly came into existence precisely because people held in detention as prisoners of war are not considered to be criminals as such. Again, they may have done things which are bad but the mere fact of being soldiers does not make them criminal. However, in the war on terror they are.

The 'war on terror' as an expression illustrates perfectly this radical reform of international relations which occurred in 1990. Why does it illustrate that? Because terror by definition is a criminal activity and war is by definition an interstate activity. So by proclaiming the war on terror, George Bush junior has given perfect expression to this complete confusion between international relations – in other words, the relations between states – and the criminal procedure of a state. Or to put it in another way, he has proclaimed a new international system which treats the entire world as if it were the part of the domestic jurisdiction of the United States of America. And that's why anybody who fights in whatever capacity and indeed in whatever country is regarded as a criminal.

Now, it's obvious that the international criminal tribunal for the former Yugoslavia comes directly out of this logic, it comes directly out of this transformation of the free association between states which used to

constitute international law into something resembling the criminal procedures of a state.

And the justification for this criminalization of international relations is usually held to be the trials at Nuremberg held in 1945 after the defeat of Nazi Germany. In fact, it's difficult to exaggerate the role which the Nuremberg jurisprudence plays in the ICTY trials. The masses of references to Nuremberg in the various judgments, the name of the tribunal 'International' and 'Tribunal' is obviously taken from the International Military Tribunal which is the name of the court that tried the Nazi leaders.

People associated with the Holocaust have put their penny worth into the various hearings – Eli Wiesel for example, appeared, disembodied anyway, on a video linked during the sentencing of Mrs. Plavsic.

And indeed, one could say frankly that of all the many perversities of the Milosevic trial none is perhaps more striking than this extraordinary charge that he was pursuing a 'Greater Serbia'. I can only think for my own part, that this does indeed come from the attempt to impose the Nuremberg jurisprudence on what happened in Yugoslavia in the 1990s. It's almost like putting a non-fitting suit too large to suit on a small man or the other way round.

Obviously, the Nazis were accused and convicted of creating a Greater Germany and so it almost seems as if the people in The Hague have simply taken the people in the Nuremberg tribunal, the Nuremberg jurisprudence off the peg and tried to fit it on the events of 60 years later.

But in spite of this, constant invocation of Nuremberg as the justification for the criminalization of international law, what I would like to show this afternoon is, that in fact the Nuremberg tribunals did precisely the opposite. I referred a moment ago to the fact that prior to the proclamation of the new world order, you were not considered to be by definition a criminal if you fought, if you were a soldier in a foreign army. This in Latin is the concept of justice – hostis. An enemy is just in as much as he is an enemy, he is not a criminal in virtue of being an enemy. And this notion came from the juridical fact that the world is divided up into different jurisdictions and so jurisdictionally it was impossible to say if somebody from another jurisdiction was a criminal. Moreover, war was more or less accepted as an inevitable part of international relations and there was no overriding authority which enable people to say, whether somebody was criminal or not. In other words, the law reflected the view that the world was made up of sovereign states. The Nuremberg jurisprudence, actually far from undermining that idea, far from undermining the idea that the world was divided up into sovereign states, in fact, based the whole of its jurisprudence on it. It based the whole of its jurisprudence on the idea that the world was divided into sovereign states. It did this because it did it for a reason and it did it in a way. The reason why it did it is that the Nazis themselves had of course radically questioned, both in their acts in their writings, the notion of states sovereignty.

The Nazis invoked overriding concerns to human rights when they issued the Ultimatum and when they ultimately occupied Czechoslovakia. Same thing for the proclamation of war on Poland. In both cases the justification was, that German minorities, which had been left outside the Reich after Versailles, would being abused by the states that now occupied those territories that now – sorry, not occupied, - but now were on that territory. In other words, the entire war effort, the entire Nazi war effort had at its starting point the doctrine of humanitarian intervention, perversely Jews of course, but this was the doctrine.

And as this has been said already by many speakers, the primary crime of which the Nazis were accused and convicted was of course crime against peace. A crime of planning and executing a war of aggression. And this is the central juridical fact of the Nuremberg trials. All the other aspect of the Nuremberg trials flow from it as logical deductions from the primary accusation of waging an aggressive war and thereby infringing states' sovereignty. One of the things that flows from it and was quite clearly discussed in the judgments and in the interpretations that were given of the Charta, even before the trials began, was that nothing which happened before the war started on the 1st of September 1939 could be adjudicated by the Nuremberg trials. The Nuremberg trials tried the laws of war and therefore no acts committed before the 1st of September 1939 were adjudicated by them, because since they were applying the laws of war clearly until a state of war occurred, no actions committed before that date fell under the tribunal's jurisdiction. And therefore, although the Nuremberg trials did of course try acts which were not covered by the existing laws of war – in particular of course crimes against humanity – the laws of war by the way, people talk about Nuremberg as being an innovatory tribunal, a. s. o., and laws of war are extremely ancient and when I say extremely ancient, I mean, you know, you can find 13th Century precedence for laws against pillage and other excesses that are committed by soldiers in wartime. But the fact is that the other crimes which were not covered by the laws of war that were prosecuted by Nuremberg, in particular, crimes against humanity, were only prosecuted to the extent that the judges in the prosecution considered that they formed part of the overall part to carry out an aggressive war.

In other words, people today, and I just want you to draw for a moment on this rather slightly Byzantine baroque reasoning because I think we have to say that the Nuremberg jurisprudence was, shall we say, imaginative, please draw for a moment on the fact that those who invoke the Nuremberg trials in justification of present trials for crimes against humanity are overlooking the fact that crimes against humanity were only tried at Nuremberg in a much as they were considered to have formed part of the overall plan to conduct and carry out, to plan and carry out an aggressive war. In other words, if there had not been this accusation at the center of the Nuremberg trials then crimes against humanity would not have been prosecuted.

This point came out very clearly in the Nuremberg trials themselves, in other words, in the trials of the 20 Nazi leaders, the trials which started in

November 1945 and finished in, I think, May 1946. When in the going trial the tribunal rule is as follows: at court, insofar as the inhuman acts charged in the indictment and committed after the beginning of the war did not constitute war crimes, they were all committed in execution of or in connection with aggressive war and therefore constituted the crimes against humanity. Now, as we can see quite clearly in the rulings, the crimes against humanity were justifiable only to the extent that they constituted part of the overall plan to commit an aggressive war.

Now this leads to some very surprising conclusions. Surprising really only because we have forgotten in fact how intelligent the Nuremberg jurisdictional reasoning was. You see, today, the people who justify the proceedings in The Hague say, well, a lot of horrible things happened, somebody must be held to account for them. That is not a judicial reasoning, that is the reasoning at best of a vigilantism but we have had so much of this now that I think it is so refreshing to draw for a moment, on how judicially intelligent the Nuremberg rulings were. For example, in the 1947 trial of judges, because after the end of the Nuremberg trials the Americans in their sector carried on a number of other trials which went on for a couple of years after 1946. And one of them was of judges and members of the officials in the Ministry of Justice who were prosecuted for having passed various laws which it was alleged and they were convicted of course at many cases, had caused, had expressed, you know, had been the instrument of racial persecution a. s. o. This trial by the way, the one I'm talking about in 1947, is the one that the film was made with Spencer Tracy and Marlene Dietrich. Anyway, in the actual trial itself the judges made the following very interesting remarks about the relationship between the universality of a crime and the right of judicial organs to prosecute it. I quote "this universality and superiority of international law" - the judges said – "does not necessarily imply universality of its enforcement". And they went on "the law is a universal, but such a state reserves unto itself the exclusive power within its boundaries to apply or withhold sanctions". And they concluded as follows – and this is of direct relevance to the Hague tribunals issuing of an indictment against the sitting head of state – they concluded as follows "In Germany, an international body, the control council, has assumed and exercised the power to establish judicional machinery for the punishment of those who have violated the rules of common international law". A power which no international authority without consent could assume or exercise within a state having a national government presently in the exercise of its sovereign powers.

I just repeat that quotation, "In Germany, an international body has assumed and exercised the power to establish judicional machinery for the punishment of those who have violated the rules of common international law", that this power, in other words, the power to punish people is "a power which no international authority without consent could assume or exercise within a state having a national government presently in the exercise of its sovereign powers".

Nevertheless, this ruling of the 1947 Nuremberg trial clearly states that, however abhorrent the alleged crimes are, it is juridically not possible to

prosecute them on a state (where it was obviously the case in Yugoslavia in 1999), where a state is in possession of a sovereign body. Now, these – the point is, of course, that in the Nuremberg case the allies simply said, that they were the holders of sovereign powers in Germany and indeed, what we must never forget in discussing the Nuremberg trial is, that prior to the end of the war or rather the end of the war came when Germany did something which no other state, as far as I know, has ever done ever in the entire history of international relations, maybe I'm wrong, and that is, offered what is known as an unconditional surrender.

The unconditional surrender – bedingungslose Kapitulation – meant that there was literally no German government and so that is why of course when the allies arrived and took control of Germany, they considered that legally speaking, they were the holders, the temporary holders of sovereignty in Germany. This is completely unlike the normal rules of occupation in a state. Indeed the judges in Nuremberg drew the distinction between their presence in Germany after 1945 and say, the presence of German troops in Poland after 1939. In other words, without unconditional surrender it is simply juridically not possible to prosecute crimes against humanity.

Now, these points are not just a matter of ancient history. They continue to form international law, in other words, not what the Hague Tribunal administers, the ICTY, up right unto our very day. I'm sure, many of you in this room are familiar with the 1986 case, Nicaragua versus the United States of America of 1986, where Nicaragua took the United States to the International Court of Justice for the abuses committed by the Contras.

Now, that ruling is an extremely interesting one for two reasons, one of them has nothing to do with my own talk, but just I mention is because it is so relevant, particularly of course to the indictments for Croatia and Bosnia. As I'm sure you know, the court found that although the Contras had been entirely created and set-up by the United States and although by the way, even the United States refused to appear in the hearings and represent its own position, the court found, that the United States could not be held legally responsible for atrocities committed by the Contras. In other words, the threshold of command responsibility in existing international law is extremely high. Nobody doubted that the Contras have been created by the United States but it was nonetheless deemed by the judges that the control exercised over them was not sufficient to warrant command responsibility and that's of obvious relevance to the indictments for Bosnia and Croatia where obviously command responsibility in a foreign country between Yugoslavia and/or between Serbia and Croatia is at issue.

But I mentioned that earlier in passing, what I really want to say is, that this same judgment also concluded, that humanitarian intervention was completely incompatible with the existing rules of national sovereignty, this is 1986. And it found, like the court stated, that there is no rule in customary international law permitting another state to exercise the right of collective self-defense on the basis of its own assessment of the situation. Although the Americans didn't contest the case, nonetheless

their arguments were discussed by the judges and so the judges found that even invoking self-defense was not enough, because of course the country, or at least that's what it said, could not be adjudge in its own course.

But then even more radically the same court concluded this, the court really found that that does not exist a new rule opening up a right to intervention by one state against another on the ground that the latter has opted for some particular ideology or political system. That alleged violation of human rights could not be taken as justification for the use of force, since the use of force could not be the appropriate method to monitor or ensure respect for human rights. In other words, this ruling from very recently, from 1986 totally rules out humanitarian intervention as being incompatible with the national sovereignty exactly as Nuremberg had done in 1945.

Indeed, in 2002 the International Court of Justice ruled on a case between Congo and Belgium. Belgium, you may recall, decided that in a wonderful moment of imperial Belgian hubris that its courts would have universal jurisdiction and that they would be able to rule on things over the entire planet. The Belgian judicial system more nearly grounded to a halt because everybody filed complaints about their favorite enemies. So complaints were filed against General Pinochet and Fidel Castro and Slobodan Milosevic and everybody. And more importantly, the American Administration told Belgium that if it pursued its indictments against Colin Powell and Donald Rumsfeld then NATO would be put in Warsaw or somewhere and Belgium would lose an important source of income.

So that way it came to an end, but before it came to an end, Belgium issued an arrest warrant against a man who at the time of the arrest warrant was the Foreign Minister of Congo, of the Democratic Republic of Congo and it ruled that this international arrest warrant was illegal and instructed Belgium to withdraw it and I quote "Belgium committed a violation in regard of the Democratic Republic of Congo on the rule of customary international law concerning the absolute inviolability and immunity from criminal process of incumbent foreign ministers and in so doing it, violated the principle of sovereign equality amongst states".

In other words, the principle of sovereign immunity which is of course another way of saying that the world is divided up into different jurisdictions, remains an active part of international law even in 2002. In other words, even a decade after the creation of the International Criminal Tribunal.

And part of the judgment is extremely again intelligent, I think, in explaining why immunity from prosecution does not mean impunity. People who advocate the Hague Tribunal and the other ad hoc tribunals always say, we can't allow people to commit atrocities with impunity. And because the two words sound the same, impunity, immunity, they behave as if they are the same thing. But they are not the same thing, they are not even the same word. And the judgment ruled on this are very

sensibly, it said, I quote "the court emphasizes that the immunity from jurisdiction enjoyed by incumbent ministers for foreign affairs does not mean that they enjoy impunity in respect of any crimes they may have committed, they're respective of their gravity. Jurisdictional immunity may well bar prosecution for a certain period or for certain offences. It cannot exonerate a person to whom it applies from all criminal responsibility".

In other words, the problem with the Belgian arrest warrant was not that the gentlemen who was Foreign Minister of Congo may or may not have done horrible things for which he shouldn't get off lightly, but instead the Belgian quite simply did not have jurisdiction over Congo and that's how it had now right to issue such a warrant. And as I say, this is a judgment from 2002 and it shows that the issue is completely live in international law and that the Hague Tribunal is in that sense in breach of international law by continuing to behave as if it had been rescinded.

I'd like to conclude by saying that when people defend national sovereignty as I do, I make the point by the way that everything that I have said is so far is factual. I've simply told you what the law is as far as I understand it.

I'm now going to express an opinion on about why I think it's a good thing, but I make that distinction, because one of the many perversities of the Hague Tribunal is that it does not operate on what the law is but instead on what it would like the law to be. Some former behavior which is about a perfect expression of lawlessness as one can imagine.

When people talk about national sovereignty as Nuremberg did and as international law has done ever since, it does so, I think, for two extremely important and desirable reasons.

The first is, that by accepting in international law that the world is divided into different jurisdictions, in other words, that there are different states, which is in any case a fact, we give traditional credence, we leant credence to the idea that there is or could be a balance of power between states. Now, as we say, it is a good thing that power is diffused between different states exercising jurisdiction over different parts of the world.

I said at the beginning of my talk that the new world order began and was facilitated precisely when the counterbalance to American power collapsed in 1991. So, I think, generally speaking, it is a good thing that power be diffused. I'm less sanguined than some other speakers today about the desirability of the International Criminal Court operating, because I fear, that it will behave as badly as the ICTY, but also more generally, because I think, that the centralization of power can itself lead to greater abuses whereas if power is separated among different states then that potential is perhaps lessened.

But the second reason, and I think this really is in many ways the most frightening aspect of the attacks on sovereignty. When we talk about the sovereignty of a state, we do not mean, as the enemies of sovereignty say, simply the discretionary executive power of a state. When

sovereignty is attacked, its enemies always say, ah, but sovereignty is nothing but a shield for human rights abuses. What they are talking about is the abusive use of executive power in a state. But state sovereignty does not refer simply to executive power, state sovereignty is being a characteristic of a state refers not only to its executive power, but much more importantly to the whole constitution of the state, including of course its judicial functions and so those people who say, that state sovereignty should be abolished which is effectively what the dialogues of the ICTY say, are saying that states should be abolished in their judicial existence as much as in their executive powers.

And that is why the powers wielded by the Hague Tribunal are so profoundly incompatible with law, because they are aimed at the destruction of states as embodiments of jurisdiction as much as of executive power. And that's why I conclude, I'd like to quote or rather misquote - I don't remember who invented the phrase - was it Madeleine Albright, Bill Clinton, I think the concept of rogue states which has informed so much of American foreign policy should in fact be applied here to the Hague Tribunal. Anybody who looks at international law, by that I mean the ICJ, customary international law and the facts of the world can see that this is a rogue Tribunal and therefore ought to be dissolved.

International Committee to Defend Slobodan Milosevic*ICDSM

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The Hague Proceedings against Slobodan Milosevic:

Emerging Issues in International Law

The Hague, Saturday, 26 February 2005

Keynote Address

(transcript)

by Ramsey Clark

Thank you very much, particularly Vladimir, for bringing us together for this important opportunity to analyze the meaning of the prosecution of Slobodan Milosevic and what people who want peace on earth ought to do about it.

I have to look at the case from, and present it as I see it, from a historical standpoint, because of the devilization in misunderstandings that is so pervasive in all of the recent problems of aggression in international criminal justice that we've had.

Humanity has struggled to create organizations that afford some opportunity for independence, true independence - economic, political and social, and peace, and among them was the idea that a Federation of Southern Slavs would be an important element in any hope for peace and independence from foreign economic, political, military exploitation. And as we look at the history before World War I, you see that there is a lot of evidence to support the idea a Federation of Southern Slavs is of utmost importance to peace in that region and the viability of political

independence for the Slavic peoples in the South of Europe. And the beginning of that effort followed World War I, many believing that at least the triggering factor in the violence was the assassination in Sarajevo.

The first dismemberment or cannibalization – if you want to think of it that way – of a Federation of Southern Slavs occurred rapidly in April of 1941, though it needs to be remembered and thought of in connection with even the charges in this trial. Suddenly, that first week in the springtime month of April, the Slavic Federation was invaded by Germany, by Italy, by Hungary, by Bulgaria and even by Albania. And it was chopped to pieces. Croatia was given the appearance of political sovereignty and independence through the Nazi government that recovered throughout the region for the next four years, but Slovenia was divided between Italy and we think Germany, but certainly Austria which was part of Germany by this time and after the Anschluss was a major factor – so there goes your richest of the six republics after World War II. The occupation of Croatia - and which it really was, included Bosnia – as we see it today, or saw it after World War II in the new Federation of Southern Slavs. Bulgaria occupied Macedonia and half of that part of Serbia called Kosovo; Albania occupied the other half. Hungary came down as far as Novi Sad and – I don't pronounce all of these Yugoslav words right any more than I do all the English words – but Vojvodina, whatever it is, an area that had a history during the Austro-Hungarian Empire of having a lot of Hungarians in there but it was part of the Yugoslav Federation.

So here you had a war of aggression in the only proper definition of "place at peace" – it was no threat to its neighbor, suddenly attacked and invaded by its neighbors' military forces. And the moral of the studies of human misery which are many and some are dire, you don't find many that are really worse than the four years of the early !forties in what has been called Yugoslavia from time to time – the genocides of Romany and Serbs and anybody else that happened to look around to someone. Then finally came the end of World War II and at Nuremberg, where the tribunal, following the Charter which listed as the first crime against peace, the war of aggression, determined that the war of aggression was the supreme international crime, and included among the wars of aggression that were adjudicated, the defendants accused and found guilty, was the cannibalization of Yugoslavia.

We talk about history repeating itself. When I first went into Yugoslavia in 1946 – I was a young marine who was shot at. I can still remember looking out the window at the anti-aircraft fire. I thought, why are those people shooting at us? It took me a long time to realize how right they were. They were shooting at us because they were angry, because they didn't think we had any business coming in there. I was just going in delivering mail, so to speak, classified documents for courier servicemen.

I went back in 1951 and I went through the country and saw it reviving – I mean, the devastation was still bad as it was all over Europe. I had seen all of this devastation of Europe really all the way out to Moscow,

Warsaw, all of it in 1945 and 1946. But the people were together and the Yugoslav Federation was working. It was working, and somehow or other, with all the history and all the problems and all the national divisions there was cohesiveness and it had the strength among all these East European countries to lead and maintaining a high degree of independence between the United States and Western Powers and the Soviet Union and the Eastern Bloc. It helped form the non-aligned and it was hard to kick around. It was right in the middle.

With the collapse of the economy of the Soviet Union, the Soviet Bloc, the leading economic potential in the whole region was Yugoslavia, and it was growing in dynamic for anybody who went in there. But if by US standards this was to be the end of history there could only thereafter be one form of government and that is capitalist plutocracy if that is not redundant. Because the United States is not a democracy and it's a gross misunderstanding if you think it is, it is governed by the wealth of the country and the wealthy people of the country. They own the media, they own the Pentagon, they own the munitions factories, they own the major corporations and they determine the policies of the government. And that's not democracy, when you spend each party, each major party, we only have two, which means you have no real choice because they both have to say the same thing or they'll lose, you've got to get 51 percent of the votes. They both spend a billion dollars in the campaign and 40 percent of the people don't even think it's worth voting, then you don't call that a democracy.

But anyway, Yugoslavia had to go. If you doubt it, ask why was the Congress in the United States insisting bypassing the Federal Government of Yugoslavia that each of the six republics hold elections to elect governments setting aside the governments they had, and unless they did that within the year, there would be no foreign aid, there would be no US cooperation with the individual republic, not with the Federal Government of Yugoslavia which had none anyway, couldn't expect any. And there would be sanctions separately against the republics as there were sanctions, economic sanctions then imposed upon the Federation. And then you saw the beginning of the coming-apart of the Federation.

By far the bloodiest war for the United States of America, that is, our people, which we ever fought, was fought precisely to prevent the break-up of the Federal Republic of the United States – the Civil War. We lost more lives of American soldiers in that war than all of our other wars put together, from the Indians to what we call the revolutionary war, the war of 1812 against the British, and the Mexican-American war where we took half of Mexico by force. We were taking Texas as my state previously by force, all the way to World War I and World War II, more killed in the Civil War. And the sole basis for the Civil War, some say, it was to free the slaves but let me tell you, anyway it wasn't about freeing the slaves, it was about holding the Union together because they had to have this aggregate power.

It is precisely what they intended to deny to Yugoslavia. And you saw

Slovenia split-off first fairly peacefully, and you saw the President of Yugoslavia negotiate that loss for the Federal Republic. You saw Croatia withdraw and immediately countries like Germany recognizing it and breaking up this Federal Republic that was created by the League of Nations so to speak, the first time, as an essential to peace and then you saw the miserable time in Bosnia. And before all this, 90 percent of all the economic trade of the Federal Republic of Yugoslavia was among the six federations. In truth, the economic viability of any of the republics depended on that association. The ability to exploit, dominate them, was overwhelming without it. And that's what's happening and that's what it was about in part. But it was also to make a psychological point that it was a failure that the system didn't work. You saw Macedonia come off. Now you see we are not at the end.

I've got in this package two articles from the New York Times of the 22nd and 23rd of this month. On the 22nd, Frank Carlucci, who was a long time CIA Executive, Agent to Executive and Secretary of Defense for almost two years in the Reagan Administration and then Head of the Institute Carlyle – and we need to know what that is if we want to have freedom any place – and is now President of Merits of the Institute Carlyle and he is saying, let's not forget the war is not over, and the war which is not over, that he is talking about, is Kosovo. And he says, the only solution is the total independence of Kosovo. Does he know what the people of Serbia think about that? Does he know the historic meaning of that? Does he know what's happened in Kosovo since the war of aggression by the United States and some of its NATO friends at that time? And what is the plan? The plan is to complete the independence by mid 2006. And this isn't just a casual article, this is what the United States intends to do in Kosovo. On the 23rd you have the Prime Minister and the President of Montenegro saying that separation and full sovereignty of Montenegro now is essential. So you have not only lost five of the republics, with only Serbia, but Kosovo and Montenegro, we won the five republics what we have, and how long will it be before it'll be the other parts of Serbia, so that, you know, balkanizing is a verb in the English language, it means breaking into small parts, it comes from the history of the Balkans, so they have balkanized the Balkans as they have never been balkanized before.

And who is to blame for all this? Of course, Slobodan Milosevic is to blame for all that, who else. He is blamed for doing what Abraham Lincoln did in the civil war and that is trying to preserve the union. I hate to use American analogies, but that's where it comes from and that's what I know most. Lincoln said many times, that his sole purpose was to preserve the Union, in other words to preserve the Federation of States that made the United States. And here the sole purpose, the United States was to destroy the Yugoslav Union, so the end of history would be real and so it could be done. And to do that, you had to demonize and destroy the leadership that sought to preserve the Yugoslav Union.

And to have its way, United States had to corrupt the UN and international justice, and the way it did it was by causing the Security Council and the role of the great personal passion on the subject,

prejudice you might Madeleine Albright led the effort and the Security Council - caused the Security Council to authorize a criminal court, to try those who were responsible for crimes against humanity and war crimes in former Yugoslavia. When the supreme international crime is the war of aggression and the war of aggression that was waged against Yugoslavia was not only political and economic, it was military from beginning to end, and it's still going on there. If equality is the mother of justice, if equal justice under law is the founding principle of the rule of law, then the International Criminal Tribunal for former Yugoslavia fails to meet both of those standards because it persecutes all the enemies of the United States to ensure further domination of the region. And in a sense it is more deadly than the bombs.

I was in Serbia early prior the bombing in early May and in the last part in June and the bombing was deadly. I mean, there were cluster bombs and apartment development in Novi Sad and a major hospital complex in Nis and all over Belgrade. Billions of dollars of destructions in property and thousands of deaths against an association of defenseless people. If there was any anti-aircraft fire that started to play a hazard against us in 1946 was far more capable defending the country than any anti-aircraft fire they had against the US military assault on Serbia. You bombed Serbia to protect that part of Serbia called Kosovo was the theory. But more important is how the central is how it corrupted the United Nations, because the United Nations Charter – and you can read it as long as you want to – and you'll never find any provision that authorizes the creation of an International Criminal Court. And it would never have been a United Nations if there had been any suggestion that that Charter contained the power to create an International Criminal Court, because the people who read the Charter would never have permitted themselves to be subjected to the power of that court, because they don't intend to be accountable to anyone. Which is why you see the United States so feverishly opposing the ICC, why you see it running from country to country to persuade the country to enter into a bilateral treaty not to surrender US citizens or US personnel, it may be aliens in the US-Military to the ICC. Because they intend that their agents be above the law. The court itself is illegal, it ultra violates the Charter and unless that's addressed, its precedence will remain even if the practice - as we hope – of creating ad hoc tribunals to pursue specific enemies.

I mean, some of us, Chris Black has just spent three months on only one of many trips to Tanzania where the International Criminal Tribunal for Rwanda sits. And all the blood that was spilled in Rwanda in 1994, the majority was clearly the blood of Hutus. A Hutu has never been indicted in that court. The US surrogates, the Tutsis, have never been indicted, yet they were responsible for most of the deaths. They invaded the country if not hours before, at least hours after the plane carrying the Presidents of Burundi and Rwanda, appeared to cause the outbreak of violence. They were invading already, they had pre-positioned people. They had a regiment in the capital of Rwanda itself, Kigali. Then they soon took over the whole country and there has never been a case against them. They've caused thousands and thousands if not hundreds of thousands of

deaths of Hutus and after 1994 they've caused deaths of Hutus in Eastern Zaire as it was called at the time in Congo, and they've been in the US service for the Congo and for Burundi and for Rwanda and for Uganda, and they are above the law. While the Hutus are systematically persecuted and more than hundred and ten thousand are still kept in prison since 1994 or they were caught thereafter without trials. The vast majority without even being charged in Rwanda, and here you have this symbol of international justice illegally created by the Security Council, again at the insistence of the United States, prosecuting or persecuting illegally.

So what it is, it's those who, to borrow a phrase from Professors Singh, those who heroically resist - as President Milosevic did - aggression, and the domination of their countries, pay the price. What you have done is, you've used, what you call international justice and power as a weapon of war by other means, and deadly war.

Look at the fairness for a minute, Robert H. Jackson, who is our – when I say our, I mean in the US, because I still consider it part of my responsibility, that's why I act so frenetically to protest his wrongful conduct, because if the highest form of patriotism is to protest what your country does when it's wrong, not praise what it does when it's right or particularly not praise what it does when it's wrong. But what you see, is the use of these courts criminally, and Jackson at Nuremberg which had its problems, observed that the record on which the Nuremberg case would be tried, would be the same record on which history would judge the judges at Nuremberg.

Here you had the investigation of President Milosevic beginning in 1994 in the fall, in October and November. For two years plus, the first Chief Prosecutor investigated as diligently as his capacity permitted, the culpability of Slobodan Milosevic for what happened in Slovenia and in Croatia and in Bosnia and in a few other places. He wrote in his memoirs after he left that he found no evidence. Then Louise Arbour succeeded him and in May of 1999 she brought the indictment of President Milosevic for acts that allegedly had occurred earlier than 1999. Not in Slovenia, not in Croatia, not in Bosnia, but in Kosovo, at a time when the UN was bombing the daylights out of Pristina, not to mention the rest of Serbia.

And they had all these years to investigate, they presented over a period of more than 300 days of trial, 200 witnesses, 36,000 pages of transcript, 500,000 documents in the case, and they've had President Milosevic argue with them most of the time as to whether he could even speak in court or represent himself in any degree, isolated from support and he is supposed to defend this case under those circumstances. There is no intention that he should be able to defend the case or to present his evidence. And even now you see a bunch of judges haggling at him after the long period in which they tried to present evidence but failed of his involvement, saying you're too slow, or that's irrelevant or improper, you're making a political speech, or something like that.

But we don't want history to have to judge this record, to judge this court, because we know now that the court is illegal and we know now that its purpose is to destroy opposition to the United States.

But there is one extremely important, extremely optimistic and even happy side to this otherwise miserable story, and that is the role of the human spirit. President Milosevic, yesterday when some of us met with him, asked that his very best wishes be extended to everyone here, which I do, is his deep concern for the future of Yugoslavia and his great joy that there are people who recognize it and stand up to see that it's a better day tomorrow. And his spirit is absolutely undaunted. In more than 4 years of solitary confinement essentially, cut off from family, cut off from friends, cut off from all forms of support, demonized constantly.

The Michael Jackson trial is getting a thousand times more attention than the Slobodan Milosevic trial. I mean that sick, pitiful little trial. Michael Jackson is supposed to be worthy of the attention of the world, but it is, what we hear about.

And his fighting spirit is higher than ever. I've watched the law for a long time as you can tell by looking at my face and I don't know of a more heroic resistance for an individual under every form of adversity, has stood up tall and resisted heroically.

And more than that, for those who heard him, can understand demonstrated that the real criminal acts were by those who were breaking up the Federal Republic of Yugoslavia and not those who were trying to preserve the Union. The violence and deaths were caused by the others overwhelmingly. And they are the ones who have created this court that are sitting in justice.

So the question is what do we do? I think, first we have to help create the understanding that the real criminal conduct – it must be examined – is the war of aggression against the former Republic of Yugoslavia as it is called and demand accountability for that.

I think we also have to insist that there be full support for a new effort for a new Federation for Southern Slavs and others in the Balkans. Otherwise they're going to be servants in the basement of Europe. There'll be no future and no real hope for them. They are not only cannibalized, they are atomized.

We have to free Slobodan Slobodan Milosevic. We have to see that the ad hoc criminal tribunals of the Security Council are declared illegal, as they obviously are. If we want peace we have to do that which many people are skeptical about, and that is, we have to create a criminal court that can hold power accountable. Because what we are looking at now are abuses of power including the corruption of criminal justice to have its way, and it has to begin somewhere. And we have to help find the means for financing, staffing and supporting an ongoing effort to bring to the attention of the public and those who have the power to accomplish some of the things that we believe are essential to the future of the planet in peace. Because the terrible war of aggression today on the planet and

the devastation that it can wreak far exceeds anything that humanity has experienced to date. So in the name and spirit of Slobodan Milosevic, let's believe that we shall overcome, then act to do it.

THE DECISIVE BATTLE FOR TRUTH NEEDS YOUR HELP NOW!

International Committee to Defend Slobodan Milosevic*ICDSM

International Conference

The Hague Proceedings against Slobodan Milosevic:

Emerging Issues in International Law

The Hague, Saturday, 26 February 2005

The ICTY case against Slobodan Milosevic:

Some Questions of International Law by Alexander Mezyaev

The proceedings against Slobodan Milosevic at the International Criminal Tribunal for the former Yugoslavia [ICTY] has been under way for three years now (it began on 12 February 2002). In that time, the Tribunal has made a series of decisions that raise serious questions of both ethical and legal nature, especially in the realm of international law.

However, this process should be seen in the broader context of ICTY's operations; in its 12 years of existence, the Tribunal has made many rulings not only at odds with international law, but also often in direct contradiction. These rulings go beyond the boundaries of criminal and political issues the Tribunal is dealing with. Due to the special relationship of Western states with the Tribunal, its activities and "innovations" have come to be seen as "progressive development of international law," and its controversial rulings as the source of contemporary international law.

This article attempts address and analyze the essential problems

with international law that the Tribunal has in general, and its conduct in the Slobodan Milosevic case in particular.

1. General problems with international law in the activities of the ICTY

This issue merits a monograph of its own; this article will limit itself to noting general problems, with the purpose of defining the context for analyzing the process against S. Milosevic.
Chronologically, the first legal problem of the Tribunal was its illegitimacy. Much has been said and written about this, so we will only note that the creation of the ICTY by the UN Security Council went beyond the UNSC's authority. Practically, the UNSC blatantly violated the UN Charter, usurping judicial authority. Furthermore, this decision violated a basic and general principle recognized in all legal systems: "One may not delegate the authority he does not possess."

The illegitimacy of the Tribunal has been noted by many jurists, including those that actively support the ICTY. Several authors who noted the illegitimacy of ICTY's creation have argued nonetheless that this action was justified, as the ICTY would eventually "serve the good cause." However, these hopes were not destined to be. The Tribunal's activity has shown itself to be ridden with the most outrageous violations of international law, and even its own Statute. We shall note the basic few.

Since the beginning of its work, the Tribunal began inventing its own rules and amending them at need. It violates the basic precepts of law that a court can decide on its own process rules. Under the guise of regulating "technical" matters, the court has actually changed the essence of the proceedings. Thus it introduced the institution of plea-bargaining, which in practice translates into the prosecutors dropping most charges and promising more lenient penalties in exchange for a guilty plea on one charge. In these cases, there is no debate in the courtroom at all. Plea-bargaining is outside the scope of international law, which should be the basis of the Tribunal's work, and it is not sanctioned even by the Tribunal's own Statute. Neither the ICTY nor the jurist community have been able to present convincing explanations and legal justifications for such a change to the Statute. During a video interview I had with deputy prosecutor Graham Blewitt, he answered my question about the legal concerns about plea-bargains by saying there was "nothing terrible" in that "novelty," and that it was a common practice in his homeland of Australia. Indeed, this is a common practice in Australia; however, Australia is not the issue here, but the ICTY, and the deputy prosecutor knew that well. His answer, therefore, obviously demonstrates that even after all this time, the Tribunal has not yet come up a convincing explanation for its actions. As to how this arrangement has worked out in practice, we could point out the example of Drazen Erdemovic. A soldier of the Bosnian Serb army, Erdemovic confessed to taking part in the murder of 1200 people, of which he personally shot 120. In exchange,

the prosecutors dropped the charge of murder (!!!) and left the charge of violating the laws and customs of war. Erdemovic was sentenced to five years' imprisonment, but did not have to serve the full sentence; the president of the Tribunal granted him an early release. It all becomes clearer if one notes that Erdemovic testified that the orders to kill were given by the Bosnian Serb Republic leadership, and agreed to testify against S. Milosevic.[1]

Other "amendments" to the procedural rules have been introduced as well, changing what the UN Security Council originally established beyond recognition. What happened in fact was the creation of two tribunals: the one envisioned in the Statute, and the one conjured by the Rules of Procedure and practice. The difference between them is too great not to be a source of most serious concern. The Russian Federation has lodged its disagreement with the Tribunal leadership's policies on several occasions, including to the UN Security Council itself.[2] However, the Tribunal has paid these objections no heed, and for reasons abundantly clear: Russia has no leverage with the Tribunal, while others do. Which leads to the next issue concerning the Tribunal, no less important: its funding. The Tribunal, supposed to be funded by the UN, but receives significant amounts of money from particular states, such as the U.S. and other NATO member states. It is not a coincidence that the ICTY refused even to investigate the crimes committed by NATO during the aggression against Yugoslavia, using frivolous excuses that have no basis in law. In that regard, it is interesting to note the "slip" by one of the prosecution's witnesses, former NATO commander General Rupert Smith. During his testimony in the Milosevic trial, Smith said (truth be told, in a different context) that "as a general rule, those who pay the bills get to issue orders."

There is no basis, whether in the ICTY Statute or in international law, for secret indictments, abductions of suspects and indictees, using testimonies that were obtained illegally, secret witnesses, etc. yet the Hague Tribunal practices all of the above. Since the very first case (that of Slavko Dokmanovic), the Tribunal has practice the principle, "Arrest first, gather evidence later."

Only the blind, or those deliberately not seeing it, could remain oblivious to the partiality of the ICTY. Even though Serbia was the only state in the former Yugoslavia that did not go through a civil war, and which preserved its ethnic structure almost completely (if one does not count the hundreds of thousands of refugees from other Yugoslav republics), the Serbian leadership has been most targeted by the Tribunal. Meanwhile, none of the officials of the governments in Croatia, Slovenia, Bosnia and Herzegovina – the main initiators of the Yugoslav civil wars – have faced criminal prosecution. Confirming that this is a result of deliberate policy is the abject refusal of the Tribunal to even investigate, let alone punish, the war crimes of NATO during its aggression against Yugoslavia in 1999.

From the standpoint of this article, particularly important are the decisions of the Hague Tribunal that cause serious doubts and directly

contradict international law and practice. Among them we should note the "revisiting" of the ruling by the International Court of Justice in *Nicaragua v. The United States*; introducing new theories of criminal law (first and foremost the theory of "joint criminal enterprise," or JCE); abolishing the burden of proof for special intent in committing the crime of genocide, and abolishing the difference between deportation and forcible transfer.

Each and every one of these merits separate and detailed research. They are highlighted here as general problems, so as to illustrate more clearly the context in which we need to observe the focal case of the Tribunal, the "trial" of Slobodan Milosevic.

2. Legal problems in ICTY's conduct in the case against Slobodan Milosevic

The trial of S. Milosevic at the ICTY is without a doubt a world champion in the sheer number of violations – of international law, rules and statues of the Tribunal itself, Yugoslav law, and last but not least, elementary ethics.

Listing the violations could begin with an act against the Yugoslav constitution that was the abduction of S. Milosevic from Belgrade in 2001; violating the immunity of a former head of state; refusal to secure and protect his rights in accordance with the International Covenant on civil and political rights and the European Convention on Human Rights; use of secret witnesses and secret sessions; acceptance of dubious testimony and even perjury.[3] Since all these issues are beyond the scope of this article I will focus on the three most significant international law issues of the case, specifically set by the decisions of the Trial Chamber in June 2004.

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It is of special importance for the purpose of this article to examine the ruling of the ICTY on the motion for acquittal of 16 June 2004.[4]

The grounds for filing the motion was Article 98-bis of the Rules of Procedure and Evidence, which stipulates the right of the accused, after the Prosecution finishes presenting its case, to demand acquittal on those counts of the indictment that had not been proven sufficiently or, or had not been proven at all.

Since S. Milosevic does not recognize the legitimacy of the ICTY and refuses to have any legal communication with it, the motion was filed by the *amici curiae*.

There were more than enough grounds for acquittal. In effect, the prosecution has suffered a fiasco, unable to conduct the proceedings either on the legal or on the ethical level. Use of lies had become the norm. Milosevic had refuted the testimonies of practically every witness for the prosecution[5], while many witnesses were caught in perjury.[6] One of the witnesses admitted he was offered acquittal in a criminal proceeding in exchange for testifying against Milosevic[7] Even the former Serbian Premier Minister Zoran Djindjic, who extradited S. Milosevic to The Hague in violation of his country's Constitution, called the proceedings a "circus"! However, the Tribunal simply pretended none of this happened. Its ruling of 16 June 2004 clearly indicated that Milosevic has already been found guilty.

In effect, the ruling consists of two parts:

- An analysis of international and criminal law issues, and

- Factual material presented to the court as evidence, which not only wasn't addressed by the analysis, but even was not evaluated at all.

To focus on the issues of international law, we need to briefly address the issues with the factual material.

In their motion, the *amici curiae* pointed out a series of factual assumptions stated in the indictment that were not sufficiently proven up by the evidence, and some of them were not proven at all. This would support the analysis that the prosecution acted along the line of "arrest first, evidence afterwards." It is absolutely unacceptable that "facts" such as "murder of 27 people" or "execution of 58 men, women and children" and other of such kind, were never factually proven. Even the prosecutors themselves admitted they could not offer any factual evidence to this. The judges were therefore forced to strike these assertions from the Indictment. However, something strange happened to the significant number of facts dealing with the "sufficiency" of evidence. The judges rejected most of the *amici's* motions to dismiss, claiming the evidence were "sufficient".

Without a doubt, the "sufficiency" of an evidence is a vague concept. However, one should keep in mind that "sufficiency" is defined here in relation to the ability of the judges to accept the charges as proven "beyond reasonable doubt". Interestingly, the judges qualified as "sufficient" even some of the evidence the prosecutors did not regard as such! Also important is that a vast amount of claims were asserted as facts by the judges, not on the basis of testimonies in the Milosevic trial, but testimonies in *other cases*![8] To put it mildly, this is dubious evidence. Yet it is a common practice at the Hague Tribunal.

Especially objectionable is the fact that while asserting the "sufficiency" of evidence submitted, the judges did not evaluate it at all, and also refused to discuss the credibility of witnesses that presented it. Only one explanation is possible here: the judges approached the evidence presented as *prima facie* – but that is absolutely not what they had to do. Any *prima facie* considerations should have been made by the

reviewing judge during the confirmation of the indictment, before issuing the arrest warrant. On the other hand, the whole purpose of the motion to acquit was to evaluate and analyze the evidence submitted.

Let's look at a specific example. An expert witness cites in his expert testimony that the Serbian interior ministry (MUP) had 150,000 employees. Milosevic cites a different number, 30,000. Asked where he got the number of 150,000, the witness cannot quote a source. First he cites the wrong source, then insists, then concedes it was impossible. The witness has no other explanation. That's a textbook case of a discredited expert witness. There were many cases of witnesses not recognizing their statements, and giving contradictory statements. One witness gave three completely different versions of the same event within one minute. The list goes on.

In situations like these, it is up to the judges to decide whether the evidence given were sufficient to support the allegations of the indictment. That is impossible without analyzing the testimonies and assessing witness credibility. However, the judges refused to do so, and basically confirmed the indictment *prima facie* second time. Naturally, the motives of such a sleight of hand are clear, but they do not justify the judges in the least. If the judges refuse to assess the credibility of such witnesses, what other conclusion can we draw than that the verdict has been reached beforehand? This is the basic conclusion we made on the matter of the factual considerations.

Let us examine in more detail the most important international law issues deriving from the motion for acquittal.

I. The Kosovo indictment

1. One of the most important questions the ICTY has to resolve before addressing any particular case is the establishment of the fact that the situation of the "armed conflict" existed.

The *amici curiae* claimed that part of the Kosovo indictment could not be considered by the ICTY, since until 24 March 1999[9] there was no "armed conflict" in the territory of Kosovo.

If the court had agreed, only a few – but fundamentally important– events would have been stricken from the Indictment. First and foremost, this refers to the incident at Racak, which served as the pretext for aggression.

In defining armed conflict, the judges used the following way:

- They used definitions from the Tribunal's ruling in the *Tadic* case;
- They listed the necessary criteria for armed conflict;
- They analysed the existing evidence supporting all of the above

criteria;

- And they analysed the criteria pointed out by the *amici curiae* - which, however the Trial Chamber did not consider necessary to qualify armed conflict.

The Trial Chamber invoked the definition of armed conflict given in the verdict of the Appeals Chamber in the *Tadic* case, which says: "An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State".

Therefore, the ICTY argued that the following qualifies an armed conflict:

- Organization of conflicting parties; and

- Intensity of the conflict

For understandable reasons, the trial chamber did not address the organizational level of government forces during the Kosovo conflict, but it did address the organization of the so-called Kosovo Liberation Army (KLA).

The judges reached the conclusion that there is a preponderance of evidence that the KLA was an armed group with unified command, headquarters, areas of operation and the ability to organize security, transportation and supply. It is interesting, however, what testimonies the trial chamber used to support such a thesis. One of them was Lord Ashdown (now the High Representative of the international community in Bosnia and Herzegovina), who monitored the transport of weapons from Albania to Kosovo. Ibrahim Rugova (the so-called "president" of Kosovo) claimed that the KLA had a unified command structure. Leaders of the KLA's terrorists (who testified as honored guests of the ICTY!) claimed they had their own areas of operation. Thus the judges concluded that the first characteristic for armed conflict was present.

To prove the second characteristic – intensity of conflict – they considered separately:

- Length or protracted nature of the conflict and seriousness and increase in armed clashes;

- Spread of clashes over the territory;

- Increase in number of governmental forces sent to Kosovo;

- Weapons used by both parties.

To evaluate the validity of these elements the judges mostly relied on a series of testimonies by secret witnesses, KLA leaders, and former OSCE observers, concluding that the presented evidence was sufficient. Therefore, the judges decided there was a sufficient evidence that the armed conflict existed in Kosovo prior to 24 March 1999.

However, it is striking that the judges refused to treat as necessary the criteria for armed conflict presented by the *amici curiae*, specifically the subordination to civilian authority and control of territory. Still, the judges ruled that there was enough evidence of their existence as well.

They found support for it in the testimony of Lord Ashdown. We need to note the "fact" that convinced the judges: in his testimony, Lord Ashdown said that Rugova had told him at a meeting that he was in control of the KLA. Ashdown himself said he had not believed Rugova entirely. Later, village elders told Ashdown they recognized Rugova as their leader. However, the judges did not ask Rugova about any of this, even though he was a witness himself and could confirm or deny these speculations.

Without discussing the credibility of testimonies, we can say that it was obvious not an accident that the judges refused to analyze the statements, as shown above. That methodology (eschewing analysis in favor of *prima facie* considerations) was necessary for achieving very important legal objectives in this phase.

Assessing the methodology and conclusions of the Trial Chamber in the establishment of the situation as an "armed conflict", we must conclude that the judges consciously "directed" themselves onto a false path from the start. First of all, armed conflict should not have been defined using an abstract characterization stemming from the *Tadic* verdict, but should have relied on the norms of contemporary international law. One of them is Article 1 of the II Additional Protocol of the 1949 Geneva Convention, which defines non-international armed conflict: "This Protocol... shall apply to all armed conflicts which are not covered by Article 1 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) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol".

Had the judges not resorted to sleigh of hand, but rather considered the qualifications as given in international law – as opposed to the internal "law" of the Tribunal – they would have had to reach a different conclusion. Their motivation is clear: the judges realized it would be very difficult to prove the criterion of "applying the norms of this Protocol" by the KLA.

A series of details indicates the judges were well aware that their actions contradicted international law. First, the II Additional Protocol is actually mentioned, but only in passing ("The Tadic decision is in accordance with Protocol II") and second, the judges pretended not to

understand the motives of the *amici* and ruled the "application of the Protocol" referred not to armed groups, but to civilian authorities controlling them.[10] The judges avoided elaborating on the issue by declaring the criterion of civilian control as irrelevant. Protocol II, however, clearly indicates the necessity of ensuring the application of international humanitarian law by armed groups, not civilian authorities controlling them. Article 1 of the Protocol could also be interpreted as meaning that what was necessary was not the readiness to apply the Protocol itself, but rather the control of territory and population that would give armed groups the *ability* to apply the Protocol. Even so, the judges would have to demonstrate the existence of such control. The very fact they refused to qualify the situation in accordance with international law is *ipso facto* its violation.

Refusal of the ICTY judges to apply the norms of international law may appear unexpected, but it is hardly new for the ICTY. This is not the first instance of such behavior.

2. The second crucial issue the judges had to resolve was the distinction between "deportation" and "forcible transfer."

In general, the judges' decision was correct: they ruled that both deportation and forcible relocation were indeed war crimes. However, it is disturbing that this took so much effort.

The Trial Chamber stated that the ICTY Statute defines deportation and forcible transfer as the same crime.[11] The Trial Chamber said that if this conclusion were correct, it would contradict international law. However, this was greeted with alarm both by the prosecutors (who maintained that deportation and forcible transfer were one and the same), and the judges. In its ruling in the *Stakic* case, the Trial Chamber officially conflated deportation and forcible transfer.[12] This is one more confirmation that the ICTY is rewriting international law as it sees fit.

II. The Croatia Indictment

No less interesting are the questions of international law posed by the *amici curiae* in the Croatian phase of the trial, or the responses of the Trial Chamber.

Given that the prosecution charged S. Milosevic for serious violations of the 1949 Geneva Conventions, it had to be proven that in the entire time period there was an armed conflict of the international character. The existence of an "international armed conflict" presupposed the existence of a state, in this case Croatia. The exact

moment in which Croatia became a state, however, represents a complex problem.

The prosecutors insisted that Croatia became a state from the moment of its declaration of independence (8 October 1991). The *amici curiae* advanced an obviously weak argument that Croatia actually achieved statehood "in the period between 15 January 22 May 1992" – in other words, in the period between Croatia's recognition by the European Community (EC) and its admission to the UN.

The weakness of this argument is not so much that the *amici* offered the notion of recognition by the EC as a qualification of statehood, but that their argument was vague and therefore ineffective.

The Trial Chamber correctly defined that the existence of an international armed conflict requires the existence of a conflict between two or more states, so the timing of Croatia's statehood is of critical importance. We must note here that the judges again used the same sleight of hand, changing the points of departure for their analysis. Instead of referring to a definition of an international armed conflict from international conventions, they again referred to their "own law" – the Appeals Chamber's ruling in the *Tadic* case.

No doubt, the question was crucial. If the Trial Chamber accepted that Croatia became a state on, for example, 22 May 1992, then all the counts of the indictment referring to earlier events would be subject to exclusion. Obviously, the trial chamber could not handle such a "sacrifice," and had to approach the definition of statehood very carefully.

As the basic definition of statehood, the Trial Chamber selected the 1933 Montevideo Convention on rights and obligations of states. Relying on this definition, the court put forth the following criteria of statehood:

1. population;
2. defined territory;
3. government; and the
4. capacity to enter into international relations.

The court's arguments and conclusions regarding the first criterion – population – are very interesting. The court accepted the prosecution's argument that the Croatian Constitution defined the Republic of Croatia as a united, indivisible democratic and social state, deriving its power from the people and of the people. No less interesting is that the court considered sufficient evidence for this the testimony of former prime minister Hrvoje Sarinic, who quoted the Constitution from memory. This "fact" allowed the court to argue that on 8 October 1991, Croatia had a permanent population.

As for the matter of the defined territory the court also accepted

the prosecution's arguments *inter alia* that:

- state practice shows that the existence of fully defined frontiers is not required and that what matters is the effective establishment of the settled community;

- during examination-in-chief and cross-examination, the fact that there was a defined Croatian territory was not in dispute;

- the accused (i.e. S. Milosevic) did not challenge the existence of Croatian territory; and

- that in October 1991, official SFRY documents recognized the "territory of the Republic of Croatia".

These arguments are at the very least odd. First of all, state practice is very contradictory and often does not correspond to international law. Furthermore, it is not the source of international law. As for the "territory of the Republic of Croatia," Milosevic not "challenging" it, and its mention in SFRY documents, this is more speculation than a legal argument. It is nonsense to claim that Yugoslavia recognized the territory of Croatia in October 1991, because the same can be said of September, May or August 1991, or 1981, or 1971.

Still, the court decided the prosecution's arguments were sufficient evidence Croatia had a specific territory.

The judges pretended that the existence of Serbian Krajina, Western Slavonia, Eastern Slavonia, Baranja and Western Srem – which at different times were in effect separate states in the "defined" Croatia territory – had no legal importance. The irony is that the very essence of this part of the case against Milosevic deals with issues stemming from the separation of Serb regions! In that context, the wholesale acceptance of prosecution's arguments and disregard of legal ramifications of the existence of Serb regions in Croatia's territory looks like overt prejudice.

As their final argument the judges quoted opinion #11 of the Badinter Arbitration Commission, which stated that Croatia had become a state on 8 October 1991.[13] However, the Badinter Commission's opinion has no legal force. Moreover, no serious international law argument was presented; the court simply accepted the Commission's opinion because it was convenient.

On the issue of government, the court indicated that the Croatian government controlled 70-75% of the country's territory, that it employed administrative personnel, and enacted laws. This justified the conclusion that Croatia had an "effective government."

The last criterion for statehood the court considered was the issue of independence. The court stated that the best demonstration of independence was the ability to enter international relations.

It is known that Croatia declared its independence on 25 June 1991, but delayed the implementation of the declaration for three months

at the request of the EC.

Prosecution's arguments that presidents of Serbia and Croatia engaged in bilateral talks; that representatives of Croatia engaged in negotiations with international observers and signed treaties; and that the Croatian government was received by commissions of the EC and the UN, were accepted by the court as proof that Croatia satisfied that criterion for statehood.

The court again referred to the Badinter Arbitration Commission opinion #11, asserting that from the standpoint of international law, Croatia became a state on 8 October 1991, and concluded that there is a sufficient evidence that Croatia's statehood starting with that date. Therefore, the judges rejected the motion to acquit S. Milosevic on all counts of crimes committed in Croatia prior to 22 May 1992.

When evaluating the arguments used by the judges to establish the fact of the Croatia's statehood, one should note that the Trial Chamber unfoundedly resorted to definitions from the 1933 Montevideo Convention. To be precise, they offered an explanation – but it was entirely unsatisfactory. The court emphasized that "it has become common practice to regard this provision of the Montevideo Convention, a regional treaty, as a crystallization of the state of customary international law...". Even if this were true, the court must not simply quote "one commentator", but *prove* his assertion. This is a crucial matter, and must be backed up by evidence.

In addition to the author quoted by the judges (C. Wabrick), who wrote the chapter on statehood and recognition in the book "International Law," edited by M. Evans, there is a great amount of literature addressing this question. One must wonder why the court did not refer to the far more fundamental work of Professor I. Brownlie, member of the UN International Law Commission, who directly argued that the criteria listed in the Montevideo Convention were by definition basic, and were nothing more than "basis for further investigation."[14] Or they could have quoted Professor M. Shaw, who calls the Montevideo Convention criteria "neither exhaustive nor immutable."[15] Both of these works have been *de facto* textbooks of international law for decades, true classics in the field. That the court ignored them and quoted a virtually unknown work instead proves that the judges deliberately sought support for a different position than one commonly accepted in the contemporary theory of international law. This could not have been an accident, because there is another fundamental criterion of statehood in addition to the four listed in the Montevideo Convention: the issue of the state's legality and legitimacy.

It should be noted that the Trial Chamber's decision pointed out correctly that the creation of a state is an issue regulated by law and that the criteria for statehood are also regulated by law. However, this factual truth was then ignored by the judges themselves. ICTY is obliged to use an international law, so the definition of state should be based not on just

an abstract "law" definition, but on the definition in international law. Qualifying Croatia as a state was not of political, geographical or social importance to the case, but of importance in the context of international law. In other words, the court had to define the moment Croatia became a state in the sense *of international* law! Contemporary international law unanimously accepts as a state only an entity (with territory, population, government and ability to enter international relations) created legally. Illegal entities can be considered states politically, but they are *not* states from the standpoint of international law.

It is perfectly obvious that Croatia violated the basic principle of international law – that of territorial integrity of the state, which also has the character of *jus cogens*. It violated the SFRY Constitution in the most violent manner imaginable. The Croatian state was created through violence, which caused civil war within Croatia and provoked civil war in one other republic. In the international legal literature, it is clearly defined that international law does not recognize the creation of states that violates the fundamentals of international law, and especially the principles characterized as *jus cogens*. American professor L. Henkin, member of the UN Human Rights Committee, writes that even if an entity satisfies the criteria of statehood based on the Montevideo convention, international law demands other states do not recognize that entity as a state if it had been created by violating the basic principles of the UN Charter.[16] It is well known that Article 2 of the UN Charter establishes the principle of non-violence and the principle of territorial integrity (inviolability) of states. Professor J. Duursma also emphasizes that the illegality and illegitimacy of any entity's creation cannot give it a right to call itself a state.[17]

It is precisely the criteria of legality and legitimacy that the ICTY not only didn't consider, but avoided mentioning entirely. Most likely, the court ignored the characteristics of statehood from the standpoint of international law precisely because it was obviously impossible to prove that the creation of the Croatian state was legal.

We may ask, then, why Croatia was admitted to the UN, since only states could join the organization. Though the question is appropriate, it does not refute the thesis that the Croatian state was created illegally. By accepting Croatia into the UN, the international community merely committed collective recognition of an illegally created state. Without entering the moral and technical aspects of that decision, we must conclude that Croatia became a state from the standpoint of international law only when it was legitimized by UN recognition. Recognition of Croatia by individual EC countries, the EC itself, or the United States, lacks the authority to legalize the illegal creation of an entity. Therefore, the only proper conclusion is that Croatia became a state on 22 May 1992, and the ICTY lacks jurisdiction to consider any allegations against S. Milosevic that relate to events prior to this date.

III. The Bosnia-and-Herzegovina indictment

The central issue of the Bosnian phase (and indeed, the case in general) is the charge of genocide, the most grave international crime. Yet it is precisely this charge that has been least supported by evidence presented by the prosecution. This was noted by the *amici curiae,* who pointed out that:

- the prosecution could not prove the existence of specific intent by S. Milosevic to commit genocide;

- the prosecution presented no evidence that the accused planned, aided, abetted, ordered, committed or in any other way aided, or abetted the planning, preparation or commission of genocide;

- the prosecution presented no evidence that genocide was the goal of the assumed JCE, and that existence of specific intent is contradictory with participation in a third-category JCE;

- the existence of specific intent contradicts the charges of command responsibility.

In its decision, the court considered the issue of genocide in contemporary international law in the following manner.

First, the court correctly noted that both the norms of international law (Convention on prevention and punishment of the crime of genocide, 1948) and the Tribunal's Statute rely on the existence of specific intent to commit genocide. This intent is established through testimony. The court, however, referred to the Appeals Chamber decision in the *Jelisic* case, which says that the proof of specific intent, it may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts.[18]

The prosecution conceded it had not presented "sufficient" direct evidence, but it claimed all the "facts and circumstances of the case" it presented to the court were proof of intent by S. Milosevic to commit genocide of Muslims as an ethnic group.

It needs to be said that this is not merely a subjective assessment of the prosecution's own efforts, but an open-faced lie. Genocide [supposedly] happened in Bosnia-Herzegovina, yet tens of thousands of Muslim refugees fled the civil war and found asylum in Serbia, under Slobodan Milosevic's presidency! This fact is familiar not just to the prosecution but to the world. So the court's decision to accept this "elastic" interpretation of the prosecution is downright sad. However, we shall demonstrate that such a decision was motivated by factors far more serious that the prosecution's "arguments."

In its decision, the court said it would consider the testimonies concerning the 7 municipalities of Bosnia-and-Herzegovina. This is a defining fact. The prosecution offered up the idea, and the court accepted and supported, that of over 100 municipalities only seven were to be considered "territory of the Milosevic case," on whose example they tried to prove genocide.

Having in mind that the prosecution listed a series of genocide charges (including the so-called "alternative" ones), the court separated out the five basic issues in which analysis was in order.

1. Is there evidence upon which a Trial Chamber could be satisfied beyond reasonable doubt that the Accused was a participant in a JCE, the aim and intention of which was to commit genocide?

2. Is there evidence that S. Milosevic was a participant in a JCE to commit other crimes than genocide, and it was reasonably foreseeable to him that as a consequence of the commission of that crime, genocide, would be committed by other participants in JCE?

3. Is there evidence that S. Milosevic aided and abetted in the commission of genocide?

4. Is there evidence that S. Milosevic was complicit in the commission of genocide?

5. Is there evidence that S. Milosevic knew or had reason to know that his subordinates were about to commit genocide, but he failed to take necessary measures to prevent the genocide or to punish the perpetrators thereof?

Answering the first question, the court invoked evidence given during the testimonies, both of witnesses in the trial of S. Milosevic, and those in other trials. It stands out that the judges accepted as sufficient the statements of many witnesses that were obviously discredited. For example, expert witness E. Tabeau not only included economic migrants in her "analysis," but maintained the validity of such an inclusion. She also remained faithful to her "methodology" even when the only international jurist – Judge Robinson – asked her if she was familiar with the definition of refugees under international law. The witness replied she was ... and proceeded to insist on the accuracy of her claims! S. Milosevic replied by asking her a reasonable question – why were tourists not included in her analysis of refugees, then?

Other "sufficient" evidence were taken from other cases, and many of them were secret.

In answering the second question, the judges also used dubious testimonies as essential. Also, a part of this decision has been held confidential.

We would like to draw the special attention to the fact that the court classified assertions as "sufficient evidence". Without exception,

assertions cannot be evidence. Only facts can be evidence. Prosecution witnesses mostly offered only assertions (e.g. "He destroyed Yugoslavia!" or "I am convinced he did it!"). It is interesting that neither the prosecutors nor the court asked of those witnesses to back their assertions up with evidence. In my judgment, no less than half of the prosecution witnesses offered assertions only. One example is paragraph 286 of the court's decision, which relies on the statement of the witness Rupert Smith (commander of NATO forces that bombed the Bosnian Serbs) that S. Milosevic "had to know" about the tragedy in Srebrenica. The paragraph itself is short on details, but if one looks at the transcript of Smith's testimony, his logic is clear: "R. Mladic knew because he was the commanding offices"[19]. The witness makes an assertion: S. Milosevic knew, because he met with Mladic!

No less "convincing" are the statements by W. Petritsch, who said he was "convinced that all the decisions were made by him and him alone"[20] .

What is shocking is not that the witnesses said such things, but that the court accepted such statements as "sufficient evidence"! Establishing the sufficiency of presented evidence means separating assertions from proof, even *prima facie*. As we can see, the court did not do this – and deliberately so.

From the standpoint of methodology, the conclusion of the court is very interesting: on the basis of "the inference that may be drawn from the evidence" concerning the previous question, the Trial Chamber "could be satisfied beyond reasonable doubt" the JCE existed, and had as its purpose genocide, that Milosevic was a participant, and had the intent to commit genocide.

But given the previous note of the judges that they hadn't evaluated and analyzed the evidence they were considering, it remains a mystery as to how they managed to separate the sufficient evidence from other ones, and in what way they reached a conclusion "beyond reasonable doubt."

Special attention needs to be paid to the portion of the decision addressing the second question. In order to do so, the Trial Chamber turned to the Tribunal's "exclusive" theory of the JCE, formulated for the first time in the *Tadic* case. It was then established as a legal norm (more accurately, as a legal norm *for this tribunal*) that there were three categories of the Joint Criminal Enterprise, the last of which demands that the prosecution proves the following:

- that the crime charged was a natural and foreseeable consequence of the execution of the JCE; and

- the Accused was aware that such crime was a possible consequence of the execution, and that, with that awareness, he participated in that JCE.[21]

In other words, the court's interpretation of the essence of third-category JCE is that the accused, by joining the JCE to commit certain

crimes, bears the responsibility for other crimes if he could foresee that the consequence of his specific crime could be the commission of the other crimes by other members of the JCE.

It should be said that the very concept of the JCA is both illegal and defective. Neither the Tribunal's Statute, nor international law, recognizes any "joint criminal enterprises," let alone categories thereof. This exclusive invention of the Tribunal is nothing but arbitrary establishment of law, which directly contradicts the general principles of law. It is worth noting that some judges at the Tribunal are critical of this fabrication. Thus in his dissenting opinion in the case *Simic et al.* judge Per-Johan Lindholm said he distanced himself from the theory of JCE "in this particular case and in general," considering it a waste of time that has nothing to do with the work of the Tribunal or the evolution of international law.[22]

Even though its response to the second question takes up about 1 percent of the total decision, it has to attract the utmost attention of international jurists.

In just five lines (as if this didn't merit any more attention), the court refers to the decision of the Appeals Chamber in the *Brdjanin* case of 19 March 2004. This decision, reached in a rush to prepare the decision of Trial Chamber in the Milosevic case, had the obvious task to create the necessary justifications for the Milosevic case. In essence, it established that if certain participants in a third-category JCE committed the crime of genocide, then a participant that did not have that as a goal will bear responsibility for genocide nonetheless! In this way the ICTY abolished the fundamental principle of culpability for genocide in international law – the necessity of proving the specific intent. More than that, the direction of such a ruling is obvious.

Further complicating the matters is the absence of the ability to appeal the decisions of the Appeals Chamber. Its decisions, no matter what lawlessness they assert, are binding on the trial chambers.

At the same time, it's hard not to agree with the arguments of one of the former *amicus curiae*, M. Vladimiroff, presented during the hearing on 29 October 2001. He justifiably pointed out that the decisions of the appeals chamber weren't as inviolate as previously thought. If the Appeals Chamber made a decision that contradicted the Statute and Rules of the Tribunal, the trial chambers could base their decisions directly on the Statute and Rules of procedure. All this applies, of course, to international law as well. In case the appeals chamber makes a decision contrary to international law, the trial chambers have not only the ability but an *obligation* to apply the norms if international law directly.

This is why it isn't unusual that the Trial Chamber making the decision in the Milosevic case simply referred to the *Brdjanin* decision.[23]

Let us recall that the prosecution accused S. Milosevic (apparently not convinced of the charges) both for "committing

genocide" and at the same time for "complicity to commit genocide." Special importance in the process was given to the theory of command responsibility. The *Brdjanin* decision "solved" (even on the Appeals level) all the contradictions in that respect as well. Still, it is perfectly obvious that under international law – as opposed to the "Hague Tribunal law" – it has been clearly established that charges of genocide on grounds of command responsibility are invalid, because to prove genocide one must demonstrate specific intent the one the Tribunal abolished so cavalierly.

Therefore, the ICTY used all the available means, including not only dubious and improper interpretations of law, but also absolutely illegal actions, to preserve the charge of "genocide," most important to the public opinion. This very clearly demonstrated the prejudice of the tribunal, and its treatment of both the accused and the international law.

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Activities of the ICTY in general, and in particular in the process against Slobodan Milosevic, are cause for serious concern. Its violations of international law and general principles of law are too serious to allow international jurists to remain silent.

The latest decisions of the Tribunal, including the one from 16 June 2004, have shown that the judges are willing not only to freely interpret international law, but to redefine it outright to suit their particular needs at the moment. Unfortunately, that need has been indicated clearly: the unconditional conviction of Slobodan Milosevic, evidence notwithstanding. Judging the record of the ICTY in general, and its case against Slobodan Milosevic in particular, one can conclude that it represents a serious threat to both the letter and the spirit of international law.

[1] During his testimony at the Milosevic trial, the already-released Erdemovic could not prove his allegations. Quite the contrary, Milosevic convincingly demonstrated the facts proving otherwise. For more details, see transcript of Tribunal session on 25 August 2003.

[2] E.g. see the speeches by permanent representative of the Russian Federation to the UN, S. Lavrov, at the UN Security Council meetings on 20 June 2000, 21 November 2000, and 27 November 2001; // UN documents: S/PV.4229, S/PV.4161, S/PV.4429

[3] One of the witnesses admitted he testified in exchange for "certain promises" – whose content remained secret, because the session was

hastily closed to the public. Another witness said he was offered immunity from charges in exchange for bearing false witness against Milosevic.

[4] See: *Prosecutor v. Slobodan Milosevic*, Decision on Motion for Judgement of Acquittal of 16 June 2004.

[5] See transcripts of cross-examinations of witnesses Bakalli, Ashdown, Petritsch, Vollebaek, Mesic, Walker, Budding, and many, many others.

[6] E.g.: the testimonies of witnesses Kristan, Lazarevic, Bakalli, Samardzic, etc.

[7] Witness Radomir Markovic, 24-26 June 2002

[8] First of all - *Brdjanin, Krnojelac, Stakic, Vasiljevic, Simic* and *Tadic* trials.

[9] This is when NATO's aggression against the FRY began; in ICTY's documents, it is referred to as "the bombing campaign."

[10] See: Trial Chamber Decision of 16 June 2004, para 34.

[11] Indeed, Article 7.2.d of the ICTY Statute says that "Deportation *or* forcible transfer of population means..."

[12] See *Prosecutor v. Stakic*, Judgment of 31 July 2003, paras 670-680

[13] See: Yugoslavia Through Documents. From its creation to its dissolution, ed. by Trifunovska S., Martinus Njihoff Publishers, The Hague, 1996, p. 1020.

[14] See: Brownlie I., Principles of Public International Law, 5-th edition, Oxford University Press, 1998, p. 70.

[15] See Shaw M., International Law, 4-th edition, Grotius Publication, Cambridge University Press, 1997, p. 140

[16] See: Henkin L., International Law: Politics, Values and Functions. General Course of Public International Law. // Recueil des Cours de Droit International, The Hague, vol.216 (1989), p.32.

[17] See: Duursma J., Fragmentation and International Relations of Micro-States: Self-determination and Statehood, Cambridge University Press, 1996, p. 127-128

[18] See: *Prosecutor v. Jelicic*, Appeals Chamber Judgment , para 47.

[19] See: General R. Smith's testimony, transcript of the 9 October 2003.

[20] See: W.Petritsch testimony, transcript of the 2 July 2002.

[21] See: *Prosecutor v. Tadic*, Appeals Chamber Judgement of 15 July 1999, paras 196-204.

[22] See: *Prosecutor v. Blagoje Simic, Miroslav Tadic, Simo Zaric,*

Separate and Partly Dissenting Opinion of Judge Per-Johan Lindholm of 17.10. 2003, paras 1-5.

[23] See: *Prosecutor v. Brdjanin*, Appeals Chamber Decision on Interlocutory Appeal of 19 March 2004.

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