Milosevic _ Staout

Nue propriété / Arts

en EVRM 01-01-2003

II

Kg. ART. 5 Lid + Kg TEGN TRIBUNE

4

EVRM + RECHTSHULP

4. ARTIKEL 5 (zie tekst op pag. 17) ART 5 EV

Zie voor HABEAS CORPUS

Algemeen. Waar art. 6 primair de behandeling ter zitting betreft, heeft art. 5 met name betrekking op het vooronderzoek, doch alleen voor zover hierbij vrijheidsberoving wordt toegepast.

Konstruktie. De opzet van art. 5 is als volgt:

- Vooreo staat het "recht op persoonlijke vrijheid en veiligheid", overigens zonder dat deze begrippen nader worden gedefiniëerd.
- Vervolgens wordt vrijheidsberoving verboden (zie 171 G.W.) waarbij de grens met vrijheidsbeperking moeilijk valt aan te geven. Uitzonderingen zijn toegestaan, mits:

A. Algemene voorwaarden:
   - "langs wettelijke weg"," d.w.z. vereist is een wet die de vrijheidsberoving toestaat en regelt, en wel in Nederland een wet in formele zin (via 171 G.W. waar "wet" - evenals elders in de G.W. t.a.v. de Grondrechten - in formele zin wordt gebezigd.)

- Tenslotte wordt een [illegible] den, waarbij het 3e lid alléén van toepassing is op [illegible] detineerden:
  - lid 2: recht op informatie
  - lid 3: recht op voorgeleiding en berechting of invrijheidstelling event. onder borg.
  - lid 4: recht op habeas corpus
  - lid 5: recht op schadevergoeding.

Het artikel zal hier met name behandeld worden voorzover relevant voor het strafproces; de gevallen van administratieve vrijheidsberoving blijven dan ook buiten beschouwing.

5 - 1 (a): "na veroordeling door een daartoe bevoegde rechter"
Dit is een procedure- bepaling, die b.v. de tenuitvoerlegging van een veroordeling tot gevangenisstraf dekt.

5 - 1 (b) I: "wegens weigering een overeenkomstig de wet door een rechter gegeven bevel op te volgen".
zie b.v. de rechterlijke bevelen tot handhaving van de openbare orde (540 v. Sv.) die kunnen leiden tot een vrijheidsberoving van maks. 10 dagen.

II: "teneinde een door de wet voorgeschreven verplichting te verzekeren".
zie b.v. gijzeling van onwillige getuigen, bij de R.C. voor 12 dagen, telkens te verlengen (221 v. Sv.) en ter zitting voor maks. 30 dagen (289 v. Sv.).
Niet iedere wettelijke verplichting rechtvaardigt vrijheidsberoving:
De ierse regering had leden van het z.g. Republikeinse Leger zonder vorm van proces in kampen gedetineerd, op verdenking van terroristische aktiviteiten, in haar poging dit voor de Kommissie te rechtvaardigen beriep zij zich o.a. op het bestaan van een algemene verplichting om de openbare orde niet te verstoren. Vlg. de Kommissie werd in 5 - 1 (b) een specifieke verplichting bedoeld, omdat anders de limitatieve opsomming van art. 5 geheel ondermijnd zou worden.
Het Hof heeft deze opvatting overgenomen (Lawless-Case, judgment of 1st July 1961).

5 - 1 (c): "teneinde voor de bevoegde rechterlijke instantie te worden geleid".
I. "Wanneer redelijke termen aanwezig zijn om te vermoeden, dat hij een strafbaar feit heeft begaan".
Zie 27 1 Sv.: verdachte is hij t.a.v. wie een redelijk vermoeden van schuld aan (= het begaan hebben van) enig strafbaar feit bestaat.

- "op rechtmatige wijze" (herhaald bij a t/m f), d.w.z. de mogelijkheid voor de rechter om de rechtmatigheid (redelijk doel en middel) van het overheidsoptreden te kontroleren.

B. Bijzondere gevallen:
- "behalve in de navolgende gevallen", d.w.z. de daaropvolgende opsomming is limitatief.
  De zes gevallen zijn:
  I. Judiciaire vrijheidsberoving.
     a. na veroordeling door een rechter
     b. bij rechterlijk bevel of wettelijke verplichting
     c. preventieve vrijheidsbeneming.
  II. Administratieve vrijheidsberoving.
     d. t.a.v. minderjarigen
     e. t.a.v. zieken etc.
     f. t.a.v. vreemdelingen

. Tenslotte wordt een viertal rechten gegarandeerd aan gearresteerden, waarbij het 3e lid alléén van toepassing is op preventief gedetineerden:
- lid 2: recht op informatie
- lid 3: recht op voorgeleiding en berechting of invrijheidstelling event. onder borg.
- lid 4: recht op habeas corpus
- lid 5: recht op schadevergoeding.

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Zie 27 1 Sv.: verdachte is hij t.a.v. wie een redelijk vermoeden van schuld aan (= het begaan hebben van) enig strafbaar feit bestaat.

Dit is vlg. ons recht overigens onvoldoende om tot vrijheidsberoving over te gaan: daarvoor is tevens hetzij heterdaad (53 Sv.), hetzij een gekwalificeerd strafbaar feit (54 Sv.) vereist.
Dit nog afgezien van de strengere eisen die aan de inverzekeringstelling (57, 58 Sv.) en de voorlopige hechtenis (64 Sv.) worden gesteld.

II. "of indien er redelijke gronden zijn om aan te nemen dat het noodzakelijk is hem te beletten een strafbaar feit te begaan".
Een dergelijke grond voor vrijheidsberoving, nog zonder dat er een strafbaar feit is gepleegd, kennen wij in ons wetboek niet. Wel is het mogelijk vrijheidsberovende dwangmiddelen toe te passen (mits voldaan is aan de sub. I vermelde eisen) t.a.v. poging tot een misdrijf.
Er is dan echter geen sprake van beletten te "begaan", doch van beletten te "voltooien", d.w.z. er is naast een voornemen en een niet-vrijwillig terugtreden reeds een begin van uitvoering van het misdrijf (45 Sr.).

III. "of indien er redelijke gronden zijn om aan te nemen, dat het noodzakelijk is hem te beletten te ontvluchten nadat hij dit heeft begaan".
Ook hier is onze wetgever strenger: gevaar voor vlucht is slechts een grond voor voorlopige hechtenis, en dan nog slechts indien er tevens sprake is van "ernstig bezwaar" (d.i. méér dan een "redelijk vermoeden") en een gekwalificeerd strafbaar feit (64 Sv.).

De drie gronden van 5 - 1 (c) worden telkens gekoppeld aan één geval, nl. een strafbaar feit. Deze justitiële vrijheidsberoving is daarenboven alléén toegestaan met het oog op voorgeleiding voor de rechter. De stelling van de ierse regering in de Lawless- Case dat voorgeleiding alléén vereist was bij de eerste grond, is door Kommissie en Hof uitdrukkelijk verworpen.

Waar het 2e, 4e en 5e lid van art. 5 op alle gevallen van 5 - 1 betrekking hebben, wordt alléén aan 5 - 1 (c) het ekstra recht van 5 - 3 gekoppeld:

5 - 3: I "moet onmiddellijk voor een rechter worden geleid of voor een andere autoriteit die door de wet bevoegd verklaard is om rechterlijke macht uit te oefenen"
In 1966 hebben twee nederlandse provo's bij de Kommissie geklaagd over het feit dat zij na de arrestatie
A.niet "onmiddellijk" waren voorgeleid voor een rechter (n.l. 6 uur verhoor en 4 dagen inverzekeringstelling vóór de bewaring door de R.C.);
B.wel voor de O.v.J. waren geleid, doch dat deze geen "andere autoriteit" etc. was.
Na vergelijking met analoge regelingen in andere verdragsstaten vond de Kommissie dat Nederland met zijn 4 dagen wel aan de ruime kant, doch nog redelijk was, d.w.z. voldoende "onmiddellijk" met het inschakelen van een rechter;
een uitspraak over de funktie van de O.v.J. - die voor Nederland wellicht zeer ongelukkig had kunnen zijn - kon hierdoor achterwege blijven. (zie desgewenst over deze materie Van Bemmelen in N.J.B. 1966 p. 701 v. en ook Smeets N.J.B. 1966 p. 833 v.)
II. "en heeft het recht binnen een redelijke termijn berecht te worden".
Over de eis van "redelijke termijn", d.w.z.het probleem van de duur van het voorarrest zijn zeer veel klachten ingediend. De Kommissie

bekijkt elke zaak in konkreto, d.w.z. geeft b.v. géén algemene absolute bovengrens aan (zoals de duitse wetgever die de maksimumduur in principe op 6 maanden heeft gesteld; een dergelijke regeling ontbreekt in ons recht). Op grond van kriteria als moeilijk bewijs, ingewikkelde zaak, noodzakelijke observatie, aangewende rechtsmiddelen etc. zijn in het verleden wel gevallen met een duur van ruim 2 jaar getolereerd. Sinds 1964 echter schijnt de Kommissie "om" te zijn; ± 8 klachten werden ontvankelijk verklaard over te lange duur van het voorarrest, variërend van ruim 1½ tot ruim 6½ jaar.
Het Hof heeft reeds in één zaak vrijgesproken (Wemhoff-Case, judgment of 27th June 1968) en in één zaak Oostenrijk veroordeeld (Neumeister-Case, judgment of 27th June 1968)

III "of hangende het proces in vrijheid te worden gesteld. De invrijheidstelling kan afhankelijk worden gesteld van een waarborg voor de verschijning van de betrokkene in rechte"

Zie art. 80 Sv.; deze regeling wordt overigens in nog geen 5% van het aantal voorarresten (totaal ± 6.500 p.j.) toegepast, mede doordat het verzoek om schorsing van de verdachte uit moet gaan.

5 - 2 : "onverwijlde informatie over redenen en beschuldigingen".

Dit i.v.m.een arrestatie gegeven recht is minder specifiek en gedetailleerd dan het vereiste van 6 - 3 (a), wat gesteld is met het oog op het onderzoek ter zitting.
De Kommissie staat dan ook op het standpunt dat de redenen en beschuldigingen niet in een bepaalde vorm gegeven hoeven te worden (het kan dus ook mondeling, of zelfs indirekt via het verhoor).
In ons recht is informatie eerst ekspliciet in de wet voorgeschreven vereist bij het bevel tot inverzekeringstelling (59 Sv.), d.w.z. niet onverwijld na arrestatie en evenmin bij verhoor op het politiebureau.

5 - 4 : habeas corpus.

Deze z.g. "Haftprüfung" betreft alléén de rechtmatigheid, niet de doelmatigheid van arrestatie (de nederlandse vertaling spreekt over "wettigheid", doch verder over "onrechtmatig"). De Kommissie heeft een klacht ontvankelijk verklaard tegen België, waar landlopers door een z.g. "juge de paix" voor een jaar geïnterneerd kunnen worden zonder dat het mogelijk is hiertegen voorziening te vragen.
In het W.v.Sv. ontbreekt een habeas- corpus- regeling t.a.v. de inverzekeringstelling: i.t.t. het voorarrest is hiertegen nl.geen beroep op de rechter mogelijk. Hier zal dan een civiele aktie wegens onrechtmatige overheidsdaad (1401 B.W.) uitkomst moeten bieden, waarbij het de vraag is of een dergelijke procedure - zelfs als kort geding - wel adequaat is aan de situatie (zie de noot van Röling bij H.R. 13-9-1963, N.J. 1964, 389, Wallace-zaak).

5 - 5 : Schadeloosstelling aan slachtoffer van arrestatie i.s.m. de bepalingen van art. 5.

De nederlandse regeling (89, 90 Sv.: zie ook 591 a. Sv.) is duidelijk beperkter: zij geldt alléén voor het voorarrest (niet b.v. voor de inverzekeringstelling), houdt slechts in een tegemoetkoming (géén schadeloosstelling) voor werkelijk geleden schade (géén immateriële schade) en wordt slechts verleend bij aanwezigheid van gronden van billijkheid. Zo kon het gebeuren dat een Utrechtenaar, die ten onrechte werd verdacht van moord die uiteindelijk gepleegd bleek te zijn door Hans van Z., voor 15 dagen vrijheidsberoving f26,24 kreeg uitgekeerd.

6-4-2002 IDEE M.'s

PROCESSEN + VERDEDIGING

Milosevic haalt, zoals dat in het Engels heet, "the right to bring habeas corpus proceedings".

→ 15 gerechtshoven

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De heer mr. N.M.P. Steijnen
Couwenhoven 52-05
3703 ER ZEIST

datum 9 november 2001
onze ref. CMB/JdM/1566768
inzake St / Milosevic

telefoon 070-5153786
fax 070-5153123
e-mail gjh.houtzagers@prdf.nl

Geachte confrère,

De minister van Algemene Zaken heeft mij gevraagd uw brief van 29 oktober 2001 te beantwoorden, waarin u hebt gesommeerd om in overleg met het Joegoslavië-tribunaal te bezien hoe kan worden gewaarborgd dat de rechten die de heer Milosevic meer in het bijzonder aan artikel 5, vierde lid van het EVRM ontleent ook daadwerkelijk door hem kunnen worden uitgeoefend.

Eerder heeft de Staat der Nederlanden het standpunt ingenomen dat de heer Milosevic is onderworpen aan de jurisdictie van het Joegoslavië-tribunaal en dat de Staat der Nederlanden ingevolge verdragsrechtelijke verplichtingen gehouden is zijn volledige medewerking aan het tribunaal te geven. De president in kort geding heeft dat standpunt in zijn vonnis van 31 augustus 2001 onderschreven.

In het kader van dat kort geding is onder meer ook aan de orde geweest dat de Rules of procedure and evidence van het tribunaal in Rule 65 een regeling voor voorlopige invrijheidstelling van verdachten bevatten. In iedere stand van het geding kan een Trial Chamber de voorlopige invrijheidstelling bevelen. Ook overigens is er namens de Staat der Nederlanden op gewezen dat de Rules een uitvoerige regeling bevatten van de rechten van verdachten, terwijl de Rules of detention een gedetailleerde regeling geven van de rechten van gedetineerden en bovendien een specifieke klachtenregeling kennen.

Gelet op het voorgaande wordt het standpunt gehandhaafd dat de heer Milosevic zich met zijn eventuele klachten rechtstreeks tot het tribunaal dient te wenden.

Hoogachtend,

G.J.H. Houtzagers

Vraag of er een verzoek
tot Regeling in de
Commissie is gedaan
m.b.t. inlossen
door de Procureur bij
de Regeling.

H. Daar gaat het volgens de
regels!

van holst en steijnen

From: Christopher Black <bar@idirect.com>
To: van holst en steijnen <n.h.van.holst@freeler.nl>
Cc: André Tremblay <agtremblay@videotron.ca>; David Jacobs <david@shelljacobs.com>; Tiphaine Dickson <tiphainedickson@videotron.ca>; Jared Israel <jedmisrael@yahoo.com>; TARGETS <redactie@targets.org>; Vladimir Krsljanin <vlada@sps.org.yu>; mailservicesnc <mailservicesnc@tiscalinet.it>; Mikhail Kuznetzov <elena_abpk@mtu-net.ru>
Sent: donderdag 1 november 2001 04:30
Subject: Re: Nico's X-files revealed

Nico,

Excellent my friend! I have not yet composed a reply to their letter blacklisting me but I will do so in a day or so.It needs some thought.

Chris

----- Original Message -----
From: Vladimir Krsljanin
To: Christopher Black ; Christopher Black ; David Jacobs ; JaredI@aol.com ; Elena Kuznecova
Cc: van holst en steijnen
Sent: Wednesday, October 31, 2001 12:00 PM
Subject: Nico's X-files revealed

For all those who cant open Nico's files:
done in SPS computer center.
Vlada

To join or help this struggle, visit:
http://www.sps.org.yu/ (official SPS website)
http://www.belgrade-forum.org/ (forum for the world of equals)
http://www.icdsm.org/ (the international committee to defend Slobodan Milosevic)
http://www.jutarnje.co.yu/ ('morning news' the only Serbian newspaper advocating liberation)

van holst en steijnen

From: van holst en steijnen <n.h.van.holst@freeler.ni>
To: Christopher Black <bar@idirect.com>
Cc: André Tremblay <agtremblay@videotron.ca>; David Jacobs <david@shelljacobs.com>; Tiphaine Dickson <tiphainedickson@videotron.ca>; Jared Israel <jedmisrael@yahoo.com>; TARGETS <redactie@targets.org>; Vladimir Krsljanin <vlada@sps.org.yu>; mailservicesnc <mailservicesnc@tiscalinet.it>; Mikhail Kuznetzov <elena_abpk@mtu-net.ru>
Sent: donderdag 1 november 2001 11:40
Subject: Re: Nico's X-files revealed

So they even had the stupid audacity to put your blacklisting on paper ! Can you send me a copy of this letter as soon as possible by ordianry mail, because this could be of great value in the coming new interim injunction procedure against Wladimiroff as the Dutch representative of the amici curiae.
There is here in Holland a good media covering of this issue.
In hope that you ilness nevertheless enables you to send this copy ! Take care of yourself !
Nico S.

van holst en steijnen

From: Vladimir Krsljanin <vlada@sps.org.yu>
To: van holst en steijnen <n.h.van.holst@freeler.nl>; Christopher Black <bar@idirect.com>; Jared Israel <jedmisrael@yahoo.com>; TARGETS <redactie@targets.org>
Sent: zaterdag 3 november 2001 16:02
Subject: Re: Nov 3 letter re Junge Welt (Chris in a simple format)

It was very simple. Here it is:

CHRISTOPHER C. BLACK
Barrister-at-Law

Mr. Christian Rohde, November 3, 2001
Legal Officer,OLAD
Mr. Hans Holthuis, Registrar
Ms. Carla Del Ponte, Prosecutor
ICTY,
Churchillplein 1,
The Hague,
The Netherlands

Re: OTP v. Milosevic

I refer to your letter dated October 16 which has just come to my attention. I was away from my office for some weeks and only now have seen it.

I vehemently protest this blatant breach of the right to counsel and the right to freedom of speech of President Milosevic. President Milosevic is not a condemned man. He is presumed to be innocent. He has the right to speak to counsel in a confidential manner, a right this tribunal has perversely refused to honour. He also has the right, as does every prisoner in even a common jail, as does every innocent person, to express his viewpoint on issues which do not threaten the security of the prison or its good order.

Under the rules of the Tribunal the Prosecutor has the capacity to request the Registrar, or in cases of emergency, the Commanding Officer, to prohibit, regulate or set conditions for contact between a detainee and any other person if the Prosecutor has reasonable grounds for believing that such contact is for the purposes of attempting to arrange the escape of the detainee . or could prejudice or otherwise affect the outcome of the proceedings against the detainee, or of any investigation, or could be harmful to the detainee or any other person.

The Prosecutor has not shown reasonable grounds for believing his conversations have the purpose of arranging an escape and has not shown that any conversations with the outside world would affect the outcome of the proceedings or are otherwise harmful. In fact, the rule under which the Prosecutor can request such a prohibition can be read to mean that he cannot communicate in any way with anybody in order to prepare a defence because "that would prejudice or otherwise affect the outcome of the proceedings" which are clearly designed to have only one outcome, his conviction.

Since the rule under which you are attempting to operate itself violates several rules of natural justice and international conventions on the treatment of prisoners and since the Prosecutor cannot establish on "reasonable grounds" any legitimate basis for the prohibition you have placed on him one can only conclude that the Tribunal is gagging him because it is afraid of what he will say to the public as is amply demonstrated by the crude and offensive tactic used by Judge May of cutting off his microphone in his public appearances, an action which has brought this Tribunal nothing but disrepute even by those who support its stated objectives.

You state in your letter of October 16 that I requested to speak to Milosevic regarding legal "advising". I said no such thing. I telephoned Mr Rohde and asked if I could see Mr. Milosevic and was told it was not

possible and that the situation regarding visits of non-appointed counsel was being reviewed. Mr. Rohde did however arrange for me to speak with Mr. Milosevic by telephone but that such conversation would be monitored. As I was not speaking with Mr. Milosevic as counsel (otherwise it would not be monitored) I spoke to him as a friend and a member of the Committee to defend him. I was not told that I would be restricted as to what I could discuss. I obviously was not going to discuss legal matters with him when every word we said was being listened to. So that leaves only matters such as his health and other events. I did discuss with him his state of being and then we discussed the attacks in New York which was a topic on everyone 's mind and he expressed his views particularly as it affected his situation.

If anyone can tell me what the harm is in discussing these thing is I and the world would like to know.

I received many telephone calls after that from journalists asking if I had been able to see Mr. Milosevic and if so what did he have to say. I told several the situation and conveyed to them what we had discussed, including a journalist from Jungle World. This I and many others have done several times at press conferences and we never received a complaint from the Tribunal.

There is nothing improper about this and I cannot protest strongly enough this insidious attempt to silence this man and to prevent communication between myself as a legal adviser and Mr. Milosevic as a man in need of confidential legal advice, something denied to him since his arrest, with the exception of Mr. Clark.

As for your second reason for barring communication between him and me I again reject your position in the same terms set out in my letter of August 26, 2001 to which I received no reply. I did not violate any Rules of Detention and can only add that I had good reason to convey that letter from Mr. Milosevic in the UNDU to the Registry and OTP directly for the reasons set out in my letter of August 26 and as appears from the experience of Mr. Nico Stejnen, his lawyer regarding the Duthe matters. Several registered letters from him to Mr. Milosevic regarding legal matters were never conveyed to Mr. Milosevic, in violation of Detention Rules. Just as you refused to accept the letter from Mr. Milosevic through me with respect to the "motion" filed by Ramsay Clark it is clear that if I had given it to the UNDU officials instead of to the Registry and OTP directly it may have disappeared as well.

You still have not answered my question as to why you refused to accept the letter which clarified the nature of the "motion" filed by Ramsay Clark with the excuse that you could not receive documents from non-appointed counsel when you did accept the original "motion" from Ramsay Clark when he is also a non-appointed counsel. I must say that the arbitrary and unprofessional manner in which you make decisions appears to many millions of people in the world to be a legal mirror of the manner in which you secured President Milosevic's person before the
tribunal and placed in its prison in the first place. But then why should a kidnap victim expect to be treated professionally, and courteously let alone according to the principles of natural justice and the rule of law.

I reiterate my protest at this highhanded action and demand on behalf of Mr. Milosevic that my communication with him be restored immediately.

Sincerely Yours,

Christopher Black
Chair, Legal Committee
International Committee To Defend Slobodan Milosevic

CC: Mr. Slobodan Milosevic; Judge Richard May

75 Lowther Avenue, Toronto, Ontario, Canada, M5R 1C9
Telephone: 416-928-6611, Fax: 416-928-9515, E-mail: bar@idirect.com

To join or help this struggle, visit:
http://www.sps.org.yu/ (official SPS website)
http://www.belgrade-forum.org/ (forum for the world of equals)
http://www.icdsm.org/ (the international committee to defend Slobodan Milosevic)
http://www.jutarnje.co.yu/ ('morning news' the only Serbian newspaper advocating liberation)

---- Original Message ----
From: van holst en steijnen
To: Christopher Black ; Jared Israel ; Vladimir Krsljanin ; TARGETS
Sent: Sunday, November 04, 2001 6:36 AM
Subject: Re: Nov 3 letter re Junge Welt

I cannot read it. Can somebody transfer it to me in another format ?
I am afraid I have to ask you, Chris, to send it also by post.
I have got your message that your banning order is on its way to Holland !
Thanks, Nico

Art 5 lid 4 - proces 8-11-2007

De habeas corpus-regel vindt zijn oorsprong in art 5 lid 3: "Everyone who is arrested.. shall be brought promptly before a judge ...."

Art 5 Abs 4 EMRK. 7 Nov. 2007

See M and C v. FRG (Application No. ~~32~~ 13258/87, Dec. Adm. Comm., 33 ~~DR~~ 46, at 52 (1983)

"The Commission considers that a transfer of powers does not necessarily exclude a State's responsibility under the Convention with regard to the exercise of the transferred powers."

and

"The object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective. (cf., Eur. Court. H.R. Soering judgment of 7 July 1989, Series A no 161, p. 34, para 87)

SIEHE WEITERE BEISPIELE STUNKEL IN DE RTS - APPLICATION UNMITTELBAR P. 31!

Arrondissementsrechtbank 's-Gravenhage

President

Postadres Postbus 20302, 2500 EH Den Haag

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Prins Clauslaan 60
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Fax (070) 381 19 72

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3703 ER ZEIST

Onderdeel Secretariaat
Contactpersoon mw. H.G.M. Hendriks
Doorkiesnummer(s) (070) 381 3502
Datum 5 november 2001

Bij beantwoording de datum en ons kenmerk vermelden.

Geachte heer Steijnen,

Mr. R.J. Paris, vice-president van deze rechtbank, stelde mij uw aan de minister-president en aan hem gerichte brief van 29 oktober 2001 ter hand.

Het ligt niet op de weg van mij of van collega Paris om een inhoudelijke reactie te geven op uw brief, namens uw cliënt Milosevic. De (president van de) rechtbank spreekt in zaken als door u bedoeld slechts bij vonnis.

Met deze reactie op uw brief, voorzover aan mr. Paris gericht, moet ik volstaan.

Hoogachtend,

H.F.M. Hofhuis
President

Art 5 lid 4 K.g   7-11-2007

De Staat stelt in zijn pleidooi in het k.g, dat eerder is gehouden dat "bij het indienen van een verzoek om invrijheidstelling kan worden geoordeeld, op grond van rule 65" en dat "daarmee in elk geval ook is voldaan aan de vereisten van habeas corpus, zoals dat in het EVRM en het IVBPR is neergelegd" → blz 6

- Eerder is gesteld dat rule 65 voorziet in een pendant van art 5 lid 4 → de Staat verwijst dus naar rule 65 en zal dat opnieuw doen.

M.a.w. Milosevic heeft het aan zichzelf te wijten als hij geen beroep doet op (de pendant van) art 5 lid 4,

→ Eerder ook al gezegd dat de toets van rule 65 is gelijk aan de toets van hechtenis overschrijding van art 8 door het Europese Hof
→ zie blz 5

DIE JURISPRUDENTIE NAKIJKEN

→ Blijkbaar acht de Staat de kern van art 5 lid 4 dat voldaan zijn aan de vereiste van Habeas Corpus. De vraag is of dat deugt.

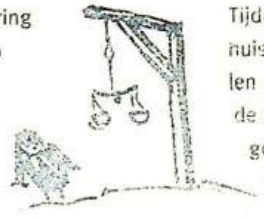
VAN DE ORDE

Orde-nieuws

Appèl aan regeringen om onafhankelijkheid advocatuur te respecteren

De afgelopen weken zag de Stichting Advocaten voor Advocaten zich diverse malen genoodzaakt om middels brieven op te komen voor de belangen van confrères in het buitenland. In een brief aan de autoriteiten van Mauritius heeft de Stichting aandacht gevraagd voor de situatie waarin een aantal advocaten verkeert. Deze advocaten, onder wie de deken van de Mauritiaanse Orde van Advocaten, zijn daar het slachtoffer van bedreigingen en intimidatie. De bedreigingen lijken rechtstreeks verband te houden met een zaak van deze advocaten waarin enkele politieagenten terecht staan.

De Stichting heeft ook brieven gestuurd naar de regering van Guatemala. Op 29 juli 2001 is de advocaat, Leopoldo Zeissig, samen met zijn vrouw en zoon, Guatemala ontvlucht na diverse keren bedreigd te zijn. Mr Zeissig trad op als aanklager in een zaak tegen drie legerofficieren en een priester die ervan worden verdacht de mensenrechtenactivist bisschop Juan Geradi te hebben vermoord. In verband met deze zaak zagen zowel deze drie advocaten zich genoodzaakt Guatemala te verlaten. De Stichting heeft er bij de autoriteiten in Guatemala op aangedrongen dat maatregelen te nemen om de veiligheid van Mr. Zeissig en andere advocaten te garanderen.



De situatie in Wit Rusland blijft Advocaten voor Advocaten zorgen baren. In de afgelopen jaren heeft de Stichting regelmatig aandacht gevraagd voor de moeilijke omstandigheden waaronder advocaten in deze republiek hun werk moeten doen. Met name is aandacht gevraagd voor Mr. Vera Stremkovskaya. Deze advocate houdt zich hoofdzakelijk bezig met de verdediging van mensenrechten-activisten. Zij wordt daarin structureel tegengewerkt en is regelmatig het slachtoffer van intimidatie. Wederom heeft de Stichting een brief moeten sturen naar de autoriteiten in Wit Rusland inzake Stremkovskaya. Tijdens een zitting stelde de advocate het verdwijnen, tijdens een huiszoeking, van bezittingen van haar cliënt aan de orde. Het stellen van deze vragen heeft ervoor gezorgd dat er een zaak tegen de advocate is ingesteld. De rechter heeft Stremkovskaya vervolgens een boete van ongeveer $US 500 opgelegd. In de brief heeft de Stichting opnieuw aangedrongen op maatregelen. Bovendien onderzoekt de Stichting of Stremkovskaya financiële ondersteuning nodig heeft.

Voor meer informatie over de Stichting Advocaten voor Advocaten kunt u contact opnemen met de secretaris Nicola Jägers, p/a Janskerkhof 3, 3512 BK Utrecht, tel: 030-2538407, fax 030-2537168, N.Jagers@law.uu.nl

G E R E C H T S H O F T E 's - G R A V E N H A G E

AKTE TOT WIJZIGING VAN DE EIS

in de zaak van:

Slobodan Milosevic

appellant

procureur: Mr. A.B.B. Beelaard

tegen

de Staat der Nederlanden

geïntimeerde

procureur: Mr. G.J.H. Houtzagers

rolnr.: 2001.983

rolzitting: 20 december 2001

Appellant wijzigt de eis in appel in dier voege dat deze komt te luiden:

dat het het Hof moge behagen te vernietigen het vonnis, op 21 augustus 2001 onder rolnummer KG 01/975 in kort geding door de President van de Arrondissementsrechtbank te 's-Gravenhage tussen partijen gewezen en, opnieuw rechtdoende, alsnog bij arrest, voor zover mogelijk uitvoerbaar bij voorraad, te bevelen dat,

ook indien er vanuit gegaan wordt:

- dat de Staat geen zeggenschap heeft over vrijheidsbeneming door het zogeheten tribunaal;
- dat ook overigens dit tribunaal bij uitsluiting bevoegd zou zijn terzake van de rechten van personen als appellant die door dit tribunaal in hechtenis worden gehouden; en
- dat de Nederlandse rechter terzake geen rechtsmacht zou bezitten,

de Staat der Nederlanden niettemin, uitgaande van de navolgende gegevens:

- dat tijdens de zogeheten Status Conference van 11 december 2001 door het tribunaal bekend is gemaakt dat de 'rechtszaak' tegen appellant naar schatting wel 3 jaar in beslag zal kunnen gaan nemen;

- dat appellant, gelet op deze extreem lange duur, feitelijk al gestraft wordt voordat er een uitspraak is van het tribunaal, indien hij al deze tijd in voorarrest zal worden gehouden;

- dat het gegeven dat er feitelijk al sprake zal zijn van bestraffing voorafgaande aan enige veroordeling in strijd is met fundamentele rechtsprincipes;

- dat dit zich ook niet verdraagt met de praesumptio innocentiae, zoals vastgelegd in de belangrijkste mensenrechten-verdragen;

- dat een en ander in elk geval voorts ook in strijd is met althans de geest van het bepaalde in artikel 9, 3e lid, van het Internatonaal Verdrag inzake Burgerrechten en Politieke Rechten, waarin tot uitdrukking wordt gebracht dat het houden van personen in voorarrest niet de gebruikelijke situatie kan zijn;

- dat een dergelijke bejegening in strijd zou zijn met het beginsel dat een onmenselijke en onnodig wrede behandeling moet worden voorkomen,

vanuit de algemene rechtsplicht om de mensenrechten te bevorderen, uitdrukkelijk bij het tribunaal en bij alle overigens in dit verband relevante internationale lichamen en instellingen de voorlopige invrijheidstelling van appellant zal bepleiten, dan wel tenminste een vorm van niet-cellulair huisarrest, zoals door het tribunaal al eerder toegepast op anderen, al dan niet onder het stellen van zekerheidsvoorwaarden;

met veroordeling van geïntimeerde in de kosten in beide instanties.

Waarvan akte !

Advocatenkantoor Steijnen & Olof
Couwenhoven 52-05
3703 ER Zeist
tel. 030-6956867
fax 030-6957830
e-mail: sagitar@hetnet.nl

Mr. Milosevic
UN Detention Unit
Postbus 87810
2500 DE Den Haag

2 september 2004

Dear mr. President,

I would like to drag your attention to my suggestions as going annexed in the enclosed e-mail to Mr. Krsljanin et al. co-members of the ICDSM.
I would like to ask the aknowledgement of receipt ofr this letter.

Best regards,

Nico Steijnen,

lawyer - ICDSM-member

Sagittarius

Van: "Sagittarius" <sagitar@hetnet.nl>
Aan: "Vladimir Krsljanin" <slobodavk@yubc.net>; <i-johnson@lineon.net>; "Ruza" <despot@tiscali.nl>; "Klaus von Raussendorff" <redaktion@aikor.de>; <bar@idirect.com>; <mailservicesnc@tiscalinet.it>
Verzonden: donderdag 2 september 2004 15:33
Onderwerp: enforced lawyers for Mr. Milosevic

Some suggestions from my side how to act now.

1. The worst thing Mr. Milosevic could do now is appealing against the decision to impose lawyers upon him. Acting like that he would still legitimize this kangaroo court after his long and fierce battle against it.

2. The best thing Mr. Milosevic can do now, to my opinion, is to abandon the floor and consequently to leave behind the kangaroo process in complete and absolute disorder.
This is definitely going to have a shattering effect on the public opinion and on the way the tribunal is viewed by the public.

2a. Anyhow, mr. Milosevic, to my opinion, should act in this way till there is pronounced a decision on his appeal, if he really intends to appeal against this decision. Which would definitely be, I must stress that again, the wrong decision. Acting in this way provides him the opportunity to watch which direction the tribunal is going to move in reaction to his step.
He then could further define his strategy, depending of the tribunal's reaction.
However the point is then that he would have lost his credibility by recognizing the tribunal.

2. In the meantime in a tribunal d' opinion, organised on his behalf, Mr. Milosevic could hear outside the reach of the tribunal his witnesses.

2. If mr. Milosevic really intends to push on with the idea to appeal against the decision to impose lawyers upon him and he would loose this appeal, which has to be expected, and he really intends to keep the floor at the tribunal, then his next step might be to declare officially that he completely is going to boycot all communication with this farce lawyers.
In the execution of this strategy he is in the position to observe what would be the counter-strategy of the tribunal.

3. If Mr. Milosevic really would prefer to keep the floor of the tribunal and he would finally loose all this battles, then he might declare that that the enforced lawyers have to consider themselves non-executive and he might appoint, instead of them, his own counsels, like Chris Black and Tiphaine Dickson.

4. In the meantime he could resume all kinds of action for his immediate release, like also legal proceedings against the State of the Netherlands.
I am prepared for that.

To Mr. Milosevic

Sagittarius

Van: "Sagittarius" <sagitar@hetnet.nl>
Aan: "Zdenko Tomanovic" <zdenkot@eunet.yu>; "Misha Ognjanovic" <misaognjanovic@yahoo.com>; <ogmi@eunet.yu>
Verzonden: donderdag 2 september 2004 15:50
Onderwerp: enforced lawyers for Mr. Milosevic

Some suggestions from my side how to act now.

1. The worst thing Mr. Milosevic could do now is appealing against the decision to impose lawyers upon him. Acting like that he would still legitimize this kangaroo court after his long and fierce battle against it.

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This is definitely going to have a shattering effect on the public opinion and on the way the tribunal is viewed by the public.

3. In the meantime in a tribunal d'opinion, organised on his behalf in the Hague, Mr. Milosevic could hear his witnesses. Outside the reach of the tribunal. He should prepare the questions asked to them.

4. Anyhow, mr. Milosevic, to my opinion, should postpone all his cooperation to the process at least till there is pronounced a decision on his appeal, if he really intends to appeal against this decision. Which would definitely be, I must stress that again, the wrong decision. Acting in this way provides him with the opportunity to watch which direction the tribunal is going to move in reaction to his step.
He then could further define his strategy, depending of the tribunal's reaction.
However the point is then that he would have lost his credibility by recognizing the tribunal!

5. If mr. Milosevic really intends to push on with the idea to appeal against the decision to impose lawyers upon him and he would loose this appeal, which has to be expected, and he really intends to keep the floor at the tribunal, then his next step might be to declare officially that he completely is going to boycot all communication with this farce lawyers.
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6. If Mr. Milosevic really would prefer to keep the floor of the tribunal and he would finally loose all this battles, then he might declare that that the enforced lawyers have to consider themselves non-executive and he might appoint, instead of them, his own counsels, like Chris Black and Tiphaine Dickson.

7. In the meantime he could resume all kinds of action for his immediate release, like also legal proceedings against the State of the Netherlands.
I am prepared for that.

Nico Steijnen

NIEUWE COMMUNISTISCHE PARTIJ
Afdeling Twente: Schopmanlanden 22, 7542 CN Enschede, telfax: 053 4763881
e-mail: ncpn.twente@worldmail.nl website: www.ncpn.twente.wolweb.nl/partij

Enschede, 5 augustus 2004

Beste Nico,

Je optreden bij de laatse demonstratie vonden we heel goed. Een paar foto's. We sturen er ook wat naar Milosevic. Sterkte met de verdere verdediging van hem.

Met vriendelijke groet,
ook van Rik Min.

Corry Westgeest

Sagittarius

Van: "Sagittarius" <sagitar@hetnet.nl>
Aan: "Christopher Black" <bar@idirect.com>
CC: "Vladimir Krsljanin"
Verzonden: dinsdag 20 juli 2004 11:47
Onderwerp: Re: TIME FOR LAWYERS?!

Chris and Vlada,

From the court's position I think it certainly can be done before August 31, but for us the preparation time would be really short. But I think that it would be no problem to fix a date later on, since unfortunately we must expect further interruptions of the procedure as a result of our friend's health problems. So, also from a publicity point of view, we can take a later opportunity after August 31, when the health problems will force a further interruption.

Of course I have already done a lot of work with respect to the human rights violations in relation to the Netherlands legal order and the admissibility of proceedings before Dutch courts. With respect to the earlier proceedings.
However, we have at least also to bring a summary of all other human rights violations by the tribunal, next to threatening his very life, in order to safeguard the opportunity to file them eventually at the European Court of human rights and/or the Geneva Human Rights Comittee. Since without having filed them before already in all stages of the domestic procedures complaints about violations could not be accessible at this international bodies.
Preparation of such a summary will take time.

To my opinion, IF we decide to provide us with an extra platform (the Dutch courtroom) in order to agitate against the efforts to silence our friend, then we should utilize this momentum also, at the same time, as the first stage for an eventual assessment of the Milosevic trial by international human rights bodies. This at a moment when the time therefore has come, to our opinion.

The political statement-character of the case would be the minor problem, as far as the preparation time is concerned.

Nico S.

----- Original Message -----
From: "Christopher Black" <bar@idirect.com>
To: "Sagittarius" <sagitar@hetnet.nl>
Cc: "Vladimir Krsljanin" <slobodavk@yubc.net>
Sent: Sunday, July 18, 2004 7:04 PM
Subject: Re: TIME FOR LAWYERS?!

> Nico,
>
> I like the robe idea. As for going back to the Dutch courts, I support

Sagittarius

Van: "Vladimir Krsljanin" <slobodavk@yubc.net>
Aan: "Christopher Black" <bar@idirect.com>; "Sagittarius"
Verzonden: zondag 18 juli 2004 19:18
Onderwerp: Re: TIME FOR LAWYERS?!

Dear friends,
My only problem with this is that I don't know the oppinion of our friend. I am trying to find it out.
Best regards,
Vlada

SLOBODA urgently needs your donation.
Please find the detailed instructions at:
http://www.sloboda.org.yu/pomoc.htm

To join or help this struggle, visit:
http://www.sloboda.org.yu/ (Sloboda/Freedom association)
http://www.icdsm.org/ (the international committee to defend Slobodan Milosevic)
http://www.free-slobo.de/ (German section of ICDSM)
http://www.icdsm-us.org/ (US section of ICDSM)
http://www.icdsmireland.org/ (ICDSM Ireland)
http://www.pasti.org/milodif.htm (ICDSM Italy)
http://www.wpc-in.org/ (world peace council)
http://www.geocities.com/b_antinato/ (Balkan antiNATO center)

----- Original Message -----
From: "Christopher Black" <bar@idirect.com>
To: "Sagittarius" <sagitar@hetnet.nl>
Cc: "Vladimir Krsljanin" <slobodavk@yubc.net>
Sent: Sunday, July 18, 2004 7:04 PM
Subject: Re: TIME FOR LAWYERS?!

> Nico,
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> I like the robe idea. As for going back to the Dutch courts, I support such
> an idea but can something like that be done in time for the start of his
> trial again on August 31? Or would you refile an amended document from your
> efforts before?
>
> Chris
> ----- Original Message -----
> From: "Sagittarius" <sagitar@hetnet.nl>
> To: "Christopher Black" <bar@idirect.com>
> Sent: Sunday, July 18, 2004 10:50 AM
> Subject: Re: TIME FOR LAWYERS?!
>
>
> > Dear Friends,
> >
> > I really do not understrand why nobody just even do not respond to my
> > suggestion to take renewed legal action before Dutch courts in order to

Sagittarius

Van: "Christopher Black" <bar@idirect.com>
Aan: "Sagittarius" <sagitar@hetnet.nl>
CC: "Vladimir Krsljanin"
Verzonden: zondag 18 juli 2004 19:04
Onderwerp: Re: TIME FOR LAWYERS?!

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Chris
----- Original Message -----
From: "Sagittarius" <sagitar@hetnet.nl>
To: "Christopher Black" <bar@idirect.com>
Sent: Sunday, July 18, 2004 10:50 AM
Subject: Re: TIME FOR LAWYERS?!

> Dear Friends,
>
> I really do not understrand why nobody just even do not respond to my
> suggestion to take renewed legal action before Dutch courts in order to
> demand full efforts of the State of the Netherlands for an unconditional
> release of our friend.
> Now that the ICTY is deliberately trying to kill him and, consequently plots
> murder on Dutch soil.
>
> We certainly would have another platform for agitation against these
> ICTU-plan with that kind of action.
>
> Why not using our full strenght and let people like Chris and Tiphaine make
> the texts which should be brought in court as the counsel's speech, Vlada
> doing the publicity and let me be in court be the voice of this joint
> legal action ?
> What is pleading against such planned action ?
>
> Above all, what is the view of our friend about this ?
>
> Nico S.
>
>
> ----- Original Message -----
> From: "Christopher Black" <bar@idirect.com>
> To: <CSchuetz1@aol.com>
> Cc: "Vladimir Krsljanin" <slobodavk@yubc.net>; <CSchuetz1@aol.com>;
> <diablenoir@wanadoo.fr>; "Ramsey Clark 1" <lwschilling@earthlink.net>;
> "David Jacobs" <djacobs@jwm-law.com>; "mailservicesnc"
> <mailservicesnc@tiscalinet.it>; "Mikhail Kuznetzov"
<elena_abpk@mtu-net.ru>;
> "Velko Valkanov" <V_Valkanov@hotmail.com>; "Nico Stejnen"

IRAKISCHE SOUVERÄNITÄT 7-7-2004

Von Kilian Stein

Der UN-Sicherheitsrat hat mit seiner Resolution 1546 dem Okkupationsregime, das, wie sich der deutsche Außenminister Fischer ausdrückt, das Machtvakuum im Irak ausfüllt, eine Legitimation verschafft und die von den Vereinigten Staaten eingesetzte Regierung als souveräne Übergangsregierung anerkannt. Er hat einem Regime nach dem Muster Diem oder Ky in Südvietnam oder Petain in Frankreich das Prädikat souverän verliehen. Konsequent unterstellt die Resolution, daß mit der Machtübertragung an die Übergangsregierung am 30. Juni das Besatzungsregime ende und der Irak seine volle Souveränität wiedererlange.

Zugleich schränkt der Sicherheitsrat selber die Souveränität der Übergangsregierung ein. Ihr wird untersagt, Maßnahmen zu ergreifen, die das Schicksal des Irak über die begrenzte Übergangszeit hinaus berühren. Die

Vorwand, gerufen zu sein, 1983 auf Grenada landeten, um eine ihnen nicht genehme soziale Entwicklung abzubrechen. Heute gibt sich der Sicherheitsrat für dergleichen her.

Zweitens beschließt der Sicherheitsrat, die US-geführte multinationale Truppe sei befugt, alles zu tun, was zur Herstellung der Sicherheit und Stabilität des Irak nötig sei. Das hat eine Konsequenz, die in der Resolution nicht ausdrücklich genannt wird, sich aber zwingend aus ihr ergibt: Der Sicherheitsrat erklärt mit dieser Ermächtigung der Okkupanten die Gegenwehr für völker- und staatsrechtlich illegal. Er setzt sich damit in Widerspruch zu Resolutionen der UN-Vollversammlung, in denen das Recht zum bewaffneten Kampf gegen koloniale und fremde Herrschaft anerkannt und den Guerilla-Kämpfern der Kombattanten- und Kriegsgefangenenstatus zugesprochen wurde. Dieser wird jetzt mit Zustimmung der UNO dem irakischen Widerstand verweigert. Die Vorschläge Brasiliens, Chiles und Spaniens, spezifische völkerrechtliche Verpflichtungen der Genfer Konvention zum Schutz der Zivilbevölkerung und der Kriegsgefangenen in den Beschlußteil der Resolution aufzunehmen, wurden von den USA und Großbritannien blockiert. Amnesty International hat das bereits kritisiert.

Nach alledem verwundert es nicht, daß der Sicherheitsrat die Greuel im Gefängnis Abu Ghraib nicht erwähnt und es auch nicht für nötig hält, die weiterhin angewandte, durch Dienstvorschriften geregelte und selbstverständlich von Präsident Bush gebilligte Folterpraxis im Irak zu benennen, zu kritisieren und ihr Ende zu fordern. Das wäre aber um so nötiger gewesen, als es in den USA immer mehr Stimmen gibt, die das sogenannte humanitäre Kriegsrecht und das absolute Verbot der Folter für überholt erklären.

Ein Drittes noch. Die Resolution legitimiert die Aufstellung von Sicherheitskräften und unterstellt sie der Marionettenregierung, letztlich also den Okkupanten selbst. Diese Sicherheitskräfte - das ist ihre offenkundige Funktion - sollen den Krieg der USA und ihrer Verbündeten in einen Bürgerkrieg verwandeln wie seinerzeit die Regierungsstreitkräfte in Südvietnam. Die fürchterlichen Folgen für den angeblich doch befreiten Irak sind absehbar - und ab jetzt von der UNO sanktioniert. Bundskanzler Schröder

strategischen sozialökonomischen Entscheidungen der US-Verwaltung, die den Übergang des Irak in eine - um es deutlich zu sagen - Sonderwirtschaftszone des Imperialismus regeln, werden nicht erwähnt, obwohl sie einen eklatanten Bruch der Haager Landkriegsordnung darstellen.

Aus der schlicht unterstellten nationalen Souveränität des Irak zieht der Sicherheitsrat rigoros politische und juristische Schlußfolgerungen.

Er stellt erstens fest, dass die multinationalen Streitkräfte auf Wunsch der souveränen irakischen Übergangsregierung im Land seien. Er nutzt also eine von ihm vorgespiegelte Souveränität der Übergangsregierung, um diese im Handumdrehen umzumünzen in die Legalisierung und Legitimierung eines Besatzungsregimes, das durch eine Verletzung des Aggressionsverbotes der Charta der Vereinigten Nationen zustande gekommen ist.

Diese Berufung auf den Willen der Übergangsregierung erinnert an die Einladung der Regierung der CSSR an sowjetische und verbündete Truppen im Jahr 1968. Nur, den Segen des Sicherheitsrates hat die Sowjetunion damals nicht erhalten. Der blieb auch den USA versagt, als sie ebenfalls unter dem Vorwand, gerufen zu sein, 1983 auf Grenada landeten, um eine ihnen nicht genehme soziale Entwicklung abzubrechen. Heute gibt sich der Sicherheitsrat für dergleichen her.

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Nach alledem verwundert es nicht, daß der Sicherheitsrat die Greuel im Gefängnis Abu Ghraib nicht erwähnt und es auch nicht für nötig hält, die weiterhin angewandte, durch Dienstvorschriften geregelte und selbstverständlich von Präsident Bush gebilligte Folterpraxis im Irak zu benennen, zu kritisieren und ihr Ende zu fordern. Das wäre aber um so nötiger gewesen, als es in den USA immer mehr Stimmen gibt, die das sogenannte humanitäre Kriegsrecht und das absolute Verbot der Folter für überholt erklären.

Ein Drittes noch. Die Resolution legitimiert die Aufstellung von Sicherheitskräften und unterstellt sie der Marionettenregierung, letztlich also den Okkupanten selbst. Diese Sicherheitskräfte - das ist ihre offenkundige Funktion - sollen den Krieg der USA und ihrer Verbündeten in einen Bürgerkrieg verwandeln wie seinerzeit die Regierungsstreitkräfte in Südvietnam. Die fürchterlichen Folgen für den angeblich doch befreiten Irak sind absehbar - und ab jetzt von der UNO sanktioniert. Bundskanzler Schröder

hat angekündigt, daß sich die Bundesrepublik in Form von Hilfe zur Ausbildung (sicher auch durch Lieferung von Waffen) an dem Aufbau dieser Bürgerkriegsarmee beteiligen wird.

Die von Kofi Annan als »fair und gerecht« bezeichnete Resolution 1546 ist für mich der Tiefpunkt in der Geschichte der Vereinten Nationen. So viel Unwahrheit war in der UNO wohl noch nie, und nie hat der Sicherheitsrat ein-schließlich seines Mitglieds Bundesrepublik Deutschland aus Lügen so bedenkenlos machtpolitische und juristische Schlüsse gezogen. Alle Staaten der EU und die Kommission in Brüssel haben die Resolution begrüßt.

Der Autor ist Sprecher des rechtspolitischen Ausschusses der Internationalen Liga für Menschenrechte.

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ENDE

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VÖLKERRECHTS- UND VERFASSUNGSBRUCH

unterstützt." (Dieter Deiseroth, a.a.O.)

1. Artikel 26 Abs. 1 des Grundgesetzes lautet: "Handlungen, die geeignet sind und in der Absicht vorgenommen werden, das friedliche Zusammenleben der Völker zu stören, insbesondere die Führung eines Angriffskrieges vorzubereiten, sind verfassungswidrig. Sie sind unter Strafe zu stellen."Ginge es nach Recht und Gesetz, müssten diejenigen, die einen Angriffskrieg vorbereiten, also strafrechtlich verfolgt werden. Paragraph 80 des Strafgesetzbuches lautet: "Wer einen Angriffskrieg, an dem die Bundesrepublik Deutschland beteiligt sein soll, vorbereitet und dadurch die Gefahr eines Krieges für die Bundesrepublik Deutschland herbeiführt, wird mit lebenslanger Freiheitsstrafe oder mit Freiheitsstrafe nicht unter zehn Jahren bestraft." Das Verbot der Vorbereitung eines Angriffskrieges schließt naturgemäß die Führung eines Angriffskrieges selbst und die Beteiligung daran ein.

2. Im "Zwei plus Vier"-Vertrag (vom 12.9.1990), mit dem die Siegermächte über Hitler-Deutschland der Vereinigung der beiden deutschen Staaten zugestimmt haben, steht in Artikel 2 die völkerrechtliche Verpflichtung: "Die Regierungen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik bekräftigen ihre Erklärungen, dass von deutschem Boden nur Frieden ausgehen wird."

3. Die Bundesrepublik Deutschland ist laut Verfassung gleichzeitig an die Normen des Völkerrechts gebunden, also an das nach der UN-Charta verbindliche Verbot der Anwendung von Gewalt gegen einen anderen Staat. Artikel 25 des Grundgesetzes lautet: "Die allgemeinen Regeln des Völkerrechtes sind Bestandteil des Bundesrechtes. Sie gehen den Gesetzen vor und erzeugen Rechte und Pflichten unmittelbar für die Bewohner des Bundesgebietes". Eine völkerrechtswidrige "Aggression" ist nach der am 14. Dezember 1974 beinahe einstimmig beschlossenen Resolution der UN-Generalversammlung die Erstanwendung von Waffengewalt durch einen Staat gegen die Souveränität, die territoriale Unversehrtheit eines anderen Staates. Eine Aggressionshandlung ist (wie in Art. 3 der Resolution 1/3314 festgelegt ist) auch die "Handlung eines Staates, die in seiner Duldung besteht, dass sein Hoheitsgebiet, das er einem anderen Staat zur Verfügung gestellt hat, von diesem anderen Staat dazu benutzt wird, eine Angriffshandlung gegen einen dritten Staat zu begehen". Artikel 25 des Grundgesetzes verbietet somit auch jede indirekte Beteiligung, etwa logistische oder finanzielle Unterstützung eines Aggressors gegen einen Drittstaat.

4. Das Verbot der Vorbereitung und Führung eines Angriffskrieges gilt insbesondere für die Bundeswehr, deren Aufgabe nach dem Grundgesetz ausschließlich die Landesverteidigung ist. Eindeutig steht in Art. 87a, Abs.

DURCH DIE BUNDESREGIERUNG

Die Bundesregierung hat mit ihren Unterstützungsleistungen für die US-amerikanischen und britischen Truppen im Krieg gegen den Irak die Verfassung der Bundesrepublik Deutschland gleich mehrfach gebrochen. Der Krieg gegen den Irak, den die USA gemeinsam mit Großbritannien geführt haben, ist der klassische Fall eines völkerrechtswidrigen Angriffskrieges. "Völkerrechtswidrig handelt danach aber nicht nur der Aggressor selbst, sondern auch derjenige Staat, der einem Aggressor hilft, etwa indem er auf seinem Hoheitsgebiet dessen kriegsrelevante Aktionen duldet oder gar unterstützt." (Dieter Deiseroth, a.a.O.)

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4. Das Verbot der Vorbereitung und Führung eines Angriffskrieges gilt insbesondere für die Bundeswehr, deren Aufgabe nach dem Grundgesetz ausschließlich die Landesverteidigung ist. Eindeutig steht in Art. 87a, Abs.

1 des Grundgesetzes: "Der Bund stellt Streitkräfte zur Verteidigung auf." Und nach Art. 115a, Abs. 1 des Grundgesetzes liegt der "Verteidigungsfall" vor, wenn "das Bundesgebiet mit Waffengewalt angegriffen wird, oder ein solcher Angriff unmittelbar droht". Auch der nach Art. 87a, Abs.2, 3 und 4 "zulässige" Einsatz der Bundeswehr im Inneren ist an den "Verteidigungsfall" bzw. an eine "drohende Gefahr für die freiheitlich demokratische Grundordnung" gekoppelt.

Um eine Grundgesetzänderung zu umgehen, was mit Sicherheit eine wohl nicht erwünschte öffentliche Debatte auslösen würde und äußerst riskant wäre, beruft sich die Bundesregierung heute (beispielsweise in den neuen 'Verteidigungspolitischen Richtlinien', Ziffer 5) auf ein höchst umstrittenes Urteil des Bundesverfassungsgerichts von 1994. Das Gericht hatte am 12. Juli 1994 - unter Hinweis auf Artikel 24, Abs. 2 des Grundgesetzes - die AWACS-, Adria- und Somalia-Einsätze der Bundeswehr gebilligt.

Artikel 24, Abs. 2 GG lautet: "Der Bund kann sich zur Wahrung des Friedens einem System gegenseitiger kollektiver Sicherheit einordnen; er wird hierbei in die Beschränkungen seiner Hoheitsrechte einwilligen, die eine friedliche und dauerhafte Ordnung in Europa und zwischen den Völkern der Welt herbeiführen und sichern". Das Bundesverfassungsgericht bewertete damals Militärbündnisse wie die NATO als "System kollektiver Sicherheit" und Kriegseinsätze, die der UN-Charta und selbst dem NATO-Vertrag widersprechen, als Maßnahmen "zur Wahrung des Friedens". Das Gericht interpretierte den Artikel als Ermächtigungsgrundlage für Auslandseinsätze der Bundeswehr - obwohl darin die "Streitkräfte" und eine "ausdrückliche Zulassung" ihres Einsatzes mit keinem Wort erwähnt sind. Dies ist aber nach Artikel 87a des Grundgesetzes explizit vorgeschrieben: "Außer zur Verteidigung dürfen Streitkräfte nur eingesetzt werden, soweit dieses Grundgesetz es ausdrücklich zulässt." (Art. 87a, GG)

Die angeblichen Bündnisverpflichtungen Deutschlands

Selbst der NATO-Vertrag verbietet jeden Aggressionskrieg. Ein NATO-Staat, der eine Aggression plant und ausführt, verstößt nicht nur gegen die UN-Charta, sondern zugleich auch gegen Artikel 1 des "Nordatlantikvertrags". Darin haben sich alle NATO-Staaten verpflichtet, "in Übereinstimmung mit der Satzung der Vereinten Nationen jeden internationalen Streitfall, an dem sie beteiligt sind, auf friedlichem Wege so zu regeln, dass der internationale Friede, die Sicherheit und die Gerechtigkeit nicht gefährdet werden und sich in ihren internationalen Beziehungen jeder Gewaltandrohung oder Gewaltanwendung zu enthalten, die mit den Zielen der Vereinten Nationen nicht vereinbar ist."

"Das heißt, ein nach Art. 51 der UN-Charta nicht gerechtfertigter "Präventivkrieg" kann auch niemals einen "NATO-Bündnisfall" nach Art. 5 des NATO-Vertrages auslösen und rechtfertigen. Was gegen die UN-Charta verstößt, kann und darf die NATO nicht beschließen und durchführen, auch nicht auf Wunsch oder auf Druck einer verbündeten Regierung. Ein Angriffskrieg wird nicht durch die Ausrufung des NATO-Bündnisfalles zum Verteidigungskrieg." (Dieter Deiseroth, a.a.O.)

Auch Artikel 5 des NATO-Vertrages regelt die Beistandspflicht nur für den Verteidigungsfall. Er verpflichtet die Mitgliedsstaaten zum militärischen

Beistand "im Falle eines bewaffneten Angriffs" gegen eine oder mehrere Vertragsparteien. Diese Voraussetzung für den "Bündnisfall" lag weder für den Afghanistan-Krieg noch im Falle des Irak vor.

Artikel 5 des NATO-Vertrags

"Die Parteien vereinbaren, dass ein bewaffneter Angriff gegen eine oder mehrere von ihnen in Europa oder Nordamerika als ein Angriff gegen sie alle angesehen werden wird; sie vereinbaren daher, dass im Falle eines solchen bewaffneten Angriffs jede von ihnen in Ausübung des in Artikel 51 der Satzung der Vereinten Nationen anerkannten Rechts der individuellen oder kollektiven Selbstverteidigung der Partei oder den Parteien, die angegriffen werden, Beistand leisten."

Das NATO-Truppen-Statut

Nach der Neufassung des Zusatzabkommens zum NATO-Truppen-Statut von 1994 (ZA-NTS 1994) - als Folge der Aufhebung des Besatzungsregimes für Deutschland - brauchen die im Bundesgebiet stationierten US-Streitkräfte grundsätzlich jeweils die Genehmigung durch die deutsche Bundesregierung, wenn sie mit Land-, Wasser- oder Luftfahrzeugen in die Bundesrepublik "einreisen oder sich in und über dem Bundesgebiet bewegen" wollen (Art. 57 Abs. 1 Satz 1 ZA-NTS 1994).

Lediglich Militärtransporte und Truppenbewegungen von NATO-Kontingenten mit Aufgaben im Rahmen und im Auftrag der NATO "gelten als genehmigt". Das gleiche gilt für die in Deutschland gelegenen US-Stützpunkte. In diesen Liegenschaften dürfen die US-Streitkräfte nach Art. 53 Abs 1 ZA-NTS "die zur Erfüllung ihrer Verteidigungspflichten erforderlichen Maßnahmen treffen". Nach Abs. 2 der Vorschrift gilt dies "entsprechend für Maßnahmen im Luftraum über den Liegenschaften".

Bundestagsgutachten: Souverän in vollem Umfang

Im Fall eines Alleingangs gegen den Irak sind die USA nicht berechtigt, ihre Militärbasen in Deutschland sowie den deutschen Luftraum ohne ausdrückliche Genehmigung der Bundesregierung zu nutzen. Zu diesem Ergebnis kam ein bereits am 18. Dezember 2002 abgeschlossenes Gutachten von RD Kramer, Wissenschaftliche Dienste des Deutschen Bundestages.

" ... Durch den 'Vertrag über die abschließende Regelung in Bezug auf Deutschland' vom 12.9.1990 (Zwei-plus-Vier-Vertrag) wurde nicht nur die deutsche Wiedervereinigung ermöglicht, sondern auch das Besatzungsrecht vollständig abgelöst und damit die deutsche Souveränität in vollem Umfange wieder hergestellt. Ausdruck dieser Souveränität war u.a. die am 29.3.1998 in Kraft getretene Änderung des Zusatzabkommens zum Truppenstatut, nach der 'Manöver und andere Übungen im Luftraum der Bundesrepublik' nunmehr der Zustimmung deutscher militärischer Behörden unterliegen bzw. inter nationalen Gepflogenheiten folgend, im Verkehrsrecht der ausländischen Streitkräfte das Erfordernis der Genehmigung der Bundesregierung beim Überschreiten der nationalen Grenzen eingeführt wurde."

Truppen der Vertragsparteien sind "... vorbehaltlich der Genehmigung der Bundesregierung berechtigt, mit Land-, Wasser- und Luftfahrzeugen in die Bundesrepublik einzureisen oder sich in und über dem Bundesgebiet zu

bewegen."

"Fazit: NATO-Truppenstatut sowie Zusatzabkommen zum Truppenstatut sind im Zusammenhang mit dem Nordatlantikvertrag zu berücksichtigen. Liegen die Voraussetzungen des Bündnisfalls, wie bei einer präventiven militärischen Maßnahme, nicht vor, kann aus dem Truppenstatut sowie dem Zusatzabkommen für die Streitkräfte der Vereinigten Staaten von Amerika keine Berechtigung folgen, eigenständig präventive Angriffshandlungen über das Territorium der Bundesrepublik Deutschland zu führen. Eine derartige Berechtigung kann sich auch für das in Artikel 57 Abs. 1 Zusatzabkommen enthaltene Verkehrsrecht der ausländischen Streitkräfte bei einer Sinn und Zweck des Zusatzabkommens entsprechenden Auslegung nicht ergeben." (Der volle Wortlaut des Gutachtens in: junge welt, 1./2.12.2003. www.jungewelt.de)

Nachdem der Krieg gegen den Irak eine rein US-nationale Entscheidung war - nicht nur völkerrechtswidrig, sondern auch ein Verstoß gegen den NATO-Vertrag - gab es keinerlei Beistandsverpflichtung, weder für die eigenen militärischen Unterstützungsleistungen, weder für die Duldung der Nutzung der militärischen Infrastruktur in Deutschland, noch für die Genehmigung von Militärtransporten und von Überflugrechten. Im Gegenteil: Die Bundesregierung hätte all das untersagen und jede eigene Hilfsleistung verweigern müssen.

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über Hitler-Deutschland der Vereinigung der beiden deutschen Staaten zugestimmt haben, steht in Artikel 2 die völkerrechtliche Verpflichtung: "Die Regierungen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik bekräftigen ihre Erklärungen, dass von deutschem Boden nur Frieden ausgehen wird."

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Nieuwe Milosevic-procedures

Rules of Procedure and Evidence are subject to human rights". Bruno Simma & Andreas Paulus, Le rôle relatif des différentes sources du droit international pénal (dont les principes généraux de droit), en, Hervé Ascensio, Emmanuel Decaux & Alain Pellet, Droit International Pénal 57 (Paris: Pedone 2000) ("le Statut élève les droits de l'homme au plus haut rang des sources"; "le Statut et le Règlement sont assujettis aux droits de l'homme").

(128) The extent to which these rights are respected will be an important factor in determining the legality under the Rome Statute and international law of any Security Council request for a deferral:

(It follows from the provision entitling the Security Council to request a deferral under Chapter VII that the Statute considers the interests of the maintenance or restoration of international peace and security to be paramount; however, this does not mean in any way that those interests may set aside the guarantees of a fair trial. In their ruling on the suspension on the proceedings, the jurisdictional organs of the Court should verify the legality of the Security Council(s resolution also under this aspect, taking into due consideration the rights of the suspect or the accused.(

Condorelli & Villalpando, supra, n. 125, 653 (footnote omitted). In this situation, ([t] he Court should then verify whether or not the purpose of the resolution is to unduly keep a person in custody without a trial. If so, the action by the Security Council would be contrary to the Charter, since it would deviate from the purposes laid down in Chapter VII.(Ibid. 653, n. 103. In addition, (in accordance with the obligation to periodically review the ruling providing for the detention of a person, the competent Chamber, at the moment of deferral, and during the period of suspension, should re-examine the subsistence of the conditions that justified the detention as provided for under Article 53 of the Statute.(Ibid., 653 (footnote omitted).

(129) Thus, if the International Criminal Court were to address this second question by examining the legality of the Security Council's action, it would be doing no more than the Appeals Chamber of the ICTY did in the Tadiæ case in 1995. There, the Appeals Chamber reviewed the question whether the Security Council had the power to establish a subsidiary judicial organ. In deciding this question, the Appeals Chamber explained that it was not sitting as a constitutional tribunal reviewing acts of the Security Council, but was addressing the question "whether the International Tribunal, in exercising this 'incidental' jurisdiction, can examine the legality of its establishment by the Security Council, solely for the purpose of ascertaining its own 'primary' jurisdiction over the case before it", Prosecutor v. Tadiæ, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT-94-1-AR72, Appeals Chamber, 2 October 1995, para. 20. It added:

"Obviously, the wider the discretion of the Security Council under the Charter of the United Nations, the narrower the scope for the International Tribunal to review its

... United States of America ... fix such threat. The resolution was ... security.

actions, even as a matter of incidental jurisdiction. Nevertheless, this does not mean that that the power disappears altogether, particularly in cases where there might be a manifest contradiction with the Principles and Purposes of the Charter."

Ibid., para. 21.

(130) Condorelli & Villalpando, supra, n. 125, 648 ((In exercising its power of judicial review of the resolution requesting the deferral, the Court will establish the legality or otherwise of the Security Council(s action. In so doing, the Court will also be entitled to ascertain that the Security Council has not exceeded its competence according to the Charter.() (footnote omitted). See also William A. Schabas, Introduction to the International Criminal Court 66 (Cambridge: Cambridge University Press 2001) (noting that the Rome Statute "imposes the requirement that in seeking a deferral or stay of proceedings, the Council act pursuant to Chapter VII of the Charter", which "means that the Council must determine the existence of a 'threat to the peace', a 'breach of the peace' or an 'act of aggression', in the words of Article 39 of the Charter" and that, "[c]onceivably, the Court could assess whether or not the Council was validly acting pursuant to Chapter VII.").

(131) Condorelli & Villalpando, supra, n. 125, 647 ((The deferral by the Security Council should thus respect the conditions set up by the UN Charter . . . . ().

(132) Ibid., 650 (footnote omitted). The authors asserted that if all the conditions listed were present, the International Criminal Court would be "bound to uphold the deferral of the case", ibid. This conclusion is correct to the extent that "a duly motivated request of deferral" is one that was intended by the drafters (see Section IV.B below).

(133) Ibid., 647 (footnote omitted).

(134) Antonio Cassese, The Statute of the International Criminal Court: Some Preliminary Reflections, 10 Eur. J. Int(l L. 144, 163 (1999) (([A] sound interpretation of this provision [Article 16] leads to the conclusion that the powers of the Security Council are not unfettered. The request may only be made by a resolution adopted under Chapter VII of the United Nations Charter. Hence, the Security Council may request the Prosecutor to defer his activity only if it explicitly decides that continuation of his investigation or prosecution may amount to a threat to the peace.().

(135) Indeed, the UN Charter does not authorize the Security Council, the General Assembly or any other UN organ to compel the International Court of Justice or any other international or national court to defer judicial proceedings. Any such power must be found in an express provision of the constitutive instrument of the court. As one commentator has noted, ([a]s the organ charged with the primary responsibility for the maintenance of peace, the SC does not enjoy priority of any kind over the

resolution – by refusing to surrender persons accused of these crimes to the Internation... [redacted] obligations under that treaty - if they were to comply with the

Council has to make a preliminary finding under Article 39 »); _____, The Role of the Security Council in the New International Criminal Court from a Systemic Perspective, in Boisson de Chazournes & Gowlland-Debbas, The International Legal System, supra, 637 ("Since the resolution to defer action by the ICC is one adopted under Chapter VII, a prior determination under Article 39, the prerequisite for any action, must presumably have to be made."); T.D. Gill, Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter,26 Neth. Y.B. Int'l L. 33, 39 (1995) (« Although the Council rarely invokes specific articles of the Charter, including Article 39, in its decisions or recommendations, it has always based enforcement measures on the terms of that provision. Without a determination that a given situation poses either a threat to the peace or constitutes a breach of the peace or act of aggression, the Council cannot take enforcement measures under Chapter VII. »);Gérard Cohen Jonathan, Article 39, in Cot & Pellet, La Charte des Nations Unie, supra, 651 ((Avant d(en venir contre un Etat en rupture de paix aux mesures conservatoires ou de contrainte que la Charte l(autorise à prendre, le Conseil de sécurité doit donc déterminer s(il existe une menace contre la paix, un rupture de la paix ou un acte d(agression. A cet égard, le Conseil doit non seulement établir ce qui s(est passé effectivement, il doit apprécier et qualifier les faits à la manière d(un juge. Cette (constation(est un prélable à l(action.() (footnote omitted) ; N. Schrijver, The Use of Economic Sanctions by the UN Security Council : An International Law Perspective, in H.H.G. Post, ed., International Economic Law and Armed Conflict 123, 144 (1994) ("This consistent practice emphasizes that sanctions under Article 41 can only be instituted after a prior determination of the Security Council under Article 39.").

(185) Frowein & Krisch, Action with Respect to Threats, supra, n. 161, 727 ("Resolutions that cannot be considered as adopted under Chapter VII . . . for lack of the necessary determination . . . do not create binding effects for states".); Schweigman, supra, n. 161, 185 ("[D]ecisions contained in a resolution that does not include a prior determination under Article 39, cannot be considered binding decisions under Chapter VII of the Charter.").

ICTY-DOSSIER

(186) The Trial Chamber had held with respect to both the Article 39 determination and the measures taken under Chapter VII after that determination:

TADIC APPEAL CASE

"The making of a judgement as to whether there was such an emergency in the former Yugoslavia as would justify the setting up of the International Tribunal under Chapter VII is eminently one for the Security Council and only for it; it is certainly not a justiciable issue but one involving considerations of high policy and of a political nature. As to whether the particular measure of establishing the International Tribunal is, in fact, likely to be conducive to the restoration of peace and security is, again, pre-eminently a matter for the Security Council and for it alone and no judicial body, certainly not this Trial Chamber, can or should review that step."

Prosecutor v. Tadiæ, Decision on the Defence Motion on Jurisdiction, Case No. IT-94-1-T, Trial Chamber, 10 August 1995, para. 23. The Appeals Chamber reversed the Trial Chamber on both points and declared:

"The doctrines of 'political questions' and 'non-justiciable disputes' are remnants of the reservations of 'sovereignty', national honour', etc. in very old arbitration treaties. They have receded from the horizon of contemporary international law, except for the occasional invocation of the 'political question' argument before the International Court of Justice in advisory proceedings and, very rarely, in contentious proceedings as well.

The Court has consistently rejected this argument as a bar to examining a case. It considered it unfounded in law. As long as the case before it or the request for an advisory opinion turns on a legal question capable of a legal answer, the Court considers that it is duty-bound to take jurisdiction over it, regardless of the political background or the other political facets of the issue."

Tadiæ, 1995 Appeals Chamber Decision, supra, n. 159, para. 24.

(187) Tadiæ, 1995 Appeals Chamber Decision, supra, n. 159, para. 27.

(188) Ibid., para.28.

(189) Ibid., para. 29. Similarly, Judge Sidhwa stated in a separate opinion in this case:

"All exercise of discretionary power is subject to the rules of fairness and reasonableness and to the jurisdictional limits provided, or which fairly and inherently can be assumed out of the objects and purposes that call for its exercise and the surrounding circumstances that create its need."

Ibid. (separate opinion, Sidhwa, J.), para. 21.

(190) Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) nothwithstanding Security Council Resolution 276, Advisory Opinion, ICJ Rep. 293 (1971).

(191) Ibid., 294.

(192) Ibid. (separate opinion, Gross, J.), 340.

(193) Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Request for Indication of Provisional Measures), Libya v. U.S., Order of 14 April 1992, ICJ Rep. (1992), para. 44.

MILOSEVIC - CASE POLITIE & GETUIGEN VAN WEGEN MOGEN SERIEUS GEWOON WORDEN!

Sagittarius

Van: "Sagittarius" <sagitar@hetnet.nl>
Aan: <scontact@balkanpeace.org>
CC: <slobodavk@yu.net>;
Verzonden: woensdag 4 juni 2003 21:30
Onderwerp: Mr. Milosevic

Dear Nico,

I acknowlegde our convenversation about your recent visit to Mr. President. In reaction to your briefing and the fact that Mr. Milosevic was asking himself why still there were not yet set renewed steps in order to resume legal action before Dutch courts against his illegal detention here into the Netherleands, I must confirm here in writing that such shall not be possible, before the financial obstacles are surmounted.

So - and this is the reason why I confirm this in writing, addressed also to Sloboda and Mr. Ognjanovic - I would strongly insist on the utmost efforts with respect to this issue.

Best wishes,

Nico Steijnen

Mr. N.M.P. Sleijnen
Advocaat en Prokureur
Couwenhoven 52-05
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Sagittarius

Van: "Vladimir Krsljanin" <slobodavk@yubc.net>
Aan: "Velko Valkanov" <v_valkanov@hotmail.com>; "Klaus Hartmann" <klaus.hartmann@user.ecore.net>; "Christopher Black" <bar@idirect.com>; "Nico Varkevisser" <office@globalreflexion.org>; "Prof A.Bernardini" <mailservicesnc@tiscalinet.it>; "Sagittarius" <sagitar@hetnet.nl>
Verzonden: woensdag 25 juni 2003 1:58
Onderwerp: ICDSM Meeting

Dear friends,
You are invited (with the endorsment of President Milosevic) to a meeting of leading members of ICDSM, to discuss the future work and the organization of the Committee.
The meeting will take place on Saturday, June 28 at The Hague, after the demos, starting at 17:30. Venue - same as for the Meeting of members and friends of ICDSM (see our last e-mail).
Best wishes,
Vladimir Krsljanin

To join or help this struggle, visit:
http://www.sloboda.org.yu/ (Sloboda/Freedom association)
http://www.icdsm.org/ (the international committee to defend Slobodan Milosevic)
http://www.wpc-in.org/ (world peace council)
http://www.free-slobo.de/ (German section of ICDSM)
http://www.geocities.com/b_antinato/ (Balkan antiNATO center)
http://www.slobodan-milosevic.org/ (an independent web site)

datum

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gironummer Rabobank: 21 71 31

Act.[50] In de considerans wordt er op gewezen dat indien Amerikanen terecht zouden moeten staan voor het ICC, zij niet de rechten zouden kunnen genieten die hen toekomen op grond van de Bill of Rights en de Grondwet, zoals het recht op berechting door een jury. De wet verbiedt samenwerking met het ICC en met staten die met het Hof samenwerken (section 3005). Section 3006 verbiedt militaire samenwerking met landen die het Hof ondersteunen. Van deze sanctie zijn onder andere de NAVO-landen weer uitgesloten. Overigens geven de sections 3003 en 3004 de president in tal van omstandigheden het mandaat om toch met het ICC samen te werken en geen sancties te treffen. Veel schrik heeft section 3008 aangejaagd die aan de president de bevoegdheid geeft 'to use all means necessary and appropriate to bring about the release' van Amerikaanse onderdanen. Alhoewel de gegeven bevoegdheid zeker zeer ruim is, lijkt me het niet zinvol te vervallen in wilde speculaties. De wet kiest in eerste instantie voor legale middelen om het beoogde doel te bereiken, zo mag de Amerikaanse regering zelfs voor het ICC verschijnen als dat dienstig is om de invrijheidsstelling van een Amerikaan te bewerkstelligen.

De tribunalen van Sierra Leone en Oost-Timor hebben hun werk aangevangen.[51] Anders dan de tribunalen voor Rwanda en het voormalige Joegoslavië worden zij deels door lokale rechters bezet. Een van de andere opmerkelijke verschillen met de Statuten van de huidige ad hoc tribunalen is dat er voor de statengemeenschap geen verplichting tot samenwerking in is opgenomen. Beide tribunalen hebben slechts financiering voor een beperkte periode verworven. Desalniettemin slaagde de Oost-Timorese rechter er in in de belangrijke Los Palos-zaak vonnis te wijzen tegen tien verdachten waarbij gevangenisstraffen werden opgelegd tussen 4 en ruim 33 jaar.[52] De Verenigde Naties braken de onderhandelingen met Cambodja over de oprichting van vergelijkbare tribunalen aldaar af.

Op 14 februari 2002 behaalde Congo voor het Internationaal Gerechtshof een glorieuze overwinning op de voormalige kolonisator België. Het Hof bepaalde dat de uitvaardiging en circulatie van het aanhoudingsbevel tegen de minister van Buitenlandse Zaken van Congo een schending van de immuniteit van de betrokkene betekende en dat België het diende in te trekken.[53] Alhoewel het Hof zich formeel nauwelijks uitspreekt over de vraag of België op grond van het volkenrecht universele rechtsmacht mocht claimen, bevat de uitspraak tussen de regels door veel opmerkingen over dit thema. Het Hof gaat zelfs zover dat het zich uitspreekt over de immuniteitenkwestie, aannemende dat België 'had jurisdiction under international law to issue and circulate the arrest warrant.'[54] Doordat het Hof in casu niet heeft beslist over de toelaatbaarheid van universele rechtsmacht, heeft zijn oordeel dat een aanhoudingsbevel tegen Ministers van Buitenlandse Zaken ontoelaatbaar is betrekking op alle strafvervolgingen, ongeacht op welk rechtsmachtsbeginsel deze zijn gestoeld.

Naar aanleiding van de zaak Congo-België rijst de vraag welke handelingen nog wel toegelaten zijn. Het Hof stelt in paragraaf 70 over het aanhoudingsbevel immers dat 'the mere issue violated the immunity which Mr. Yerodia enjoyed.' Yerodia is nooit gearresteerd, ondervraagd of aangehouden, wel heeft hij afgezien van reizen naar het buitenland uit vrees voor aanhouding. Is dat laatste iets waarvoor België ter verantwoording dient te worden geroepen? In de ogen van het Hof wel, ondanks het feit dat een eventuele arrestatie de verantwoordelijkheid van een derde staat zelf is, ook al doet deze dat op Belgisch verzoek. Dit roept de vraag op of opsporingshandelingen die zonder dat de betrokkene daar last van heeft en zonder dat tegen hem een aanhoudingsbevel is uitgevaardigd nog wel zijn toegelaten.[55] Temeer daar het Hof nadrukkelijk het Belgische argument heeft verworpen dat het aanhoudingsbevel als zodanig buiten België niet zelfstandig tot aanhouding kan leiden. Ook ten aanzien van de personen die immuniteit kunnen claimen bestaat onduidelijkheid. Dit wordt mede veroorzaakt doordat het Hof België veroordeelde, ondanks het feit dat ten tijde van het uitvaardigen van het aanhoudingsbevel en ten tijde van de uitspraak van het Hof betrokkene geen minister van Buitenlandse Zaken (meer) was. Kennelijk ontleent iemand uit functie ook nog een immuniteit aan zijn voormalige betrekking. Voorts geeft ook het gemak waarmee het Hof staatshoofden, ministers van buitenlandse zaken en diplomaten een absolute immuniteit toekent reden te veronderstellen dat het de kring nog wel wijder zou kunnen (of willen) trekken.

Besluit

Veel van de indrukwekkende hoeveelheid wetgeving heeft op de keper beschouwd toch meer een symbool-karakter dan dat verwacht mag worden dat er een werkelijke invloed op het recht in de praktijk vanuit gaat. Dit geldt vooral voor de Europese Unie en de anti-terrorismewetgeving. In het huidige tijdsgewricht doet het er kennelijk niet zo zeer toe of een maatregel een middel is tegen de kwaal, maar dat men in ieder geval denkt of wil denken dat zulks zo is. Veel 'problemen' van Europees strafrecht laten zich definiëren als institutionele problemen. Als Europa beslist dat het strafrecht Europees moet, dat er een Europese strafrechter, officier van justitie en politie dient te zijn, dan volgt de noodzaak van Europese wetboeken van Strafrecht en Strafvordering automatisch. Die beslissing wordt niet genomen en zo ontwikkelt het Europees strafrecht zich fragmentarisch, inconsistent, inefficiënt, ondemocratisch, ontoegankelijk en onsamenhangend. Aldus rijzen er gevaren voor een efficiënte rechtshandhaving en rechtswaarborgen voor burgers.

In het uniestrafrecht, de strafrechtelijke samenwerking en de terrorismebestrijding is het de facto vrijwel uitgesloten schendingen van mensenrechten voor te leggen aan toezichthoudende organen. Dit is er op terug te voeren dat de samenwerking van staten dogmatisch nog niet wordt gezien als een voor de naleving van mensenrechten relevante gezamenlijke verantwoordelijkheid.

Voor wat betreft de vervolging van internationale misdrijven zijn het afgelopen jaar flinke stappen terug gezet. Feitelijk doen staten niet veel meer dan hun eigen stoepje schoonvegen en Nederland sluit met de WIM uit dat het veel aan strafvervolging zal kunnen doen. In dat licht is de Amerikaanse strijd tegen het ICC weliswaar overtrokken, maar desondanks niet gunstig voor de ontwikkeling van een internationaal strafrecht. Ik sluit niet uit dat al met al het afgelopen jaar een periode van stilstand is ingeluid. Ook zonder dat de Amerikaanse regering het dwarsboomt zal het ICC zich de komende jaren vooral bezig moeten houden met allerlei preliminaire vragen van meer volkenrechtelijke aard, alvorens toe te komen aan de de behandeling van 'echte' strafzaken. Het Statuut voor het Internationaal Strafhof bevat immers meer mogelijkheden voor staten om niet samen te hoeven te werken met het ICC dan verplichtingen om zulks wel te doen. ■

50. Zie Senate of the United States, 107th Cong., 2d Sess., H.R. 4775. Voorts K. Brölmann en G. den Dekker, De Verenigde Staten als volkenrechtelijk koorddanser, *NJB* 2002, p. 1246-1247.
51. Zie Statute of the Special Court for Sierra Leone, 16 January 2002. United Nations Transitional Administration in East Timor Regulation No. 2000/15 of 6 June 2000 on the Establishment of Panels with Exclusive Jurisdiction over Serious Offences.
52. Dili District Court, Special Panel for Serious Crimes, Judgment, Case No. 09/2000, 11 December 2001.
53. International Court of Justice, Judgment 14 February 2002, Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium).
54. Zie par. 46. Terecht wijzen de Joint Separate Opinion Judges Higgins, Kooijmans and Buergenthal en de Dissenting Opinion Judge *ad hoc* Van den Wyngaert op de zwakte in deze redenering. Immers als het Hof de vragen in logische volgorde zou hebben beantwoord, was het wellicht niet toegekomen aan de immuniteit.
55. Zie ook Dissenting Opinion Judge *ad hoc* van den Wyngaert, par. 75.

Mr R. van Elst, mr dr M. Boot-Matthijssen*

Wetsvoorstel internationale *misdrijven*

Enkele knelpunten en mogelijke verbeteringen

Richard van Elst is gerechtsauditeur bij de Hoge Raad der Nederlanden en bereidt een proefschrift voor over verdragsverplichtingen tot het vervolgen van ernstige schendingen van rechten van de mens op basis van universele rechtsmacht.

De voorgestelde WIM zal ten dele een belangrijke verbetering betekenen voor de strafbaarheid van de meest ernstige schendingen van rechten van de mens en internationaal humanitair (oorlogs)recht. De wet maakt een einde aan de manier waarop die strafbaarheid nu verspreid is over verschillende wetten. Voor het eerst wordt voorzien in strafbaarheid van misdrijven tegen de mensheid als zodanig en bovendien wordt de rechtsmacht over genocide uitgebreid. Op onderdelen worden hieronder wijzigingen en verbeteringen voorgesteld.

Machteld Boot-Matthijssen was van 2000-2002 verbonden aan de sectie humanitair oorlogsrecht van het Nederlandse Rode Kruis. Met ingang van 1 oktober 2002 is zij wetenschappelijk medewerker bij Instituut Clingendael.

Ernstige schendingen van rechten van de mens en internationaal humanitair (oorlogs)recht, kunnen binnenkort door de Nederlandse rechter worden berecht, waar ter wereld die zich ook hebben voorgedaan. Dat is de strekking van het onlangs aan de Tweede Kamer voorgelegde voorstel voor de Wet internationale misdrijven, kortweg de WIM.[1] De wet voorziet in zogenoemde universele rechtsmacht over de misdrijven die in het Statuut van het Internationaal Strafhof zijn opgenomen alsmede over foltering zoals dat tot nu toe is omschreven in de Uitvoeringswet folteringverdrag. Daarnaast wordt de verjaring van deze misdrijven afgeschaft en de volkenrechtelijke immuniteit van onder meer buitenlandse staatshoofden, regeringsleiders en ministers van buitenlandse zaken uitdrukkelijk gehonoreerd zolang zij als zodanig in functie zijn.

De WIM zou een welkome uitbreiding kunnen betekenen van het bestaande instrumentarium om in Nederland aanwezige buitenlanders te vervolgen wegens hun betrokkenheid bij schendingen van rechten van de mens in het land van herkomst. Het komt nogal eens voor dat ten aanzien van een vreemdeling die een vluchtelingstatus aanvraagt aanwijzingen bestaan dat hij zich schuldig heeft gemaakt aan oorlogsmisdrijven of misdrijven tegen de mensheid.[2] Vervolging lijkt met name aangewezen in het niet zeldzame geval dat het onmogelijk is de vreemdeling terug te sturen naar het land van herkomst omdat zijn leven daar in gevaar is of omdat hem daar geen eerlijk proces of de doodstraf staat te wachten. In de praktijk blijkt die vervolging nog weinig succesvol, aldus een recente evaluatie van het Nationaal Opsporingsteam Voor Oorlogsmisdrijven (NOVO).[3]

In deze bijdrage worden enkele knelpunten van de voorgestelde WIM geïnventariseerd en mogelijke oplossingen daarvoor gegeven. Daarbij wordt ook bekeken in hoeverre met de WIM bestaande mogelijkheden tot het vervolgen en berechten van oorlogsmisdrijven en misdrijven tegen de mensheid worden uitgebreid of beperkt, zonder dat daarbij een overzicht van alle komende veranderingen is beoogd. Daarom blijven onder meer de terugwerkende kracht (die is afgewezen[4]) en de bevoegde rechter (de zaken worden geconcentreerd bij de gewone rechter te Arnhem[5]) verder onbesproken.

* Voor beiden geldt dat deze bijdrage op persoonlijke titel is geschreven.

1. *Kamerstukken II* 2001/02, 28 337, nrs 1-2 Regels met betrekking tot ernstige schendingen van het internationaal humanitair recht (Wet internationale misdrijven).
2. Nationale ombudsman 22 april 2002, rapportnummer 2002/110, p. 6 meldt voor 1 augustus 2001 een werkvoorraad bij de IND van 1 785 zaken.
3. A. Beijer e.a., *Evaluatie van het Nationaal Opsporingsteam Voor Oorlogsmisdrijven*, WODC 2002, p. 30.
4. *Kamerstukken II* 2001/02, 28 337, nr 3 (MvT), p. 24-25.
5. Art. 15 WIM, met uitzondering overigens van Nederlandse militairen die voor de militaire kamer van de Rechtbank te Arnhem worden vervolgd en berecht, zie *Kamerstukken II* 2001/02, 28 337, nr 3 (MvT), p. 33-34 en 52.

Milosevic - Ernstig

5.2. Definitie van foltering voldoet niet aan lex certa

De strafbaarstelling van foltering als bedoeld in het VN Folteringverdrag wordt vrijwel onherkenbaar door een creatieve maar onnodig gelaagde definitie waarmee het wordt onderscheiden van 'torture' als oorlogsmisdrijf of misdrijf tegen de mensheid waarop het Statuut betrekking heeft en dat in de WIM als 'marteling' is vertaald. De definitie is als volgt geconstrueerd. Marteling wordt in de WIM gedefinieerd als 'het opzettelijk veroorzaken van ernstige pijn of ernstig lijden, hetzij lichamelijk, hetzij geestelijk, bij een persoon die zich in gevangenschap of in de macht bevindt van degene die beschuldigd wordt, met dien verstande dat onder marteling niet wordt verstaan pijn of lijden dat louter het gevolg is van, inherent is aan of samenhangt met rechtmatige sancties'.[52] Dit begrip wordt vervolgens in twee stappen omgewerkt tot foltering als bedoeld in het VN Folteringverdrag. Eerst wordt het begrip foltering gedefinieerd, te weten als marteling met als bijkomende voorwaarde dat wordt gemarteld met het oogmerk zoals dat hierboven al is besproken. Dit is een tamelijk zinloze exercitie nu op hetgeen aldus als foltering is omschreven geen straf wordt bepaald. Daarvoor is namelijk een tweede stap vereist, en wel dat de foltering wordt begaan door een 'ambtenaar of anderszins ten dienste van de overheid werkzame persoon in de uitoefening van zijn functie'.[53]

Deze nodeloos getrapte definitie is onvoldoende duidelijk en precies (*lex certa*) en suggereert bovendien ten onrechte dat de uitleg van het begrip marteling identiek zou moeten zijn als het gaat om foltering als bedoeld in het VN Folteringverdrag en om 'torture' als oorlogsmisdrijf of misdrijf tegen de mensheid. Foltering als bedoeld in het VN Folteringverdrag is echter een strafbaar feit *sui generis* dat ook een incidenteel geval kan betreffen terwijl 'torture' als oorlogsmisdrijf of misdrijf tegen de mensheid deel uitmaakt van een groter geheel en daarom veelal structuurcriminaliteit betreft.[54] Gelet op dit verschillende kader zou voor wat betreft foltering *sui generis* bijvoorbeeld met recht een engere uitleg kunnen worden bepleit voor het toebrengen van 'ernstig' pijn of letsel dat overigens in het VN Folteringverdrag is geplaatst naast 'andere vormen van wrede, onmenselijke of onterende behandeling of bestraffing'.[55]

5.3. Strafmaximum niet langer gedifferentieerd en ten onrechte verhoogd

Ook in de strafmaxima wordt onvoldoende onderscheid gemaakt tussen enerzijds 'torture' als oorlogsmisdrijf of misdrijf tegen de mensheid en anderzijds foltering *sui generis*. Zonder de dood van het slachtoffer als strafverzwarend gevolg komt foltering *sui generis* vrijwel overeen met het commune delict van zware mishandeling met voorbedachten rade begaan door een ambtenaar, waarop vijftien jaar gevangenisstraf is gesteld, zoals ook nu het geval is in de Uitvoeringswet foltering, terwijl levenslange gevangenisstraf kan worden opgelegd indien het folteren de dood ten gevolge heeft.[56] In de WIM zou deze differentiatie vervallen en levenslange gevangenisstraf zonder meer de maximumstraf zijn. Deze verhoging miskent dat foltering niet in al zijn schakeringen (zoals een ernstig uit de hand gelopen politieverhoor) behoort tot de ernstigste feiten.[57] Ook bij de strafbaarstelling van andere misdrijven naar internationaal recht, zoals vliegtuigkaping, zijn de strafmaxima gedifferentieerd.[58] Bij het herstellen van de strafdifferentiatie is het overigens wel raadzaam de, in de praktijk ook bij incidentele gevallen van foltering niet ongebruikelijke, vermissing van het slachtoffer met de dood gelijk te stellen teneinde bewijsproblemen zoveel mogelijk te voorkomen.[59]

Een andere verbetering is dat misdrijven tegen de mensheid niet langer alleen strafbaar zijn indien zij zijn begaan in de context van een internationaal gewapend conflict.

5.4. Verjaring afgeschaft

Foltering krachtens het VN Folteringverdrag wordt, net als overigens genocide en de meeste oorlogsmisdrijven en misdrijven tegen de mensheid, van verjaring uitgesloten. Het Folteringverdrag noch internationaal (gewoonte)recht[60] bieden daarvoor afdoende grondslag aangezien foltering *sui generis* betrekking heeft op foltering dat niet als oorlogsmisdrijf of misdrijf tegen de mensheid kan worden gekwalificeerd. De ernst van het feit is als argument weinig overtuigend gelet op het bestaande systeem waarin ook de meest ernstige strafbare feiten na 18 jaar verjaren.[61] Evenmin overtuigend is het *ius cogens* karakter van het verbod van foltering – dat in de memorie van toelichting eveneens als reden wordt gegeven om foltering van verjaring uit te sluiten – welk caoutchoucbegrip betrekking heeft op staatsaansprakelijkheid zonder dat daaruit volgt op welke wijze inhoud

52. Art. 1 lid 1 onder d.
53. Achtereenvolgens art. 1 lid 1 onder d; art. 1 lid 1 onder e; art. 8 lid 1 WIM.
54. C.F. Rüter, *Enkele aspecten van de strafrechtelijke reactie op oorlogsmisdrijven en misdrijven tegen de menselijkheid*, diss. Amsterdam, Amsterdam: University Press 1973, p. 23-24 en 48-49.
55. *Prosecutor v. Kunarac, Kovac en Vukovic*, Judgment, T.Ch. II, Case No. IT-96-23-T en IT-96-23/1-T, 22 februari 2001, par. 469 ('The definition of an offence is largely a funtion of the environment in which it develops.') en par. 461 (The Trial Chamber is therefor wary not to embrace too quickly and too easily concepts and notions developed in a different legal context. The Trial Chamber is of the view that notions developed in the field of human rights can be transposed in international humanitarian law only if they take into consideration the specificities of the latter body of law.'); M. Boot, *supra* noot 13, p. 587-588 nr 568 ('a human rights concept cannot be automatically transposed to violations constituting crimes under the law of armed conflict').
56. Art. 1 lid 1 en lid 3 Uitvoeringswet folteringverdrag, zie *Kamerstukken II* 1986-1987, 20 042 nr 3 (MvT), p. 7.
57. Anders het advies van de Raad van State, *Kamerstukken II* 2001/02, 28 337, B, p. 8.
58. Zie art. 117, 168, 385a, 385b Sr en art. 80 Kernenergiewet.
59. Om dezelfde reden is destijds art. 26 lid 4 Besluit Buitengewoon Strafrecht aangepast, zie *Stb.* H (1947) 206. Zie ook art. 5 lid 2 WOS.
60. Op grond van twee verdragen kan worden betoogd dat *ernstige* oorlogsmisdrijven en misdrijven tegen de mensheid niet verjaren, zie UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 26 november 1968, 754 *U.N.T.S.* 73 (1970) (in werking getreden op 11 november 1970; Nederland is geen partij) als European Convention on the Non-Applicability of the Statutory Limitation to Crimes Against Humanity and War Crimes, 25 februari 1974; *E.T.S.* 82 (niet in werking getreden; Nederland heeft dit verdrag wel geratificeerd).
61. Vgl. *Kamerstukken II* 2001/02, 28 495, nr 3 (MvT), p. 2 waarin wordt voorgesteld de verjaring af te schaffen voor een aantal misdrijven die de dood ten gevolge hebben.

a. buitenlandse staatshoofden, regeringsleiders en ministers van buitenlandse zaken, zolang zij als zodanig in functie zijn, alsmede andere personen voor zover hun immuniteit door het volkenrechtelijk gewoonterecht wordt erkend;
b. personen die op grond van enig verdrag waarbij Nederland partij is over immuniteit beschikken.

Met de erkenning van de immuniteit voor buitenlandse staatshoofden, regeringsleiders en ministers van buitenlandse zaken – de overige in deze bepaling bedoelde immuniteiten blijven hier onbesproken – geeft de wetgever gevolg aan de recente uitspraak van het Internationaal Gerechtshof (IGH) in de zaak die de Democratische Republiek Congo tegen België had aangespannen. Daarin sprak het IGH zich uit over het door een Belgische onderzoeksrechter op basis van universele rechtsmacht uitgevaardigd arrestatiebevel jegens Abdulaye Yerodia Ndombasi, die op enig moment Minister van buitenlandse zaken was, wegens diens betrokkenheid bij genocide en schendingen van internationaal humanitair recht. Het IGH oordeelde het arrestatiebevel in strijd met de aan Yerodia toekomende immuniteit, en in het bijzonder met diens 'immunity from criminal jurisdiction and the inviolability then enjoyed by him under international law'.[83] Hoewel deze uitspraak alleen betrekking heeft op ministers van buitenlandse zaken, trekt de wetgever de lijn terecht door naar buitenlandse staatshoofden en regeringsleiders hetgeen in overeenstemming is met de ratio van deze immuniteit, te weten het niet belemmeren van internationale betrekkingen.[84] Tevens strekt het ertoe te voorkomen dat deze functionarissen mogelijk op onzuivere politieke gronden in het buitenland strafrechtelijk worden vervolgd.[85]
Uit het voorgestelde artikel 16 WIM wordt evenwel niet duidelijk hoe ver de immuniteit na afloop van die functie nog doorwerkt. Op grond van de letterlijke tekst kan worden betoogd dat de immuniteit slechts bestaat *zolang* de immuniteitsgerechtigden als zodanig in functie zijn en daarna geen effect meer heeft. De memorie van toelichting verzet zich evenwel tegen die uitleg doordat daarin wordt aangeknoopt bij de overweging van het IGH dat de immuniteit van Yerodia geen straffeloosheid betekent omdat hij na afloop van de uitoefening van die functie kan worden berecht voor feiten die tijdens die functie zijn begaan 'in a private capacity'.[86] In de memorie van toelichting wordt hierover opgemerkt dat aan de daden die 'in a private capacity' zijn begaan een ruime interpretatie moet worden gegeven, en dat het hier aan de orde zijnde internationale immuniteitsrecht in beweging is.[87]
In de tekst van artikel 16 WIM zou tot uitdrukking moeten komen dat strafvervolging van buitenlandse staatshoofden, regeringsleiders en ministers van buitenlandse zaken na afloop van het uitoefenen van die functie niet langer is uitgesloten ter zake van de misdrijven waarop de WIM betrekking heeft. Dit sluit aan bij het standpunt dat was neergelegd in de memorie van toelichting zoals die aan de Raad van State was voorgelegd. Daarin stond dat thans moet worden aangenomen dat 'deze immuniteit in ieder geval niet meer geacht kan worden te bestaan voor de in het Statuut van het Internationaal Strafhof genoemde internationale misdrijven'.[88] De door ons voorgestane benadering sluit tevens aan bij het standpunt dat de ernstigste misdrijven naar internationaal recht nooit tot de officiële hoedanigheid kunnen worden gerekend, zoals Higgins, Kooijmans en Buergenthal in hun *separate opinion* bij de uitspraak in de zaak Congo versus België overwogen.[89] Door enerzijds de immuniteit absoluut te erkennen voor zolang de immuniteitsgerechtigde in functie is, en anderzijds aan te geven dat strafvervolging na afloop van die functie weer mogelijk is, bevordert Nederland de ontwikkeling van de internationale rechtsorde binnen de door het IGH getrokken grenzen in plaats van de rechtsontwikkeling aan anderen over te laten.

8. Conclusies en aanbevelingen

De voorgestelde WIM zal ten dele een belangrijke verbetering betekenen voor de strafbaarheid van de meest ernstige schendingen van rechten van de mens en internationaal humanitair (oorlogs)recht. Het maakt een eind aan de wijze waarop die strafbaarheid tot nu toe over verschillende wetten is verspreid en voorziet voor het eerst in de strafbaarheid van misdrijven tegen de mensheid als zodanig. Bovendien wordt de rechtsmacht over genocide uitgebreid.
Bij het omschrijven van genocide en misdrijven tegen de mensheid, bootst de wetgever vrij slaafs het Statuut na. Het verdient nadere overweging om aan de definitie van genocide het oogmerk tot vernietiging van een sociale of politieke groep toe te voegen. De redactie van misdrijven tegen de *mensheid* – en niet misdrijven tegen de *menselijkheid* – is niet helder en moet net als de vertaling van 'vervolging' worden verbeterd. De specifieke omschrijving van oorlogsmisdrijven is een belangrijke verbetering ten opzichte van de huidige algemene strafbaarstelling in artikel 8 WOS van 'schending van wetten en gebruiken van de oorlog' welke omschrijving in de voorgestelde WIM nog als vangnetbepaling wordt gehanteerd. De wijze waarop in het voorgestelde artikel 5 WIM oorlogsmisdrijven worden omschreven die in geval van een internationaal gewapend conflict zijn begaan, is evenwel ontoegankelijk en onduidelijk. Bij de categorisering van de verschillende oorlogsmisdrijven moet het onderscheid naar het karakter van het gewapende conflict vervallen. Het gebruik van anti-personeelsmijnen moet uitdrukkelijk als oorlogsmisdrijf worden omschreven.
Er bestaan onvoldoende redenen om ook foltering als bedoeld in het VN Folteringverdrag in de WIM op te nemen, de gedifferentieerde strafmaxima daarvoor te verlaten en de verjaring uit te sluiten. In plaats daarvan dient de Uitvoeringswet folteringverdrag te worden gehandhaafd met daarin een verbeterde definitie van foltering. Dit kan een zelfstandige interpretatie, los van foltering als oorlogsmisdrijf of misdrijf tegen de mensheid, bevorderen.
De voorgestelde, beperkte universele rechtsmacht belemmert het uitoefenen van opsporings- en vervolgingsbevoegdheden zozeer dat veelal onvoldoende informatie zal kunnen worden verzameld om daadwerkelijk tot vervolging te kunnen overgaan in die gevallen waarin een mogelijke verdachte slechts korte tijd in Nederland verblijft. In plaats daarvan moet de WIM van toepassing worden verklaard op een ieder die zich in of buiten Nederland schuldig maakt aan de daarin omschreven misdrijven.
Bij het uitsluiten van strafvervolging voor buitenlandse staatshoofden, regeringsleiders en ministers van buitenlandse zaken laat de wetgever het antwoord in het midden op de vraag of deze immuniteitsgerechtigden na het einde van die functie alsnog kunnen worden vervolgd voor de misdrijven die in de WIM zijn omschreven. De wetgever zou richting moeten geven aan de rechtsontwikkeling door die vraag bevestigend te beantwoorden hetgeen tamelijk eenvoudig kan door artikel 16 WIM aan te scherpen en de strafvervolging van de genoemde immuniteitsgerechtigden uit te sluiten *'voor de duur dat* zij als zodanig in functie zijn'. ■

82. *Prosecutor v. Furundžija*, Judgment, *supra* noot 62, par. 162.
83. IGH 14 februari 2002, par. 70; 41 *I.L.M.* 536 (2002); *MRT* XCV (2002), p. 139-174 m.nt. A. Bos en N. Keijzer. De volledige uitspraak en 'opinions' zijn te vinden op www.icj-cij.org.
84. IGH 14 februari 2002, *supra* noot 84, par. 54; *Kamerstukken II* 2001/02, 28 337, nr 3 (MvT), p. 20.
85. *Kamerstukken II* 2001/02, 28 337, nr 3 (MvT), p. 21.
86. IGH 14 februari 2002, *supra* noot 84, par. 61.
87. *Kamerstukken II* 2001/02, 28 337, nr 3 (MvT), p. 20.
88. *Kamerstukken II* 2001/02, 28 337, A, p. 3 m.k.
89. Joint Separate Opinion Higgins, Kooijmans en Buergenthal, par. 85 ('serious international crimes cannot be regarded as official acts because they are neither normal State functions nor functions that a State alone (in contrast to an individual) can perform'). De Raad van State lijkt tot dit standpunt te neigen, *Kamerstukken II* 2001/02, 28 337, B p. 4

...p. 33-34 en 52.

Prof. mr N.J. Schrijver

AFGHANISTAN-KG
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Kroniek van het *internationaal publiekrecht*

Voortgezette rechtsontwikkeling, actieve internationale rechtspraak en verankering in nationaal recht: deze in de vorige kroniek aangeduide trends zetten zich onverminderd voort. Internationaal recht komt steeds vaker aan de orde voor de Nederlandse rechter en steeds vaker hebben nationale regels een internationale oorsprong.

Nico Schrijver is hoogleraar volkenrecht aan de VU en medewerker van dit blad.

Een voormalig staatshoofd voor een internationaal straftribunaal, terroristische aanslagen op de grootste mogendheid in de wereld, in reactie daarop het collectief zelfverdedigingsartikel van het NAVO-verdrag voor het eerst in de geschiedenis ingeroepen, de VN-Commissie voor Internationaal Recht die na 46 jaar van studie en discussie haar werkzaamheden inzake het fundamentele vraagstuk van staatsaansprakelijkheid afrondt. En bovendien kwam het internationale recht diverse keren in volle omvang en ongezouten aan de orde bij de Nederlandse rechter: een kort geding tot onmiddellijke invrijheidstelling aangespannen door oud-president Milosovic tegen Nederland, de zaak-Bouterse bij de Hoge Raad na cassatie in het belang der wet, en vredesgroepen tegen de Staat der Nederlanden in verband met de voorgenomen deelname aan de militaire operatie tegen Afghanistan.

Wanbetalers in de statengemeenschap

De statengemeenschap is in de verslagperiode betrekkelijk stabiel gebleven. Er zijn geen nieuwe staten op de kaart bijgekomen of oude er vanaf geraakt. Het wachten is op de officiële onafhankelijkheid van Oost-Timor om het aantal lidstaten van de Verenigde Naties op 190 te brengen. Wel hadden opnieuw gevaarlijke schermutselingen plaats tussen India en Pakistan en in het Grote Merengebied in Afrika. De Derde VN-Conferentie inzake Minst Ontwikkelde Landen (Brussel, mei 2001) bracht nogmaals de toenemende differentiatie binnen de statengemeenschap voor het voetlicht. Maar liefst 50 staten in vooral Afrika, maar ook Azië en Latijns-Amerika, behoren tot deze groep, die gekenmerkt wordt door een zeer laag inkomen per hoofd van de bevolking, een lage graad van industrialisatie en hoog analfabetisme. De VN-conferentie leidde overigens niet tot veel juridisch relevante nieuwe beleidslijnen. Wel tot een inspanningsverplichting om industrie- en landbouwproducten uit die landen tarief- en quotavrij naar industrielanden te kunnen importeren.[1] De differentiatie van staten kwam ook nadrukkelijk naar voren tijdens de vervolgconferenties inzake internationaal klimaatbeleid te Bonn en Marrakesh, onder voorzitterschap van onze VROM-minister Pronk. Na herculische inspanningen van Pronk kon toch een compromis worden bereikt over de uitleg van het in 1997 gesloten Kyoto Protocol bij het VN-Klimaatverdrag, dat industrielanden verregaande verplichtingen oplegt inzake vermindering van de emissie van broeikasgassen. Het compromis is dat bepaalde industrielanden (met name Australië, Canada, Verenigde Staten) nu ook bestaande opslagcapaciteit in bossen en landbouwgebieden mee mogen tellen.[2] Dit bleek evenwel niet voldoende om de regering-Bush mee over de streep te trekken.

Een aantal staten werd in januari 2002 nogal nadrukkelijk aan de schandpaal genageld vanwege een contributieachterstand van twee of meer jaren aan de Verenigde Naties. Artikel 19 bepaalt dat in zo'n geval een lid zijn stemrecht in de Algemene Vergadering verliest en Secretaris-Generaal Kofi Annan bepaalde dat die situatie zich voor maar liefst 20 staten voordoet. Het betrof vooral arme Afrikaanse landen en ook Afghanistan, Irak en enkele Centraal-Aziatische landen. Nu is het bijzondere dat de Algemene Vergadering meestal in de eerste negen maanden van het jaar niet of nauwelijks bijeenkomt in zittingen waar gestemd moet worden. Gewoonlijk zorgen de meeste staten (waaronder in het verleden vaak ook de Verenigde Staten en Rusland) dat zij voor de opening

1. Zie de 'Brussels Declaration' in VN Doc. A/CONF.191/12, alsmede het 'Programme of Action for the LDCs in VN Doc. A/CONF.191/11, 8 juni 2001. Zie ook het Verslag van de Conferentie in brief minister Herfkens aan Tweede Kamer, 12 juli 2001.
2. Zie voor een verslag het tijdschrift *Environmental Policy and Law*, de website www.unfccc.int van het Secretariaat van het VN-Klimaatverdrag en de brief van minister Pronk aan Tweede Kamer inzake het verslag van de Zesde Conferentie van Partijen bij het Klimaatverdrag in Bonn, Kamerstukken II, 27 400XI, nr 98, 14 augustus 2001.

e Algemene Vergadering voldoende contributie len om weer net buiten de Artikel 19-procedure geraken.[3] Wel legt het nog eens het gebrekkige financieringssysteem van internationale organisaties bloot, die op enkele uitzonderingen van gedeeltelijk automatische financiering na (o.a. Europese Gemeenschap, Wereld Meteorologische Unie) geheel zijn aangewezen op verplichte contributies en vrijwillige bijdragen van lidstaten. Dit ook tegen de achtergrond van een trendmatige daling van beschikbare middelen voor ontwikkelingsfinanciering, zogenaamde officiële ontwikkelingshulp (ODA): het officiële percentage van 0,7% van het BNP als ODA wordt door slechts door enkele landen gehaald, te weten Nederland en drie Scandinavische landen. Het gemiddelde ODA-percentage van donorlanden is nu gedaald tot slechts 0,22 % BNP.[4] Intussen is de internationale gemeenschap voor de periode 2001-2015 ambitieuze ontwikkelings- en millenniumdoelen overeengekomen, waaronder in 2015 halvering van het aantal mensen dat moet rondkomen van minder dan een dollar per dag, basisonderwijs voor alle kinderen, vermindering van de kindersterfte met tweederde ten opzichte van 1990, verlaging van de moedersterfte met driekwart en halvering van het aantal mensen zonder toegang tot veilig drinkwater.[5]

Codificatie van Volkenrecht

Een wapenfeit van formaat in de verslagperiode is de afronding van het werk van de VN-Commissie voor Internationaal Recht (ILC) op het gebied van Staatsaansprakelijkheid, 46 jaar nadat de studie en discussie over dit fundamentele vraagstuk van volkenrecht een aanvang nam. Diverse speciale rapporteurs van de ILC hebben hun beste krachten aan dit onderwerp gegeven, waaronder de Nederlander Riphagen (1976-1981). Op basis van de voorstellen van haar huidige rapporteur, de Australiër James Crawford, nam de Commissie in juli 2001 een serie van 59 ontwerp-artikelen aan inzake Staatsaansprakelijkheid van staten voor onrechtmatig handelen, alsmede een uitvoerig artikelsgewijs commentaar.[6] Op 12 december 2001 besloot de Algemene Vergadering van de VN, overeenkomstig het voorstel van de ILC, om de artikelen voor kennisgeving aan te nemen.[7] Niet uitgesloten is dat te zijner tijd een diplomatieke conferentie bijeengeroepen wordt om deze ontwerp-artikelen in de vorm van een multilateraal verdrag te doen vaststellen. Maar sommige staten, waaronder Nederland,[8] menen dat de ontwerp-artikelen zoals die thans voorliggen grotendeels geldend internationaal gewoonterecht weerspiegelen en dat consolidatie en eventuele verdere ontwikkeling nu het beste aan internationale rechtspraak, arbitrage en doctrine kunnen worden toevertrouwd. Dit vanwege het niet denkbeeldige gevaar dat tijdens een diplomatieke conferentie veel zaken weer opnieuw worden opgerakeld en/of ondertekeningen en ratificaties van veel staten uitblijven.

De ontwerp-artikelen bestaan uit vier delen: I. De internationale onrechtmatige daad door een staat; II. Inhoud van de aansprakelijkheid van een staat; III. De tenuitvoerlegging van de aansprakelijkheid van een staat; IV. Algemene bepalingen. Kernelementen van de staatsaansprakelijkheid zijn schending van een volkenrechtelijke verplichting en toerekenbaarheid daarvan aan een staat, vraagstukken die aan de fundamenten van het volkenrecht raken. De artikelen maken een onderscheid tussen 'schade' en 'onrecht' ('*injury*'). In het laatste geval kan een bredere groep staten een juridisch belang hebben om hiertegen in geweer te komen. Daarmee samenhangend kan een bilateraal georiënteerde of multilaterale benadering gevolgd worden. Aanvankelijk voorzag het ontwerp ook in een uitvoerige bepaling over internationale misdrijven gepleegd door staten, waaronder agressie, apartheid, ernstige schending van mensenrechten en grootschalige vervuiling (het oorspronkelijke art. 19). Dit onderwerp bleek evenwel toch te controversieel. In plaats hiervan zijn nu artikelen 40 en 41 opgenomen, die zich richten op ernstige schendingen (*'gross or systematic failure by the responsible State'*) van verplichtingen onder dwingend volkenrecht. Andere belangrijke punten in de laatste voorbereidingen waren de kwestie van de reikwijdte van tegenmaatregelen ('counter-measures', art. 49-54) en bepalingen op het terrein van geschillenbeslechting. Uiteindelijk besloot de Commissie deze laatste niet op te nemen aangezien deze reeds in het algemeen voldoende aangegeven zijn bij de meer specifieke, 'primaire' verplichtingen van staten.

De aanslagen van 11 september 2001

De aanslagen op de Verenigde Staten van 11 september 2001 hebben ook het volkenrecht in rep en roer gebracht.[9] Daags na de afschuwelijke gebeurtenissen en met de dreiging van verdere terroristische acties, nam de Veiligheidsraad unaniem Resolutie 1368 (2001) aan. Hierin veroordeelde de Veiligheidsraad in klip en klare bewoordingen de aanslagen en uitte de Raad zijn medeleven met de slachtoffers en hun families. Tegelijkertijd identificeerde de Raad de aanslagen ook als 'een bedreiging van de internationale vrede en veiligheid', één van de sleutelvoorwaarden waarmee de Veiligheidsraad de deur naar dwangactie onder Hoofdstuk VII van het VN-Handvest kan openzetten. Opvallend was evenwel dat de Veiligheidsraad zelf (nog) geen maatregelen trof, maar alleen de bereidheid uitte om alle noodzakelijke 'stappen' te nemen om te antwoorden op de aanslagen van 11 september 2001. Wel erkende de Veiligheidsraad in algemene bewoordingen 'het recht op individuele en collectieve zelfverdediging in overeenstemming met het VN-Handvest'. Dit is een verwijzing naar artikel 51 van het VN-Handvest. Het bepaalt dat ingeval van een gewapende aanval tegen een lid van de Verenigde Naties deze het 'natuurlijke recht' heeft

3. Zie voor een recent overzicht 'Status of Contributions', VN Doc. ST/ADM/ SER.B/583, 14 december 2001.
4. Zie voor recente cijfers de jaarrapporten van het Development Assistance Committee van de OESO (ook op www.oecd.org) en het jaarlijkse World Development Report van de Wereldbank.
5. Zie de Millennium verklaring van de Algemene Vergadering van de Verenigde Naties, *VN*Doc. A/RES/55/2 18 sept. 2000.
6. Het uitvoerige rapport van de ILC met de ontwerp-artikelen en het Commentaar zijn opgenomen in VN Doc. A/56/10. De werkzaamheden in het laatste stadium van de voorbereidingen zijn beschreven in J. Crawford, J. Peel en S. Olleson, 'The ILC's Articles of States for Internationally Wrongful Acts: Completion of the Second Reading', *European Journal of International Law*, vol. 13 (2002), nr 1, ook toegankelijk via website www.ejil.org.
7. VN Doc. A/RES/56/83; verslag van de beraadslagingen in VN Doc. A/56/589 + Corr. 1.
8. Zie de rede van J.G. Lammers, *Juridisch Adviseur ministerie van Buitenlandse Zaken*, tot de Zesde (Juridische) Commissie van de AVVN, 31 oktober 2001.
9. Zie hierover A. Cassese, 'Terrorism is also disrupting some crucial categories of international law', in *European Journal of International Law* 12 (2001) 3, p. 993-1001 en N.J. Schrijver, 'Responding to International Terrorism: Moving the frontiers of international law for 'Enduring Freedom'', *Netherlands International Law Review*, jrg. 48 (2001), p. 271-291.

op zelfverdediging, totdat de Veiligheidsraad maatregelen heeft genomen ter handhaving van de internationale vrede en veiligheid.[10] Ook de NAVO-raad toonde vrijwel onmiddellijk zijn solidariteit met de Verenigde Staten als aangevallen verdragspartij door te verklaren dat artikel 5 NAVO-Verdrag (1949) van toepassing is.[11] Dit artikel stelt dat een gewapende aanval op één lidstaat zal worden beschouwd als een aanval tegen hen allen en dat bijgevolg zij elkaar in de uitoefening van het recht op individuele of collectieve zelfverdediging zullen bijstaan teneinde de veiligheid in het verdragsgebied te herstellen. Dit artikel 5 NAVO voorziet overigens ook in een rapportageplicht aan de VN-Veiligheidsraad en erkent de primaire rol van dit VN-orgaan voor de handhaving van vrede en veiligheid.[12] Een en ander bleef evenwel in de NAVO-verklaring onvermeld, wellicht met de bedoeling maximale speelruimte voor het bondgenootschap te behouden. Dit moge symbolisch zijn voor het beperkte gewicht dat de NAVO de VN-Veiligheidsraad toebedeelt, zeker nu de Verenigde Staten in het geding zijn, maar daarmee is dit nog niet juist. Op 28 september 2001 nam de Veiligheidsraad wel een heel pakket anti-terrorismemaatregelen aan. De Raad deed dat expliciet 'handelend onder hoofdstuk VII'. De maatregelen zijn verstrekkend en behelzen met name verplichtingen voor alle staten om enigerlei steun aan en financiering van internationaal terrorisme onmogelijk te maken, zoals het bieden van een schuilplaats aan terroristen en hun leiders of handlangers. Belangrijk is dat ook deze Resolutie 1373 (2001) unaniem werd aangenomen. De resolutie herbevestigde nog eens het recht op zelfverdediging. De in de resolutie getroffen bindende maatregelen, in feite een stuk internationale wetgeving[13], hebben vooral een preventieve functie en zijn niet bedoeld als maatregelen ter wegneming van de concrete bedreiging van de internationale vrede en veiligheid die in de plaats treden van de uitoefening van het recht op zelfverdediging van de Verenigde Staten tegen het Al Qa'ida-netwerk in Afghanistan.

Op het eerste gezicht onderstreepte de Veiligheidsraad aldus het recht van de Verenigde Staten om zich zo nodig gewapenderhand te verdedigen. Toch kan men de vraag stellen of de aanvallen van 11 september 2001 wel een 'gewapende aanval' in de zin van artikel 51 vormden.[14] Artikel 51, opgesteld in 1945, ziet waarschijnlijk op de situatie van een gewapende aanval door een staat op een andere staat. Het is echter een feit is dat de formulering van artikel 51 dit niet eist en dus ruimte laat voor een interpretatie om het recht van zelfverdediging ook van toepassing te achten ingeval van gewapende aanvallen door andere entiteiten dan staten, bijvoorbeeld internationale organisaties of internationale terreurgroepen. Daarnaast zijn de gebruikte formuleringen van de Veiligheidsraad ook niet geheel ondubbelzinnig: de Veiligheidsraad 'erkent' of 'herbevestigt' weliswaar in de betrokken resoluties het recht op zelfverdediging in algemene zin, maar zegt niet met zoveel woorden dat dit in deze zaak van toepassing is. De bepaling over zelfverdediging staat er echter natuurlijk niet gewoon even en passant bij. De Verenigde Staten hebben het recht om hieruit te kunnen afleiden dat de Veiligheidsraad van oordeel is dat het als aangevallen staat zichzelf mocht verdedigen. Dit is echter geen vrijbrief, want afgezien van rapportageverplichtingen aan de Veiligheidsraad en opschorting van het recht zodra de Veiligheidsraad zelf het heft in handen neemt, gelden ook de gewoonterechtelijke criteria van noodzaak, proportionaliteit, doelmatigheid en verplichting tot naleving van internationaal humanitair recht. Weinigen hebben de noodzaak betwijfeld om tegen de Al Qa'ida-terroristen op te treden, maar wel is – zoals ook ten tijde van de Kosovo-oorlog (1999) – kritiek geuit op het treffen van onschuldige burgers en burgerdoelen en op het gebruik van clusterbommen. Voorts is het de vraag of de reikwijdte van het begrip zelfverdediging zover kan gaan dat het omverwerpen van een regime in een ander land, hoe verwerpelijk ook, min of meer als nevendoel mag gelden. Dit roept belangrijke vragen op naar bewijsmateriaal inzake de identiteit van de plegers van de aanslagen en medeplichtigheid en toerekenbaarheid daarvan aan de Talibanleiders. Weliswaar is naar verluidt in besloten zittingen van de Veiligheidsraad en NAVO-ministers alsmede in vele bilaterale contacten door de Amerikanen bewijsmateriaal overlegd op basis waarvan de betrokkenheid van Al Qa'ida en zijn leider Osama bin Laden buiten kijf is komen te staan, maar veel is daarvan niet naar buiten gekomen. Misschien is de heimelijk opgenomen video-tape van gesprekken van Osama bin Laden zelf nog wel het meest harde, publiek beschikbare bewijs. Een belangrijke vraag is tot op welke hoogte de daden van Al Qa'ida aan het voormalige Talibanregime van Afghanistan toegerekend kunnen worden. Artikel 8 van de hierboven besproken Ontwerp-artikelen inzake Staatsaansprakelijkheid stellen daarover: *'The conduct of a person or group of persons shall be considered an act of State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.'* Het is nog maar de vraag of dit wel opgaat voor de verhouding tussen Al Qa'ida en het Taliban-regime. In Nicaragua *v.* de Verenigde Staten (1986) paste het Internationaal Gerechtshof een zogenaamde *'effective control test'* toe om na te gaan of en in welke mate de contra's in Nicaragua naar de pijpen dansten van de Verenigde Staten en aldus al dan niet geacht konden worden namens dit land op te treden. Dat laatste was toch niet het geval, aldus het Hof. Overigens is het opmerkelijk dat het Joegoslavië-tribunaal in het geval van individuele strafrechtelijke verantwoordelijkheid een veel lagere drempel lijkt te hanteren, getuige zijn jurisprudentie inzake *'overall control'* in de Tadic-zaak. Het is belangrijk om hier ergens een grens te trekken en het recht op zelfverdediging en het beginsel van toerekenbaarheid niet zo ruim en losjes te interpreteren dat iedere staat die verdacht wordt van enigerlei betrokkenheid bij internationaal terrorisme het object van militaire acties van de Verenigde Staten en zijn bondgenoten kan worden. Hier is wel reden voor zorg, getuige (a) de zinsnede in de Amerikaanse rapportage aan de Veiligheidsraad d.d. 7 oktober 2001: *'We may find that our self-defence requires further actions with respect to other organizations and other States'*;[15] en (b) de aanduiding van Irak, Iran en Noord-Korea als 'de as van het kwaad' in de State of the Union (januari 2002) van president Bush. Zolang er geen hard bewijsmateriaal voorhanden is dat de leiders van deze staten rechtstreeks mede verantwoordelijk gehouden kunnen worden voor de aanslagen van 11 september, is er thans volkenrechtelijk geen legitimatie om tot militaire actie tegen Irak, Iran of Noord-Korea over te gaan.

Behandeling Taliban- en Al Qa'ida-krijgers

In januari 2002 begonnen de Verenigde Staten me het overvliegen van in Afghanistan gevangen geno men Al Qa'ida-strijders en Talibansoldaten naar d Amerikaanse basis Guantanamo Bay op Cuba. Vele werden niet alleen kaalgeschoren en stevig geboeid maar ook gekneveld en verdoofd vervoerd, terwijl z bij aankomst geblinddoekt naar kooien werden over gebracht. De wijze van behandeling van deze gevar

10. Zie ook N.J. Schrijver, 'Opinie: De aanslagen op de Verenigde Staten en het Volkenrecht', in *NJB* 2001, p. 1613-1614. De Tweede Kamer is regelmatig ingelicht over de Nederlandse opstelling door met name de ministers van Buitenlandse Zaken en Defensie in de serie Tweede Kamer, nr 27 925, niettegenstaande het feit dat de Regering art. 100 Gw. niet van toepassing achtte. Zie daarover het voortreffelijke artikel van L.F.M. Besselink, 'Militaire acties en de rol van het parlement', in *NJB* 2001, p. 1883-1887.
11. Zie NAVO persbericht 2001, nr 124. Zie ook de website van de NAVO: www.nato.int/terrorism.
12. De betrokken zinnen luiden: 'Elke dergelijke gewapende aanval en alle maatregelen genomen in reactie daarop moeten terstond ter kennis worden gebracht van de Veiligheidsraad. Deze maatregelen zullen worden opgeheven zodra de Veiligheidsraad de nodige maatregelen zal hebben genomen om de internationale vrede en veiligheid te herstellen en te handhaven.' Art. 5 NAVO Verdrag van Washington, 4 april 1949. Een analyse van de nieuw ontstane situatie biedt W. Werner, 'Art. 5 van het NAVO-Verdrag', in *Militair Rechtelijk Tijdschrift*, jrg. 94 (2001), nr 10.
13. Deze resolutie 1373 (2001) van de VN-Veiligheidsraad werd dan ook zelfs in het Tractatenblad gepubliceerd. Zie *Trb.* 2001, 179.
14. Zie daarover E.P.J. Myjer, 'Twin Tower-aanval: een onbelemmerd recht op zelfverdediging?', *NJB* 2001, p. 1888-1890 en K.M. Manusama, 'Terrorisme en zelfverdediging in de Veiligheidsraad', *Vrede en Veiligheid*, jrg. 30 (2001), nr 4, p. 481-499.
15. Zie *VN Doc.* S/2001/946, 7 oktober 2001.

nen gaf aanleiding tot een storm van internationaal protest, niet alleen van mensenrechtenorganisaties maar ook van Europese bondgenoten. Het debat ging met name over de vraag of deze gevangenen al dan niet krijgsgevangenen zijn in de zin van de Derde Geneefse Conventie inzake de behandeling van krijgsgevangenen (1949) en ook recht hebben op de bescherming die het Aanvullend Protocol I inzake internationale gewapende conflicten (1977) nog zou kunnen bieden. De Verenigde Staten stelden aanvankelijk dat het internationale humanitaire recht niet van toepassing was en dat de gevangen genomen strijders 'illegale strijders' waren. Aldus wilden de Verenigde Staten maximale speelruimte behouden om hen als criminele terroristen te laten berechten door militaire tribunalen met de mogelijkheid hen ter dood te veroordelen.

Artikel 4 van de Derde Geneefse Conventie bepaalt dat tot krijgsgevangenen gerekend worden alle leden van de strijdkrachten alsmede van milities en andere vrijwilligerskorpsen die in handen van de vijand zijn gevallen. In dat laatste geval dienen zij *1.* onder bevel te staan van een persoon die verantwoordelijk is voor zijn ondergeschikten, *2.* als milities herkenbaar te zijn, *3.* openlijk wapens te dragen, en *4.* zich aan de regels van het oorlogsrecht te houden.[16] Volgens de Amerikaanse regering voldoen de Taliban-strijders niet aan de tweede en vierde voorwaarde en de Al Qa'ida-strijders als leden van een terroristisch netwerk aan geen van de voorwaarden. Volgens artikel 5 van de Derde Geneefse Conventie moet ingeval van twijfel over de status van gevangenen deze worden vastgesteld door een 'bevoegd tribunaal'. Het maakt wel degelijk verschil of de gevangenen al dan niet als krijgsgevangenen beschouwd moeten worden. Krijgsgevangenen hebben het recht om te zwijgen tijdens hun verhoren en mogen zich beperken tot het noemen van hun naam, rang en het nummer van hun onderdeel (art. 17). Zij mogen niet veroordeeld worden voor hun deelname aan het gewapend conflict. Bovendien hebben zij op grond van artikel 118 Derde Geneefse Conventie het recht om na de beëindiging van de vijandelijkheden zonder uitstel vrijgelaten en gerepatrieerd te worden. Onder hoge internationale druk verklaarde de regering-Bush begin februari 2002 dat de Taliban-gevangenen behandeld worden volgens de humanitaire standaarden van de Derde Conventie van Genève, mede omdat Afghanistan partij was bij dit verdrag. De Al Qa'ida strijders komen, volgens de Amerikaanse regering, daarvoor niet in aanmerking, omdat zij niet tot een regulier leger behoren en geen enkel land vertegenwoordigen dat partij was bij de Conventie. Dat is op zichzelf een begrijpelijk standpunt, maar zou niet mogen betekenen dat zij verstoken blijven van de humanitaire behandeling waarop ook zij recht hebben in de geest van de Geneefse Conventies en de aloude 'Martens'-clausule (in niet geregelde gevallen gelden de wetten der menselijkheid en de eisen van het publieke geweten van de beschaafde volken) alsmede de rechten van de mens; zie ook de Opinie van T.D. Gill in de vorige aflevering van dit blad.

Kort Geding tegen de Staat vanwege Aanval op Afghanistan

In oktober 2001 vorderden vijf vredesgroepen, waaronder de Vereniging Juristen voor de Vrede, in kort geding dat de Staat der Nederlanden geen medewerking zou verlenen aan de dreiging met of het gebruik van militair geweld door de Verenigde Staten en zijn bondgenoten tegen Afghanistan. Dit omdat een opdracht van de VN-Veiligheidsraad (art. 42 VN-Handvest) daartoe ontbrak en derhalve de dwingende norm van het geweldverbod van het VN-Handvest (art. 2, lid 4) gold. Voorts vorderden de vijf vredesgroepen dat Nederland dit standpunt aan de bevoegde VN-instanties kenbaar zou maken middels een ontwerp-resolutie. Op 26 oktober 2001 verklaarde de President van de Haagse Rechtbank, Mr Paris, de vredesgroepen ontvankelijk in hun vorderingen, omdat ieder van hen het bevorderen van de wereldvrede en van de internationale rechtsorde in hun Statuten heeft opgenomen en deze doelstelling vrijwel gelijkluidend is aan artikel 90 Gw. De President wees, mijns inziens terecht, hun stelling af dat de aanslagen van 11 september niet als een gewapende aanval aangemerkt kunnen worden en derhalve artikel 51 VN-Handvest niet van toepassing zou zijn. In zijn vonnis memoreert de President dat de Veiligheidsraad het recht op zelfverdediging heeft erkend en bevestigd en dat zowel de Verenigde Naties als het Verenigd Koninkrijk de op 7 oktober begonnen militaire acties bij de Raad hebben aangemeld. Ter staving van zijn opvatting dat hier sprake was van een gewapende aanval en dat de staat Afghanistan hierin een '*substantial involvement*' had, haalt de Rechtbankpresident passages uit het Nicaragua-arrest (1986) van het Internationaal Gerechtshof en de VN-Definitie van Agressie (1974) aan. Voorts meent hij dat de militaire acties voldeden aan de vereisten van noodzakelijkheid, onmiddellijkheid en proportionaliteit. Op grond van een en ander wees de Rechtbankpresident in zijn vonnis van 26 oktober 2001 de vordering van de vijf vredesgroepen dan ook af.[17] Deze hebben hoger beroep ingesteld.

Een aantal staten werd in januari 2002 nadrukkelijk aan de schandpaal genageld vanwege een contributieachterstand van twee of meer jaren aan de Verenigde Naties.

Poging tot algemeen anti-terrorismeverdrag

De aanslagen van 11 september leidden vrijwel onmiddellijk tot grote, hernieuwde aandacht voor het opstellen van een algemeen anti-terrorismeverdrag. Daarover is reeds vanaf 1996 onderhandeld in het kader van een ad hoc commissie van de Algemene Vergadering, met name op basis van een ontwerp daartoe van India. Groot struikelblok voor de onderhandelingen tot nu toe is steeds geweest het ontbreken van overeenstemming over een definitie van terrorisme. Dit omdat het nu eenmaal dikwijls, en in vele delen van de wereld, voorkomt dat degene die voor de één een terrorist is voor de ander soms als een vrijheidsstrijder geldt: denk aan Zuid-Afrika, Israël en de Palestijnen, Noord-Ierland.[18] Diverse staten, waaronder Nederland, die tot voor kort weinig heil zagen in de opstelling van een algemeen anti-terrorismeverdrag, vonden nu plotsklaps dat dit nog in 2001 tot stand moest komen.[19] Niettegenstaande intensieve onderhandelingen en vooruitgang, wekt het geen verbazing dat dit (nog) niet is gelukt. De geschillen over de definitie, de gepastheid van een 'political offence'-exceptie en de opname van een verwijzing naar zelfbeschikking bleken opnieuw vooralsnog onoverbrugbaar.[20] Hoe wenselijk een algemeen anti-terrorismeverdrag politiek en juridisch ook moge zijn, het belang daarvan dient ook niet overschat te worden. Er bestaat reeds een groot aantal anti-terrorisme verdragen, zowel multilaterale (twaalf) als regionale

16. Zie ook I. Detter, *The Law of War*, Cambridge, 2e dr., 2000 en F. Kalshoven en L. Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law*, Genève, 2001.
17. Voor de tekst van het vonnis zie *KG* 2001, 287.
18. Zie voor een algemene analyse B.T. van Ginkel, 'Terrorisme in internationaal juridisch perspectief', in *Vrede en Veiligheid*, jrg. 29 (2000), p. 393-412, p. 396.
19. Rede minister Van Aartsen tot AVVN, 13 november 2001.
20. Zie Report of the Working Group in *VN Doc.* A/C.6/56/L.9, 29 oktober 2001.

(zeven).[21] Deze hebben onder meer betrekking op het kapen van vliegtuigen of schepen, terroristische acties op vliegvelden of boorplatforms, gijzeling van diplomaten en personen in het algemeen. De twee meest recente verdragen zijn een VN-Verdrag inzake terroristische bomaanslagen (1997) en een inzake internationale financiering van terrorisme (1999). Naast verplichte nationale strafbaarstelling van dergelijke misdrijven voorzien veel van deze verdragen in juridische samenwerking en berechting óf uitlevering (*aut dedere aut judicare*) van verdachten. De verhoogde bereidheid na 11 september tot ondertekening en ratificatie van al deze verdragen is mooi meegenomen. Ook de verdere rol van de VN-Veiligheidsraad en regionale organisaties, zoals de Europese Unie, moet niet onderschat worden. Zij kunnen via direct werkende besluiten een belangrijke bijdrage aan terrorismebestrijding leveren. Een belangrijk voorbeeld is Veiligheidsraadsresolutie 1373 (2001), die op nogal unieke wijze in feite neerkomt op een stuk internationale wetgeving. Naast bindende verplichtingen voor alle staten om terrorisme te bestrijden, met name door het onthouden van financiering en enigerlei andere vorm van ondersteuning en betrokkenheid, voorziet deze Resolutie in instelling van een toezichtscommissie, het 'Counter-Terrorism Committee', dat onder leiding staat van de Britse ambassadeur Greenstock. Deze commissie is thans druk doende met het bestuderen van de rapporten van alle lidstaten die zij op 31 december j.l. moesten inleveren over de maatregelen die zij genomen hebben om gevolg te geven aan de bindende Resolutie 1373.[22] Ten slotte heeft de Veiligheidsraad de mogelijkheid om door middel van dwangmaatregelen op te treden tegen staten die verdacht worden van betrokkenheid bij internationaal terrorisme. Thans gelden nog steeds bepaalde diplomatieke, financiële en reissancties tegen Libië, Soedan en Afghanistan.

Internationaal economisch overleg

Hoe kwetsbaar de wereldeconomie ook is voor instabiliteiten, blijkt wel uit de grote verschillen in de cijfers van economische groei en internationale handel voor het jaar 2000 en 2001. Economisch begon het tij in 2001 te keren en 11 september kwam daar als klap op de vuurpijl nog bovenop. Van 9 t/m 14 november 2001 had te Doha (de hoofdstad van Qatar) de tweejaarlijkse ministeriële conferentie van de Wereldhandelsorganisatie (WTO) plaats.[23] Het was de eerste keer sinds de '*Battle of Seattle*' (1999), waar de ambitie om een nieuwe ronde van wereldwijde handelsonderhandelingen onder de naam 'Millennium Round' of eventueel 'Clinton Round' in rook opging. Doha was veel beter voorbereid en minder ambitieus ingezet. De top resulteerde dan ook op 14 november in een algemeen aanvaarde 'Doha Declaratie', die een inhoudsrijke agenda biedt voor verdere wereldwijde onderhandelingen over landbouw (markttoegang, exportsubsidies, binnenlandse steunmaatregelen), dienstenverkeer, verdere verlaging van tarieven van niet-agrarische producten, mededingingspolitiek, transparantie bij overheidsaanbestedingen, relatie handel en milieu, e.d.[24] Relatief veel aandacht werd besteed aan het voor ontwikkelingslanden vergemakkelijken van de uitvoering van WTO-verplichtingen betreffende landbouwpolitiek, subsidies, handel in textiel en kleding, investeringsmaatregelen en regels van oorsprong. Daarbij hebben ook de bijzondere kwetsbaarheid en de structurele problemen van de minst-ontwikkelde landen aandacht getrokken. Tevens besloten de ministers te Doha om de Europese Unie opnieuw een vrijstelling te geven van zijn anti-discriminatieverplichtingen, teneinde de preferentiële handelsconcessies aan de ex-koloniën in Afrika, de Caraïben en de Stille Oceaan te kunnen voortzetten. Duidelijk is dat dit wel nogal contre coeur gaat. De Verenigde Staten en ook niet-ACS ontwikkelingslanden vechten al jarenlang de preferentiële behandeling (rijst, bananen, rum) van de ACS-landen aan, maar de Europese Unie en de aangesloten 78 ontwikkelingslanden hebben zich verbonden om in tien jaar tijd hier een einde aan te maken en hun samenwerking op meer WTO-conforme leest te schoeien.[25] Het heeft met name te maken met de toepassing van het anti-discriminatiebeginsel in het WTO-recht, dat sinds de GATT 1947 een fundamentele plaats inneemt. In werkelijkheid bestaan er echter maar liefst 170 verschillende 'regionale handelsovereenkomsten', die maar al te vaak de wereldwijde toepassing van het beginsel van vrijhandel en non-discriminatie ondermijnen. Hun aantal is bovendien nog groeiende (naar 250 in 2005) en bijna de helft van de wereldhandel heeft thans al plaats binnen deze handelsblokken.[26] Een hoogtepunt van de top was zonder meer de gelijktijdige toelating van de Volksrepubliek China en Chinees Taipei (lees Taiwan) tot de wereldhandelsorganisatie WTO. Met China was sinds 1985 onderhandeld over toetreding tot de GATT/WTO. Daarbij ging het met name over de omvang en het tempo van aanpassingen van de economie en het rechtssysteem van China aan de internationale handelsregels, de vraag of China al dan niet als een ontwikkelingsland zou toetreden en de kwestie-Taiwan[27]. De overeenstemming op al deze punten is neergelegd in een document van maar liefst 900 pagina's, waarover vaak ook bilateraal tussen China en WTO-leden is onderhandeld. Sinds de top in Seattle zijn ook nog zeven andere landen toegetreden: Albanië, Kroatië, Georgië, Jordanië, Litouwen, Moldavië en Oman. In totaal staan er nu nog 28 landen in de wachtrij. Naast de Doha Declaratie nam de WTO nog een afzonderlijke verklaring aan over intellectuele eigendomsrechten en toegang tot medicijnen. In de afgelopen jaren was veel onrust ontstaan over de toegang tot en de prijs van medicijnen tegen HIV/aids. Nieuwe regels beogen een beter evenwicht te vinden tussen bescherming van eigendomsrechten en het belang van openbare gezondheidszorg bij betaalbare medicijnen.

Internationaal Gerechtshof

Met ruim 20 zaken op de rol kampt het Internationaal Gerechtshof met een relatief grote werklast, ook al omdat partijen er meesters in zijn om in de verschillende fasen van behandeling vertraging te veroorzaken met weer nieuwe preliminaire bezwaren, (tegen-)claims, documenten, e.d. Daarom zijn de 15 rechters in de verslagperiode nog eens met een fijne kam door de procedures van het Hof gegaan en hebben zij geprobeerd de behandeling van zaken te bespoedigen en 'economy of justice' te bevorderen. De aangebrachte wijzigingen betreffen met name het verkorten van de procedure waarin partijen bezwaren kunnen maken tegen de rechtsmacht van het Hof (art. 78) en het geven van meer vrijheid aan het Hof bij het nemen van beslissingen op ingediende counter-claims (art. 79 van de Procedureregels van het Hof).

De zaken die thans voor het Hof aanhangig zijn, zijn een boeiende mengeling van allerhande vraagstukken in het internationale recht en de internationale politiek: grensgeschillen tussen staten te land en ter zee (in drie werelddelen!), behandeling van buitenlandse onderdanen (Guinea/Kongo, Duitsland/Liechtenstein), een bombardement (een ongelukje?)

21. Zie de verzameling in Verenigde Naties, *International Instruments Related to the Prevention and Suppression of International Terrorism*, New York, 2000.
22. Zie de website van het 'Counter Terrorism Committee': http://www.un.org/docs/sc/committees/1373.
23. Zie brief Staatssecretaris Ybema van Economische Zaken aan Tweede Kamer, nr 25 074, nr 39.
24. Zie de website van de Wereld Handels Organisatie: http:\\www.wto.org
25. Zie de art. 36-39 van de Partnerschapsovereenkomst tussen de Europese Gemeenschap en haar lidstaten, en de groep van staten in Afrika, het Caribisch gebied en de Stille Oceaan, Cotonou, 23 juni 2000, gepubliceerd in *Trb.* 2001, 57.
Zie ook de aparte overeenkomst tussen de EG en Zuid-Afrika in *Trb.* 2000, 43.
26. Zie voor een recent boek over deze materie J. H. Mathis, *Regional Trade Agreements in the GATT/WTO*, The Hague, 2002.
27. Zie hierover Y. Li, '*Fade-away from socialist planned economy: China's participation in the WTO*', in F. Weiss, E. Denters and P.de Waart (eds.), International Economic Law with a Human Face, Den Haag, 1998, p. 453-478.

en Iraans olieplatform door de Verenigde Sta- de Lockerbie-zaak (Libië/VK-VS), interventie in Grote Merengebied (Kongo/Oeganda), genocide Bosnië-Hercegovina en Kroatië, en de NAVO-actie tegen Joegoslavië vanwege de situatie in Kosovo. De laatste procedure, aangespannen door Joegoslavië, loopt nu nog tegen acht NAVO-landen, waaronder Nederland. De verwachting bestond dat het nieuwe democratische bewind in Belgrado deze procedures, die nog uit de tijd van ex-president Milosovic stammen, zou intrekken, maar vooralsnog zijn deze alleen op een laag pitje gezet.

In de verslagperiode handelde het Hof twee grote zaken af. Op 16 maart 2001 deed het Hof uitspraak in een omvangrijk grensgeschil tussen de oliestaten Qatar en Bahrein, bijna 10 jaar nadat Qatar dit bij het Hof aanhangig had gemaakt.[28] Het Hof deelde de regio Zubarah (unaniem) en het eiland Janan (13-4) toe aan Qatar, terwijl het met 12 tegen 5 rechters vaststelde dat Bahrein de soevereiniteit over de Hawar eilanden heeft. Daarop ging het Hof over tot vaststelling van de grenzen van de territoriale zee, het continentale plateau en de exclusieve economische zone, mede op basis van een uitleg van de invloed van eilanden, kleine eilanden, zandbanken en bodemverheffingen daarop. Daarbij paste het Hof in beginsel de laagwaterlijn (niet op basis van rechte basislijnen) en de middellijn toe, met correcties op basis van overwegingen van billijkheid. Een en ander was een verre van gemakkelijke taak vanwege de gecompliceerde (koloniale) geschiedenis, grillige kustlijnen, uitvoerige documentatie (6000 pagina's!) die in het geval van Bahrein halverwege de rit voor een bepaald deel wellicht niet authentiek bleek te zijn en ingetrokken moest worden, en de uitvoerige, vijf weken lang durende mondelinge pleidooien van partijen. Interessant is dat het Hof zich gedwongen zag internationaal gewoonterecht toe te passen, nu de beide staten geen partij zijn bij de vier Zeerechtverdragen van 1958 en alleen Bahrein partij is bij het VN-Verdrag inzake het Recht van de Zee van 1982. Op essentiële punten bleek dat evenwel niet af te wijken van het verdragsregime van 1982. De uitspraak bevestigt nog eens het beginsel van *uti possidetis*, d.w.z. dat in de koloniale tijd getrokken grenzen in beginsel worden gehandhaafd.

Een andere gevoelige zaak betrof het geruchtmakende geschil tussen Duitsland en de Verenigde Staten over het voltrekken van de doodstraf tegen twee Duitse onderdanen, de gebroeders LaGrand. Dit zonder dat de Duitse consul tijdig over hun arrestatie en straf was ingelicht, zoals op grond van artikel 36 van het Weens Verdrag inzake Consulaire Betrekkingen wel vereist is. Alhoewel de Amerikaanse regering de verplichting daartoe niet ontkende, beriep zij zich op Amerikaans recht dat bepaalt dat de rechterlijke macht onafhankelijk is en dat geen procedurele voorschriften voor een federale rechter kunnen worden ingeroepen die al eerder door de deelstaatrechter terzijde zijn geschoven (zgn. *procedural default*-doctrine). Nadat verzoeken om clementie van de Duitse Bondskanselier en President vergeefs bleken, heeft Duitsland in 1999 aan de vooravond van de geplande executie van een van de broers een procedure bij het Internationaal Gerechtshof aangespannen tegen de Verenigde Staten op basis van het Protocol over de erkenning van de rechtsmacht van het Hof over de uitleg en toepassing van het Weens Verdrag. Daags erna, op 3 maart 1999, wees het Hof de Duitse eis tot opschorting van het doodvonnis toe, maar dit werd door de bevoegde Amerikaanse instantie terzijde gelegd. Dit mede op basis van een advies van de Amerikaanse *General Sollicitor* dat dergelijke voorlopige maatregelen van het Hof geen bindende werking hebben. Het doodvonnis werd dan ook op het geplande tijdstip voltrokken. In de einduitspraak van juni 2001 stelt het Hof Duitsland op vrijwel alle onderdelen van het geschil in het gelijk. Het Hof oordeelt in de eerste plaats dat de Verenigde Staten artikel 36, lid 1 van het Weens Verdrag inzake Consulaire Betrekkingen heeft geschonden. Opmerkelijk hierbij is dat het Hof ervan uitgaat dat het recht van consulaire bijstand niet alleen rechten en plichten voor staten schept, maar nadrukkelijk ook individuele rechten van aangehouden of veroordeelde buitenlandse onderdanen. Voorts stelt het Hof dat interne Amerikaanse regelgeving, zoals de *procedural default*-doctrine, een volledige en effectieve werking van uit het Weens Verdrag voortvloeiende rechten voor zowel staten als individuen niet in de weg mag staan. Dit is een grondregel van het Weens Verdragen inzake Verdragenrecht. In de derde plaats concludeert het Hof zeer stellig dat, gezien het doel en de strekking van het Statuut van het Internationaal Gerechtshof, voorlopige maatregelen genomen op basis van artikel 41 van het Statuut rechtens bindende werking hebben. De juridische status van deze voorlopige maatregelen is in de literatuur steeds een omstreden kwestie geweest die dan nu door het Hof in een duidelijk progressieve zin is beslist, vooral op basis van een uitleg van het doel en de strekking van artikel 41 van het Statuut nu zowel de Engelse als de Franse tekst daarvan in deze niet geheel duidelijk zijn. Het Hof stelt dan ook vast dat de Verenigde Staten veel minder hebben gedaan om de voorlopige maatregel uit te voeren dan, ook gezien de korte beschikbare tijd, mogelijk zou zijn geweest en dat zij dus niet in overeenstemming met dat vonnis van het Hof hebben gehandeld. De uitspraak is door een grote meerderheid van het Hof vastgesteld. Alleen de Amerikaanse rechter Buergenthal en de Japanse rechter Oda hebben een *dissenting opinion* geschreven.[29]

Een belangrijke vraag is tot op welke hoogte de daden van Al Qa'ida aan het voormalige Talibanregime van Afghanistan toegerekend kunnen worden.

Milosevic naar Den Haag

Alhoewel in september een aparte Kroniek Internationaal Strafrecht zal verschijnen, kan het grootste wapenfeit in de internationale strafrechtspraak van 2001 hier toch niet onvermeld blijven: de arrestatie van Slobodan Milosevic op 1 april 2001, zij het op gronden van fraude en machtsmisbruik in Joegoslavië, en zijn overdracht aan het Joegoslavië-tribunaal in Den Haag in de nacht van 29 op 30 juni 2001. Natuurlijk is op de wijze van overdracht wel een en ander aan te merken. De in die dagen gehouden internationale donorconferentie voor Joegoslavië heeft ongetwijfeld een doorslaggevende rol gespeeld bij het besluit van de Servische premier Dinciz om Milosevic aan Den Haag over te dragen. Dit moge niet fraai zijn, maar dat maakt het volkenrechtelijk nog niet onrechtmatig. Onder geldend internationaal recht was Joegoslavië zonder meer verplicht Milosevic over te dragen aan het VN-Tribunaal in Den Haag. Een beroep doen op onregelmatigheden in de gevolgde nationale procedure zal weinig indruk maken op het Joegoslavië-tribunaal. Een grondregel van volkenrecht is nu eenmaal dat een staat zich niet kan

28. Zie noot A.G. Oude Elferink in *NJB* 2001, p. 1043-1045. De tekst van de uitspraak in Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain verschijnt in *ICJ Reports 2001* en is te raadplegen op http://www.icj.cij.org

29. Zie voor de volledige tekst van deze uitspraak (en de *dissenting* en *separate opinions*) de website van het IGH: http://www.icj.cij.org. Voor een bespreking van deze zaak, zie T.D. Gill in *NJB* 2001, p. 1309-1310, E.M.H. Hirsch Ballin, 'De Verenigde Staten en het internationale recht: onthouden van consulaire bijstand aan ter door veroordeelde Duitsers', in *Ars Aequi*, 50 (2201) 10, p. 807-819 en I. F. Dekker en N.J. Schrijver, 'Katern 81 Volkenrecht', in *Ars Aequi*, 50 (2001) 12, p. 4329-4330. Zie ook Th. C. van Boven en E. Rieter, 'Nederland, het Internationaal Gerechtshof en de doodstraf', *NJB* 2000, p. 1921.

verschuilen achter tekortkomingen in zijn nationale recht om zijn verplichtingen onder internationaal recht niet na te komen.[30] Het Joegoslavië-tribunaal zal zich dan ook naar alle waarschijnlijkheid niet inlaten met de uitleg en toepassing van het nationale uitleveringsrecht van Joegoslavië, nu Milosevic – anders dan Öcalan – niet op het grondgebied van een andere staat gekidnapt is maar gewoon door de Servische regering op het vliegtuig naar Den Haag is gezet. Evenmin zal de verdachte Milosevic enige kans maken met zijn verweer dat het Joegoslavië-tribunaal onrechtmatig is ingesteld. Dit verweer is reeds diverse malen naar voren gebracht en door het Tribunaal in zijn jurisprudentie uitvoerig beargumenteerd terzijde gelegd, onder andere tot in hoger beroep in de Tadic-zaak[31]. Milosevic raakt hier echter wel aan een teer punt. Het is niet onomstreden of de politieke VN-Veiligheidsraad, ook al handelt hij onder hoofdstuk VII ter handhaving of herstel van vrede en veiligheid, wel rechterlijke organen kan instellen. Het is bovendien nogal ongemakkelijk dat het aan het Joegoslavieë-tribunaal zelf is om dit te beoordelen: *quis custodiet custodes*? Opmerkelijk was Milosevic' suggestie dat de Algemene Vergadering het Tribunaal had behoren in te stellen. Dit VN-orgaan heeft op zijn best een subsidiaire verantwoordelijkheid voor vrede en veiligheid indien de VN-Veiligheidsraad niet tot besluiten kan komen.[32]

Milosevic raakt aan een teer punt. Het is niet onomstreden of de politieke VN-Veiligheidsraad, wel rechterlijke organen kan instellen.

Dit nu was in dit deel van de kwestie-Joegoslavië gelukkig niet het geval. Indien de – toegegeven – meer koninklijke weg van een diplomatieke conferentie en opstelling van een multilateraal verdrag zouden zijn gevolgd, zou het Joegoslavië-tribunaal en het latere Rwanda-tribunaal op zijn best jaren later tot stand zijn gekomen.

Voorspelbaar was dan ook de uitkomst van het kort geding dat de ex-president in augustus tegen de Nederlandse Staat aanspande. Milosevic eiste onvoorwaardelijke invrijheidstelling en een geregelde terugreis naar Joegoslavië. Dit onder meer wegens schending van het Joegoslavische uitleveringsrecht, de onwettigheid van het Joegoslavië-tribunaal, schending van artikel 6 EVRM inzake onafhankelijke en onpartijdige rechtspraak en van de immuniteit van strafvervolging van voormalige staatshoofden. Hij voerde aan dat Nederland een plicht heeft tot rechtsbescherming van personen die zich op Nederlands territoir bevinden. Maar Nederland is ex artikel 103 VN-Handvest gehouden de regelgeving van de Veiligheidsraad onder hoofdstuk VII van het VN-Handvest te respecteren. En deze houdt ex artikel 9, lid 2 van het Statuut van het Joegoslavië-tribunaal mede in dat de rechtspraak van het Tribunaal prevaleert boven die van nationale rechterlijke instanties. Daarenboven bepaalt de volkenrechtelijke zetelovereenkomst tussen Nederland en de Verenigde Naties en uitvoeringswet terzake dat Nederland niet de bevoegdheid heeft om te beslissen over de rechtmatigheid over de vrijheidsbeneming van personen die door het Tribunaal worden vervolgd. Op 31 augustus 2001 verklaarde Rechtbankpresident Paris zich dan ook onbevoegd om van de vorderingen van Milosevic kennis te nemen.[33]

De Hoge Raad en de Decembermoorden

Het proces tegen de Surinaamse ex-legerleid… voormalig staatshoofd Bouterse vanwege zij… meende betrokkenheid bij de Decembermoor… Paramaribo in 1982 nam in 2001 een opmer… wending. Zoals in de vorige Kroniek besprok… schikte het Gerechtshof te Amsterdam in nov… 2000 op grond van klachten van nabestaande… enkele slachtoffers en mede op basis van een de… digenrapport van Professor Dugard (hoogler… kenrecht, Universiteit Leiden) dat vervolging … rechting van Bouterse in Nederland wegens fo… in beginsel mogelijk was. Daarop werd echter d… procureur-generaal van de Hoge Raad cassatie … belang der wet gevorderd (art. 95 Wet RO). Ov… komstig de uitvoerige conclusie van A-G mr … vernietigde de Hoge Raad op 18 september 20… beschikking van het Gerechtshof Amsterdam[34]… traal in deze cassatieprocedure stond de vraag … derland bevoegd is folterdaden te berechten en… straffen die zijn begaan vóór de inwerkingtredi… het Anti-Folterverdrag en de Nederlandse U… ringswet terzake van 20 januari 1989. Dit in he… van artikel 16 Gw. en artikel 1, lid 1 Sr. die ter… kende kracht ongeclausuleerd verbieden. De… Raad gaat nog na of het Anti-Folterverdrag zelf… lingen bevat die als 'een ieder verbindende be… gen van verdragen' (art. 94 Gw.) folterdaden … rugwerkende kracht strafbaar achten en aldu… twee wetsartikelen terzijde kunnen stellen. Di… naar het oordeel van de Hoge Raad niet het ge… verplichting onder artikel 5 Anti Folter Verdr… universele jurisdictie te vestigen voor folterda… derhalve een nieuwe, waaraan geen terugwe… kracht verleend kan worden.[35] De opvatting … Hoge Raad betekent niet dat het martelverbo… reeds gold, bijvoorbeeld op grond van ande… dragsbepalingen of als internationaal gewoonte… ten tijde van de Decembermoorden in Surinam… ging in deze procedure om de vraag of Bouter… op de achtergrond wellicht ook de Argentijn … guieta) voor die daden in hun landen in Ned… vervolgd kunnen worden. Hoe verwerpelijk h… trokkenheid daarbij ook moge zijn, ik meen … Hoge Raad hier terecht is afgeweken van de be… king van het Gerechtshof Amsterdam.[36]

Uitleiding

Uit deze Kroniek blijkt dat de in de vorige K… aangeduide trends: voortgezette rechtsontwikk… actieve internationale rechtspraak en veranker… nationaal recht, zich in het afgelopen jaar onve… derd hebben voortgezet. Internationaal recht … steeds vaker aan de orde voor de Nederlandse r… en steeds vaker hebben nationale rechtsregels e… ternationale oorsprong. Het is winst dat ten … leste ontwerp-artikelen inzake Staatsaansprak… heid zijn overeengekomen. Uit de (nog) ni… dragsvorm daarvan, de interessante jurispru… van het Internationaal Gerechtshof en het bind… welhaast wetgevende karakter van de belangri… gemene anti-terrorisme Resolutie 1373 van d… Veiligheidsraad blijkt nog eens opnieuw de d… teit van de bronnen van het internationale … Ook al verwierven in 2001 de Verenigde Nat… zijn Secretaris-Generaal Kofi Annan de presti… Nobelprijs voor de Vrede, nog steeds dreigt e… *carte*-gebruik van de volkerenorganisatie. Naa… leiding van het binnenkort te verschijnen NIO… port inzake Sebrenica zullen we daar ongetwijf… een volgende Kroniek op ingaan.

30. Vgl. art. 27 van het Weens Verdrag inzake Verdragenrecht (1969).
31. ICTY, Prosecutor v. Tadic, case IT-94-1, Appeals Chamber 1999, gepubliceerd in International Legal Materials, jrg. 38 (1999) p. 1518, op p. 1546, par. 145.
32. Zie Uniting for Peace-Resolutie, GA Res. 377 A (V), 3 november 1950.
33. Zie *KG* 2001, 258.
34. Zie Hoge Raad der Nederlanden, LJN nummer: AB 1471, nr 00 749/01 CW 2323, 18 september 2001, ook op www.hogeraad.nl.
35. Zie voor een kritische noot Y. Buruma, 'Decembermoorden', in *Ars Aequi* 51 (2002) 2, p. 99-106.
36. Zie ook Ferdinandusse, Kleffner en Nollkaemper, *NJB* 2002, p. 341 e.v. alsmede de Kroniek Internationaal Publiekrecht, *NJB* 2000, p. 501.

13 okt 2002

Milosevic kan als gelijke
optreden in zijn eigen zaak

→ Rule 85 (c)

ADDITIONAL REMARKS

regarding the

PRELIMINARY MOTION

on the

FORMAL DEFECTS OF THE INDICTMENT
AGAINST
SLOBODAN MILOSEVIC

by the

I C T Y

Zeist, the Netherlands September 2001

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The above mentioned preliminary motion on the formal defects of the indictment against Mr. Milosevic by my collegue Mr. Z. Tomanovic gives me reason for the following additional remarks.

I. ADDITIONAL REMARKS DIRECTLY RELATING ON THE INDICTMENT ITSELF

ad 16 of the amended indictment

- The final line: "By using the word "committed" in this indictment, the prosecutor does not intend to suggest that any of the accused physically perpetrated any of the crimes charged, personally", is new compared to the original indictment.
  The question is: when "committed" doesn't mean here "committed personally", what is then its meaning ?
  Defence against obscure use of words in this respect is impossible.

- All descriptions of the counts, beginning under 16, and further under 23, 24 and 25, state that the alleged crimes were beginning "on (or about) January 1999".

Nevertheless, there is only one single case specified and described of alleged acts dating from **before** the start of NATO's aggression on 24 march 1999: the so called Racak incident.
So for the most counts all foundations of the allegation that the concerned alleged criminal action already has started **before** the beginning of NATO's aggression are lacking.
This makes it impossible to prepare the defence on this point, regarding the allegations during this period, preceding NATO's war against the FRY.

- **By the way**: regarding the false Racak accusations we have plenty of documentation in English by a lot of different sources that it was a set up by the UCK. We possess also quite a lot of important (written) documentation in Dutch, including the cassette tapes of three Dutch broadcasting programs, presenting the results of critical research journalism on the Racak incident, that are well-founding that is was an UCK move.
  Unfortunately, we lack the funds to translate this material in English or Serbian.

ad 17

- Unclear is what is meant by the the terms "The operations targeting the Kosovo Albanians ..". They suggest that "the operations", i.e. all military operations in Kosovo, executed by Yugoslav and Serbian armed forces and directed against the UCK terrorists, have to be considered as "operations targeting the Kosovo Albanians", without the making of any distinction by the prosecutor between actions targeting terrorists and possible actions targeting civilians.
  Stating like this and not mentioning at all that, anyhow, there was a heavy military campaign directed against the UCK terrorists, the indictment is purely manipulative on this point.
  A legal defence against such a manipulative indictment is quite an impossible task.

ad 18

- Stated is that "The forces of the FRY and Serbia, in a systematic manner, forcibly expelled and internally displaced hundreds of thousands of Kosovo Albanians from their homes (..)."
  It is unclear what is exactly meant by the terms "expelled from their homes" and "internally displaced from their homes" an what is the difference between "expelled" and "internally displaced" in this specific context.
  So far the indictment on this point is obscure.
  Their is no prospect on a proper defence against an obscure indictment.

- It is also inacceptable that the indictment on this point don't specify how many of the alleged 'hundreds of thousands of Kosovo Albanians', according to the prosecutor's allegations, should be considered as 'expelled from their homes' and how many as 'internally displaced from their homes', if their is a distiction between the two categories.

- This is particularly important in connection with the following aspect. Anyhow, internal displacement is, under war conditions, certainly not contrary international humanitarian law standards. If required by the necessities of war. There was a war raging between the FRY and the NATO aggressors and there was the threatening of an additional NATO ground invasion, that should have been legitimazing sufficiently all from a military point of view necesssary measures of internal displacement of civilians.
  Internal displacement is, as an legitimate measure in times of war, explicitly described and regulated on a Geneva Convention base.
  It's Nato, as friend and accomplice of the so called tribunal itself, which, by its very aggression, was creating the very base for the legitimacy of every alleged internal displacement of civilians.
  So the prosecutor has to drop this 'indictment', or to specify <u>why, when and how</u> the alleged internal displacemt has been nevertheless a breach of international law.
  Formulated as above mentioned there is at the most a matter of only an appearant indictment, or a situation of an indictment that makes a proper defence impossible.

<u>ad 20</u>

- The alleged "widespread shelling of towns and villages, the burning of homes, farms and businesses; and the destruction of personal property", stated under 20, can also not be considered as such as contrary to international humanitarian law standards, when indicated by and in accordance with the necessities of war. And supposed that civilians are not targetted as such and also are spared as much as possible, so that there are not disproportional accounts of civilian casualties.
  Formulated as above mentioned, this allegation is also no criminal act against humanitarian law at all.
  And it's applying here again that the prosecutor had to drop the indictment on this point, or has to specify <u>why, when en and how</u> the alleged 'widespread shelling of towns and villages, the burning of homes, farms and busisness, and the destruction of personal property' has been nevertheless a breach of international law.
  Here is also only an appearant indictment, or an indictment that makes a proper defence impossible.

<u>ad 21</u>

- The alleged 'harassing' of Kosovo Albanian civilians under 21, without knowing what exactly must be understood by that, couldn't be seen anyhow ipso facto as a crime against international law.
  That's the same regarding the alleged 'humiliating' and 'degrading' as wel as the alleged 'physical' and 'verbal abuse' of Kosovo Albanian civilians.
  In this respect also the context of the alleged acts is important. Of course the standard on treatment that Kosovo Albanian civilians who were no suspects of having ties with the terrorists could claim, differs greatly from the standard of treatment that cilvilians that were suspects of being terrorist aidees could invoke.
  So the prosecutor has to explain <u>why, when and how</u> the alleged 'harassing', 'humiliating', 'degrading' and 'physical' and 'verbal abuse' of Kosovo Albanian civilians should have taken.
  Again, here is only an appearant indictment, or an indictment that makes a proper defence impossible.

- In the first part of the line under 21 are used the terms 'Kosovo Albanian civilians', but in the second part are used the terms 'Kosovo Albanians'. Without specifying whether there are meant here Kosovo Albanian civilians or Kosovo Albanian terrorists and their (civilian) accomplices.
  It is a mysterie why for instance 'insults', even 'persistently', committed against UCK-terrorist and 'based on their political identication', as mentioned under 21, should be considered as a serious violation of international humanitarian law !
  Also is unclear what exactly is meant by the terms 'racial slurs', 'degrading acts' and 'other forms of physical mistreatment'.
  As such the alleged implementation of such terms can not be considered as a crime.
  So the prosecutor has to explain <u>why, when and how</u> this alleged treatment of 'Kosovo Albanians' should be considered as serious violations of humanitarian law standards. Especially when the concerned 'Kosovo Albanians' would have been terrorists or aidees of the terrorists.
  Again, here is only an apearant indictment, or an indictment that makes a proper defense an illusion.

<u>ad 22</u>

- There is mentioned: "Throughout Kosovo, the forces of the Fry and Serbia systematically seized and destroyed the personal identity documents and licences of vehicles belonging to Kosovo Albanian civilians."
  Even when this allegation should be true, then it is a mystery why this should be considered as a crime. In every state such documents remain after all the property of the state's administration. So they can be required back by the state's authorities at any moment. And certainly when necessities of war are demanding such an action.

Whether such an action is necessary in times of war, is, according to international law, only for assessment of the relevant (military) authorities and nothing of business for any outsider whatsoever.
That the alleged acts were committed in order 'to deny them the right to return to their homes' is only a concoction of the prosecutor. Without any appearance of evidence.
A proper defence against concoctions without even a trace of an indication of rightness is impossible.

THE MOST CRAZY ALLEGATION IN HISTORY IS THE ALLEGATION UNDER 23, THAT THE ALLEGED ACTIONS BY 'THE FORCES OF THE FRY AND SERBIA' (COMMANDED BY MR.MILOSEVIC) 'RESULTED IN THE FORCED DEPORTATION OF APPROXIMATELY 740.000 KOSOVO ALBANIAN CIVILIANS'.

SO THIS MEANS THAT, ACCORDING TO THIS ALLEGATION OF THE PROSECUTER, **ALL KOSOVO ALBANIAN CITIZENS**, ALLEGEDLY FLED FROM KOSOVO ON THE MOMENT THAT THE INDICTMENT WAS ISSUED, **SHOULD HAVE BEEN DEPORTED BY THE FORCES OF THE FRY AND SERBIA. NOT ONE EXCEPTED !**

SINCE WE READ UNDER 99: "BY 20 MAY 1999, OVER 740.000 KOSOVO ALBANIANS, APPROXIMATELY ONE-THIRD OF THE ENTIRE KOSOVO ALBANIAN POPULATION, HAD BEEN EXPELLED FROM KOSOVO."

THE INDICTMENT WAS ISSUED ON 22 MAY 1999, AT THE HEIGHT OF THE NATO AGGRESSION. WHILE EACH DAY NATO CARRIED OUT HUNDREDS OF BOMBARDMENTS ON TARGETS IN KOSOVO. AND WHILE ON THE GROUND IN KOSOVO A VIRULENT CIVIL WAR WAS RAGING BETWEEN THE YUGOSLAV ARMY AND THE UCK.

SO, ACCORDING TO THE PHILOSOPHY OF THE PROSECUTOR, THOSE DIRECT ACTS OF WAR BY NATO FROM THE AIR AND BY ITS UCK ALLIES ON THE GROUND WOULD NOT HAVE RESULTED IN A SINGLE REFUGEE, FLEEING OUTSIDE THE BOUNDARIES OF KOSOVO ! ALL REFUGEES WERE PUT TO FLIGHT BY THE FORCES OF MR.MILOSEVIC !

HOW LUNATIC AND ALIEN THIS ACCUSATION IS BECOMES IMMEDIATELY CLEAR WHEN WE CONSIDER THE PRESENT SITUATION IN MACEDONIA.
THERE THE DIRECT ACTS OF WAR IN A 'LOW INTENSITY-CONFLICT' OF LIMITED SCOPE CAUSED ALREADY ALMOST 100.000 REFUGEES, ACCORDING TO RECENT FIGURES FROM THE UNHCR.

BUT THE GRUESOME WAR WAGED BY NATO AND ITS UCK ALLLIES IN KOSOVO DID NOT RESULT IN A SINGLE REFUGEE OUTSIDE THE BOUNDARIES OF KOSOVO, SO THE PROSECUTOR WANTS US TO BELIEVE ! THEY WERE ALL MR. MILOSEVIC FAULT.

THE PROSECUTOR COULD NOT HAVE SHOWN A BETTER PICTURE OF ITS OWN SERVILITY TO NATO !

II. ADDITIONAL REMARKS REGARDING THE PRELIMINARY MOTION

Might be inserted into p. 12 after the first paragraph or into p. 13 after the second paragraph:

The prosecution has (also) accepted in the Final Report that, in order to judge about possible charges because of the NATO-bombardments, it has taken as a basic assumption that the declarations by NATO in general should be considered as honest and faithful. (p. 90)
If this is the position of the prosecution regarding the declarations of suspects of NATO-crimes, the prosecution has to express in this indictment that it should take the same position regarding the declarations of Mr. Milosevic.

Might be inserted into p. 10 after the second paragraph:

Apart from that, the formal stand by the prosecution that the tribunal specificly lacks the competence to judge on crimes against peace, is for everybody that intends to uphold the thesis that the tribunal has jurisdiction in general, totally untenable and legally infounded.
This thesis that specificly crimes against peace should be excluded from the tribunal's competence, is brought up as a conspiracy by the countless American 'legal experts' and 'legal advisers' surrounding the prosecutor, in order to protect NATO against obvious claims that NATO's resposibles should be criminally charged for this aggression.
Moreover, it's already an old American legal thesis, worked out in order to immune the United States, constantly an aggressor during decades on the world stage, to legal charges.

Nevertheless this stand holds no ground. There is an distinction between the ius ad bellum and crimes against peace next to the ius in bello and war crimes, but there is no separation.
It is explicitly expressed by the Nuremberg Tribunal that a crime agaist peace, like aggression, 'differ only from other war crimes in the way that it embodies in itself the evil of the whole'.
Furthermore the Secretary-General has expressed in its report pursuant to paragraph 2 of the security council resolution 808 d.d. 3 may 1993, concerning the legal basis for the establishment and the competance of the tribunal that the tribunal 'should [only] apply rules of international humanitarian law which are beyond any doubt part of customary law' (ad 34) and is then mentioning that part of humanitairian law, among which the law embodied in 'the Charter of the International Tribunal of 8 August 1945'. (ad 35)
This Charter of Nuremberg mentions explictly in Article 6, on an equal base, crimes against peace on one hand and war crimes and crimes against humanity on the other hand.

So if the tribunal considers itself competent on war crimes, it must consider itself also competent on crimes against peace. The fact that the Statute of the tribunal is not explicitly mentioning that the so called tribunal shall have the power to prosecute crimers against peace is not decisive. Article 1 states in general that the tribunal should have the power to prosecute 'persons responsible for serious violations of international humanitarian law' and the crime of aggression is undoubtedly such a serious violation of international humanitarian law.

Thus, if the prosecutor sticks on the competence of the tribunal, the prosecution has to explain in the indictment why it brings up criminal charges against Mr. Milosevic defending his country against the crime of peace by NATO and at the same time refuses to bring up criminal charges against NATO's responsibles for this crimes of peace, prosecuting as such discriminately.

Pro memory remark concerning paragraph k, p. 18:

There are many decisive 'objective' sources proving that in Kosovo before the introduction of the state of war due to the NATO aggression there was not remotely a situation that had any resemblance with the counts under 16, 23, 24 and 25.

One of these sources consists of the verdicts of German courts regarding the situation in Kosovo before the start of the NATO aggression and the reports of the German ministry of foreign affairs on the same subject.

Another source is the reports of German secret services and the statements in NATO reports itselfs, mentioned in a broadcasting program on Dutch radio, as a result of critical research journalism.
Funds to translate the concerned cassette tapes in English are lacking.

The German section of the International Association of Lawyers Against Nuclear Arms (IALANA) stated on 29 April 1999 with concern to the above mentioned German sources:

> **"Through detailed excerpts from hitherto unpublished Foreign Ministry documents and from numerous German high-administrative-court decisions in refugee cases, IALANA had pointed to obvious and serious contradictions. Until mid-March 1999, just a few days before the start of NATO's air attacks against Yugoslavia, Joschka Fischer's Foreign Ministry constantly stated in his status reports and official intelligence information produced for asylum hearings: "Even in Kosovo an explicit political persecution linked to Albanian ethnicity is not verifiable."**
> **Trusting the veracity of this official intelligence the German asylum judges found that the Milosevic regime had no state program of persecution of Kosovo-Albanians, and**

that the latter were not otherwise threatened in Kosovo by the Serb-dominated state on account of their ethnicity.
However, since the NATO countries' air war, begun on March 24, 1999, had to be justified before the German public opinion and the Bundestag, the Foreigh Ministry spoke of "genocide", "deportations" and "ethnic cleansing", practiced by the Milosevic regime against Kosovo-Albanians not just since the war's beginning, but as having preceded the NATO attack for a considerable time.

III.

The foreign Ministry passes over in silence the fact that the "Federal Bureau for the Recognition of Foreign Refugees" in Zirndorf (wich is under the Ministry of the Interior) had, on March 17, 1999 - that is, a few days before the start of NATO's air attacks wich were undertaken, according to Chancellor Schröder's executive declaration, "to prevent further and systematic violations of human rights and a humanitarian catastrophe in Kosovo", - issued a directive (AZ 2433787 - 138 of March 17, 1999) expressly based on the binding jurisdiction of the Bavarian High Administrative Court, of the Administrative Court of Baden-Wurttemberg and of the High Administrative Court of the Saar District, wich themselves had invoked the status report and official intelligence of the Foreign Ministry, in wich the following was stated:

> "When returning to their homeland, Kosovo-Albanians still are not subjected to group persecution..The situation in Kosovo has fundamentally changed due tot the agreement on the pacification of the region worked out between the OSCE, under the leadership of American Special Envoy Holbrooke and the Yugoslav state leadership...The ca. 50.000 refugees, who had temporarily holed up in the mountains and forests (mostly in the immediate vicinity of their villages), have almost all found stable lodgings since the partial withdrawal of the Security Forces...
> However, there are occasional armed incidents. These overwhelmingly consist of raids by the KLA and its supporters, using terrorist means, to wich the Yugoslav reacts within its area of operations in a targeted manner."

IV. Operation Horseshoe

In order to justify NATO's air attacks, the Foreign Ministry claims that "Operation Horseshoe" provides for a systematic expulsion of the Kosovo-Albanian pouplation aiming at violent, demographic changes in Kosovo".
In doing so, it relies on documentatation and positions taken by Minister Sharpings's Ministry of Defense.

To begin with, "Operationa Horseshoe" will not do as a justification for NATO air attacks, if for no other reason than the fact that it first became known to the Ministry of Defense only after March 24, 1999. In its press statement, even the Foreign Ministry admits that it had become aware of the existence of such plan only on April 1, 1999.

What is more, one should realize that the documentation on "Operation Horseshoe" has not yet been presented to the public for critical scrutiny; it is merely claimed to exist. It is still impossible to know whether it can adequately prove that already before the NATO air attacks the Yugoslav state and its organs had introduced measures for "ethnic cleansing" of Kosovo, on the basis of a state program of persecution and carried out by systematic violations of the human rights of Kosovo's population linked to Albanian ethnicity.

And finally, in answer to the question whether the documents on "Operation Horseshoe" given her by Minister Sharping were useful, the Chief Prosecutor of the UN Criminal Court for Yugoslavian Affairs in the Hague, Louise Arbour, stated:

> "As to Operation Horseshoe, I have my doubts as to its capacity to prove anything, If it were a document with cover, date and signature, it would be fantastic. But mostly such things (referring to documents given her by various NATO countries) look more like verbal descriptions and conclusions." (See Der Spiegel, No. 17/1999, p. 152)

V.

The Foreign Ministry's claim that IALANA's exceprts from the Foreign Ministry's official positions are "citations that are selective and isolated from their context and do not correspondent to the predominant tenor of the status reports", is false.
This can be seen in the simply fact that in asylum proceeding the German High Administrative Courts understood the "status reports" and "official intelligence" on the Kosovo situation in preciesely the sense that the Foreign Ministry wishes now to deny.
If the Foreign Ministry, as it now claims, had in fact indicated "since May 1998 in its status
reports" that an "ethnic expulsion policy on the part of Milosevic's regime against Kosovo-Albanians" was verifiable, and that in fact, as the asylym seekers constantly proposed, there was a state program of persecutions linked to ethnicity, then the asylum courts would properly have been forced to recognize the asylum-seeking Kosovo-Albanians.

However, until the most recent period, it was expressly on the basis of the Foreign Ministry's "status reports" and "official intelligence" that the High Courts cited by IALANA did not reach such conclusion. Since the Foreign Ministry is still trying to deny the facts, IALANA, as a proof of these facts, points once again to the following up-to date compilation from the latest court decisions.

(The compilation is appended to this Press Informstion and mostly identical to all the other excerpts already published by IALANA.)

VI.

IALANA asks the Foreign Ministry:

- Have all these judges who have for years made decisions based on their trust in the accuracy of the Foreign Ministry's "status reports" and official intelligence reports, and knew the latter well, misread, misunderstood or wrongly elaborated the "status report" of November 19, 1998 and the Foreign Ministry's official intelligence reports of december 28, 1998, of january 6, 12 and 22, 1999 and March 15, 1999 ?

- If the Foreign Ministry's official intelligence reports before March 24, 1999, that is before the NATO air attacks, had been substantively misunderstood by the courts, why had the Foreign Ministry not pointed this out to the courts ?

(....)"

Excerpts from the official documents mentioned above:

I. Intelligence report from the Foreign Office january 6, 1999 to the Bavarian Administrative Court, Ansbach:

"At this time, an increasing tendency is observable inside the Federal Republic of Yugoslavia of refugees returning to their dwellings...Regardless of the desolate economic situation in the Federal Republic of Yugoslavia (according to official information of the Federal Republic of Yugoslavia 700.000 refugees from Croatia, Bosnia an Herzegovina have found lodging since 1991), no cases of chronic malnutrition or insufficient medical treatment among refugees are known and significant homelessness has not been obeserved...According to the Foreign Office's assessment, individual Kosovo-Albanians (and their immediate families) still have limited possibilities of settling in those parts of Yugoslavia in

wich their countrymen or friends already live and who are ready to take them in and support them.

II. Intelligence report from the Foreign Office, Januari 12, 1999 to the Administrative Court of Trier (Az: 514-516.80/32 426):

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"Even in Kosovo an explicit political persecution linked to Albanian ethnicity is not verifiable. The East of Kosovo is still not involved in armed conflict. Public life in cities like Pristina, Urosevac, Gnjilan, etc. has, in the entire conflict period, continued on a relatively normal basis. The actions of the security forces (were) not directed against the Kosovo-Albanians as an ethnically defined group, but against the military opponent and its actual or alleged supporters."

"The members of the Albanian people are not threatened by political persecution related to their national affiliation. Thus, in Belgrade alone several thousands of ethnic Albanians live. Their status is not unfavourable and they are not treated as unequal citizens on a systematic base by the state. In southern Serbia there are areas with a majority Albanian population wich no case of violation of human
rights worth mentioning have been registered against this category of persons.

III. Report of the Foreign Office, March 15, 1999 (Az: 514-516,80/33841) to the Administrative Court, Mainz:

"As laid out in the status report of November 18, 1998, the KLA has resumed its positions after partial withdrawal of the (Serbian) security forces in October 1998, so it once angain controls broad areas in the zone of the conflict. Before the beginning of spring 1999 there were still clashes between the KLA and security forces, although these have not until now reached the intensity of the battles of spring and summer 1998."

IV. Opinion of the Bavarian Administrative Court, October 29, 1998 (Az: 22 BA 94.34252):

"The foreign Office's status reports of May 6, June 8 and July 13, 1998, given to the plaintiffs in the summons to a verbal deliberation, do not allow the conclusion that there is a group persecution of ethnic Albanians from Kosovo. Not even regional group persecution, applied to all ethnic Albanians from a specific part of Kosovo, can be observed with sufficient certainty. The violent actions of the Yugoslav military and police since February 1998 were aimed at separatist activities and are no proof of a persecution of the whole Albanian ethnic group in Kosovo or in a part of it. What was

involved in the Yugoslav violent actions and excesses since February 1998 was a selective forcible action against the military underground movement (especially the KLA) and people in immediate contact with it in its areas of operation.. A state program or persecution aimed at the whole ethnic group of Albanians exists neither now nor earlier."

V. Opinion of the Administrative Court of Baden-Wurttemberg, February 4, 1999 (Az: A 14 S 22276/98):

"The various reports presented to the senate all agree that the often feared humanitarian catastrophe threatening the Albanian civil population has been averted. ...This appears to be the case since the winding down of combat in connection with an agreement made with the Serbian leadership at the end of 1998 (Status Report of the Foreign Office, November 18, 1998). Since that time both the security situation and the conditions of life of the Albanian-derived population have noticeably improved....Specifically in the larger cities public life has since returned to relative normality (cf. on this Foreign Office, January 12, 1999 to the Administrative Court of Trier; December 28, 1998 to the Upper Administrative Court of Luneberg and December 23, 1998 to the Administrative Court at Kassel), even though tensions between the population groups have meanwhile increased due to individual acts of violence... Single instances of excessive acts of violence against the civil population, e.g. in Racak, have, in world opinion, been laid at the feet of the Serbian side and have aroused great indignation. But the number and frequency of such excesses do not warrant the conclusion that Albanian living in Kosovo is exposed to extreme danger to life and limb nor is everyone who returns there threatened with dead and severe injury."

VI. Opinion of the Upper Administrative Court at Munster, February 24, 1999 (Az: 14 A 3840/94 A):

"There is no sufficient actual proof of a secret program, or an unspoken consensus on the Serbian side, to liquidate the Albanian people, to drive it out or otherwise to persecute it in the extreme manner presently described....If Serbian state power carries out its laws and in so doing necessarily puts pressure on an Albanian ethnic group wich turns its back on the state and is for supporting a boycot, then the objective direction of this measures is not that of a programmatic persecution of this population group. ... Even if the Serbian state were benevolently to accept or even to intend that a part of the citizenry wich sees itself in a hopeless situation or opposes compulsory measures, should emigrate, this still does not represent a program of persecution aimed at the whole of the Albanian majority (in Kosovo)."

"If moreover the (Yugoslav) state reacts to separatist strivings with consistent and harsh execution of its laws and with anti-separatist measures, and if some of those involved decide to go abroad as a result, this is still not a deliberate policy of the (Yugoslav) state aiming at ostracizing and expelling the minority; on the contrary it is directed toward keeping this people within the state federation."

"Events since February and March 1998 do not evidence a persecution program based on Albanian ethnicity. The measures taken by the armed Serbian forces are in the first instance directed toward combatting the KLA and its supposed adherents and supporters."

VII. Opinion of the Upper Administrative Court at Munster, March 11, 1999 (Az: 13A 3894/94.A):

"Ethnic Albanians in Kosovo have neither been nor are now exposed to regional or countrywide group persecution in the Federal Republic Of Yugoslavia."

www.emperors-clothes.com/ggg.htm

Why They Were Indicted

Dusan Vilic
Bosko Todorovic
Grafomark, Belgrade, 2001

Note to members of the press: The following is a long excerpt from the book, 'Why They Were Indicted,' which shall appear shortly in full, both on the Internet, at the Websites www.icdsm.org, www.sps.org.yu, and www.tenc.net, and in paperback book form.

The book, by two retired Yugoslav generals with access to original military documents, provides a paragraph by paragraph refutation of the original 'indictment' of Yugoslav leaders by the ICTY in May, 1969. We urge members of the press to read the entire document, since some of the most important refutations occur toward the end of this long excerpt. We regret that the entire book is not available today, but it will be shortly.

-- Jared Israel, Vice-Chairman of the ICDSM

Introductory note - About the ICTY Indictment of Yugoslav Leadership

Two months after NATO aggression on FRY began, on May 22, 1999, chief prosecutor of the ICTY (Also known as the Hague Tribunal) Louise Armour indicted Slobodan Milosevic, Milan Milutinovic, Nikola Sainovic, Dragoljub Ojdanic and Vlajko Stojiljkovic for "crimes against humanity and violations of laws and customs of war."

The systematic anti-Serb campaign which preceded the NATO aggression against FR Yugoslavia accused the Yugoslav Army (*Vojska Jugoslavije* - VJ) and police forces of "excessive force and repression against the Albanian civilian population." Had this campaign been based on fact, then an indictment of the top Yugoslav leadership for "crimes against humanity..." would have been announced several months before the NATO aggression. This especially since the NATO Council's decision to initiate air and missile strikes against FRY was publicly explained as a "humanitarian operation," with the basic objective to "prevent a humanitarian disaster" that supposedly preceded the NATO aggression.

The indictment (Paragraph 25) claims that by October 1998, due to "a campaign of shelling predominantly Kosovo Albanian towns and villages" some 300,000 (15% of the total population) people were displaced in Kosovo-Metohia, which is absolutely untrue on many counts. Firstly, VJ conducted anti-terrorist operations in Kosovo-Metohia from July 25 to September 28, 1998, which resulted in some movement of civilians in addition to combat casualties among the terrorists. That movement, however, was not caused by expulsions by the VJ or shelling of towns and villages, but by the orders given to civilians by secessionist leaders supported by foreign powers with the aim of manufacturing evidence of "humanitarian disaster," as well as by the spontaneous flight of civilians from areas of combat.

Secondly, the indictment uses the loaded term "shelling." In doing this, the ICTY consciously disregards the fact that no town or village in Kosovo-Metohia, with the exception of Orahovac, was a target of artillery bombardment during 1998 because there were no terrorist operations in Kosovo-Metohia cities during that year. Only Orahovac (July 18-20, 1998) saw a sizeable counter-terrorist operation with the purpose of freeing Serb civilians who were hostage by the terrorists and subjected to violence and murder while 134 officers of the Serbian Interior Ministry (MUP) were under siege in two buildings. No anti-terrorist action during 1998 involved "shelling" of inhabited areas, since the VJ Command specifically forbade such actions in its operational orders. (For details, see the refutation of Paragraph 25 further below).

Really, there was no "humanitarian disaster" in Kosovo-Metohia in 1998. Even those civilians that temporarily fled combat operations or established refugee columns and camps on "KLA" orders, returned to their homes and settlements at the end of anti-terrorist operations. Thanks to great efforts of the Serbian State and FRY, no Albanian family in Kosovo-Metohia, as well as families of other ethnicities, had to face the winter of 1998-99 without housing. The media campaign claiming a "humanitarian disaster" that supposedly already happened by the end of 1998 was manufactured in order to prepare the international community for the upcoming NATO aggression against Serbia and FRY

The claim was that a "humanitarian disaster" occurred before the NATO bombing which was thus codenamed "Merciful Angel." Yet the fact that the Slobodan Milosevic and his associates were indicted only close to the end of the NATO aggression points to motives very different from its official claim.

According to the expectations of U.S. political and military leaders and their public boasts (notably those of Madeleine Albright and Gen. Wesley Clark) Yugoslav defense forces were supposed to capitulate after two or three days of massive air raids and missile strikes, with the Yugoslav political and military leadership accepting the Rambouillet ultimatum it had previously rejected. But the expected capitulation did not occur even after two months of round-the-clock strikes against both military and civilian objectives throughout FR Yugoslavia. Instead of surrendering, the will of the people to grew parallel to the death toll and infrastructure devastation.

VJ and Serbian security forces indeed could not hope to militarily defeat a greatly superior enemy, whose economic potential according to some estimates was some 676 greater than that of FRY, sapped by a decade of embargoes and blockades. Yet its heroic defense and moral support of the entire population succeeded in causing significant losses to the enemy, while suffering minimal casualties. Yugoslavia emerged from this greatly unequal contest as the moral winner.

This unexpected outcome of the NATO aggression disturbed its creators.

Blackmail, a decade of blockades and embargoes, media demonization and finally, the 78 days of air and missile strikes against 995 targets in Yugoslavia were not enough to force the capitulation of the country and its armed forces. That is why the North Atlantic Council and the U.S. government decided to declare Yugoslavia's military and civilian leaders war criminals, thus attempting to mask the general impression of failure, and the responsibility of NATO for atrocities. Convictions and long sentences would send a powerful message to the next victims of aggression: do not even try to resist, or the same fate will befall you.

Therefore, the ICTY indictment's primary goal is not to justifiably prosecute real criminals, but to punish the "defiance" of those who refuse to submit to imperious foreign forces in its aggressive drive towards a new world order [*Novus Ordo Seclorum*].

From the standpoint of future armed interventions by NATO and the U.S., their planners could not allow the Yugoslav model of decade-long resistance – and especially defense from the 78-day air and missile strikes, combined with multiple land attacks from Albania, in early 1999 – to become an attractive model for defense doctrines in other small countries, aiming to preserve their national identity, liberty and independence.

Following is the so-called Indictment Of the International Criminal Tribunal for the former Yugoslavia (ICTY) against Slobodan Milosevic, Milan Milutinovic, Nikola Sainovic, Dragoljub Ojdanica and Vlajko Stojiljkovica, for «crimes against Humanity and violations of laws and customs of war», along with the factual refutation of the allegations and incriminations listed therein, paragraph by paragraph.

Paragraph 1 of the Indictment gives general geographical and political information about Kosovo-Metohia and its immediate surroundings, to which we have no objections.

Paragraph 2 of the Indictment says: "In 1990 the Socialist Republic of Serbia promulgated a new Constitution which, among other things, changed the names of the republic and the autonomous provinces. The name of the Socialist Republic of Serbia was changed to the Republic of Serbia (both hereinafter Serbia); the name of the Socialist Autonomous Province of Kosovo was changed to the Autonomous Province of Kosovo and Metohija (both hereinafter Kosovo); and the name of the Socialist Autonomous Province of Vojvodina was changed to the Autonomous Province of Vojvodina (hereinafter Vojvodina). During this same period, the Socialist Republic of Montenegro changed its name to the Republic of Montenegro (hereinafter Montenegro)."

The reasons for and character of the 1990 constitutional changes in Serbia will be discussed in subsequent counts. All paragraph 2 does is establish that all the republics and provinces of the former Socialist Federal Republic of Yugoslavia (SFRY) struck the attribute "Socialist" from their name. Yet this assertion can in no way be related to the indicted, and thus does not belong in the indictment. Given the undeniable ideological bend and the clearly stated political objectives of the ICTY, this count would appear more favorable to proving the defendants' innocence than their guilt. But as most of them were not in significant positions of authority in Serbia and Yugoslavia at the time of the 1990 constitutional changes, any connection between them and such changes – positive or negative – is out of place

Paragraph 3 of the Indictment says: "In 1974, a new SFRY Constitution had provided for a devolution of power from the central government to the six constituent republics of the country. Within Serbia, Kosovo and Vojvodina were given considerable autonomy including control of their educational systems, judiciary, and police. They were also given their own provincial assemblies, and were represented in the Assembly, the Constitutional Court, and the Presidency of the SFRY."

According to all the Constitutions of Second Yugoslavia (SFRY), Vojvodina and Kosovo-Metohija had certain autonomous rights, which had been constantly expanded as the country and its political system evolved. In the Constitutional amendments of 1968 and the 1974 Constitution, those rights had elevated these Provinces to the level of "constituent components of the Federation," with all the ensuing consequences of such status. These constitutional changes significantly limited the sovereignty of SFRY and the Republic of Serbia. Serbia's sovereignty had dual limitations – on one side, just like the other Republics, because its Constitution was subordinate to that of the Federation; but on the other, that the Provinces had a say in Serbia's Constitution. Yet the provinces

had no such restrictions in promulgating their own Constitutions. Thus it ensued that the Provinces were more sovereign than the Federation, since not even Serbia had a say in the Constitutions of Provinces ostensibly within its territory.

This count of the indictment is misleading and essentially untrue. Even before the 1974 Constitution, the Republics of the SFRY (all six) had substantial authority and autonomy in their internal affairs. This was especially true following the 1963 Constitution.

Also, the Autonomous Provinces within the Republic of Serbia existed before the 1974 SFRY Constitution. The Autonomous Province of Vojvodina and the Autonomous Region of Kosovo-Metohia were already established during the Liberation War, as part of the administrative and territorial division of the antifascist movement. The first Constitution of the Democratic Federal Republic of Yugoslavia (DFRY), in January 1946, determined that the People's Republic of Serbia included the Autonomous Province of Vojvodina and the Autonomous Region of Kosovo-Metohia. Subsequently, the Autonomous Region of Kosovo-Metohia was also upgraded to the status of Province, but also within Serbia. Both provinces had their governments and administrative bodies long before the Constitution of 1974.

Amendments to the 1963 SFRY (Amendments XX, XXXII and XLI, adopted June 30, 1971, and included fully in the 1974 SFRY Constitution) made the autonomous provinces of Vojvodina and Kosovo-Metohija "constituent elements" of the Yugoslav federation. This constitutional change and the subsequent practice of both provinces have made them *de facto* and *de iure* federal components. This status put them practically outside of Serbia, and in some fundamental issues they had greater authority than the Republic of Serbia, even though they were theoretically still its components. For example, "changes to the SFRY Constitution can be adopted when the wording proposed by the Federal Parliament is ratified by the Parliaments of all Republics and all Autonomous Provinces... ***[But] if the Parliament of one or more Republics or Autonomous Province do not ratify the changes to the SFRY Constitution adopted by the Federal Parliament, the proposed Constitutional amendments… cannot be [returned] on the Parliamentary agenda before one year expires..." (XXXII amendment).

On top of all that, the autonomous provinces of Vojvodina and Kosovo-Metohia had representatives on all levels of government in Serbia and the Federation, while Serbia had no prerogatives relating to the governments and administration of «its own» provinces.

Such a degree of provincial authority substantially infringed on the sovereignty of Serbia. It proved to be absurd in both the theory and practice of federalism, and had to be changed.

That led to changes in the Constitution of the Republic of Serbia, which did not infringe in any way on the Federal Constitution, but took place under Section IV of the Serbian Constitution. These amendments, among other things, regulated the following:

* "Changes to the Serbian Constitution will be made by the Parliament of Serbia. If changes to the Serbian Constitution relate to the issues of the entire republic, the Parliament of Serbia will make its decision with the agreement of provincial Parliaments." (Article 427).

* "The Parliament of Serbia, after a public debate, establishes the proposed amendments to the Serbian Constitution relating to issues of interest to the entire Republic. The Parliament of Serbia then votes [on the amendments] with the agreement of provincial Parliaments. Changes to the Serbian Constitution are adopted in the Serbian Parliament if two-thirds of all delegates in the Parliament of Serbia votes in their favor." (Article 430).

Paragraph 4 of the Indictment says: "In 1981, the last census with near universal participation, the total population of Kosovo was approximately 1,585,000 of which 1,227,000 (77%) were Albanians and 210,000 (13%) were Serbs. Only estimates for the population of Kosovo in 1991 are available because Kosovo Albanians boycotted the census administered that year. General estimates are that the current population of Kosovo is between 1,800,000 and 2,100,000 of which approximately 85-90% are Kosovo Albanians and 5-10% are Serbs."

It is misleading and scientifically inaccurate to consider the ethnic makeup of any region in the world, including Kosovo-Metohia, exclusively in the light of the last comprehensive Census, only 20 years old.

The historical right of an indigenous people to ancestral territory cannot be determined solely on the basis of the last Census, completely neglecting the reasons for that people shrinking in numbers from an indisputable majority to a marginal minority.

Any previous Census would have pointed to a different ethnic makeup of Kosovo-Metohija than what is stated in this Indictment, since this region is historically, culturally, spiritually and in all ways a center of the Serbian civilization and state.

Anthropological and ethnological research on the Medieval period (1455), indicates that, for example, the central Kosovo-Metohia area of Drenica had a total of 1,900 households, of which 1,873 were Serb and only 10 Albanian. The censuses from 1921 and 1931 also indicate that Albanians were not a majority in this region. At the peak of Medieval Serbia's economic and cultural prosperity, its capital was in the Kosovo-Metohia city of Prizren; at the time, it was one of the largest cities in the Balkans, with 60,000 inhabitants. The belief of Serbs – and not just the Orthodox clergy – that Kosovo is the "Serb Jerusalem" is not unfounded. Without Kosovo-Metohia, Serbs would not be who they are – they would cease being a historical nation, and become an amorphous demographic mass.

The Albanian character of Kosovo-Metohia emphasized by the Indictment is not a legitimate consequence of the natural disappearance of Serbs and the natural population growth of local Albanians. Forced Albanization began with the Islamization of the local populace during the Turkish occupation and has continued to the present day, always as a function of conquest and occupation by foreign powers. In addition to Albanization, the majority Serbs in Kosovo-Metohia have been systematic targets of expulsion and terror, until they were reduced to the proportions on which the ICTY Indictment is based. With regard to elementary justice such an essentially genocidal change of ethnic makeup in Kosovo-Metohia cannot be considered valid. It is generally understood in the legal science that changes achieved by force are considered null and void.

Paragraph 5 of the Indictment says: "During the 1980s, Serbs voiced concern about discrimination against them by the Kosovo Albanian-led provincial government while

Kosovo Albanians voiced concern about economic underdevelopment and called for greater political liberalisation and republican status for Kosovo. From 1981 onwards, Kosovo Albanians staged demonstrations which were suppressed by SFRY military and police forces of Serbia."

Serb "concern" over discrimination against them by the "Kosovo Albanian-led provincial government" is much older, and has involved much more than the mere concern mentioned in the Indictment. Indeed, the issue here is an expulsion of Serbs from Kosovo-Metohia which began in the latter half of 1960 after the Fourth Plenary session (the Brioni *plenum*) of the Yugoslav League of Communists (SKJ).

During the 1980s, after the death of J.B. Tito, the expulsions intensified, and were manifested in a variety of ways calculated to cause the mass exodus of Serbs from the province. According to expert though still incomplete analyses of the available data, it is estimated that over 200,000 Serbs were expelled from Kosovo-Metohia from mid-1960 to 1981, under various circumstances, commonly under pressure. The Albanian majority in Kosovo (77% per the Indictment and 74% according to the Federal Bureau of Statistics) came into being not just because of the well-known demographic explosion among the Albanians, but because of systematic expulsion of Serbs and other non-Albanians from the province.

Also, the 1981 Census was conducted by the predominantly Albanian government in the province, and should therefore be viewed with suspicion. Even the Yugoslav public is not familiar with the fact that Albanian census-takers were instructed to classify Croats, Roma, Turks, Gorani, Moslems and other non-Albanians as "Albanians" on the census form. The fact that most of these groups became targets of Albanian terrorists and separatists after the withdrawal of VJ and FRY security forces from Kosovo-Metohia and the arrival of KFOR (June 1999), and joined the Serbs in refugee columns heading into inner Serbia (and in some cases Macedonia) confirms the suspicions about this Census.

The concerns of Kosovo Albanians "about economic underdevelopment" that the Indictment quotes as a legitimate reason for Albanian revolt were borrowed from the propaganda quiver of the Albanian separatist movement. This movement cites that very reason to justify its separatist nature for a full 50 years. The Yugoslav public remembers that the Albanian riots in March and April 1981 began ostensibly over "bad food" in Pristina University's cafeteria.

Underdevelopment was debunked by the then-absolute leader of Kosovo Albanians, the member of the SFRY Presidium, Fadil Hoxha, in his address to the rioting demonstrators. On that occasion, among other things, he said:

> "The Albanian people of Kosovo has, together with the Serbs and other nations and nationalities of Yugoslavia, achieved development is has never before had in its history. Since this soil knows of Albanians, Serbs, Montenegrins and others, Kosovo and its ethnic communities have never before had a faster and more dynamic growth. Not only that, but I can tell you that I know no other people who achieved this much progress in such a short time as the Albanians have in Kosovo. In only four decades, we have overcome the burden of feudalism and unprecedented cultural backwardness. Today, we Albanians have every

opportunity to develop and nurture all the values that make up our national identity, like all the other peoples in Yugoslavia."

It is interesting that violent Albanian separatism appeared precisely at the time when this ethnic minority had the greatest rights and the widest possible autonomy within Yugoslavia, when the provinces of Vojvodina and Kosovo-Metohia were granted constituent status in the Federation and all the rights of Republics within Yugoslavia.

During 1968, there was an ongoing debate in Yugoslavia about amending the 1963 Constitution. The goal was to decentralize the powers of the Federal government and give more power to the Republics and autonomous provinces. It was in 1968 that Amendment VII made the autonomous provinces - Vojvodina and Kosovo-Metohia – into "constituent elements of the Federation."

Not even these rights were enough for the Albanian separatists, however. They demanded the province be granted the status of a separate Republic. That was the occasion for demonstrations and riots that began in Pristine on November 27, 1968.

A new separatist rebellion in Kosovo-Metohia (the third since World War Two) began in the spring of 1981. Again this had the purpose of fracturing Yugoslavia. It is interesting that the intensity of separatist force in the province grew parallel to the growth of overall prosperity in Kosovo.

To prove this claim, we will cite just some statistics: between 1954 and 1980, industrial production increased 18-fold; agriculture tripled; the entire province got electricity and a complete network of elementary, secondary and higher education institutions, encompassing all school-age children; modern roads, health care, social welfare and cultural facilities were constructed for the benefit of all inhabitants.

Since World War Two, Kosovo-Metohia rose from last in Yugoslavia to third in the education levels of its workforce. In early 1980, the total number of pupils and students in this province was 500,000, which meant that every third inhabitant was attending an educational institution (see Sebrian Bureau of Stattistic figures, published 1986 in Belgrade).

Rapid development of the province was spurred by a special fund within the Federal budget, established from taxes all over Yugoslavia. This fund, for example, financed 70% of all investments in Kosovo-Metohia between 1971 and 1985. Some 70% of the Fnd was covered by taxes from Serbia. Between 1978 and 1985, the Fund also granted investment credits to Kosovo–Metohia – collected through taxes to the extent of 1.83% of the national GDP – at rates up to 25% more favorable than other undeveloped areas.

Therefore, the claim by Fadil Hoxha that the Albanian people have never before seen such gigantic progress was based on accurate indicators and statistics.

Paragraph 6 of the Indictment says: "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. In so doing, he broke with the party and government policy which had restricted nationalist expression in the SFRY since the time of its founding by Josip Broz

Tito after the Second World War. Thereafter, Slobodan MILOSEVIC exploited a growing wave of Serbian nationalism in order to strengthen centralised rule in the SFRY."

The claim that Slobodan Milosevic, exploiting a "growing wave of Serbian nationalism, went to Kosovo-Metohia in April 1987 and there "endorsed a Serbian nationalist agenda" contradicts paragraph 5 of the Indictment, which talks about the Serbian "concern about discrimination against them by the Kosovo Albanian-led provincial government." So, which nationalism was dominant in Kosovo-Metohia in the 1980s, Serbian or Albanian?

Failure to crush the Albanian national-separatist movement that instigated the March-April 1981 riots resulted in the latter part of that decade in a veritable eruption of pent-up discontent among the Serbs in the province. Their demonstrations were sparked by arrests of several prominent Serbs from Kosovo-Metohia. Having failed to reach a negotiated solution with the provincial authorities, the demonstrators (some 500 of them) arrived in Belgrade on April 7, 1986. All they demanded from the Federal authorities at the meeting in Sava Center in Belgrade was peace, liberty and freedom of movement. They complained that even their children were not safe any more. "We are not free. All we ask for is liberty" was their basic demand.

As the elected chairman of the Presidium of the Serbian League of Communists' (SK) Central Committee, Slobodan Milosevic automatically became a member of the inner circle of the Yugoslav League of Communists (SKJ), according to the SJK Statute. In that capacity, he could not exercise influence to "strengthen centralised rule in the SFRY," even if he wanted to.

Paragraph 7 of the Indictment says: "In September 1987 Slobodan MILOSEVIC and his supporters gained control of the Central Committee of the League of Communists of Serbia. In 1988, Slobodan MILOSEVIC was re-elected as Chairman of the Presidium of the Central Committee of the League of Communists of Serbia. From that influential position, Slobodan MILOSEVIC was able to further develop his political power."

Slobodan Milosevic and "his supporters" did not "gain control" over anything. They were elected to the leadership positions of their party, during its Congress, according to rules and procedures, in a secret vote. What happens in any political party, including the Serbian SK, cannot under any criteria be a basis of any Indictment, not even that of the ICTY. Therefore, we believe this paragraph does not deserve a serious response.

Paragraph 8 of the Indictment says: "From July 1988 to March 1989, a series of demonstrations and rallies supportive of Slobodan MILOSEVIC's policies—the so-called "Anti-Bureaucratic Revolution"—took place in Vojvodina and Montenegro. These protests led to the ouster of the respective provincial and republican governments; the new governments were then supportive of, and indebted to, Slobodan MILOSEVIC."

Had the authors of the Indictment been concerned with its accuracy, this paragraph would have been left out. First of all, there was no so-called 'Anti-Bureaucratic Revolution,' but a real mass movement of the people in favor of the previously heralded, then sabotaged, reforms of the contemporary Yugoslav society. The character of this movement is best summed-up in a phrase "the people happened," widely used to describe it at the time. Reforms were resisted by the governments in both the republics and the provinces, by

then already under firm bureaucratic control and firmly allied with national-separatist movements in their communities. The nature of these governments is best reflected in their attitudes towards the preservation of SFRY in the late 1980s and early 1990s. If only the anti-bureaucratic revolution had swept from power the governments in Slovenia, Croatia, Bosnia-Herzegovina and Macedonia, and even the federal government, as it had in Montenegro and Vojvodina. Had this been the case, Yugoslavia would have survived as a union, spared from all the subsequent misfortunes and tragedies. It would have implemented the planned reforms and continued its prosperous development. In that regard, the objective assessment of the anti-bureaucratic revolution would be favorable, rather than incriminating, to Milosevic and "his supporters."

The entire process in Vojvodina and Montenegro "from July 1988 to March 1989" was entirely an internal matter of Yugoslavia. Therefore, both this paragraph and paragraph 8 of the Indictment cannot represent a crime over which the ICTY would have jurisdiction.

Paragraph 9 of the Indictment says: "Simultaneously, within Serbia, calls for bringing Kosovo under stronger Serbian rule intensified and numerous demonstrations addressing this issue were held. On 17 November 1988, high-ranking Kosovo Albanian political figures were dismissed from their positions within the provincial leadership and were replaced by appointees loyal to Slobodan MILOSEVIC. In early 1989, the Serbian Assembly proposed amendments to the Constitution of Serbia which would strip Kosovo of most of its autonomous powers, including control of the police, educational and economic policy, and choice of official language, as well as its veto powers over further changes to the Constitution of Serbia. Kosovo Albanians demonstrated in large numbers against the proposed changes. Beginning in February 1989, a strike by Kosovo Albanian miners further increased tensions."

Our refutation of Paragraph 3 already answered the question of why and how the changes to the Serbian constitution were made in March 1989. Demands of the Serbian public to amend the Constitution were aimed at Vojvodina and Kosovo-Metohia equally. Because of their obstructionist policies, both provincial governments were dismissed. The Vojvodina government resigned in October 1988, followed by that of Kosovo-Metohia in November. Montenegro's government did the same in January 1989, under popular pressure. New governments were not appointed, as the Indictment alleges, but elected by popular vote.

It is an established fact that all countries, and especially federations, regard national security, economic issues, and education as key factors of state unity. Therefore, it is entirely logical that jurisdiction over these matters was transferred from the provincial level to the Republic. For example, when the Albanian separatists organized a violent and widespread armed rebellion in Pristina and the rest of Kosovo-Metohia, Serbian police and even the Special Forces of the Federal Interior Ministry were unable to intervene against the rebellion until the federal Presidium issued that order after an emergency session.

Allegations in the Indictment that the constitutional changes in Serbia denied the Albanians their choice of language are false. The ethnic Albanian minority continued to have full rights to education in their native language, as well as use of that language in communicating with all branches of government in the province.

Speaking of Paragraph 9, however, we must wonder why and on what grounds does this Indictment address the issues of changes in system and personnel in a legitimate, sovereign state – undertaken, by the way, in full accordance with the Constitution and laws of that state? Also, in addressing these issues, why does the Indictment single out Kosovo-Metohia? At the same time, reforms took place in the province of Vojvodina and the republic of Montenegro.

Paragraph 10 of the Indictment says: "Due to the political unrest, on 3 March 1989, the SFRY Presidency declared that the situation in the province had deteriorated and had become a threat to the constitution, integrity, and sovereignty of the country. The government then imposed "special measures" which assigned responsibility for public security to the federal government instead of the government of Serbia."

It is true that the Yugoslav Presidium, chaired at the time by Lazar Mojsov, declared a state of emergency ("special measures") in one part of Yugoslav territory - the Autonomous Province of Kosovo – though on March 1, not March 3, as alleged. This decision was issued on the authority of the National Defense Law (SFRY *Official Gazette*, Issue 21/8). The NDL stipulates, among other things, that a state of emergency may be imposed in case of imminent danger to the country. Under the Constitution, only the SFRY Presidium was authorized to issue such a decision. Therefore, this legitimate and entirely constitutional decision can in no way be attributed to the any of the five indicted leaders of Serbia, including Slobodan Milosevic.

Paragraph 11 of the Indictment says: "On 23 March 1989, the Assembly of Kosovo met in Pristina and, with the majority of Kosovo Albanian delegates abstaining, voted to accept the proposed amendments to the constitution. Although lacking the required two-thirds majority in the Assembly, the President of the Assembly nonetheless declared that the amendments had passed. On 28 March 1989, the Assembly of Serbia voted to approve the constitutional changes effectively revoking the autonomy granted in the 1974 constitution."

We already refuted the allegations in Paragraph 11 in our refutation of Paragraph 3. We would only add that the provincial Parliaments, under the existing Serbian constitution, were not supposed to ratify the proposed amendments, only to vote on them. It was the Serbian Parliament that had the power to adopt the amendments. As we said already, under these amendments the provinces remained constituent elements of the federation, and their autonomy was not "effectively" revoked, as the Indictment alleges.

Paragraph 12 of the Indictment says: "At the same time these changes were occurring in Kosovo, Slobodan MILOSEVIC further increased his political power when he became the President of Serbia. Slobodan MILOSEVIC was elected President of the Presidency of Serbia on 8 May 1989 and his post was formally confirmed on 6 December 1989."

Slobodan Milosevic became chairman of the Serbian Presidium on May 8, 1989 in an entirely legal manner, as regulated by the Constitution. Naturally, assumption of the highest governmental position in any state in and of itself means the assumption of the political authority that position entails. That fact is not by itself incriminating. It is puzzling that the ICTY Indictment dwells at all on who came into power and how in a sovereign state such as Serbia, then part of the sovereign and internationally recognized Yugoslav federation!

Paragraph 13 of the Indictment says: "In early 1990, Kosovo Albanians held mass demonstrations calling for an end to the "special measures." In April 1990, the SFRY Presidency lifted the "special measures" and removed most of the federal police forces as Serbia took over responsibility for police enforcement in Kosovo."

As it is untrue that "mass demonstrations" of "Kosovo Albanians," – whether in the 1960s, 1970 or the 1980s (which were addressed in our refutation of Paragraph 5), no matter – were caused by economic backwardness or repression by Serbian police or military forces, it is also untrue that the 1990s demonstrations has as their goal to lift the state of emergency ("special measures").

This was only the official excuse, while the real reason has always been the same: demands for secession from Yugoslavia and the creation of a "Greater Albania." How repressive the "special measures" were is best seen by the ease with which the Albanian separatists could organize and launch "mass demonstrations." Behind these, and all earlier "mass demonstrations of Kosovo Albanians," was a well-organized separatist movement. Its illegal branches (such as PASRJ, the "Movement for the Albanian Socialist Republic in Yugoslavia" and others) had infiltrated not only the entire province, but also the Yugoslav People's Army (JNA). Illustrating this is the fact that between 1981 and 1988, some 241 illegal cells of Albanian separatists were discovered within the JNA, with some 1,600 members among the enlisted men and officers. One of them was Pvt. Aziz Kelmendi; on September 2, 1987, Kelmendi killed four of his comrades and wounded another six, as they slept in their barracks in Paracin. This example illustrates the criminal and terrorist nature of this movement and its illegal organizations.

Paragraph 14 of the Indictment says: "In July 1990, the Assembly of Serbia passed a decision to suspend the Assembly of Kosovo shortly after 114 of the 123 Kosovo Albanian delegates from that Assembly had passed an unofficial resolution declaring Kosovo an equal and independent entity within the SFRY. In September 1990, many of these same Kosovo Albanian delegates proclaimed a constitution for a "Republic of Kosovo." One year later, in September 1991, Kosovo Albanians held an unofficial referendum in which they voted overwhelmingly for independence. On 24 May 1992, Kosovo Albanians held unofficial elections for an assembly and president for the 'Republic of Kosovo'."

It defies understanding that the ICTY, officially a legal extension of the U.N. Security Council, takes the side of the entirely illegal and unconstitutional Albanian separatist organizations, recognizing both this assembly and its "decisions." There is no country in the world that would allow separatist forces to achieve their goals in this fashion. The authors of this Indictment are probably familiar with the U.S. government's response to a relatively minor separatist group in Texas, which mentioned the issue of secession only to be mercilessly destroyed. (Yet U.S. diplomats urged the Albanian secessionists to hold such an "Assembly," and since they could not do it inside the Provincial Parliament in Pristine, they urged them to hold it anyway, even if it had to be inside a bus.)

Paragraph 15 of the Indictment says: "On 16 July 1990, the League of Communists of Serbia and the Socialist Alliance of Working People of Serbia joined to form the Socialist Party of Serbia (SPS), and Slobodan MILOSEVIC was elected its President. As the successor to the League of Communists, the SPS became the dominant political party in

Serbia and Slobodan MILOSEVIC, as President of the SPS, was able to wield considerable power and influence over many branches of the government as well as the private sector. Milan MILUTINOVIC and Nikola SAINOVIC have both held prominent positions within the SPS. Nikola SAINOVIC was a member of the Main Committee and the Executive Council as well as a vice-chairman; and Milan MILUTINOVIC successfully ran for President of Serbia in 1997 as the SPS candidate."

This paragraph is not incriminating, therefore not meriting a comment. One note is, however, necessary. The newly formed SPS was not the "successor to the League of Communists", as the Indictment alleges, not by its Statute, its memberships or property. It is true that some of the members of the old SK joined the newly formed SPS, but it is also true that some of them continued their membership in the League of Communists-the Yugoslav Movement (SK-PJ), while others joined other political parties that appeared on the Serbian political scene at the time. Other Leagues of Communists in republics of the former SFRY joined up with other leftist parties after stepping down from power, yet none of them was ever labeled "successor to the League of Communists." After the abortive 14th Congress of the Yugoslav SK, many of its members joined other political parties, and not only in Serbia.

Paragraph 16 of the Indictment says: "After the adoption of the new Constitution of Serbia on 28 September 1990, Slobodan MILOSEVIC was elected President of Serbia in multi-party elections held on 9 and 26 December 1990; he was re-elected on 20 December 1992. In December 1991, Nikola SAINOVIC was appointed a Deputy Prime Minister of Serbia".

Since it is true, this Paragraph does not require a response. It might not be extraneous to add that Slobodan Milosevic won these multi-party elections in a landslide.

Paragraph 17 of the Indictment says: "After Kosovo's autonomy was effectively revoked in 1989, the political situation in Kosovo became more and more divisive. Throughout late 1990 and 1991 thousands of Kosovo Albanian doctors, teachers, professors, workers, police and civil servants were dismissed from their positions. The local court in Kosovo was abolished and many judges removed. Police violence against Kosovo Albanians increased."

As already mentioned, the autonomy of Kosovo was not revoked when this province was reintegrated into the Serbian constitutional system.

After the attempts by Albanian separatists to organize the so-called assembly, issue the so-called "unofficial resolution" and hold the "unofficial" but also illegal and illegitimate referendum, and their proclamation of the "Republic of Kosovo," the separatists launched a general boycott of the Serbian State in the entire territory of Kosovo-Metohia.

One of the forms of boycott was the mass resignation of "doctors, teachers, professors, workers, police and civil servants" – all Kosovo Albanians. This was not because their employment was terminated, but because the secessionist leadership called for their boycott of the Serbian state, since only with the aid of these professionals could it establish the so-called parallel state (as Paragraph 18 describes below).

The greatest victims of this lunacy were surely the generations of Albanian children, "educated" over the past decade in improvised schools without really gaining any

knowledge. During this time, the children were exposed to intense nationalist and chauvinist indoctrination, which aided their recruitment into terrorist organizations (such as the "Kosovo Liberation Army" and others). A great percentage of these children were only instructed in criminal terrorism and hatred for all things non-Albanian. Therefore, this paragraph is incriminating only for the Albanian separatist leadership, and not the state of Serbia and its leaders.

Paragraph 18 of the Indictment says: "During this period, the unofficial Kosovo Albanian leadership pursued a policy of non-violent civil resistance and began establishing a system of unofficial, parallel institutions in the health care and education sectors."

Everything mentioned in response to Paragraph 17 is applicable to this paragraph as well. We would add, however, that the Albanian separatist movement's boycott of the Serbian state was nearly absolute when it came to civic obligations such as taxes and paying state-owned utility services (heating bills, power, water, vehicle license and registration, insurance, etc.).

Yet the boycott was not practiced when there was a need to use the expert services and facilities of the national health system (maternity care, treatment of serious diseases, complicated surgical procedures, etc.). That is why we would like to ask the authors of this Indictment if any country in the world would tolerate such behavior from its citizens? This boycott lasted for almost a decade, bolstered by former Yugoslavia's dismemberment and the subsequent civil and ethno-religious wars, during which the so-called international community systematically demonized Serbia and FRY. Any efforts of the Serbian government to end this inexcusable state of affairs were immediately deemed "repression" against the Albanian population.

We will address in detail the notion of Albanian separatists' "non-violent civil resistance" in Kosovo-Metohia in responding to Paragraph 23 of the Indictment.

Only the uninformed and ill-intentioned could classify the attempts of Albanian secessionists in the early 1990s to create a "parallel state" through a general boycott of the Serbian government in Kosovo-Metohia as pursuit of "a policy of non-violent civil resistance." Such a policy was really a well-planned, long-term strategy, whose scope and implications eluded at the time even the Serbian and Yugoslav political leadership.

Only in the late 1990s, when the Albanian separatist leadership in Kosovo-Metohia decided to initiate widespread terrorist violence – in conjunction with their foreign sponsors and allies, of course – did it become apparent how important the period of so-called non-violent resistance was to the preparation of terrorist actions. For example, the unhindered mass indoctrination of classes of young Albanians with national-chauvinist ideas was possible only under a complete boycott of the Serbian government and its educational system. Some ten of thousands of fanatical youths in the so-called "parallel" schools were to be the recruiting pool for the "KLA" in the late 1990s.

The same goes for the fortification of areas controlled by "parallel institutions" – i.e. the "KLA". Anyone with the slightest awareness of the proportion and degree of fortification on some 50% of Kosovo-Metohia's territory – over 5000 square kilometers – has no

doubt that the "non-violent resistance" and "parallel institutions" were necessary to complete preparations for the violent secession that was eventually launched.

Paragraph 19 of the Indictment says: "In late June 1991 the SFRY began to disintegrate in a succession of wars fought in the Republic of Slovenia (hereinafter Slovenia), the Republic of Croatia (hereinafter Croatia), and the Republic of Bosnia and Herzegovina (hereinafter Bosnia and Herzegovina). On 25 June 1991, Slovenia declared independence from the SFRY, which led to the outbreak of war; a peace agreement was reached on 8 July 1991. Croatia declared its independence on 25 June 1991, leading to fighting between Croatian military forces on the one side and the Yugoslav People's Army (JNA), paramilitary units and the 'Army of the Republic of Srpska Krajina' on the other."

First of all, the SFRY did not "disintegrate." It was violently fragmented through internal secessionist rebellions, organized and aided from foreign centers of power, primarily the United States and the Federal Republic of Germany. The only thing the Indictment gets right, perhaps inadvertently, is that the declarations of independence by former Yugoslav republics led to armed conflict. Decisions of Slovenian and Croatian separatists (on June 25, 1991) were illegal under the SFRY Constitution. A day after declaring independence, Slovenia took control of international borders with Italy, Austria and part of the border with Hungary. When federal authorities (Customs Service and police), accompanied by 2000 JNA troops, went to reclaim the usurped border crossings, they were ambushed by Slovenian police and paramilitaries and suffered casualties in men and vehicles. That is how the Slovenian armed rebellion began.

As in the case of Albanian separatism, this unconstitutional and illegal behavior merits an indictment of the leaders that pursued it (Milan Kucan, Franjo Tudjman and their associates), not Slobodan Milosevic and his associates. This, however, was never done.

Everything else in this Paragraph is false. There was no "fighting between Croatian military forces on the one side and the Yugoslav People's Army (JNA), paramilitary units and the 'Army of the Republic of Srpska Krajina' on the other," formed from territorial defense units while SFRY still existed. Until the "premature" recognition of Slovenia and Croatia as independent states (January 15, 1992), no armed formation except the JNA can be considered a regular force, nor can their actions be considered fighting between military forces as recognized by international laws of war. Even less appropriate is the Indictment's mention of "peace agreements" between parties in conflict. What this refers to is the Brioni Declaration of July 7, 1991, in which representatives of all the republics and the federal government, with European Community mediation, agreed to a three-month moratorium on unilateral separatist acts by Slovenia and Croatia, with the purpose of finding a peaceful solution to the crisis. This abuse of the term "peace agreement" is highly inappropriate for the ICTY, which at least presents itself publicly as a legal institution of international repute.

Paragraph 20 of the Indictment says: "On 6 March 1992, Bosnia and Herzegovina declared its independence, resulting in wide scale war after 6 April 1992. On 27 April 1992, the SFRY was reconstituted as the FRY. At this time, the JNA was re-formed as the Armed Forces of the FRY (hereinafter VJ). In the war in Bosnia and Herzegovina, the JNA, and later the VJ, fought along with the 'Army of Republika Srpska' against military forces of the Government of Bosnia and Herzegovina and the 'Croat Defence Council.'

Active hostilities ceased with the signing of the Dayton peace agreement in December 1995."

Bosnia-Herzegovina declared independence on April 6, not March 6 as the Indictment alleges. It is also untrue that the well-known "premature" recognition of B-H "resulted in a wide-scale war" following the recognition. Armed incidents in the territory of former Bosnia-Herzegovina began as early as March 1, 1992, threatening to grow into a wider-scale ethno-religious and civil war.

(Some examples were the murder of Nikola Gardovic, a Serb and the groom's father, during a wedding in the Sarajevo district of Bascarsija; the murder of a Serb at the Sarajevo Vrbanja bridge; the attack of Croatian paramilitaries on Posavina region on March 27, and their massacre of Serbs in the village of Sijekovac, committed together with the Moslem paramilitaries; clashes between Moslem and Serbian militia on Vraca hill above Sarajevo on April 5, etc.)

During March 1992, representatives of both the Serbian and the Moslem sides attempted to avoid armed conflict and reach a peaceful solution to the impasse. The Lisbon conference (March 19, 1992) and the so-called Cutillero Plan represented the pinnacle of those efforts. Representatives of all three Bosnian peoples accepted the plan for cantonization of this republic, signing the agreement.

Its implementation was thwarted, however, by the U.S. Ambassador to Yugoslavia Warren Zimmerman, by persuading Moslem leader Alija Izetbegovic to renege on his signature, promising him full U.S. support in creating a unitary, Moslem-dominated Bosnia-Herzegovina. According to public admissions of Ambassador Zimmerman (in his book *Origins of a Catastrophe*) and Lord Peter Carrington (*Intervju,* issue 3338, Belgrade, October 20, 1995), the "Lisbon plan... wasn't that bad" and "it turned out... I was wrong" (Zimmerman), while Izetbegovic was "in some way pushed into declaring independence" (Carrington). Therefore, the so-called premature recognition of independent Bosnia-Herzegovina, forced by the U.S. government, as well as Ambassador Zimmerman's sabotage of the Lisbon Agreement, were the main causes of "wider-scale war" in the former Bosnia-Herzegovina. Encouraged by support and promises, on April 14, 1992, Izetbegovic issued a classified order to his "green beret" militia and all armed Moslems to initiate attacks against all facilities, units and officers of the JNA in Bosnia-Herzegovina. Artificial disputes about the order's authenticity are dispelled by the events that followed. Moslem attacks against JNA units and Serb civilians escalated throughout Bosnia-Herzegovina, especially in the Drina valley (Foca, Gorazde, Visegrad, Srebrenica, Zvornik, Bijeljina). This situation forced the JNA to act in self-defense.

At the end of April 1992, the so-called international community issued an ultimatum demanding the pullout of all JNA units from Bosnia-Herzegovina within 20 days. This was an unreasonably and carelessly short deadline, for withdrawing an Army from its former territory. (We have in mind that the Soviet Army was scheduled to withdraw from the former East Germany within three years.) Even with this tight deadline, as the JNA withdrew from Bosnia-Herzegovina, its peaceful pullout was hindered by numerous ambushes. The most drastic examples are events in Tuzla and Dobrovoljacka Street in Sarajevo, the latter taking place in the presence of Izetbegovic and Maj. Gen. Lewis MacKenzie [UNPROFOR commander in Sarajevo]. This ambush resulted in the deaths

of several enlisted men and officers, as well as one civilian. A JNA column peacefully retreating from Tuzla was attacked on May 15, 1992. Over 200 JNA troops were massacred (no one in Bosnia bothered to establish the exact number). These ambushes and massacres were remembered not only by their multiple innocent victims and the ruthless cruelty of Izetbegovic's paramilitaries, but also because no one was ever called to face justice for them. What has the ICTY ever done about this?

Also false is the Indictment's assertion that the JNA fought in this territory after May 19, 1992 – i.e. after its pulliut from Bosnia-Herzegovina. It is true that after the JNA pullout, many of its members, Serbs from Bosnia-Herzegovina, voluntarily stayed in their homeland and joined the Army of Republika Srpska (VRS), defending their people.

Paragraph 21 of the Indictment says: "Although Slobodan MILOSEVIC was the President of Serbia during the wars in Slovenia, Croatia and Bosnia and Herzegovina, he was nonetheless the dominant Serbian political figure exercising *de facto* control of the federal government as well as the republican government and was the person with whom the international community negotiated a variety of peace plans and agreements related to these wars."

This paragraph, like many others, was formulated to be in maximum agreement with the "expert" study of Professor Andrew James Gow, commissioned by the ICTY with the goal of placing blame for Yugoslavia's dismemberment on Serbia and its leadership (i.e. Slobodan Milosevic and his closest associates), rather than domestic separatists and their international sponsors.

The fact is that Serbia was only one of the six entirely equal republics in SFRY at the time (1991), so Slobodan Milosevic, even had he wanted to, could not exercise "*de facto* control of the federal government" as Paragraph 21 alleges. More so because Croats held the key positions in the federal government during 1990 and until the very end of 1991: Ante Markovic chaired the Federal Executive Council (SIV, the federal cabinet) while Budimir Loncar was the Foreign Minister, for example.

Clashes between the secessionists in Slovenia and Croatia and the JNA were over by November 1991, when Ante Markovic still ran the federal government with support from the United States.

The war in Bosnia-Herzegovina has even less to do with the federal government and any influence Slobodan Milosevic could have had on it. Contrary to what Paragraph 21 alleges, when war started in that former Yugoslav republic, the SFRY had already been dismembered, and its "federal government" was no more.

To compare the similarities between phrasing in Paragraph 21 and Paragraph 55 of Mr. Gow's "expert" study, we quote the latter in full:

> "In 1990, several ideas regarding the future of Yugoslavia appeared. One of them, proposed by the then-chairman of the federal Presidium Borisav Jovic, ally of the Serbian President Milosevic, had the support of Serbia and the JNA. President Jovic's proposal contained many of characteristics of the existing federation, and would strengthen the role of federal government, and Belgrade with it." [translated back from Serbian]

Yet this is how events in the SFRY unfolded in 1990: Organized efforts to find better and more acceptable solutions to the future of Yugoslavia were intensified. In that regard, the SFRY Presidium held exhaustive talks in mid-1990 (June 21 - July 23) with representatives of all republics and autonomous provinces, pointing to the growing concern and fear of citizens for the future of the country and its internal organization. It was emphasized that further aggravation of inter-republic and inter-ethnic relations could lead to an uncontrollable and undemocratic unraveling, with tragic consequences beyond prediction. Fundamental questions of Yugoslavia's character were put to discussion: should it be a united state or a union of states, a federation or a confederacy; the issue of internal borders; the right to self-determination, including secession; and the means to resolve these issues. It was concluded that solutions for the future organization of the country could be reached only through democratic procedure and cooperation between the federal, republic and provincial authorities. A Program of measures and activities was prepared, detailing the actions to be undertaken by the Presidium, the SFRY Parliament and all the republics.

This was, then, a document adopted by the collective heads of government, not an individual. Instead of implementing the Program, however, some republics rapidly organized paramilitaries and prepared for armed rebellion against Yugoslavia (Slovenia, Croatia, Bosnia-Herzegovina). The SFRY parliament received a detailed report about these activities on October 17, 1990.

During late 1990 and in early 1991, representatives of the republics and the federal government held talks on the constitutional reorganization of the country.

In early 1991, the SFRY Presidium issued an executive order that all irregular and paramilitary forces in the country had to be disbanded.

Slovenia and Croatia, however, openly informed the Presidium they would not allow this order to be executed in their territories. In the expanded session of the Presidium on March 21, 1991, it was decided to organize meetings between presidents of all republics and provinces, to discuss the issues of SFRY's future organization. Six such meetings were held before the unilateral and violent secession of Slovenia and Croatia, which destroyed all efforts to solve the Yugoslav crisis peacefully. This had a decisive impact on future evens in Yugoslavia - especially in Bosnia-Herzegovina, which ethnically represented a smaller version of the federation.

Everything cited above clearly indicates that while SFRY existed, Slobodan Milosevic was not "the person with whom the international community negotiated a variety of peace plans and agreements related to these wars." Serbia's representative in the SFRY Presidium, and a close associate of Slobodan Milosevic, was Dr. Borisav Jovic. In his last meeting with U.S. President George [H.W.] Bush, in October 1990, Jovic received U.S. promises that the United States gave its "full support to the unity, independence and territorial integrity of Yugoslavia," and that the accidental meeting between President Bush and Croatia's leader Tudjman, a "handshake in the hallway," did not change America's principled position on Yugoslavia. Jovic communicated this to Milosevic. Therefore, we do not consider Milosevic's agreement at the time with the "unity, independence and territorial integrity of Yugoslavia" incriminating in any way.

Paragraph 22 of the Indictment says: "Between 1991 and 1997 Milan MILUTINOVIC and Nikola SAINOVIC both held a number of high ranking positions within the federal and republican governments and continued to work closely with Slobodan MILOSEVIC. During this period, Milan MILUTINOVIC worked in the Foreign Ministry of the FRY, and at one time was Ambassador to Greece; in 1995, he was appointed Minister of Foreign Affairs of the FRY, a position he held until 1997. Nikola SAINOVIC was Prime Minister of Serbia in 1993 and Deputy Prime Minister of the FRY in 1994."

This Paragraph in the Indictment is accurate, though there is nothing incriminating about the information it contains.

Paragraph 23 of the Indictment says: "While the wars were being conducted in Slovenia, Croatia and Bosnia and Herzegovina, the situation in Kosovo, while tense, did not erupt into the violence and intense fighting seen in the other countries. In the mid-1990s, however, a faction of the Kosovo Albanians organised a group known as *Ushtria Çlirimtare e Kosovës* (UÇK) or, known in English as the Kosovo Liberation Army (KLA). This group advocated a campaign of armed insurgency and violent resistance to the Serbian authorities. In mid-1996, the KLA began launching attacks primarily targeting FRY and Serbian police forces. Thereafter, and throughout 1997, FRY and Serbian police forces responded with forceful operations against suspected KLA bases and supporters in Kosovo."

Though for the reasons cited earlier the Albanian separatist movement was not yet ready to join the separatist movements in Slovenia, Croatia and Bosnia-Herzegovina in actively destroying the SFRY during 1990-1992, it did use the country's deteriorating internal and international circumstances to expand preparations for its own armed rebellion – certainly with support from outside sponsors. Compared to the environment in which separatist rebellions were organized in other parts of Yugoslavia, the Albanian separatists had a far better environment for their rebellion as the decade went on. The first part of this decade was characterized by a fierce assault by New World Order forces, achieving results that would have been unimaginable to their ideologues even a few years earlier:

1) The USSR was broken up. One of the two superpowers, which helped anchor the bipolar world order, thus simply disappeared from the international scene;
2) Secondly, only one of the major military alliances disappeared in the USSR's wake (the Warsaw Pact).
3) Germany united, and overnight asserted its dominant role in political reorganization, first inside the European Community and then outside its borders.
4) The SFRY was broken up, and its territory beset with several short and long ethno-religious and civil wars, in which the Serbian nation suffered the most – and with it Serbia and Kosovo-Metohia as well.

Serbia was realistically unable to assert its full authority in Kosovo-Metohia, due to the necessity of aiding its compatriots across the Drina River and coping with the consequences of embargoes imposed by the so-called international community. Local government in Kosovo-Metohia was inefficient and corrupted by bribes from wealthy Albanians. Some opposition forces in Serbia sabotaged the state and acted as a fifth column, valuing the struggle for power over the struggle against Albanian separatism.

The indictment says that "In the mid-1990s… a faction of the Kosovo Albanians organised a group known as… the Kosovo Liberation Army (KLA)."

This is only partially true. The origins of Albanian separatists' terrorist organizations in Kosovo-Metohia date much earlier than the "mid-1990s". A forerunner of the "KLA" was formed on February 17, 1982, when Albanian émigrés in Germany (FRG) established the National Movement for the Republic of Kosovo (NPRK). Four illegal organizations from Kosovo-Metohia joined the NPRK: the Movement for the Albanian Socialist Republic in Yugoslavia (PASRJ), the Marxist-Leninist Organization of Kosovo (OMLK), the Communist-Leninist Party of Yugoslav Albanians (PKMLSHJ) and the People's Red Front (FKB).

Until the early 1990s, NPRK organized the activities of several smaller, fanatical terrorist cells, well trained in Albania, Switzerland and FR Germany. Numerous indicators of their activity were cited in responses to previous paragraphs of the Indictment. Albania has always had the key role in instigating and aiding Albanian terrorism in Kosovo-Metohia. After Albania emerged from seclusion (following Enver Hoxha's death) in the latter 1980s, Turkey had a dominant influence on Albanian affairs, which included aiding the growing terrorist arm of Albanian separatists in Kosovo-Metohia.

In the late 1980s, however, German intelligence (BND) displaced Turkey as the dominant foreign influence in Albania, while U.S. intelligence (CIA) has had a strong presence in Albania and Kosovo-Metohia since the early 1990s.

The idea of closer military organization among the Albanian separatists dates back to the early 1990s and the declaration of a "Republic of Kosova" (at the July 2, 1992 "Kacanik assembly"), when it was decided to form illegal police and paramilitary groups. December 1994 was the first public encounter with the "KLA," following the assassination of Lutvi Ajvazi, a police inspector from Srbica. On that occasion the "KLA command" issued a communiqué taking responsibility for this crime, also claiming several earlier assassinations of "occupiers and traitors." Under the banner of "liberating" all territories in the Balkans inhabited by Albanians and uniting them in a single, Albanian state, the NPRK called its terrorist groups the "Army of Kosova."

Yugoslavia's dismemberment (1990-1992) was used by the Albanian separatists to accelerate weapons acquisition and paramilitary training. In the spring of 1993, the Serbian Security Service (SDB) succeeded in dealing a partial and temporary setback to the Albanian separatist paramilitaries; some 14 members of the so-called "Republic of Kosova" ministry of defense were arrested, and many incriminating documents seized. What they showed was that the "ministry of defense" planned to organize an army of some 40,000 men for the armed rebellion, with the appropriate modern weaponry. According to the documents, a total of 18 brigades were envisioned, (3 in Pristina, 2 each in Podujevo and Kosovska Mitrovica, 2 each in Gnjilane, one each Urosevac, Kacanik, Decani, Klina and Drenica), numbering 2,000-5,000 men each. Every brigade had a specified zone of operations (ZO). Since the "KLA" had a very similar organizational structure and distribution of ZO when it attacked the Serbian security forces and the VJ in 1998-99, this testifies to the long-term character of plans for armed rebellion in Kosovo-Metohia.

Facts decisively refute the Indictment's allegation that the paramilitary formations of Albanian separatists were formed only in the "mid-1990s," and definitely refute another suggestion: that the "KLA" was "a faction of the Kosovo Albanians," isolated, almost autonomous, and a lone advocate of "armed insurgency and violent resistance to the Serbian authorities." The "KLA," much like paramilitary branches of other separatist movements (the Croatian National Guard Corps - ZNG, Bosnia-Herzegovina's Patriot League, ETA's military arm in Basque, and others in Corsica, Ireland, Chechnya, etc.), is part and parcel of the Albanian separatist movement in Kosovo-Metohia, its "military arm" without whose terrorist activities that movement would have never been able to cause a crisis in the Balkans and southern Europe, threatening the peace in the entire region.

Unlike the inadequate descriptions of aggressive and terrorist activities of Albanian separatists found throughout this Indictment, this Paragraph at least acknowledges that the so-called "KLA" in 1996 "began launching attacks primarily targeting FRY and Serbian police forces." A question arises from this, essentially accurate, statement: which country or government in the world would fail to respond to such attacks with appropriate measures?

Certainly, the response of VJ and Serbian police was far less "forceful" than U.S. police and military action against the Texas separatists in 1999. Even though all the rebels there were killed in "forceful actions" by the U.S. security forces, no one deemed this an instance of "excessive force", and there was certainly no condemnation by the so-called international community.

While not dwelling on the methods of fighting separatist terrorism in other countries (the UK in Northern Ireland, Spain in the Basque country, France in Corsica and Turkey in northern Kurdistan), we would like to point out the "forceful actions" of Macedonian armed forces against the Albanian "liberation army" in early 2001, using tanks and combat helicopters. Macedonia has not been declared an outlaw state. Yet the far less "forceful" operations by Serbian security and the VJ against that very same Albanian "liberation army" somehow merit the ICTY Indictment of Serbian and Yugoslav leadership as war criminals! What kind of "justice" is this, valid in one case but no other?

Further attention is merited by the condensed description of events in Kosovo-Metohia in the early 1990s, when the Albanian separatist rebellion did not "erupt into the violence and intense fighting..." such as in Slovenia, Croatia and Bosnia-Herzegovina.

Years of total boycott of the Serbian state and the development of some sort of parallel society (the "Republic of Kosova") had created a perception, reinforced by indoctrination, in many Kosovo-Metohia Albanians that secession from Serbia and the creation of a "Greater Albania" were in their grasp. This was a vacuum in which the Albanian separatists could grow, strengthen its organization and enlist more support virtually unhindered. Especially important was the separatists' ability to connect with international factors that expressed interest in their goals, thus securing various forms of aid. Since this was an aggressive, separatist movement, determined to achieve its goals and those of its foreign sponsors through genocidal terrorism, its priority was obviously to create the appropriate paramilitary groups and arm and equip them for terrorist actions.

Therefore, the Indictment's allegation that the Albanian separatist movement embraced "non-violent" resistance to Yugoslav and Serb authorities until the "KLA" appeared in the mid-1990s, is unsustainable. Rather to the contrary, this movement spent the first half of the 1990s preparing for armed rebellion, using the cover of wars in Slovenia, Croatia and Bosnia- Herzegovina.

Paragraph 24 of the Indictment says: "After concluding his term as President of Serbia, Slobodan MILOSEVIC was elected President of the FRY 15 July 1997, and assumed office on 23 July 1997. Thereafter, elections for the office of the President of Serbia were held; Milan MILUTINOVIC ran as the SPS candidate and was elected President of Serbia on 21 December 1997. In 1996, 1997 and 1998, Nikola SAINOVIC was re-appointed Deputy Prime Minister of the FRY. In part through his close alliance with Milan MILUTINOVIC, Slobodan MILOSEVIC was able to retain his influence over the Government of Serbia".

Our response to this Paragraph is similar to what we said about Paragraph 22 above.

Paragraph 25 of the Indictment says: "Beginning in late February 1998, the conflict intensified between the KLA on the one hand and the VJ, the police forces of the FRY, police forces of Serbia, and paramilitary units (all hereinafter forces of the FRY and Serbia), on the other hand. A number of Kosovo Albanians and Kosovo Serbs were killed and wounded during this time. Forces of the FRY and Serbia engaged in a campaign of shelling predominantly Kosovo Albanian towns and villages, widespread destruction of property, and expulsions of the civilian population from areas in which the KLA was active. Many residents fled the territory as a result of the fighting and destruction or were forced to move to other areas within Kosovo. The United Nations estimates that by mid-October 1998, over 298,000 persons, roughly fifteen percent of the population, had been internally displaced within Kosovo or had left the province."

The very first sentence demonstrates the bias of the ICTY prosecutors when qualifying the combatants in Kosovo-Metohia. First the "KLA" is referred to without any qualifiers, as if this was a regular armed force or a liberation movement of an internationally recognized state, rather than a separatist and terrorist paramilitary movement, beyond a doubt the most criminal of all that operated in the former Yugoslavia. At the same time, the Yugoslav Army, Serbian police and militias were lumped together ("forces of the FRY and Serbia") which is both amateurish and not supported by facts.

Secondly, the "conflict" between the "KLA" and Serbian security forces did not "intensify" on its own, nor was this intensification bilateral.

Under direct influence of the U.S. and German governments, the Albanian secessionists decided to commence an open armed rebellion in Kosovo-Metohia. This decision was preceded by several exploratory trips, round tables and "scientific" gatherings (in Vienna, April 18-19, 1997, in Ulcinj on June 29, between Adem Demaqi and Momcilo Trajkovic in New York, etc.), with the help and participation of the official and semi-official representatives of many Western countries. The goal of these gatherings was to "soften" the Serbian State authorities to "voluntarily" accept the so-called international mediation of the Kosovo problem. Naturally, the "hard-line" position of the FRY and Serbian authorities regarding the demands for so-called international mediation was motivated by experiences with the so-called international community since Slovenia's secession.

Direct involvement of the United States in preparing the Albanian separatists' armed rebellion in Kosovo-Metohia was demonstrated (among other things) by the appointments of Ambassadors Holbrooke and Gelbard as special envoys for the southern Serbian province, and their direct contact with "KLA" headquarters. Encouraged by this U.S. behavior, Klaus Kinkel, German foreign minister at the time, called "all European countries to follow the American example and make contact with the KLA." That was when the Albanian separatist leaders and their foreign sponsors estimated that their numbers, organization, armament, substantial separatist indoctrination and both the internal and external weakness of the Serbian state and FRY, offered them a chance to conquer the area of Kosovo-Metohia and force Serbia and FRY to accept the solutions imposed by foreign diktat.

So they attacked, fiercely, often without making any distinction between civilians and uniformed officials, between ordinary citizens and police, police and the military, or even Albanians and Serbs. According to statistics of the Serbian Interior Ministry (MUP), between February and June 1998 there were 409 registered terrorist attacks in Kosovo-Metohia – over 80 attacks per month, an average of about three per day. This is also documented in the operational logs of the Pristina Corps HQ. It is worth pointing out that of those terrorist attacks, 261 of them targeted civilians and civilian buildings. In this period, terrorists killed 35 and injured 50 non-Albanians (29 seriously); 143 of their victims were non-Serbs (among them 26 killed and 43 injured Albanians). Serbian police forces were targets of 148 terrorist attacks, suffering 18 dead and 67 injured. An eye-opener is that the "KLA" terrorists killed more Albanians (26) than Serbian police (18), with a similar proportion among the injured. Such ruthlessness to those among their own people, who were reluctant to fully support the most violent expression of Albanian separatism, is unprecedented. Traditionally, Albanians did not kill other Albanians, since that would precipitate an almost endless blood feud. The so-called "KLA" violated even this traditional code. Whether it did so by itself, or under foreign influence, has never been established.

All the available battle reports of the VJ Pristina Corps from January to early April 1998 (classified orders number 122-3, 311-2, 78-8, 78-12, 78-18, 78-29 and 1/138-1) testify and prove that the Corps units took the following actions: "measures taken to improve security of the border," transition to "increased security of the interstate border with Albania" in order to prevent the increasing number of illegal crossings from that country, "field deployment of certain units," accompanied by "preparation and deployment of field base camps," etc. The field camps did not conduct combat operations, but "combat training of units and personnel of all services" for the sake of "improving preparedness of Task Forces." Since the deployment was undertaken in areas where Albanian separatists' terrorist groups were operating, the organizational orders of April 11, 1998 emphasize (in section 7) that measures should be taken to avoid "damage to the civilian population (such as disturbing pastures and fields)", in order to thwart the terrorist goal of provoking hostility among the people towards the VJ. Orders also demanded "appropriate behavior of all troops towards the local population in areas of training exercises," avoiding all provocations and possible "conflicts with the local population." Since there was a realistic expectation that "terrorist groups might launch surprise actions," the orders mandated "security measures to protect personnel, equipment and data."

In early March 1998, due to a "deteriorating security situation in the Corps' area of responsibility," the Pristina Corps Headquarters ordered (classified order # 72-2 of March 1) that: "...in order to prevent armed conflict from escalating" the Corps would "reinforce security of the border towards Albania" using peacetime formations trained for that purpose.

Later, in the second half of March 1998, given the complex security situation in Kosovo-Metohia, the escalation of terrorist attacks and illegal crossings from Albania, and the impending threat to communications with isolated military posts and border outposts, the Corps' HQ ordered the deployment of forces to secure a wider strip along the border, according to the "order establishing special measures of permanent security alert," so that certain Task Forces deployed along certain communication routes and camp sites along the border (classified order # 1/138-1, April 10, and #1/138 of April 11, 1998).

Obviously, all through mid-April 1998 the Yugoslav Army's Pristina Corps fostered friendly relations with civilians, even seeking to avoid damages to "pastures and fields." The "shelling of majority Albanian towns and villages in Kosovo" alleged throughout the Indictment, as well as alleged expulsions of civilians from the "KLA's" areas of operation, is obviously nowhere near the truth. Moreover, Serbian police units could not have "shelled" anything; even though it had several heavy skirmishes with the terrorists (one of them is described in more detail below), it had no artillery.

All other orders of the Pristina Corps, Third Army and the VJ General Staff contain specific instructions for civilian relations, with the emphasis on the protection of person and property.

Soon after the orders cited above (April 11), the Pristina Corps CO issued another order, (classified #880-35 of May 16, 1998, instructing (section 4): "Brigade and Task Force commanders will make contact with local Albanians and warn them that the VJ was not deployed against them, but for the purpose of regular combat training and suppression of terrorists. Warn the Albanian population not to attack the VJ, because the Army will respond to any attack with all available means." Sections 8, 9 and 11 of the same Order instruct:

- "Without explicit orders from the Pristina Corps HQ, all Pristina Corps units and Task Forces in the field shall not undertake any actions that would needlessly involve them in combat. There shall be no expulsions or attacks on civilians."

- "Without explicit orders from the Pristina Corps HQ , all Pristina Corps units and Task Forces in the field shall under no circumstances enter residential areas to conduct searches, sweeps, arrests of individuals and similar activities."

- "In case of terrorist attacks on Pristina Corps units, and before responding to the said attacks, warn the attackers to cease fire and retreat, while notifying the civilians to leave the zone."

Serbian police forces, naturally, had to respond to terrorist attack by returning fire, as well as taking offensive action to neutralize terrorist groups, destroy their strongholds and establish effective control over communication routes and territory.

One of the first major engagements between the Serbian police and the so-called KLA was in securing the villages of Lausa, Gornje Prekaze and Donje Prekaze, in March, 1998.

A terrorist group led by Adem Jashari had attacked police patrols on February 28, killing four officers and injuring two. While the Serbian MUP forces dealt with this terrorist situation in the Drenica area, focusing on the villages of Prekaze and Jablanica and the road to Kalausa, the Pristina Corps HQ monitored their activities, documenting them in command reports of March 5 and March 6, 1998.

In these reports, the Corps' commanding officer indicated some problems created by the MUP forces' actions, such as the use of combat vehicles that were not painted blue or clearly marked. This could have created the impression that VJ units were involved in the operation, which was not the case (classified order 78-18 of March 9, 1998). This report also noted that the terrorists were using civilians as human shields when confronting the police, a practice which caused a number of unnecessary, civilian casualties. Civilians who defied terrorist orders to remain in the combat zone were nevertheless organized in a refugee column, to create the impression of expulsion or exodus. This practice, which was part of the standard tactic employed by the "KLA", will be discussed separately.

Terrorist attacks throughout Kosovo-Metohia did not spare the VJ, targeting its units, command facilities and outposts, especially along the border with Albania. A coded report from the Pristina Corps HQ to the Security Directorate of the VJ General Staff, dated April 28, 1998, cites the number of killed (19) and captured (2) terrorists, as well as the precise quantity and composition of weapons and equipment captured around the border outposts, "Morina", "Gorozup", "Kosare", "Cestak" and "Orgusa": 169 assault rifles, 67 rifles, 4 anti-tank guns, 7 machine guns, one RPG, 6 machine pistols, 164 RPG rounds, 18 boxes of ammunition, 27,163 bullets (7.62 mm), etc.

Operational logs of the Pristina Corps HQ also show that on April 24, 1998, one group of "KLA" terrorists attacked a unit belonging to the 52nd Military Police Battalion from the position of Suka Vogelj, while on the same day the border outpost in the village of Babaloc came under fire.

Responding to the terrorist attack, units of the 52nd Military Police Battalion attacked Suka Vogelj and killed seven terrorists. The following day, VJ border patrol units engaged a terrorist group attempting a crossing from Albania near the border outpost, "Kosare," killing 16 terrorists and capturing large quantities of weapons and ammunition. In April 1998, Albanian terrorists launched 11 attacks altogether against VJ units and positions. Only three and a half months after these initial terrorist attacks on the VJ did the Army begin offensive, counter-terrorist operations.

This ought to be enough to unequivocally answer the question of who initiated the use of force in Kosovo-Metohia. Attacks on VJ units apparently had the goal of forcing and accelerating its logical response, which was to be used by separatist and Western propaganda as evidence that a "mass Albanian uprising" was underway in Kosovo-Metohia, which "rightfully expected NATO aid."

Therefore, in the first half of 1998 (from the end of February to mid-July), the VJ did not take offensive actions against the "KLA," nor did it have paramilitary formations under its command, then or ever. The Army's general position on volunteers and possible emergence of militias was clear in the Directive of the Joint Command for Kosovo-Metohia of July 1, 1998. Among other things, it prohibits "enlistment of volunteers on any basis or ethnicity, into these units," meaning the units belonging to the Joint Command for Kosovo-Metohia.

Finally, we point out that *federal* police never took part in fighting the Albanian terrorists, contrary to allegations in the Indictment.

Paragraph 26 of the Indictment says: "In response to the intensifying conflict, the United Nations Security Council (UNSC) passed Resolution 1160 in March 1998 'condemning the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo,' and imposed an arms embargo on the FRY. Six months later the UNSC passed Resolution 1199 (1998) which stated that 'the deterioration of the situation in Kosovo, Federal Republic of Yugoslavia, constitutes a threat to peace and security in the region.' The Security Council demanded that all parties cease hostilities and that 'the security forces used for civilian repression' be withdrawn."

In responding to this Paragraph, we cited the numbers of "KLA" attacks on Serbian police forces, the VJ and civilians (on an average, three attacks per day) during February and March 1998, resulting in dozens of killed and wounded among civilians, police and military personnel.

The extent of these attacks is convincingly documented by the Interior Ministry's report to the Serbian government on March 10, 1998, on the topic of counter-terrorist activities in Kosovo-Metohia, stating, among other things:

> "Terrorist attacks in the region of Srbica, which for many months have endangered the security of several roads, led to numerous civilian casualties, and jeopardized the safety of citizens of all ethnicities, created a need to re-establish full control of the roads in this area through the use of police outposts. Adem Jashari's terrorist group tried to interfere with this operation on February 28, attacking police patrols and killing four, while wounding two officers. Sixteen terrorists were killed in a battle with this group. In the early morning hours of March 5, a terrorist group attacked another police patrol near the village of Donje Prekaze. After police returned fire, the terrorists retreated to their base and dug in at the Jashari family farm in that village... engagement with the terrorists lasted for 27 hours, with a total of 51 casualties. Unfortunately, it was later established that Jashari family members were among them. Terrorists physically prevented them from leaving the farm, despite the police invitation. The Interior Ministry expresses regret and bitterness that these victims were a direct consequence of cruelty and ruthlessness of Albanian terrorists. The police could not have known how many, if any, civilians were detained by the terrorists, since dozens of civilians did respond to the police invitation to evacuate the village. The fact that he personally shot his nephew to prevent him

from surrendering testifies to Adem Jashari's cruelty. Two officers lost their lives in this action, and seven were seriously injured."

Here is a calendar of the "KLA's" terrorist attacks on Serbian police in late February and early March 1998:

February 28: in the village of Liposane, around 12:30, terrorists ambush an MUP vehicle and open fire with assault rifles; several kilometers ahead, terrorists ambush the backup MUP force, shooting up a "Lada-Niva" 4x4 vehicle; two officers are killed, two injured. Around 14:00, MUP special forces arrive, extracting the wounded officers and pursuing the terrorists. After the ambush, the terrorists retreat towards Gland Selo, battling the MUP, which is in pursuit. Three terrorists are killed, and three more wounded. For many hours, terrorists retreat towards the villages of Poljanci, Sirez and Gradica, where the battle continues. After a battle with the terrorists, MUP forces capture three Albanians in camouflage uniforms. In the village of Vrbovac, they find a vehicle used to transport weapons and ammunition to terrorists in boxes marked "humanitarian aid." Fighting goes on throughout the night of February 28-March 1. One police officer is wounded and later dies. Terrorists open fire on an MUP observation helicopter with automatic weapons and a "Zolja" RPG launcher. One officer is killed, another injured;

March 1: Police force the terrorists to retreat towards Poljance, with sporadic fire by the fleeing terrorists;

March 5: At dawn, in the village of Lausa, a group of terrorists attacks a police patrol, wounding two officers. Reinforcements arrive and the battle moves towards Donje Prekaze and Gornje Prekaze. Women, children and the elderly villagers are evacuated. Terrorists are forced to scatter, carrying off their dead and wounded into the nearby woods. Two officers are killed and four injured. Twenty terrorists are killed. Eight terrorists surrender, emerging from a well-camouflaged bunker. Three large bunkers are discovered overall, two with medical equipment and one filled with ammunition, weapons and demolition explosives, which also served as the command center. Among the terrorists killed in Donji Prekaz are terrorist leader Adem Jashari (age 43) and Rexhep Sellami (age 29). Both had been sentenced *in absentia* to 29 years imprisonment.

March 6: Terrorists retreat towards the Albanian border, into Klina and Djakovica municipalities. They attack another MUP patrol near the village of Josanica.

Before the first significant counter-terrorist action by security forces in the villages of Lausa, Gornje Prekaze and Donje Prekaze (March 5, 1998) neither the U.N. Security Council (UNSC), not any other international body acted in any way to stop the terrorist acts of the "KLA." All attempts to have the Security Council issue even a formal communiqué condemning "KLA" terrorism, or declare this paramilitary wing of the Albanian separatist movement a terrorist organization, were systematically blocked by the United States (three times in one month, in one instance). This impotence of the Security Council before American obstruction was publicly called a disgrace by the chairman, Brazilian Ambassador Salma Amorim. Nor did U.N. Secretary General Kofi Annan ever bother to visit this region and personally ascertain which side was responsible for the "intensifying conflict."

As soon as the terrorists suffered their first crushing defeat at the hands of the police, however, (in the battles of Lausa and Prekaze), a Security Council session was called immediately and the UNSC Resolution 1160 "condemned the police for excessive use of force," against, as the Indictment alleges falsely, "civilians and peaceful demonstrators in Kosovo." The only civilian casualties in those battles were those kept by Adem Jashari's terrorists as human shields in their fortified compound.

Six months later, in the same manner and with the same reasons, the UNSC issued its Resolution 1199, qualifying the "deteriorating situation in Kosovo" as a "threat to peace and security in the region." This resolution was also passed at the insistence of the United States, in its interest and on its behalf. Therefore it is necessary to be reminded of some significant events that took place between July and September 1998, before Resolution 1199.

Early in this period, the situation in the province could already be qualified as dramatic, especially in the municipalities of Pec, Klina and Decani. Police forces, which had battled terrorists almost every day for months, taking casualties, were significantly weakened and unable to successfully counter the increasing numbers of "KLA" terrorists. At that point, the Supreme Defense Council of the FRY decided that Pristina Corps units should begin offensive counter-terrorist operations, aid the police forces in destroying terrorist flashpoints and establish order in the province.

This decision was motivated by the following:

(1) at the time (mid-July, 1998), the "KLA" controlled over 50% of Kosovo-Metohia territory, including all the routes from Kosovo into Metohia, except for the Urosevac-Strpce-Prizren highway;

(2) the size of "KLA" forces was estimated at some 25,000 well-armed terrorists, concentrated around Drenica, Malisevo and Jablanica;

(3) the highest concentration of terrorists was in: Salja (ca. 2,500 armed terrorists), Zicevica (2,000), Drenica (3,500), Suva Reka (3.000), Orahovac, (1,500), Glodjane (3,000), Junik, (2,000), Zur (1,500), Jablanica (3,000) and Rugovo (1,500). In each one of those towns the "KLA" had a headquarters that directed terrorist actions and the arming of local villages. There were three regional HQs (Drenica, Jablanica and Malisevo), and the "KLA's" general HQ was in Malisevo. At this time, the terrorists had started adjusting their organizational structure, and were about to form units of higher order (a division in Drenica, for example).

In all areas under its control, the "KLA" had (a) territorial units, mostly village watches and village militia that would control villages and hold conquered territory, numbering some 15,000 men and (b) mobile forces, organized in companies, numbering about 10,000 men. The mission of mobile forces was to attack police checkpoints, VJ units, strategic buildings and government officials. This component of the "KLA" also had squads of raiders, "military police," and other specialized units.

Intervention by the Pristina Corps, i.e. a general counter-offensive against the terrorists, scuttled the organizational efforts of the terrorists and the establishment of a supply

corridor with Albania, on the route Jablanica-Junik-Jasici, as well as the creation of a compact territory bordering Albania, in the area of Decani-Jablanica-Drenica-Salja.

Following the decision of the Supreme Defense Council, the Pristina Corps devised a plan for comprehensive counter-terrorist operations, which lasted a total of 65 days (July 25 – September 29, 1998). Battle action reports estimated that over 20,000 terrorists were neutralized during the operation:

Killed	3,500;
Wounded	5.000-6.000,
Escaped from Kosovo-Metohia	4.000-5.000,
Surrendered or disarmed	6.000-6.500,
Killed at the border	666,
Wounded at the border	856,
Captured at the border	822.

The counter-terrorist operation also had the following political results:

a) It stopped the mass influx of weapons and equipment from Albania as well as the infiltration of terrorists and the establishment of a corridor with Albania;

b) The further rise of terrorism in Kosovo-Metohia was stopped, the terrorists subdued and prevented from promoting of the "KLA" as a legitimate armed force of the separatist movement;

c) Terrorist forces were scattered and the territory they held was splintered. All headquarters were eliminated, and all the roads in Kosovo-Metohia secured;

d) In the aftermath, Albanian civilians who fled the terrorist pressure and combat operations near their homes were returned to their homes or taken to refugee accommodations.

However, all of that is described in Paragraph 26 as "the deterioration of the situation" that constituted "a threat to peace and security in the region," which caused UNSC Resolution 1199.

The FRY was forced in September 1998 to halt its counter-terrorist operations before their completion, though blackmail and pressure (which we will address in our response to Paragraph 27).

One would expect that the Bush administration's decision to "blacklist" the "KLA" (June 2001) would spur the analysis and reassessment of the long-term support and protection the U.S. government gave this terrorist organization. But since the reassessment of this relationship would drag out many other skeletons from the previous (Clinton) administration's closet – among which would certainly be the staged massacres in

Sarajevo during the Bosnian war (breadline, marketplace I and II, and others), as well as Ambassador Walker's fabrication of the "Racak incident" into a pretext for aggression against the FRY – it is more probable that the current administration will experience short-term memory loss and behave as if nothing had happened.

Paragraph 27 of the Indictment says: "In an attempt to diffuse tensions in Kosovo, negotiations between Slobodan MILOSEVIC, and representatives of the North Atlantic Treaty Organisation (NATO), and the Organisation for Security and Co-operation in Europe (OSCE) were conducted in October 1998. An "Agreement on the OSCE Kosovo Verification Mission" was signed on 16 October 1998. This agreement and the "Clark-Naumann agreement," which was signed by Nikola SAINOVIC, provided for the partial withdrawal of forces of the FRY and Serbia from Kosovo, a limitation on the introduction of additional forces and equipment into the area, and the deployment of unarmed OSCE verifiers."

This paragraph mentions nothing about events that preceded the Milosevic-Holbrooke negotiations in early October 1998. As mentioned earlier, the VJ Pristina Corps forces conducted joint operations with Serbian police from July to September 1998, destroying terrorist cells throughout Kosovo-Metohia. At that point, the United States government, through NATO, had issued an ultimatum demanding that all operations of the VJ and the Serbian police against Albanian terrorists cease immediately, and threatening aggression against the FRY. This was a serious threat to FRY's security.

The Milosevic-Holbrooke talks took place in this atmosphere of pressure. Because of the very real threat to FRY's security, substantial concessions to American demands were made:

1. counter-terrorist operations were halted before the final destruction of terrorist organizations was achieved;

2. a political approach to resolving the Kosovo-Metohia situation was accepted;

3. violence and terrorism were condemned as acts contrary to international norms;

4. it was agreed that every solution of the Kosovo-Metohia problem would respect the sovereignty and territorial integrity of the FRY;

5. every solution had to respect the equality of all citizens and all minorities residing in Kosovo-Metohia;

6. the future of Kosovo-Metohia was to be equality, integration, economic prosperity and tolerance;

7. local self-government in Kosovo-Metohia had to conform to the legal systems of Serbia and FRY, as well as international standards;

8. self-government would be practiced through the legislative, judicial and executive branches of government;

9. ethnic communities would have additional rights for the sake of preserving their ethnic, cultural, religious and linguistic identity, in accordance with international standards;

10. local police will be established as part of the political agreement;

11. no person would be criminally prosecuted for the conflict in Kosovo, except for crimes against humanity and violations of international law, for the sake of full equality. Full and unhindered access would be allowed to foreign experts, including forensic pathologists, which would cooperate with state investigators;

12. for the purpose of one-time sentence reduction, the authorities would reassess sentences against members of ethnic communities in Kosovo-Metohia convicted of crimes motivated by political violence.

However, the statement of NATO's Secretary-general, Javier Solana, immediately after the agreement was signed, revealed the true extent of the U.S. and NATO's commitment to a peaceful resolution of the Kosovo-Metohia crisis, and their readiness to use force in order to establish a military presence in the area.

"Parallel to the OSCE Verification mission," Solana had said, "NATO will be a key element in verifying President Milosevic's readiness to keep his word... NATO will carefully watch the area of Kosovo from the air, and constantly maintain the threat of force... it will remain ready and willing to intervene militarily if the agreement is not respected."

Surely it was after consultations with NATO that Austria's foreign minister Wolfang Schuessel requested the following day that the Alliance's air patrols be extended over the entire territory of Yugoslavia, and demanded additional guarantees for OSCE Verifiers.

It was proven later that the arrogance of NATO's secretary-general and Austria's foreign minister had been grounded in the fact that the decision to attack the FRY had already been reached at the time. All that the Alliance was waiting for was a "convincing" pretext to start the aggression without a decision by the Security Council.

Retired German general Heinz Loquai (*Berliner Zeitung*, June 1999), later stated that before air strikes against the FRY, a good chance for a peaceful resolution in Kosovo-Metohia had been missed due to the "biased, dismissive and one-sided position of most countries in the Alliance in favor of the Kosovo Albanians and against the Serbs."

According to Loquai, the "United States had a firm intent to intervene militarily long before Rambouillet." Ambassador Walker's order at the end of January 1999 to prepare for the evacuation of the OSCE verifiers proves that the Kosovo dice were loaded. The OEBS mission was not yet complete, and there was obvious evidence that even its incomplete presence reduced tensions in the field.

This is demonstrated by Pristina Corps HQ orders (classified, #880-349 of October 23, 1998):

> Based on the orders of the Third Army (classified, #168-319, of 23 October, 1998) and with the purpose of fulfilling Pristina Corps' (PrK) obligations from the agreement about OSCE and NATO's Verification Mission, in Kosovo-Metohia (K-M),
>
> I ORDER:
>
> 1. On October 24, 1998, return Task Force BG-15-1 from the village of Obrandza near Podujevo to the garrison "K. Junaci" in Pristina.

Departure from the current position to start at 0900 hours, to be completed by 1500 hours on October 24, 1998 at the latest.

2. Redeployment shall proceed along the route Obrandza - Podujevo - Milosevo - Pristina.

3. 15th Armor Brigade HQ will make all the preparations for a planned, organized and secure redeployment, along with the necessary security during the march.

4. Commanders of BG-15-1 shall be aided in preparation and organization of the march, with the Task Force's own units handling the security of the column on the march.

5. Before departure, inspect all combat and other vehicles. Do not transport personnel in malfunctioning vehicles.

6. Before departure, perform a weapons check and retrieve all equipment and weapons deployed in the field. Upon arrival at the garrison, retrieve ammunition issued to enlisted men and officers. Through another weapons check, verify that no ammunition was missed.

7) In case of a deteriorating situation in K-M, stay on alert for intervention in areas under threat; this will be regulated by separate orders.

8) Submit a report on the completion of this assignment by 1700 hours on October 24, 1998, as part of the regular battle report.

[signed] Commander, Lt. Gen. Nebojsa Pavkovic

Only three days later, the terrorists abducted and murdered the deputy council chairman of Kosovo Polje municipality, Zvonko Bojanic. On New Year's Eve, the terrorists continued their actions in the Podujevo municipality, first murdering Security Service inspector Milic Jovic by shooting him in the back on his way to work. Then they murdered Milovan Radojevic (age 65) at his doorstep in the village of Obradze, near Podujeva. He was murdered with his wife forced to watch, only because they were the last Serbian family remaining in the village. During Radojevic's funeral, the terrorists shot at the mourners as well.

The first police casualty after the arrival of Walker's Verifiers was Nenad Stankovic, murdered in the village of Dragobilje on October 16. The following day, October 17, three officers were killed on the Pristina-Malisevo highway near the village of Orlate: Zivorad Kostic, Dejan Jakovljevic and Goran Markovic. One of the Walker Verifiers turned over a witness of this crime to the terrorists, and the witness was only returned because of the Yugoslav government's insistence and under public pressure.

On the same day, the terrorists ambushed and shot Olivera Simic of Klina, on the Pristina-Pec highway, injuring her seriously. By sheer chance, her three children, also in the car, were not injured. All of these crimes did not bother U.S. Ambassador [Christopher] Hill, who met with "KLA" representatives in Dragobilje (near Orahovac) on two occasions, November 6 and November 17.

The next criminal attack on the police took place on November 9, when officers Ilija Vujosevic and Dejan Djatlo were murdered near Malisevo. Some ten days later, officers Zoran Vrbaski and Janos Cizmadija were murdered in the village of Prilep near Decani. On December 11, terrorists murdered a local constable, Uka Mustafa, in the village of Babaj Bosku near Djakovica. On December 28, three officers were wounded in an ambush near Podujevo, and on January 8, 1999, three officers were murdered near Suva Reka: Milos Stevanovic, Dragan Tomasevic and Goran Boskovic. Since the terrorists attacked with RPGs, four more officers were injured, as well as two Serb and two Albanian civilians. In this period, two Tanjug journalists and eight VJ soldiers were abducted by the terrorists.

Paragraph 28 of the Indictment says: "Although scores of OSCE verifiers were deployed throughout Kosovo, hostilities continued. During this period, a number of killings of Kosovo Albanians were documented by the international verifiers and human rights organisations. In one such incident, on 15 January 1999, 45 unarmed Kosovo Albanians were murdered in the village of Racak in the municipality of Stimlje/Shtime."

The claim that "scores of OSCE verifiers were deployed throughout Kosovo" is false. There were hundreds of them. As we said before, the Milosevic-Holbrooke agreement stipulated the deployment of 2,000 OSCE verifiers in the province. By the end of 1998, 1,400 of them were deployed.

Ina ccord with the agreement, the VJ (Pristina Corps) units were withdrawn to garrisons, and Serbian police were pulled back to their stations. Army and police Special Forces, deployed in Kosovo-Metohia for counter-terrorist operations (July-September 1998), pulled out of the region and returned to their bases. The Yugoslav side fully complied with its obligations from the Milosevic-Holbrooke agreement, and was prepared to peacefully resolve the crisis in this southern Serbian province.

Albanian terrorists, however, used the benevolence and good will of the OSCE mission leader, Ambassador William Walker, to reorganize, regroup and regenerate after the defeats they suffered between July and September 1998, and continue their terrorist activities.

Effects of both the Milosevic-Holbrooke agreement and NATO's promised surveillance of events in Kosovo-Metohia are best demonstrated by the following statistics: from the day the agreement was signed till the end of January 1999, over 500 terrorist attacks by the "KLA" were registered in Kosovo-Metohia; in the same period, 35 villages were ethnically cleansed of Serbs and Montenegrins. During just the first 11 days of 1999, the "KLA" launched 80 terrorist attacks against the VJ, police and civilians, killing six civilians. Four police officers were killed, and another ten injured.

Evidently encouraged by the withdrawal of the Special Forces and the VJ, and the arrival of Walker's Verifiers, starting October 13, 1998 the Albanian terrorists committed new, more widespread and brutal crimes. The number of crimes from this period is a significant part of the total for 1998, which amounted to 1,854. Casualties from these attacks were 284 dead and 556 wounded, including 115 dead and 399 wounded police officers.

Most horrendous of all the crimes the terrorists committed during Walker's mission was the murder of four Serb youths at café "Panda" in Pec, on December 14, 1998. This deed demonstrated that Walker's KVM, instead of reducing tensions between Serbs and Albanians, preventing terrorism and securing peace for all residents of Kosovo-Metohia, managed to stoke the fire of Albanian terrorism with the obvious intent of provoking NATO intervention.

Paragraph 28, among other things, alleges: "a number of killings of Kosovo Albanians were documented by the international verifiers and human rights organisations." It would be nice if the Indictment mentioned on what basis the KVM "documented" a "number of killings of Kosovo Albanians." The Verifiers gave absolute preference to staying in Albanian homes during their mandate. When hiring translators, the Verifiers were again biased in favor of the Albanians. Therefore, the information about "a number of killings of Kosovo Albanians" was received from the Albanians. Additionally, the Indictment lists not a single example or piece of evidence that Albanians were murdered during the KVM's stay in Kosovo-Metohia. The only "incident" cited is Racak..

Since the powerful Western propaganda turned the casualties suffered by the terrorist "KLA" in fighting the Serbian police in this Albanian village into a false proof of atrocities against innocent "Kosovo Albanians," this case certainly deserves an exhaustive review.

The alleged "massacre" of innocent Albanian civilians in Racak is only the last in a long line of recognizable scenarios already seen in separatist armed rebellions throughout the former SFRY over the course of the past decade, from Slovenia to Kosovo-Metohia. Most of them were staged by American experts for covert operations ("black ops"). Because this publication is limited in space and scope, we cannot mention all of them. We will, however, indicate a few.

- Firing on the helicopter transporting the French President Miterrand on the approach to the Butmir Airport, Sarajevo, in June 1992;
- Moslem shelling of Sarajevo on August 17, 1992, timed to coincide with the visit of British Foreign Minister Douglas Hurd.
- Detonation of explosives set in front of TV cameras at the Sarajevo cemetery on August 4, 1992;
- Murder of U.S. journalist and producer David Kaplan on August 13, 1992;
- Downing of the Italian G-222 cargo aircraft en route to Sarajevo on Semptember 3, 1992 and an attack on a U.N. food convoy several days later;
- The attack on U.N. headquarters of General Morillon (as he called it, a "deliberate" attack);
- The murder of civilians in a breadline in Vase Miskina Street, Sarajevo (May 29, 1992), and the even more mysterious explosions that killed people at the Markale market in February 1994 and August 1995 in the same city.

The large number of casualties stands as an indictment of those who staged these crimes, deliberately exposing hundreds of men, women, children and the elderly to grave danger for the sake of maniacal political and propaganda goals.

Despite the vast experience of those who staged such bloody provocations, there is no perfect crime. Thus none of the above-mentioned scenarios were executed so perfectly as to be believed absolutely and forever. It is simply impossible to force all the conspirators, witnesses and observers to lie, say they saw things they did not see, keep silent about what they did see, or cover up expert reports forever. This was the fate of many reports about the cited terrorist provocations in Bosnia-Herzegovina, and even Kosovo-Metohia. Both then and now, powerful and well-paid contacts of high-ranking U.S. officials managed to either cover up the accurate reports about these events, or provide false testimony – expecting, perhaps, that all will be forgotten with the passage of time. Expert reports on the Markale massacre were thus hidden in the files of the UN Security Council, just as the Finnish forensic experts' report on Racak was hidden in the vaults of ICTY. European Commissioner for foreign relations Chris Patten thinks that the Finnish autopsy report according to which the "Serb forces did not commit a massacre in that Kosovo village," should not be made available to the public, in order to "avoid direct interference in the ICTY's investigation"!

So what really happened in Racak on January 15, 1999?

A routine police patrol was ambushed by the "KLA" terrorists on January 14, killing officer Svetislav Prsic. The following day, January 15, 1999, a reinforced unit of the Serbian police followed the terrorists' trail and launched a successful operation that inflicted great casualties on the terrorists. The unit had previously infiltrated the empty KLA fortifications (capturing the terrorist guard and obtaining from him all the warning signals), thus establishing a great advantage over the terrorists. Firing from up close, from the well-prepared entrenchments, they prevented a group of some 40 armed terrorists from deploying into the trenches from a nearby farmhouse, where they had slept to avoid the cold night temperatures. However, the police could not remain in the village due to heavy fire from terrorist positions on the nearby hills. William Walker and Pristina district attorney Danica Maksimovic came to the village the following day. Walker immediately made a statement (January 16, 1999): "From what I personally saw, I do not hesitate to describe the crime as a massacre, a crime against humanity, nor do I hesitate to accuse the government security forces of responsibility." This "verdict," before any of the experts could investigate the scene, was followed by the decision of the U.S. government and NATO to attack the FRY.

Maksimovic's report was completely different. However, none of the world leaders paid it any heed. She said that a massacre of civilians in Racak was out of the question. At first, she was not even allowed to survey the scene.

Following Walker's scenario, the dead terrorists were not buried the same day (as Moslem custom calls for) but were dressed in civilian clothing and set on display in the nearby mosque, in order to send the images of "massacred civilians" to the world.

Still, because of the obvious discrepancies between reports on what happened in Racak, a "neutral" group of Finnish forensic experts was formed to conduct autopsies on the bodies and establish if they were civilians or "KLA" combat casualties. Though the Finnish experts' report denies any massacre in Racak, Walker and his superiors managed to extort a statement from their leader, Dr. Helena Ranta (probably with a sizeable payoff), that the victims were "probably" civilians. A full report was classified – just like

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the one about Markale in Sarajevo – and stored in the vaults of Secretary Solana and General Clark. Those who ordered the criminal bombardment of Yugoslavia made the fabricated massacre in Racak into a pretext for their already planned aggression.

Only in early February 2001 did the Finnish experts' report reach the ICTY. Its conclusions were printed in *Forensic Science International,* (quoted by the *Berliner Zeitung* of February 16, 2001), saying, among other things, that one cannot make a conclusion that security forces massacred Albanian civilians in Racak, as Walker had claimed.

If, at the time the Indictment was put together, its authors could possibly have believed Walker's statements, they cannot continue to treat them as key evidence now that the entire fabrication has been exposed. Cananot, that is, if they care for their reputation and integrity. Also exposed was the criminal character of U.S. Ambassador/General William Walker.

William Walker officially began his diplomatic career in Peru, in 1961. Between 1988 and 1992, he was the U.S. Ambassador in El Salvador. He really belongs to the inner circle of CIA experts for covert operations, with the likes of Oliver North, Morton Ambramowitz and others, who use diplomatic passports only as cover and protection. In this role, his greatest success was in Panama, alongside the former NATO commander Gen. Wesley Clark, and earlier in Nicaragua and El Savador during the 1980s, when he fought their national liberation movements. Walker was even investigated – though unsuccessfully – over illegal armament and infiltration of the Contras into Nicaragua from their bases in El Salvador. At the time of Walker's service in El Salvador, local "death squads" trained and armed in U.S. covert operation camps (under Walker's supervision) committed numerous massacres.

In Kosovo-Metohia, Walker became "famous" for his extreme bias in favor of the Albanian separatist movement. He always had time to give speeches at the funerals of terrorist casualties, but he never had a moment to give his condolences to the families of murderer police officers, or abducted and murdered Kosovo Serbs, even when massacres of Serbs were found and clearly established (such as the crematorium in Klecka and the massacre site in Donji Ratis), including the murder of four youths at the café "Panda" in Pec.

If the ICTY really wanted to prosecute those responsible for "crimes against humanity and violations of laws and customs of war" it should first have indicted William Walker. Yugoslavia's political leadership should answer to Yugoslav courts as to why such an obscure and unscrupulous character was allowed to become head of the OSCE Verification Mission in Kosovo-Metohia, especially following the extremely negative experiences that the leaders of Republika Srpska Krajina had with Walker in Eastern Slavonia.

Paragraph 29 of the Indictment says: "In a further response to the continuing conflict in Kosovo, an international peace conference was organised in Rambouillet, France beginning on 7 February 1999. Nikola SAINOVIC, the Deputy Prime Minister of the FRY, was a member of the Serbian delegation at the peace talks and Milan MILUTINOVIC, President of Serbia, was also present during the negotiations. The Kosovo Albanians were represented by the KLA and a delegation of Kosovo Albanian

political and civic leaders. Despite intensive negotiations over several weeks, the peace talks collapsed in mid-March 1999."

The so-called peace conference in Rambouillet was not a "response to the continuing conflict in Kosovo" but a continuation of the scenario to create an artificial pretext for NATO's aggression against the FRY. If one follows elementary logic, then the "incident" in Racak cannot be taken as evidence of the "continuing conflict in Kosovo," especially since it has been established that the victims of this "incident" were not innocent civilians, but armed terrorists of the "KLA"

Rambouillet was preceded by a meeting of the so-called Contact Group in London, (January 29, 1999), which had previously discussed conflicts in the former Yugoslavia, though lacking any mandate to do so. Acting on behalf of the so-called international community, this *soi-disant* organization created the well-known list of ten principles for resolving the crisis in Kosovo-Metohia:

Contact Group Non-negotiable Principles/Basic Elements, 30 January 1999

General Elements

- Necessity of immediate end of violence and respect for a cease-fire
- Peaceful solution through dialogue
- Interim agreement: a mechanism for a final settlement after an interim period of three years
- No unilateral change of interim status
- Territorial integrity of the FRY and neighbouring countries
- Protection of the rights of members of all national communities (preservation of identity, language and education; special protection for their religious institutions)
- Free and fair elections in Kosovo (municipal and Kosovo-wide) under supervision of the OSCE
- Neither party shall prosecute anyone for crimes related to the Kosovo conflict (exceptions: crimes against humanity, war crimes, and other serious violations of international law
- Amnesty and release of political prisoners
- International involvement and full co-operation by the parties concerning implementation

Governance in Kosovo

- People of Kosovo to be self-governed by democratically accountable Kosovo institutions
- High degree of self-governance realized through own legislative, executive and judiciary bodies (with authority over, intern alia, taxes, financing, police, economic development, judicial system, health care,

education and culture (subject to the rights of the members of national communities), communications, roads and transport, protection of the environment

- Legislative: Assembly
- Ececutive: President of Kosovo, Government, Administrative bodies
- Judiciary: Kosovo court system
- Clear definition of competencies at communal level
- Members of all national communities to be fairly represented at all levels of administration and elected government
- Local police representative of ethnic make-up with coordination on Kosovo level
- Harmonisation of Serbian and Federal legal frameworks with Kosovo interim agreement
- Kosovo consent required *inter alia* for changes to borders and declaration of martial law.

Even though these principles were formulated to be refused by Serbia and Yugoslavia, they were accepted at considerable surprise to their authors. The goal was to accept even the unfavorable points, in order to avoid the danger to the security of the nation posed by the oft-repeated threat of NATO aggression.

What happened was a reprise of events from August 1995 in Republika Srpska. At that time, the United States had offered a 12-point peace initiative, expecting the Serbs to reject it and prepared to use that as a pretext for NATO intervention in favor of Moslem and Croat forces. When the Serbs did accept the unfavorable U.S. platform, there was an explosion at the Sarajevo Markale market (August 28, 1995), killing 37 and injuring 45 civilians. Serbs were blamed right away, though all foreign and local experts claimed that the round could not have come from Serb positions. A day later, NATO began bombing the civilian and military targets in Republika Srpska.

By accepting the 10 Contact Group principles, Yugoslavia offered an Agreement on Kosovo-Metohia self-government in full accordance with those principles. The Agreement contained all the elementary principles of self-government in the province: from the basics to democracy, the assembly, a council of ministers, the judiciary, human rights, local police, amnesty for all prisoners except those responsible for war crimes, etc.

An embryonic core of this agreement was based on the Milosevic-Rugova agreement from early 1996 (the "3+3" treaty), among other things dealing with educational issues and the establishment of local, all-Albanian police in Djakovica.

That agreement had been accompanied by a pledge to implement the "September 1, 1996 Education Agreement", signed by three Serb (Ratomir Vico, Goran PerCevic and Dobrosav Bjeletic) and three Albanian representatives (Fehmi Agani, Abdulj Rama and Rexhep Osmani), in the presence of three representatives of "Comunità di Sant'Egidio," whose status was not exactly clear. This agreement specified the deadlines for activating the Pristina University Balkans Studies Institute (March 31, 1997), reopening three

colleges at the Pristina University, with "returning Albanian students and faculty" (April 30, 1998), and the use of university facilities by non-Albanian faculty and students. Along with these measures, the Agreement established deadlines for reopening other Pristina University schools (May 31, June 30, September 30, 1998 etc.), along with a similar process for reopening the elementary and secondary schools. The "3+3" Committee pledged to secure funding for construction of new classrooms.

In other words, practice has shown that agreement on peaceful coexistence between ethnic communities in Kosovo-Metohia was possible. That is why the Albanian delegation in Rambouillet showed interest in negotiating with the Yugoslav delegation about this document. However, the U.S. Ambassador to Macedonia, Christopher Hill, interfered and prevented further discussions, following the recipe established when his colleague Warren Zimmerman scuttled the 1992 Lisbon agreement.

The Albanians had previously refused to sign the Contact Group principles, without even discussing them, let alone holding "intense negotiations" with the Yugoslav delegation. Therefore, the Rambouillet "peace conference," (as the Indictment baselessly calls it) did not "collapse" because of some supposed uncooperative or uncompromising position of the Yugoslav delegation. Rather, the conference never had a chance because the Albanians, in consultations with the U.S. government, did not even agree to hold direct talks with the Yugoslav delegation, let alone sign the Contact Group's 10 principles. Certainly, they could anticipate the Americans' next move. Having created a stalemate, the U.S. Secretary of State M. Albright stepped in with a set of entirely new, extremely unacceptable and humiliating demands – the well-known Rambouillet ultimatum. Representatives of Serbia Yugoslavia couldn't possibly agree to them, because they were not authorized to sign an act of capitulation.

This ultimatum (officially, the Annexes to the Contact Group principles) demanded: a President, Prime Minsiter and government for Kosovo, its own Parliament, Supreme Court and an entire judicial system; also that Kosovo would have the authority to pass legislation without approval or revision by Serbia or the FRY, regulating taxes, economic, scientific, social, regional and technological development, as well as foreign relations on the same level as Serbia. Another humiliating, insulting and utterly unacceptable ultimatum, akin to "deploy military forces... authorized to use necessary force in order to secure the implementation of the agreement." The head of CIM (Civilian Implementation Mission) would be "authorized to issue directives binding for both sides regarding all important issues as he deems necessary, including appointing and dismissing officials and overriding institutions" According to paragraph 8 of the Annex that deals with deployment of occupation troops in Yugoslavia, NATO forces were supposed to have "unrestricted passage and unimpeded access throughout the FRY including associated airspace and territorial waters," free use of "airports, roads, rails, and ports", as well as the right to make "modifications to certain infrastructure "to suit its needs. According to this annex, NATO troops would have full immunity from legal process, "whether civil, administrative, or criminal." This would have encompassed murder, rape, pillaging, drug-running and other crimes.

In a press statement signed by Hashim Taqi, the delegation of Albanian separatists unconditionally accepted the so-called Interim Agreement for Peace and Self-

Government in Kosovo of 23 February 1999 – i.e. the Contact Group Principles with the Annexes inserted by M. Albright. Taqi's statement said:

> "Recognizing with gratitude the contribution to that goal made by the Contact Group members, the co-chairmen, the negotiators and the hosts of the conference, international institutions involved in the process of negotiations and implementation, and especially the tireless efforts of the U.S. Secretary of State Madeleine Albright...the Kosovo delegation reiterates its agreement to the integral text as submitted and accepted on 23 February 1999. This is a definite text, which cannot be subject to further negotiations or changes, except purely technical ones.... As stated on 23 February 1999, Kosovo invites and expects quick deployment of NATO [troops], with complete and effective implementation of their foreseen functions, as well as others intended to implement the Interim Agreement, strictly in accordance with the modalities of command and control, and within the time frame set out in the Interim Agreement. Full implementation of this part of the Interim Agreement represents a key condition for the entire package, and for the agreement that Kosovo has given. Kosovo expects to be consulted regarding NATO's precise plan of deployment..."

Such a humiliating ultimatum made even American newspapers (*Washington Post,* June 1999, *Houston Chronicle* on March 28 that year, and others) and many experts on international law ask if anyone could have expected the Serbs to accept such a thing. Would you have signed such an agreement?

So the Serbian and Yugoslav delegation cannot be blamed for the "collapse" of the Rambouillet negotiations, which never took place. The main responsibility for all that happened in Rambouillet, including the "collapse" of "peace negotiations," lies with the United States policy represented by M. Albright.

Instead of honest negotiations with the purpose of peacefully resolving the crisis in Kosovo-Metohia, the U.S. – through M. Albright – had steered the Rambouillet and Paris meetings towards collapse from the very beginning, so it would have a justification to start aggression against the FRY. Such efforts are demonstrated, among other things, by the fact that Albright placed a call to Hashim Taqi in Tirana the day after NATO's air and missile strikes began (25 March 1999), demanding that the "KLA" begin a general armed insurrection in Kosovo-Metohia.

The most pertinent assessment of U.S. foreign policy towards the crisis in Kosovo-Metohia was given by H. Kissinger ("New World Disorder," *Newsweek*, May 31, 1999), saying, among other things:

> "Several fateful decisions were taken in those now seemingly far-off days in February, when other options were still open. The first was the demand that 30,000 NATO troops enter Yugoslavia, a country with which NATO was not at war, and administer a province that had emotional significance as the origin of Serbia's independence. The second was to use the foreseeable Serb refusal as justification for starting the bombing."

> Rambouillet was not a negotiation – as is often claimed – but an ultimatum. This marked an astounding departure for an administration that had entered office proclaiming its devotion to the U.N. Charter and multilateral procedures."

It is especially interesting that the Indictment refers to these non-negotiations as an international peace conference," since such conferences had in the past only been held at the end of major wars, between the victors and the defeated. One of the "parties" in Rambouillet was the "KLA", i.e. a terrorist paramilitary of the Albanian separatist movement. According to general principles of the international community, there can be no negotiations with terrorists. The United States was among the first to build this principle into its foreign policy. Instead of dealing with the paradox of having the terrorist "KLA's" leader Hashim Taqi represented at an "international peace conference," the Indictment cites for their presence the legitimate representatives of a sovereign and internationally recognized state - Milan Milutinovic and Nikola Sainovic!? Even this is inaccurate, since neither of them headed the Yugoslav/Serb delegation. Deputy Prime Minister of Serbia, Prof. Dr Ratko Markovic, did. Other members of the delegation were Prof. Dr Vladan Kutlesic, deputy Prime Minister of the FRY, Sokoll Cuse (Albanian Democratic Reform Party), Faik Jashari (Kosovo Democratic Initiative), Vojislav Zivkovic (Kosovo-Metohia Serbs and Montenegrins), Zajnelabedin Kurjes and Guljbehar Sabaovic (of the Turkish community); Ibro Vajt (of the Goranci community), Refik Senadovic (of the Moslem/Bosniak community), Ljuan Koka (of the Roma community), and Cerim Abazi (of the Egyptian community).

Paragraph 30 of the Indictment says: "During the peace negotiations in France, the violence in Kosovo continued. In late February and early March, forces of the FRY and Serbia launched a series of offensives against dozens of predominantly Kosovo Albanian villages and towns. The FRY military forces were comprised of elements of the 3rd Army, specifically the 52nd Corps, also known as the Pristina Corps, and several brigades and regiments under the command of the Pristina Corps. The Chief of the General Staff of the VJ, with command responsibilities over the 3rd Army and ultimately over the Pristina Corps, is Colonel General Dragoljub OJDANIC. The Supreme Commander of the VJ is Slobodan MILOSEVIC".

The Indictment is too vague when it refers to "the violence in Kosovo continued" during the peace negotiations. Every act of violence is committed by someone. This was also the case in Kosovo-Metohia, at every stage in the crisis. Only the ICTY Indictment chooses not to identify them whenever these perpetrators are Albanian terrorists of the "KLA," so as not to identify the "KLA" as the main perpetrator of violence at the time of the so-called peace negotiations in France. Hence the use of passive voice ("the violence continued..."), so absurdly; it is not the terrorists who perpetrated the violence; rather, violence somehow perpetrated itself.

Another absurd claim in this part of the Indictment is that the "forces of the FRY and Serbia launched a series of offensives against dozens of predominantly Kosovo Albanian villages and towns." Such phrasing suggests to the public that terrorists and their actions are wholly nonexistent in Kosovo-Metohia, so that the "forces of the FRY and Serbia" have nothing to do but attack the peaceful citizens of "Kosovo Albanian villages and towns," out of sheer impunity or some other irrational motivation.

What was really happening in Kosovo-Metohia during, for example, mid-to-late February 1999, becomes obvious from the orders of the Pristina Corps (PrK) headquarters [Classified # 455-1, 16 February 1999] to "destroy the Albanian terrorist forces in the area of Malo Kosovo; Drenica; Malisevo" (marked on 1:50 000 map, sections: Novi Pazar - 4, Kursumlija - 3,4, Kosovska Mitrovica - 1, 2, 3 and 4, Pristina - 1, 2, 3. and 4, and Prizren - 1. i 2).

In section 1, this order defines the "enemy":

Albanian terrorist forces (ATF) have been reorganized, rearmed with modern weapons and equipment, and trained for continued combat operations against the FRY forces.

ATF strongholds are the areas of Malo Kosovo, Drenica, Malisevo and 'Salja & Bajgora', where they have establish zones of operation (ZO) 'Lab' (some 1800-2000 Albanian terrorists/AT); 'Drenica' (25,000 AT), 'Drim-Pastrik' (some 1500 AT), and 'Salja & Bajgora' (some 600-800 AT), totaling some 6,800 armed terrorists in four zones of operation:

- 'LAB': Three "KLA" brigades (151st, numbering 300, with a command post (CP) in Bradas, with special force of 80-90 terrorists; 152nd, numbering 400, CP in Konjusevac; 153rd, numbering 180, CP in Zlas). CP of the ZO "Lab" is in the village of Lapastica.

  Local militia units, numbering 60-100 terrorists, are deployed in the villages of Godisnjak, Brabonjic, Vaganica, and Slavkovce.

- 'SALJA & BAJGORA: two "KLA" brigades (141st, numbering 200, CP in Smrekovica; 142nd, numbering 250, CP in Sipolje). CP of the ZO 'Salja & Bajgora', with a special force of 70-80 terrorists, is in Bajgora.

- '"DRENICA': five brigades (111th Special Brigade, numbering 300, CP in Gradica; 112th, numbering 450, CP in Likovac; 113th, numbering 300, CP in Donje Prekaze; 114th, numbering 300, CP in Glogovac; 140th, numbering 300, CP in Srbica).

  CP of ZO 'Drenica' is in Likovac, with a special force of 70-80 terrorists in Vocnjak.

  Local militia units, numbering 50-70 terrorists each, deployed in Turicevac, Trtevac, Domanek, and Krajkovo. Armed sentries (100-150 terrorists) in Gladno Selo, Likosane, Prelovac and Trstenik.

  The "KLA" counts on armed villagers (some 30-50 men) in the villages along Mt. Cicavica, Drenica, Prekaz and Gornja Drenica.

- 'DRIM-PASTRIK': two brigades (122nd, numbering 250, deployed in Drenovac; CP and special force of 70-80 terrorists, also in Drenovac; 124th, numbering 300, CP in Retimlje).

  CP of the ZO and the "KLA" operational HQ in Maralija.

  Local militia in villages of Dragobilje, Maralija, Gornje and Donjee Potocane, Naspale, Velika Krusa, Bace and Kravasarija. Armed sentries (30-50 terrorists) in Gajrak and on Mt. Milanovac.

The PrK orders then say:

"Objectives of the ATF are to capture military, economic and civilian targets, expand and link their zones of operation, spread the rebellion, create conditions for controlling the entire territory of Kosovo-Metohia and declare an independent Kosovo.

"The ATF are armed with automatic rifles, light and heavy machine guns (also mounted on vehicles), anti-tank weapons ARMBRUST, RPG, 'zolja', 'osa' [FRY-made AT missiles], AT guns and both 60- and 82-mm mortars.

"Expect mortar fire from Gornja Lapastica, Bradas and Bajgora; Likovac, Marina, Gornje and Donje Obrinje, Vocnjak, Blace, Kravasarije, Pagarusa and Dragobilje.

"Expect ambushes of units and supply convoys on all roads. Observation posts and skirmishers are deployed well in front of main ATF strongholds. AFT strongholds are being fortified with trenches and firing positions.

"Expect residential areas to be booby-trapped (schools, homes, shops), roads and trails obstructed by mines, ditches and barricades.

"To slow down, trap and inflict casualties on VJ and MUP forces, the ATF mined the areas around Obrandza, Sibovac, Gornja Lapastica, Zatric, Malisevo, Orahovac, Sobina, Orlate, Crni Lug, Vrasevce, Likovac, Lapusnik, Marina, Trnavce, Gornja Klina.

"The following roads have also been mined: Grebno-Kramovik, Jablanica-Dasinovac-Decane; Donji Ratis-Rznic- Decane, Sedlare-Crnoljevo, Stimlje-Suva Reka, Stari Trg-Rasane, Opterusa- Zociste, Likovac-Pluzina.

"Recruitment stations are in the villages of Kravaserije, Ratimlje and Pagarusa. Urban terrorist training centers are in Nisar, Ratimlje, and Pagarusa.

"We expect initial ATF resistance to VJ and MUP to be strong, but to fall off with casualties and loss of positions, eventually resulting in abandonment of strong points."

Objectives of the 52nd, Pristina Corps, were specified in clear military terms in the following order:

> "Objectives: in cooperation with Serbian MUP forces, surround, break and destroy ATF in the area of Malo Kosovo, Drenica and Malisevo. Simultaneously, secure the border towards Albania and Macedonia, prevent infiltration of ATF from Albania and Macedonia, secure military outposts, roads and territory.
>
> "Part of our forces is to prevent the retreat of ATF from Malo Kosovo, Bajgora and Drenica to Mt. Cicavica, and from Malisevo to Baranski Lug and Mt. Jezero.
>
> "Afterwards, secure the major communication routes and establish full control over Kosovo-Metohia territory."

Given the estimated enemy force, deployment of his own troops and the objectives, the PrK commander decided to:

> "Attack with the bulk of the force along the lines: Krpimej-Gornja Lastica-Majance; Komorane-Trstenik-Srbica, and Klina-Malisevo-Suva

Reka, and detach forces to secure the border, military outposts, roads and territory.

"Goal of the operation is to surround the ATF in the area of Malo Kosovo, Drenica and Malisevo; together with the Serbian MUP forces, from the surrounding positions attack and destroy the ATF along all the axes of advance.

"Continue with heightened alert along the borders towards Albania and Macedonia, preventing the infiltration of ATF from these republics. Secure military outposts, communications and territory.

"Part of the forces will prevent the retreat of ATF from Malo Kosovo, Bajgora and Drenica to Mt. Cicavica, and from Malisevo to Baranski Lug and Mt. Jezero.

"Afterwards, secure the major communication routes and establish full control over Kosovo-Metohia territory.

"Operation to last between three and five days."

Sections 10.2 and 10.6 of the same Order, both relating to security and psychological aspects of the operation, regulate the behavior towards captured terrorists, as well as civilians and their possessions:

"10.2. Security:

"Captured terrorists shall be taken to the following POW camps:

"- units operating in Malo Kosovo will establish a POW collection point at the poultry farm in the village of Goles;

"- units operating in Malisevo will establish a POW collection point at the administrative compound of "TO Metohija vino" winery in Siroko near Suva Reka.

"- the Corps will establish a POW camp at the warehouse of "DP Vocar" in Gracanica.

"All units will escort prisoners from the collection points to the main POW camp using their own forces and transportation.

"During the operation, it is specifically forbidden of all VJ troops: to enter residential areas on their own accord; to loot the property of local civilian; to violate international laws and customs of war; and to move the enemy dead and their weapons before the arrival of appropriate authorities.

10.6. Moral/Psychological concerns, and Information:

"Individual soldiers are strictly forbidden to enter houses, and are to watch for possible surprise explosive devices."

So, in "late February and early March" there was no "series of offensives against dozens of predominantly Kosovo Albanian villages and towns," as the Indictment alleges, but an

operation to destroy very strong "KLA" forces in the above mentioned areas. Even so, despite such heavy deployment of the terrorists inside villages and towns, orders from the PrK Headquarters specifically forbid individual entry into homes and require respect for international laws and customs of war.

The above-cited sections of PrK HQ orders are in full agreement with the Instruction by the VJ General Staff regarding the VJ procedures for preparation and execution of operations in Kosovo-Metohia, order # 100 of February 3, 1999, signed by Col.-Gen. Dragoljub Ojdanic. This Instruction, aside from the general guidelines and conclusions, contains four sections: 1) Preparations for conducting combat operations, 2) Procedures for preparing to conduct combat operations, 3) Procedures during combat operations and 4) Procedures after combat operations.

In its general guidelines, the Instruction sets a basic principle for all procedures during the preparation and execution of combat operations, to be followed to the letter. As its main principle, the Instruction asserts that "conduct of combat operations by VJ in endangered areas... must be thoroughly planned, organized, prepared, implemented, controlled and analyzed," which means it excludes improvisation and initiative that would make enable individuals, groups or units to engage in behavior not approved or uncontrolled by their commanders and the Headquarters.

We shall discuss "command responsibility" of Col-Gen. D. Ojdanic in responding to the following, Paragraph 31 of the Indictment.

Paragraph 31 of the Indictment says: "The police forces taking part in the actions in Kosovo are members of the Ministry of Internal Affairs of Serbia in addition to some units from the Ministry of Internal Affairs of the FRY. All police forces employed by or working under the authority of the Ministry of Internal Affairs of Serbia are commanded by Vlajko STOJILJKOVIC, Minister of Internal Affairs of Serbia. Under the FRY Act on the Armed Forces, those police forces engaged in military operations during a state of war or imminent threat of war are subordinated to the command of the VJ whose commanders are Colonel General Dragoljub OJDANIC and Slobodan MILOSEVIC".

The only truth in this Paragraph of the Indictment is that Vlajko StojiLJkovic was head of the Serbian MUP at the time, commanding the Serbian police. Everything else is false. But let's take it one thing at a time:

- It is not true that "some units from the Ministry of Internal Affairs of the FRY" took part in the actions in Kosovo-Metohia. No unit of the FRY Interior Ministry took part in any action in Kosovo-Metohia. We would also add that the FRY Interior Minister at the time, Zoran Sokolovic, never even visited Kosovo-Metohia in 1998 or 1999;

- the allegation that "Under the FRY Act on the Armed Forces, those police forces engaged in military operations during a state of war or imminent threat of war are subordinated to the command of the VJ whose commanders are Colonel General Dragoljub Ojdanic and Slobodan Milosevic" is untrue. There is no FRY Act on the Armed Forces. A non-existing law cannot regulate anything. The National Defense Act, Article 17, does say: "In case of imminent threat of war, a state of war or martial law, units and agencies of the Interior Ministry can be used to conduct combat operations, whether in battle or other forms of armed resistance. While conducting combat

operations, such units and agencies would be subordinated to the VJ officer in command of those operations."

So, Article 17 says that "units and agencies of the Interior Ministry can be used..." The word "can" does not imply they *must*. Sticking to that interpretation, the units and agencies of the Serbian Interior Minitry did not want to be subordinated to VJ command, from the beginning to the end of the state of war.

There were attempts to subordinate police forces to Pristina Corps brigade commanders in Kosovo-Metohia, but they were unsuccessful.

Orders of the Third Army Command (classified, # 872-92 of April 20, 1999) say: "1) For the purpose of unified command in areas of operation, forces and agencies of the Interior Ministry shall be subordinated to the Pristina Corps and its subordinate commands in conducting combat operations; 2) Pristina Corps and subordinated commanders will additionally regulate the obligations of MUP forces and agencies in conducting combat operations in their areas of responsibility, according to the organizational structure of forces and agencies of the Interior Ministry; 3) All Interior Ministry agencies in Army areas of responsibility shall be notified of this order."

Based on these orders from the 3rd Army, the PrK commander issued an order to its brigades, regulating the subordination of police units in tactical operational zones.

"Following the Third Army command orders (classified #872-125/1) of 8 May 1999, for the purpose of preventing further activities of ATF and destroying all terrorist groups in the PrK zone of responsibility:

1. "In the PrK zone of responsibility all security forces shall be engaged in establishing complete control of territory and maintaining open routes of communications.
2. "Through the deployment of VJ units and MUP units in brigade tactical operational zones, provide a planned and continuous engagement of manpower and materiel in the entire territory of Kosovo-Metohia; on the brigade level, engage in total destruction of the remaining terrorist forces in each brigade's area of responsibility.
3. "MUP units shall be involved in controlling the territory, engaging in counter-terrorist, actions, protecting the flanks and rear areas of Army units, and generally participating in combat operations in the area, following orders of VJ brigade commanders.
4. "Part of the forces is to be engaged in regular duties of providing public order and safety, protect the lives and property of citizens, regulating traffic, etc.

   "Mobile MUP units (22nd, 23rd, 35th, 36th, 1st, 4th and 37th Special Forces companies) are to be integrated into defense systems under direction of defense force commanders in their areas of responsibility.

5. "PrK Command order (classified #455-201) of 1 May 1999 subordinated all territorial defense and MUP units to VJ brigades, according to the MUP deployment map (attached) and territorial defense deployment plans, so that MUP and territorial defense companies can operate as units, engaging in combat under VJ control.

6. "Current deployment of MUP and territorial defense forces can be changed depending on the situation; brigade commanders will have the responsibility for such changes.

7. "Ensure a high level of accountability among all members of VJ, MUP and territorial defense units. Violators shall be held responsible and subject to disciplinary measures and criminal prosecution.

8. "Brigade commands and MUP headquarters will regulate with their superiors all other issues in regard to combat operations by the VJ, MUP and territorial defense units, providing for consistent implementation of this order. MUP units will be deployed in agreement with Interior Ministry offices in local areas of responsibility..."

None of this was implemented, however, because the police refused to be subordinated to VJ commanders. A report from the commanding officer of the 37th Motorized Brigade (20 May 1999) thus states:

"Despite Your orders and the meetings held so far with MUP officials, their subordination to brigade commanders in the PrK area of responsibility is proceeding very slowly and with substantial resistance of police officers in regard to their deployment. Following your proposals, we propose the following: to approach the police command in order to regulate the subordination of MUP units in brigade zones of responsibility, thus enabling their deployment in areas of responsibility in the role of combat elements attached to the corresponding brigades, and for the purpose of maintaining control of [Kosovo-Metohia] territory...

"To define the relationship between forces at the appropriate level, for the purpose of combating ATF and in the [Corps'] area of responsibility, so that the situation in the field would conform to realistic needs and the tactical situation."

Finally, Paragraph 31 puts forward that the VJ commanders were "Colonel-General Dragoljub Ojdanic and Slobodan Milosevic."

This claim is also not true. Colonel-General Dragoljub Ojdanic was never a "commander" of the Yugoslav Army, nor the police, had it ever agreed to be subordinated to VJ brigade commands.

According to the FRY Constitution (Article 135), "The Yugoslav Army is commanded by the President in times of both war and peace, in agreement with decisions made by the Supreme Defense Council," to be "composed of the FRY President and presidents of member republics.

The FRY president also chairs the Supreme Defense Council."

The Law on the Yugoslav Army (Articles 3 and 4) says: "Command in the Army is based on the principles of unified command and control in regard to use of forces and materiel, chain of command and following orders and directions of superior officers." (Article 3), and that "The Yugoslav Army is commanded by the President in times of both war and peace, in agreement with decisions made by the Supreme Defense Council." (Article 4).

Colonel-General Dragoljub Ojdanic was Chief of Staff at the Supreme Command. Historically, chiefs of staff on all command levels in the Yugoslav Army – and in the armies of Serbia, the Yugoslav Kingdom and SFRY – never had command authority, but only staff duties. Therefore, they cannot bear responsibility for actions of lower-level command officers in the armed forces.

Paragraph 32 of the Indictment says: "Prior to December 1998, Slobodan MILOSEVIC designated Nikola SAINOVIC as his representative for the Kosovo situation. A number of diplomats and other international officials who needed to speak with a government official regarding events in Kosovo were directed to Nikola SAINOVIC. He took an active role in the negotiations establishing the OSCE verification mission for Kosovo and he participated in numerous other meetings regarding the Kosovo crisis. From January 1999 to the date of this indictment, Nikola SAINOVIC has acted as the liaison between Slobodan MILOSEVIC and various Kosovo Albanian leaders."

Paragraph 33 of the Indictment says: "Nikola SAINOVIC was most recently re-appointed Deputy Prime Minister of the FRY on 20 May 1998. As such, he is a member of the Government of the FRY, which, among other duties and responsibilities, formulates domestic and foreign policy, enforces federal law, directs and co-ordinates the work of federal ministries, and organises defence preparations."

Not just in these two, but in eleven other paragraphs is Nikola Sainovic's name mentioned, though the Indictment offers no specific incriminating information, or even suspicion that he committed a single criminal act. If his constitutional powers were listed in addition to his positions (deputy Prime Minister and Prime Minister of the Serbian government, deputy Prime Minister of FRY), it would have been clear that everything Nikola Sainovic did, even according to the Indictment, was squarely within the bounds of his constitutional and legal authority. All the duties cited in Paragraph 33, as well as many other duties of the Federal government have been clearly outlined by the FRY Constitution in Article 99. (Section 1. Formulating domestic and foreign policy and enforces federal laws, regulations and other acts; Section 2. Maintaining relations between the FRY and other states and international organizations;.... Section 7. Directing and coordinating the work of federal ministries with other federal agencies and organizations, with the ability to nullify their decisions; ... Section 9. Ordering a general mobilization and organizing preparations for defense; etc.)

Therefore, as Deputy Federal Prime Minister Nikola Sainovic was in charge of foreign policy and he worked strictly in accordance with the government policy and constitutional authority. All that considered, why is his name on the list of the indicted at all?

This needs to be emphasized in relation to the allegation in Paragraph 32 that Nikola Sainovic was Slobodan Milosevic's "representative for the Kosovo situation." Nikola Sainovic was part of the delegation composed of federal and Serbian officials whose purpose was to contribute to the peaceful solution of the Kosovo-Metohia crisis.

The allegation that Sainovic "took an active role in the negotiations establishing the OSCE verification mission for Kosovo" is not incriminating and should go in his favor, since this demonstrates his efforts to peacefully resolve the Kosovo-Metohia crisis.

The Fabricated "Humanitarian Disaster"

Paragraph 34 of the Indictment says: "During their offensives, forces of the FRY and Serbia acting in concert have engaged in a well-planned and co-ordinated campaign of destruction of property owned by Kosovo Albanian civilians. Towns and villages have been shelled, homes, farms, and businesses burned, and personal property destroyed. As a result of these orchestrated actions, towns, villages, and entire regions have been made uninhabitable for Kosovo Albanians. Additionally, forces of the FRY and Serbia have harassed, humiliated, and degraded Kosovo Albanian civilians through physical and verbal abuse. The Kosovo Albanians have also been persistently subjected to insults, racial slurs, degrading acts based on ethnicity and religion, beatings, and other forms of physical mistreatment."

By claiming that "forces of the FRY and Serbia... in a well-planned and co-ordinated campaign of destruction of property owned by Kosovo Albanian civilians..." made entire regions "uninhabitable for Kosovo Albanians", this Paragraph makes, in addition to "crimes of genocide" (which will be discussed later), one of the gravest and most untrue allegations in the entire 100 Paragraphs of the Indictment. Namely, it insinuates the so-called humanitarian disaster, created as part of a media campaign to establish a pretext for NATO (led by the U.S.) military intervention against the FRY, with aims that have been discussed earlier.

Such a situation in Kosovo-Metohia was to be blamed entirely and solely on the "forces of the FRY and Serbia", i.e. their military and civilian leadership. Paragraph 34 simply bristles with explicit allegations made to sound as if they were based on incontrovertible evidence, and therefore impervious to doubt. This formulation suggests to the public that the Prosecutors already have all the necessary evidence, which has been left out simply because of spatial limitations in the Indictment.

In refuting Paragraph 34, however, we will not adhere to any spatial limitations.

On the other hand, the following paragraph (35) presents the alleged rendering of Kosovo-Metohia "uninhabitable for Kosovo Albanians" as a consequence of a planned and coordinated campaign of deliberate destruction of civilian property in Kosovo in both (markedly different) stages of the Kosovo-Metohia crisis: (a) before and (b) during NATO's air aggression against the FRY, combined with multiple attempts of land invasion from Albania (March-June 1999).

Both periods involve mass columns of refugees - not just "Kosovo Albanians" – and temporary refugee camps of short or longer duration, but for different causes. The

allegedly deliberate shelling of "towns and villages" and burning of "homes, farms, and businesses" by the "forces of the FRY and Serbia," calculated to render the region "uninhabitable for Kosovo Albanians," played no significant part (or none altogether) in any of those causes.

The main causes of refugee columns and temporary refugee camps appearing in the territory of Kosovo-Metohia during 1998-1999 were: (a) organized, premeditated (by the "KLA" commanders, not the "forces of the FRY and Serbia") movements in order to fabricate evidence of persecution of "Kosovo Albanians," thus creating a media pretext for direct military involvement of NATO in the Kosovo-Metohia crisis; (b) a separatist rebel tactic, familiar since Slovenia, of involving the civilians and residential areas in their rebellious acts, primarily as human shields, to counter the military supremacy of state security forces; (c) exodus of civilians from residential areas where "KLA" forces had fortified themselves, at the invitation of "forces of the FRY and Serbia", before attacks on these fortified terrorist bases; (d) voluntary exodus of Albanian civilians from combat operations in and around residential areas which had been turned into "KLA" fortifications; and finally, (e) exodus of all civilians, Albanians and non-Albanians alike, from the 78 days of NATO's massive and indiscriminate missile and air strikes, the brunt of them against Kosovo-Metohia.

Rounding out this qualification of the framework for the alleged "humanitarian disaster" in Kosovo-Metohia during 1998 and 1999, we would like to add and perhaps repeat that the "forces of the FRY" – specifically the Pristina Corps and the Third VJ Army – behaved towards "Kosovo Albanian" civilians in a fashion completely opposite to that alleged in the Indictment. Some exceptions will be mentioned later. We cannot neglect the fact that most of the officers in the Pristina Corps and the Third Army, i.e. those responsible for all the acts by those units, were educated and commissioned in the former Yugoslav People's Army (JNA) and rooted in the traditions of heroism and chivalry of the Serbian Army, Montenegrin Army, and the People's Liberation Army (Yugoslav Partisans), built around the moral foundation of loyalty to the people, ethical behavior and adherence to laws and customs of war. This is one of the oldest modern armies in Europe. Over the past 150 years, it has fought for a total of 17 years in numerous difficult and cruel wars – always in self-defense and liberation. In these wars, support and aid of the people has always represented a primary factor of victory.

Unlike most modern European armies, the VJ (a product of JNA's transformation) did not enter the fight against Albanian terrorism without experience. It could not have been surprised by the involvement of manipulated and terrorized civilians that either aided the terrorist paramilitaries of various separatist movements, or was used by them as human shields. As early as 1991, in Slovenia, and subsequently in Croatia and Bosnia-Herzegovina, the JNA faced strong paramilitary forces of local secessionists, which used civilians in towns and cities as human shields. In order to protect these civilians from any harm, JNA garrisons suffered protracted sieges (lacking power, water, food and medical supplies) and even casualties (often surrendering without a fight). Having tested the JNA's reaction to civilian involvement, separatist regimes in Slovenia, Croatia and Bosnia-Herzegovina reached the conclusion that the JNA will not "fire into the crowd." Only this way can one explain their risky, irresponsible and adventurous decision to besiege JNA garrisons located inside cities. Had the besieged units decided to actively

resist and break out of encirclement, they had at their disposal enough firepower and ammunition to literally destroy those cities. It is well known that the sieges in Zagreb, Karlovac (Koranj bridge), and Sarajevo (Dobrovoljacka Street) ended with bloodbaths of JNA soldiers, especially the one in Skojevska Street in Tuzla (May 15, 1992). Trained and educated to be an army of the people, the JNA/VJ was always ready to suffer casualties and humiliation rather than violate its sacred oath, enshrined in the salute of units at roll call: "We Serve the People!"

Respect for Laws of War and Military Ethics in the VJ

Leaders of the Albanian separatist movement and the "KLA" incorporated their awareness of these principles into their strategy of widespread terrorist violence, developing it to an unprecedented extent with the help of its foreign sponsors.

They were surprised, therefore, by the Yugoslav Army's decision to deploy the PrK units in the field before the beginning of "KLA's" general terrorist offensive. In this way, the VJ preempted the blockade of its garrisons with all the disastrous consequences the JNA had to suffer. At the same time, it gained maximum freedom to choose the type of combat operations which would best enable the protection of civilians. Because of this, there is not a single document in the entire battle archive of PrK and the Third Army related to counter-terrorist operations and defense from NATO aggression that does not insist on protecting the civilians, and for that purpose order the commands and members of VJ to take appropriate actions. In addition to all we said responding to Paragraph 25 (first half of 1998) about the relations between PrK commands and units and the civilian population, we will begin documenting this relationship in the latter half of 1998 with a classified order of Pristina Corps Command (# 873-367, 4 May 1998) regulating the return of civilians to abandoned villages:

> "By the authority vested in me by the FRY and Serbia, and based on the talks between PrK and government representatives with the inhabitants of Batusa village on 4 June 1998,
>
> I ORDER:
>
> 1. Approve the return of civilians who left their homes along the Ponosevac-Batusa highway, to the villages of Brovina, Molic i Batusa;
> 2. Commanding officers of PrK units controlling the aforementioned communications route shall demand from village elders to give them complete information about the households and inhabitants of the villages, a list of names of people returning home, and information about their property (fields, pastures and wells);
> 3. Behave towards all inhabitants of the aforementioned villages with every courtesy. During the return, all VJ members shall render all necessary assistance;
> 4. All harassment, damage to property, or seizure of food, water and spirits from local population is expressly forbidden;

5. During the return of civilians to their villages, establish controls to prevent the smuggling of weapons, ammunition and explosives. In case of incoming fire from these villages, issue warnings and demand the surrender of weapons and terrorists. If these demands are rejected, open fire on the houses from which hostile fire came.
6. This order shall come into force on 5 June 1998. at 0800 hrs.
7. Inform all enlisted men and officers (signature of acknowledgement required) with this order and ensure its full implementation."

At the end of the first phase of anti-terrorist operations in the area of the 53rd Border Brigade, when VJ units accomplished their mission of securing the territory along the state border and removing the blockade of roads towards outposts "Morina" and "Kosare," a meeting took place at the PrK forward command post in Djakovica on June 5, 1998. At the meeting, attended by the CO of units in charge of the area, the accomplished mission was analyzed and the following order (classified # 873-375 of 5 June 1998) was issued by the PrK Command. We quote the relevant parts relating to measures for protection of civilians:

I ORDER:

1. Actions of all units and must conform fully to previous decisions and orders issued by this command;

2. Ensure that all orders are fully implemented in subordinated units, and inform their officers and enlisted men of their specifics to the extent necessary to perform combat operations and other duties;

3. All mines are to be fully documented, according to standing operating procedures, with one copy of each report sent to the PrK Command and the forward CP by 10 June 1998. All subsequent reports shall be sent within three days;

5. Deployment of all improvised mines in all areas shall be forbidden. When leaving an area, the unit CO shall attest that the area is clean of all mines and booby-traps;

6. Personnel exhibiting reckless, hesitant and deviant behavior shall be immediately removed from all units, in order to prevent their influence on other enlisted men's behavior and unit morale...

14. All units shall sweep their areas of responsibility, remove all ammunition and shrapnel and stow it in crates. The deadline for this is 8 June 1998;

15. In areas of deployment and operation of all units, ensure the discipline of officers and enlisted men and prevent theft of property from ethnic Albanian citizens. All property that has been taken so far from homes and yards shall be returned. In the future, all personnel violating this order shall be disciplined and criminally prosecuted.

16. All units shall check their rosters of officers and enlisted men, paying close attention to reserve personnel, and consistently implement earlier orders regarding personnel control before and after each mission;

17. In combat areas impose martial law, preventing uncontrolled movement of individuals during both day and night. This will be the responsibility of PrK Command's Chief Security Officer (CSO).

18. Compose a status report on the situation found in the village of Ponosevac upon arrival of VJ forces and at present. For the villages of Brovina and Molic compose reports about VJ actions (damages to houses and other buildings and their nature) and the situation in them...

20. Prevent the use of alcohol in all units, and take appropriate measures towards violators."

However, the Albanian separatist leaders and "KLA" commanders would not accept the defeats they suffered along the border (at outposts "Kosare" and "Morina"), and especially the return of civilians to their homes under VJ escort and protection. In coordination with their foreign advisors and sponsors, they organized some 40-50,000 civilians from the Djakovica, Decani and Prizren municipalities, with the intention to form refugee columns and cross the border into Albania – illegally, of course, without documents (passports, visas) and away from regular border crossings. PrK Command learned of this plan in time, and issued an order marked "extremely urgent" (classified #873-380) on June 6, 1998, which among other things said:

"Based on available information, we are expecting a mass movement of ethnic Albanian minority citizens from the municipalities of Decane, Djakovica and Prizren towards the Republic of Albania.

Mass movement of some 40,000 to 50,000 is possible in the directions: Decani-Gegaj, Djakovica-Zogaj and Prizren-Kuks, probably via tractors, wagons, cars and beasts of burden.

This action by ethnic Albanian minority citizens has as its purpose to create an image of forced exodus for the international community and world opinion, so as to provoke their reaction.

In order to prevent mass movement of ethnic Albanian minority citizens from FRY territory to the Republic of Albania along the indicated roads,

I ORDER:

1. Establish contact with police in the cited areas of responsibility, for the purpose of timely discovery of rallying points and organizers of the mass movement of citizens, requesting the MUP units to engage in preventing the entry of civilians into the border zone. This shall be the responsibility of the PrK CSO.

4. Upon learning of movement, and if MUP units are unable to stop and turn back the ethnic Albanian minority citizens, take the following measures:

- close the crossing points by deploying the necessary forces, while avoiding the deployment of combat vehicles such as tanks;

- barricade the roads towards crossing points;

- announce over the loudspeakers that the border zone is a restricted area, and that force will be used if the movement continues;

- in case of violence towards VJ personnel, fire warning shots into the air;

- if necessary, fire smoke;

Use force only in self-defense and protection of personnel and vehicles. It is absolutely mandatory to video-tape the entire action.

5. In case any VJ personnel come under fire, return fire, making sure to identify and target the attacker, and not the non-combatants (women, children, elderly and other civilians). If this is not possible, or if it jeopardizes the safety of civilians, find a way to immobilize the attacker without opening fire.

6. Inform the HQ of all new developments and activities via coded messages and regular battle reports."

"KLA" commanders responded to this measure with renewed terrorist attacks, especially in the areas where refugee columns were concentrated (near border outposts "Djeravica" and "Kosare"), having been prevented from crossing the border. This prompted another "extremely urgent" order, "for the purpose of efficiently performing the mission, complete protection of units involved and prevention of civilian casualties" (classified #873-458/1 of 17 June 1998):

"I ORDER

...2. Enable the displaced population to return to their homes. If possible, contact the local population directly and explain their obligations and the role of the VJ.

While securing the international border, act with special care in areas where displaced population has gathered.

3. In areas of deployment and directions of advance, make preparations for access of humanitarian and other organizations per decisions of state authorities. In possible contacts with personnel of humanitarian and other organizations, prevent any unauthorized personnel from giving any statements."

As fighting over civilians between the "KLA" commanders – who wanted to manipulate them – and the PrK – which wanted to pacify and protect them – grew more complicated, further directions for mission performance were issued to VJ personnel in the "territory encompassed by terrorist activities." One such instruction was issued by Military Police Command 7357 Pristina (classified #10/21, dated 22 June 1998) to all PrK units. We cite parts of the instruction sent to MP Command 4445 Pristina, with a not to "make copies and distribute to commanders of companies and batteries"

Section 4 of the instruction deals with procedures and behavior while "detaining the members of terrorist- saboteur groups": "As long as members of TSG using weapons and offering resistance, treat them according to the rules of combat. After they lay down their arms and cease resisting, deal with them in the following way:

- collect them and gather them in one place, stripping them of all weapons and armament,

- separate them by sex, age, rank and role in the TSG,

- ascertain their identities by gathering basic information,

- ascertain the role of every individual in the TSG; depending on that and reasonable suspicion, decide about release or further detention,

- every TSG member, their associates, helpers or inciters shall be detained and interrogated about the circumstances and role of their membership in the TSG,

- everyone has the right to detain a TSG member caught in the act of engaging in terrorism, and turn them over to a magistrate,

- while detaining individuals, search them thoroughly and impound all items, objects, notes, inscriptions on clothing, strip-searching the detainee for any markings,

- start a file for every detainee, containing basic information (full name, father's name, date and place of birth, education, occupation, workplace, ethnicity, language proficiency, military training - if and if, where, and which specialty - if they were trained abroad - if yes, when and how - since when they've belonged to the TSG), then demand of them to make a statement about involvement in the TSG, their organization, armament, bases and supply lines,

- unit commanders have the right to interrogate detainees about matters of military nature,

- after interrogation by commanders, military police and security forces have the right, as Interior Affairs officials, to gather information of prior crimes by the detained TSG member, and extend their detention on that basis,

- persons for which there is reasonable suspicion that they committed criminal acts should be turned over to the military magistrate, with a criminal charge filed,

- transfer of detainees to the magistrate should be humane, adhering in all respects to appropriate Military Police regulations,

- detainees should be subjected to examination by a physician, who should ascertain their health condition and establish a medical file,

- families of the detained should be notified, and immediately placed under surveillance, for the purpose of finding out whom they will

contact with the information that the specific TSG member had been detained.

IT IS FORBIDDEN:

- to kill detainees,

- to injure, mutilate, torture and mistreat them,

- to sentence them and carry out those sentences without a verdict by a court-martial,

- Note that female TSG members should be treated with all courtesy due to their gender.

Further, it regulates the "actions towards citizens and property during combat operations against the TSGs": (Paragraph 4):

"During combat operations against the TSG seek to avoid using weapons and force against noncombatant civilians, religious facilities (churches, mosques, monasteries, etc.), industrial facilities whose destruction would cause major damage to property and environment, medical facilities (first-aid stations, emergency care, hospitals), schools, barns and so forth;

- however, if civilians join TSG members in armed insurrection, offer food and shelter to the TSG, supply the TSG with weapons and ammunition, in that case they are to be considered members of the TSG and treated as such.

- if schools, hospitals, religious or industrial facilities are used by the TSG for observation, reconnaissance and opening fire, consider these facilities to be TSG positions and deal with them as with all TSG positions used to attack the [Army] forces.

- All property without established ownership found in the theater of combat shall be gathered, assessed, entered into evidence and turned over to the authorities.

...6. Procedures for dealing with casualties (KIA)

Upon finding casualties, immediately inform the local military court's investigators, so they may investigate the scene. If the military investigators are unable to survey the scene, inform the civilian investigators. In case they, also, are unable to investigate the scene, establish a team for that purpose, composed of a forensic technician (team leader), a physician and another official."

As the counter-terrorist operations of the VJ and MUP escalated in July and August 1998, a series of orders were issued to prevent any renegade acts and unintended consequences (classified orders #1104-6 of 6 June, #880-74 of 7 July, and #880-80-101 of 16 July), which:

"Forbid any operations without the knowledge and approval of the Joint Command Authority...every operation must be accompanied by approved documents: maps, orders and an operational plan. It is strictly forbidden to use 122-, 128- and 155-mm artillery, as well as 100-mm main tank guns without the approval of Corps Command."

"Fire from other weapons can be used at brigade commanders' discretion, solely for the purpose of eliminating targets that endanger lives, such as bunkers, buildings where no civilians are present, mortar positions (60 mm, 82 mm and 120 mm) and large groups of personnel attacking the positions of VJ and MUP units.

...3. Open fire on Albanian terrorist targets only if absolutely certain there are no foreign diplomats or observers among them. Show maximum restraint in opening fire, except in dire need.

4. Inform all unit commanders and commands of this order."

"While opening fire, exclusively engage targets outside of residential areas, where no civilians, humanitarian aid workers, reporters and observers are present."

During August and September of 1998, joint forces of the PrK and the Serbian police conducted several major counter-terrorist operations:

1) destruction of the terrorist "KLA" forces in the general area of Crnobreg - Rznic, Glodjane - Gramocelj - Prilep, in zones Pec 3 and 4, Djakovica 1 and 2, shown on the 1:50,000 map, (PrK command, classified order #873-758/3 of August 10);
2) destruction of the "KLA" forces in the area of Lipovic, in zones K. Mitrovica 4, Pristina 3, Prizren 2 and Urosevac 1, shown on the 1:50,000 map (PrK command #1104-14 of August 20);
3) destruction of "KLA" forces in the area of Dobrodeljane, zone Prizren 1, shown on the 1:50,000 map (PrK command, classified order #880-207 of August 27);
4) support to MUP forces in destroying a TSG in and near the village of Ratis, zone Pec 4 and Djakovica 2 shown on the 1:50,000 map (PrK command, classified order #880-214 of September 5);
5) support to MUP forces in destroying a TSG in the area of Lug, zones Pec 4, Djakovica 2 and K. Mitrovica 3, shown on the 1:50,000 map (PrK command, classified order #880-220 of September 9);
6) support to MUP forces in destroying a TSG in the area of Jezerce, zones Urosevac 1 and 3, Prizren 3 and 4, shown on the 1:50,000 map (PrK command, classified order #880-256 of September 25, 1998).

All the orders cited above, following the strict VJ regulations for composition of battle documents, regulated the issues of dealing with the civilian population. We cite the relevant excerpts, in the order they were issued:

"To the loyal ethnic Albanian civilians emphasize the need for correct behavior of the troops, especially towards refugees and civilian property. Prevent all media access to combat areas without special permission.

"Extract civilians from areas of combat operations, making sure they are not used as human shields by the retreating terrorists. Open fire only at buildings from which the terrorist are firing, and prohibit the entry of troops into other homes and buildings during combat operations, to prevent looting of property.

"During combat operations, shelter and protect displaced civilians. Secure and bypass locations where larger groups of displaced civilians have taken shelter, and inform units charged with aiding the displaced. MUP units tasked with aiding the displaced shall perform triage, offer medical aid, shelter them from inclement weather, distribute the necessary food, water, clothing, and offer any other humanitarian aid. After sweeping the residential areas which the civilians fled, organize their return to to their homes."

Threats of Aggression Save the "KLA" from Defeat

In the six aforementioned counter-terrorist operations which the PrK-VJ conducted on its own or in coordination with the MUP forces, all the terrorist strongholds were destroyed and heavy casualties inflicted upon the "KLA." Adding these August and September defeats to those from July 1998, it becomes clear that the "KLA" was facing final defeat at the end of this period. The terrorist "Headquarters" in Switzerland called the defeat "catastrophic" at the time, and for good reason.

Parallel to the growing awareness of defeat, pressure mounted from the so-called international community, with the aim to save the separatist forces from complete destruction – since that would have derailed all other designs on Kosovo-Metohia. An entire machinery of propaganda was put on the case, first recasting the counter-terrorist operation of the Yugoslav forces as repression against the "disenfranchised Albanian civilians," with "excessive use of force." Subsequently, entire villages were ordered to disperse by the "KLA," which at the time had to flee its fortified positions in these villages before the Army and police forces, often without firing a shot. This was then described as a "humanitarian disaster" caused by "excessive force."

Synchronized with this pressure were numerous other initiatives. Turkish Prime Minister Mesut Yilmaz tried on behalf of the "KLA" to arrange a ceasefire and negotiations in late July. Members of the U.S. Congress, Sattack [sp] and Dole, after "investigating the situation," began a campaign in the U.S. to halt the "humanitarian disaster" in Kosovo. Chairman of the Democratic League of Kosovo, Ibrahim Rugova, appealed at the end of August to all relevant bodies of the international community to urgently intervene in order to stop the operations of "Serb forces" in Kosovo and force the "Belgrade regime" to withdraw its forces from Kosovo in order to avoid an "unprecedented humanitarian disaster." Among others, we will mention Albanian president Rexhep Meidani, Austrian Foreign Minister (at the behest of Veton Surroi) and the head of EU's observer mission, Franz Parak [sp].

All the factors involved in the campaign to "stop the excessive use of force" and withdraw the Serb forces from Kosovo did so at the same time, using the same topics presented as urgent arguments, even using the same terminology. Like a Sword of Damocles, above all the appeals and staged complaints, accompanied by appropriate images of the omnipresent and all-powerful CNN, was the threat of U.S. and NATO air strikes against Yugoslavia in case their demands were not met. One analysis of a

Republican committee in the U.S. Senate indicates that plans for a NATO intervention were well along in August 1998, but that at the time there was no "acceptable media event that could serve as a political alibi for an interventions." The road from showing concern for the fate of refugees "fleeing Serbian repression and terror" to UNSCR 1199 and open preparations for air and ground attack on Kosovo-Metohia was very short indeed.

It was in this climate, which threatened to degenerate into terrorist air strikes by NATO forces against Yugoslavia, that the 11-point Milosevic – Holbrooke agreement was reached on October 13, 1998.

A session of the Supreme Defense Council was held after the talks between President Milosevic with Ambassador Holbrooke on October 4. Opening the session, the President said that the VJ General Staff had made estimates of the current military and political situation in the region, especially the threats by parts of the international community against the FRY in regard to the situation in Kosovo-Metohia.

Later during the meeting, the chairman of the SDC first reiterated the general commitment of the FRY to resolve all issues peacefully, and stated several arguments proving this commitment. First among them was the cessation of hostilities; second, the withdrawal of forces into garrisons upon the cessation of terrorist activities, as agreed with the Russian president Yeltsin; third, freedom of movement for representatives of UNHCR and International Red Cross, in order to help the resolution of humanitarian problems, and fourth, our readiness for dialogue and resolving the situation peacefully.

Yugoslavia had fulfilled all the demands despite all the objections to the Resolution [UNSCR 1199], he continued, since the FRY represented no threat to peace and other countries' security. Yugoslavia's neighbors understood that such allegations were not true, since they had underestimated the terrorism in Kosovo. He added that combat operations had stopped six days before the session; counter-terrorist units were returned to garrisons; full freedom of movement was given not only to UNHCR and ICRC, but also to diplomatic missions and the media – something the resolution never required.

Yet the Albanian side had not fulfilled any of its obligations – articles 1, 2, 3 and 6. Article 7 concerned Albania, but it continued to smuggle military equipment, arms and ammunition into Yugoslavia, though hindered by efforts of Yugoslav border patrol.

Yugoslavia had, therefore, respected all the demands in UNSCR 1199, and that had been summarized in the Foreign Minister's letter to UN Secretary-General Kofi Annan.

President Milosevic reminded the SDC members of the meeting with the Contact Group ambassadors, at which he reiterated the positions of the Serbian Parliament regarding the resolution of the Kosovo-Metohia crisis. He also informed them of Russia's position, having met with the Russian delegation that very day. The Russian delegation was headed by Foreign minister Ivanov and Defense Minister, Marshall Sergeyev, who said that Russia would user her Security Council veto if a resolution to attack the FRY were proposed. They expected Yugoslavia to prove the commitment to implement UNSCR 1199, and readiness for dialogue.

At the end of the debate, President of the FRY and Chairman of the SDC suggested that the conclusions of the session be summarized in one sentence:

"Yugoslavia is firmly committed to peace, and ready to solve all issues in a peaceful manner. If we are attacked, however, we will defend the country by any means necessary."

This was deemed necessary because of the general political climate in the country. He repeated that Yugoslavia would do everything to avoid conflict, adding, "If need be, we must defend the country. That is our duty." Both members of the SDC – president of Serbia Milan Milutinovic and president of Montenegro, Milo Djukanovic, agreed with this proposed conclusion.

Finally, the SDC agreed that "Yugoslavia was facing... an imminent threat of war."

This is how the unit headquarters within the PrK reacted to requests for reports of the alleged massacres of civilians and claims of various representatives of the so-called international community that "forces of the FRY and Serbia" had used "excessive force" in battling the Albanian terrorists.

Report that the 549th Motorized Brigade (classified, #2351-2, of 5 October, 1998) sent to the PrK Command (regarding the classified order #880-274 of 3 October 1998), says:

> "Item 2: We have no information of any massacres committed against the civilian population in our zone of operations. Our units gave a wide berth to groups of displaced civilians. Neither they nor their vicinity were targeted. Triage and check-ups were performed by members of the Serbian MUP."

Chief of Staff of the PrK, reporting from the advanced Command Post on October 5, (classified #873-1125/2) on combat operations between the 26th and 27th of September, said:

> "1. Operations conducted on 26 and 27 September, 1998 followed the orders and instructions of the PrK Command without deviation.
>
> 2. PrK units committed no massacres against civilians in their zones of operation. We do not have information on the actions of MUP forces, which we had supported in pacifying the village of Gornje Obrinje.
>
> 3. Between 1 April 1998 and 29 September 1998, there were no deviations from PrK orders regulating the procedures and actions of PrK units in the area affected by the operations of terrorists and saboteurs."

After receiving reports of "civilian discontent" after the approved return of displaced persons, the PrK command issued the following order from its advanced CP (classified #873-1147/1) on October 6, 1998:

> "1. Immediately vacate furnished private homes.
>
> 2. All private property found in homes is not to be touched, and their seizure is expressly forbidden.
>
> 3. Units are to be billeted on public property, and possibly in private homes that had been abandoned and vacated of furnishings.

4. Responsibility for complying with this order lies personally with commanding officers of brigades and task forces."

Humanitarian Disaster as a Consequence of NATO Aggression

After the Milosevic-Holbrooke agreement and the arrival of OSCE's Kosovo Verification Mission, led by W. Walker, leaders of the Albanian secessionist movement, "KLA" commanders and their foreign allies saw an even better opportunity than before to reorganize, replenish and re-arm the terrorist paramilitaries, thus preparing them for becoming the first echelon of NATO aggression, which had already been decided upon.

In early 1998, the "KLA" numbered some 7,000 armed terrorists, growing by July of that year to over 20,000. These terrorist forces had been largely destroyed and scattered by the counter-terrorist operations of the "forces of the FRY and Serbia"by the end of September 1998. After the Milosevic - Holbrooke agreement was signed and the OSCE Kosovo Verification Mission was deployed, in almost four months the "KLA" grew back to 25,000 men. This terrorist organization was stronger in numbers and better equipped in January 1999 than it had been in June 1998. Instead of observing the situation in the province, the KVM had established favorable conditions for the revival of the "KLA," which had been shaped into the first wave of NATO's aggression against the FRY. With the help of the KVM, terrorists seized control over much of Kosovo-Metohia. They even infiltrated cities, which made it possible to organize some of the cities' population to become "refugees," in order to convincingly stage a "humanitarian disaster" of vast proportions.

The Albanian terrorist paramilitary grew in numbers not only from an unhindered mobilization the "KLA" had organized throughout Kosovo, but also in the form of mercenaries and volunteers from Albania, Bosnia-Herzegovina, some Western European and Islamic countries. According to verifiable VJ intelligence, at any time the "KLA" had between 300 and 800 foreign mercenaries, paid some DM 2000 a month, and issued forged identity papers in order to conceal their identities in case of capture.

The withdrawal of PrK units into garrisons and the removal of many MUP checkpoints had significantly weakened the control of Yugoslavia's borders with Albania and Macedonia, along the border itself as well as deeper inside Kosovo. This created favorable conditions for growth of the "KLA" beyond what it had been before the KVM's arrival, and the influx of new, modern weapons and equipment from abroad. The terrorists were now supplied with Sig-Sauer 7.62 mm sniper rifles with fragmentation bullets, German sniper rifles "SSO 99," American M-16 assault rifles, Browning .50-cal. heavy machine guns, "Armbrust" anti-tank missiles, British-made mine detectors, U.S.-made sniper rifles with a range of up to 2 kilometers, communication systems (hand-held radios and long-range devices as well), satellite telephones and medical supplies from NATO's inventory, large quantities of medication from "humanitarian aid" packages, X-ray machines, surgical equipment and operating tables, etc. It is a grave, but completely true, allegation that the "KLA" was replenished through members of the KVM, and "humanitarian" organizations which had intensified their operations in Kosovo-Metohia. Especially notable was the role of an organization known as "Mother Theresa."

Death tolls testified of increasing terrorist activities by the regenerated "KLA." Here are some statistics just for the first three months of 1999 (January 1 to March 24): there was a total of 606 terrorist attacks, 355 of which were aimed at buildings and members of the MUP, and 251 at civilians and their property. In these attacks, a total of 138 people were killed - 25 police and 113 civilians – while 274 were injured (106 police and 168 civilians).

Using the environment established by the Milosevic - Holbrooke agreement and the presence of the KVM, the North Atlantic Council embarked on several important operations in this period: "Eagle Eye," "Determined Guarantor" and "Determined Force."

Operation "Eagle Eye" followed directly from the Milosevic – Holbrooke Agreement. Its main purpose was to provide the KVM with additional information through NATO's daily one-hour reconnaissance flights. Based on that information (and the reports of KVM verifies in the field) NATO was able to plan and coordinate its activities. The purpose behind this was to diminish the effectiveness of the VJ and MUP in battling terrorism, and enable the "KLA" to consolidate and continue escalating the crisis in Kosovo-Metohia.

"Eagle Eye" was blind in the eye that was supposed to monitor the consolidation and terrorist activities of the "KLA" Members of the KVM from NATO countries showed an emphatic lack of interest for systematic violence perpetrated by the "KLA." Certain U.S. verifiers even offered military expertise and other aid to the terrorists, contrary their mission parameters.

The North Atlantic Council approved the plans for "Operation Determined Guarantor," in November 1998, with the purpose of extracting KVM verifiers from Kosovo-Metohia in case their safety was endangered. A decision to deploy extraction forces into Macedonia was made in early December. On the other hand, terrorist formations of the "KLA" were incited to act with support in arms and training, which was mentioned previously. This operation, in addition to its public aim to protect the verifiers, aimed to continue the pressure on FRY and create conditions to deploy NATO troops in Kosovo-Metohia and maintain a long-term NATO presence in the region.

In late October 1998, NATO had initiated the procedure for implementation of plans for a military intervention against the FRY, within the "Operation Determined Force." There were, essentially, two plans for a military intervention against the FRY: 1) a limited operation in Kosovo-Metohia alone, which predicted cruise missile strikes with the possibility of using air force, and 2) a radical option for attacking the entire territory of Serbia, involving missile strikes and aerial bombardment of civilian and military targets throughout Serbia.

OSCE's KVM was preceded by another diplomatic mission to Kosovo-Metohia – the Kosovo Diplomatic Observer Mission (KDOM), made up of accredited diplomats from the Contact Group, and formed to deal with the situation in Kosovo-Metohia. Members of this mission came from the United States, Germany, France, Britain and Russia. With the permission of VJ's General Staff, KDOM members toured all battle groups and PrK units in their garrisons on October 27 and 28, 1998, inspecting their heavy weapons. In their contacts with VJ officers, members of the mission indicated that their report to the North Atlantic Council in Brussels would determined if NATO's decision to attack

selected targets in Yugoslavia would be rescinded. This decision to allow KDOM members to enter the garrisons and inspect weapons was later shown to have been a major mistake. It was later shown that this mission was mapping the position of VJ garrisons and battle groups in Kosovo-Metohia through portable GPS devices, establishing their exact position for the later NATO air strikes.

In addition to sporadic border incidents since November 1998, "KLA" terrorists also began attacking army convoys. By conducting an intensive campaign of psychological warfare and propaganda through incessant provocations, open movement throughout the province and intimidation of loyal Albanians, the "KLA" hoped to cause defeatism and derail political activities aiming to stabilize the situation in the province.

At the end of November 1998, the "KLA Headquarters" issued a general call for mobilization to the entire Albanian population in Kosovo-Metohia. "KLA" set up checkpoints on side roads throughout the province. By December, "KLA" would set up checkpoints on all roads in Kosovo during the night, stopping all travelers.

By early January 1999, masked "KLA" members began appearing in urban areas. Terrorists thus made an effort to move the confrontation with security forces from the open country into urban close quarters, in order to provoke a response by the security forces and civilian casualties – thus provoking a reaction by the international community. Albanian émigrés in Germany and Switzerland had formed a fund "Homeland Calling," which raised funds to finance terrorist activities in Kosovo-Metohia.

Meanwhile, intense training of new terrorists took place in Albania, while large quantities of weapons from Germany were smuggled into that country. In mid-January 1999, some 6,000 terrorists waited in Albania to be infiltrated across the border to Kosovo-Metohia and join the "KLA." Because the border between Kosovo and Albania had been mined, infiltration was redirected through Montenegro and Macedonia, along the following paths: Tropola - Gusinje - Rugovska ravine - Pec; Shkoder – Shkoder lake - Tuzi and Tetovo - Globocica - Urosevac.

Through the KVM, the terrorists were pressuring the Serbian authorities to withdraw all security presence from municipalities inhabited almost exclusively by Albanians (Kacanik, Stimlje, Glogovac, Srbica, Orahovac, Malisevo). This was the heartland of Kosovo, which the terrorists intended to declare "liberated territory" so they could bring in weapons from Macedonia without hindrance. To support the terrorists and further pressure the FRY, the Albanian arm mobilized on January 16, 1999, and deployed along the Yugoslav border.

Residents of certain ethnically clean Albanian villages in Kosovo-Metohia engaged in organized burning of leaves and tires, attempting to present the KVM with images of mass exodus as a result of alleged repression by the regime, wishing to provoke additional NATO pressure on the FRY and Serbia. At the same time, the "KLA" escalated its terrorist activities, attempting to provoke the security forces into reacting and thus causing foreign intervention and the establishment of an international protectorate in Kosovo-Metohia.

Deviating from their mandate in the interest of plans and purposes of world powers, representatives of the KVM attempted to accelerate the escalation of the Kosovo crisis

through allegations of "massacres," "mass graves" and "humanitarian disaster," baselessly accusing the Yugoslav government and terming its actions against the terrorist "KLA" as terror against Albanian civilians. Threats of NATO aggression became increasingly present.

Judging that the so-called negotiations in Rambouillet and Paris (December 2-24, 1999) were most likely to end with the rejection of the humiliating ultimatum by the Serbs and the FRY, and in order to further pressure the FRY and bolster the already full-fledged anti-Serb campaign in the media, the KVM began leaving Kosovo-Metohia on February 19, 1999 – obviously, following someone's instructions. This was a certain indicator that NATO's aggression against the FRY was imminent.

In addition to helping the "KLA" regain strength, KVM verifiers had left behind 480 locator beacons, used shortly after their departure by NATO planes in striking selected targets in Kosovo-Metohia. These locator beacons certainly served their sinister purpose, thus making some of the KVM verifiers certified accomplices to NATO's terrorist aggression.

In preparing a defense from NATO's aggression, forces of the FRY and Serbia logically initiated offensive operations immediately after the verifiers' departure, with the goal of "fracturing and destroying Albanian terrorists forces," as quoted in the February 16 order of the PrK cited at the beginning of the response to Paragraph 30 of the Indictment.

Naturally, the "KLA" forces that had grown during the KVM mission could not have been completely destroyed before the NATO aggression began, so operations against the continued during the air strikes.

Having deployed part of its forces along the borders with Albania and Macedonia, in order to defend from ground attacks, forces of the PrK and the Third Army could not tolerate a presence of a 25,000-strong terrorist paramilitary in their rear. The outset of NATO's air and missile strikes, which focused on civilian and military targets in Kosovo-Metohia throughout the aggression, further complicated the position of the Third Army. History is hard pressed to come up with another example of circumstances as complex and demanding as those which the Yugoslav Army faced throughout the FRY and especially in Kosovo-Metohia during the aggression. The VJ was forced to simultaneously conduct defensive operations on three fronts:

1. to protect its personnel and weapons from substantial harm, and protect civilians from casualties due to the intensive air strikes against both military and civilian targets;

2. to foil several attempts of Albanian ground invasion, accompanied by repeated threats of NATO forces to invade from Albania as well;

3. to fracture and destroy the terrorist "KLA," which had been prepared by the KVM to act as the first wave of the aggressor's land invasion deep inside Kosovo-Metohia.

Even with such long odds, the VJ managed to save its troops and materiel from major losses. Contrary to expectations and daily pronouncements of NATO officials, echoed by sympathetic world media, that the Yugoslav Army had suffered significant casualties both in men and materiel, when the aggression ceased after 78 days it turned out that those losses were minimal, and that almost all combat material had been saved. Meanwhile, the VJ had incessantly protected civilians from massive, indiscriminate air

strikes. It also repelled several attempts of invasion from Albania and simultaneously crushed the "KLA" terrorists in Kosovo-Metohia. Only some 1,500 terrorists remained active at the moment when hostilities ceased, hiding in the ravines and mountains of Kosovo.

CONTINUED, PART II