

Milosevic - Staat

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European Court of Human Rights
Council of Europe
F - 67075 Strasbourg Cedex
FRANCE

re.: SLOBODAN MILOSEVIC v. THE STATE OF THE NETHERLANDS

APPLICATION

by

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I. SUMMARY

0.1. If the claims on legality and legitimacy of the so-called tribunal are right, then the Security Council, for the first

time in its history, is entitled to penetrate the private lives and the private legal positions of individual citizens of States.

This would then raise the question: QUIS CUSTODIAT ?

0.2. If the claim on legality and legitimacy of the so-called tribunal are right, then the prosecutor of this 'tribunal' is even mightier than all the members of the Security Council together.

Because the Security Council members can only act in concert, in order to issue a decisive measure under Chapter VII of the UN Charter, directed toward restoring peace and security.

But if the claims on legality and legitimacy of the tribunal are right, then the prosecutor could issue such a measure, time and again, acting alone and by a single stroke of her pen.

Because, in such a case, every single arrest warrant, issued by her, must be considered a measure under Chapter VII of the UN Charter.

To be respected unconditionally by the entire world.

And again this would raise the question: QUIS CUSTODIAT ?

1. This application is made by **SLOBODAN MILOSEVIC**, former President of the Federal Republic of Yugoslavia.

The applicant complains of a violation of his rights under Articles 5, 6, 10, 13 and 14 of the Convention.

2. The applicant reserves the right to file one or more additional applications.

In order to give a further elaboration on certain elements of this application.

II. INTRODUCTION AND STATEMENT OF FACTS

3. This application is made by the former President of the Federal Republic of Yugoslavia **SLOBODAN MILOSEVIC**, at present domiciled in the Netherlands, Scheveningen (the Hague), in the Detention Unit, Pomstationsweg 32, (2597 JW), P.O. Box 87810, 2508 DE the Hague.

Summary of important facts

The applicant is in detention on Dutch territory under the auspices of the so-called Yugoslavia Tribunal.

4. The applicant was indicted for the first time in May 1999, during the height of NATO's war of aggression against the Federal Republic of Yugoslavia, when he was President of the Federal Republic of Yugoslavia. This indictment is in regard to certain alleged crimes against humanitarian law in Kosovo.

5. On 28 June 2001 he was taken from Yugoslavia, after having already been more out of office as President of Yugoslavia for more than 9 months and during the main part of this time imprisoned in Belgrade's district prison. He was then extradited to the Netherlands and surrendered to the so-called Yugoslav Tribunal.

6. This by a joint action certain elements of the Serbian government, NATO-officials in Bosnia, NATO-countries on the route between Bosnia and Dutch territory, the Dutch government and functionaries of the so-called tribunal were involved.

7. While on the same day the Yugoslav Constitutional Court just suspended a decree, directed to permit the extradition and surrender of Mr. Milosevic. And ruled out all further action directed on extradition, pending a final decision of the Constitutional Court.

8. During his detention here in the Netherlands the so-called tribunal has twice extended the initial 'Kosovo'-indictment and launched two brand-new indictments. One for alleged crimes in Croatia in a so called 'Croatia'-indictment, and another, in december 2001, for alleged crimes in Bosnia, the so called 'Bosnia'-indictment.

9. Caused by his illegal and illegitimate extradition and surrender out of the Federal Republic of Yugoslavia, and by his transfer to and detention by the so-called tribunal, important human rights of Mr. Milosevic have been breached and are still breached. Other human rights of mr. Milosevic are violated in the course of his detention by the so-called tribunal.

Facts concerning the tribunal

10. By Security Council Resolutions 808 (1993), dated 22 February 1993, and Security Council Resolution 827 (1993), dated 25 May 1993, an ad hoc international tribunal was established, called 'International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International

Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991'.

11. This tribunal was given the task 'to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute'.

As it is stated in Article 1 of the 'Statute of the International Tribunal', adopted 25 May 1993 by Resolution 827 and several times amended by subsequent resolutions.

12. This means that this tribunal has explicitly an ad hoc status and that only those suspect of severe humanitarian law violations are within its alleged jurisdiction, who have allegedly committed crimes against humanitarian law in the territory of the former Yugoslavia.

13. A further restriction on the jurisdiction of the so-called tribunal is the limitation with regard to time. Only the period since 1991 is to be considered.

14. The establishment of the tribunal was merely a decision of the Security Council, not the outcome of a treaty-making process, or the result of a UN General Assembly initiative.

15. Within the system of international law in general and of the UN Charter in particular, the tribunal's appointed status is the status of a subsidiary organ of the Security Council, in accordance with Article 29 of the UN Charter.

16. The decision to establish the tribunal was further justified as a measure by the Security Council, acting under Chapter VII of the UN Charter, taken to restore international peace and security.

A measure, based on Article 41 of the UN Charter.

Legal outlines of the tribunal

17. Mr. Milosevic strongly denounces the legality and legitimacy of this tribunal for many reasons.

18. And with respect to this he is in good company. Numerous scholars and other international law experts all around the world have taken the same position.

19. First of all it must be stressed that any suggestion that the Security Council is above the law, or that it is itself the law, has to be rejected resolutely.

According to Article 24 of the UN Charter the Security Council is also bound by the rules of international law and justice.

The Security Council is bound by the UN Charter as well.

20. So it is quite clear that the Security Council is capable of taking decisions which contravenes international law or the UN Charter.

21. According to the opinion of numerous prominent international law experts the establishment of the tribunal is an example of such a violation of international law and of the UN Charter by the Security Council.

22. The main objections to this tribunal are that it has been established in an abuse of power of the Security Council, that such an ad hoc tribunal, with highly restricted competence with respect to subjects and time, is inherently discriminatory and that it is set up as a political tool in the hands of mainly western powers, first and foremost the United States, to serve their political interests.

23. It must be remembered that this tribunal, challenged to this by its own appointed 'friends' - the 'amici curiae' in the case of Mr. Milosevic - did not dare to bring the question of its own legality and legitimacy before the International Court of Justice.

The tribunal dismissed this challenge.

24. So Mr. Milosevic is forced to submit to the jurisdiction of this so-called tribunal.

A tribunal to which its most prominent champion, the United States, would never submit any of its own citizens.

25. For it must be stressed that the United States, by far the most powerful and influential member of the Security Council and strong sponsor and advocate of this tribunal, itself would never accept the jurisdiction of such an international ad hoc tribunal over its own citizens.

26. This is quite clear now.

The United States very recently has enacted domestic laws that threaten economic, financial and political sanctions against any State that dares to cooperate with any international court, which pretends to have jurisdiction over American citizens with regard to crimes against international humanitarian law, especially the International Criminal Court proposed by the Rome Treaty.

27. The United States even has accepted a law, which gives the United States' President the power to release American citizens who are detained by such international tribunals.

This to be obtained even by military action on the territory of the state where these American citizens are held in custody.

28. This act, called the American Service-members Protection Act (ASPA) is already nicknamed 'The Hague Invasion Act'.

29. So the protagonists of the legality and legitimacy of the tribunal intend to continue propagating that, according to the standards of international law, should it occur that an American citizen and, say, a Serbian citizen commit a crime against humanitarian law, standing shoulder to shoulder, it would be acceptable that the Serbian citizen could legitimately be prosecuted and sentenced before an international court, but the American would be immune from such prosecution and would go scot-free.

They dare to maintain that international law would accept such an imbalance.

Discriminate prosecution policy by the tribunal in the course of its performance

30. Also in the course of its performance the tribunal blatantly and continuously demonstrates its thoroughly political and discriminate character.

31. As it was stated by the prosecutor in her speech before the UN Security Council of 27 November 2001, the tribunal's prosecution policy is that its 'focus (..) is on the leaders'.

32. And the tribunal's President, Mr. Claude Jorda, stated in his speech before the UN General Assembly that:

"The first problem, which I called to your attention last year, is due to the fact that many of the accused, high-ranking political and military figures, remain at large even though it is alleged that, through their criminal actions, they seriously breached international law and order and consequently jeopardised peace and security in the Balkans."

So the question is: which 'high-ranking political and military figures' is the tribunal's President referring to? It could be also 'high-ranking political and military figures' from all parts and parties in the former Yugoslavia.

But that is certainly not the case: the 'high-ranking political and military figures', so strongly wanted by the tribunal's 'impartial' President are only Serb.

Further on in his speech he states:

"The hope of accomplishing our mission at the earliest opportunity kindled by the implementation of these reforms must not lead us to forget that several of the accused - high ranking political and military leaders - remain at large. Some of them reside with total impunity in the

Federal Republic of Yugoslavia, while others have taken refuge in the territory of Republika Srpska (...)"

So all 'high ranking political and military leaders' are suspect.

Provided that they are Serb, of course.

33. As it was strongly stressed by the prosecutor during the latest Status Conference on 11 December 2001 in the case against Mr. Milosevic, the tribunal will concentrate now on the construction that all evil in the territory of the former Yugoslavia - in Bosnia, in Croatia and in Kosovo - came finally for the most part from the same source: namely a conspiracy by the Serbian leadership to create 'a Greater Serbia', masterminded by Mr. Milosevic.

34. This anti-Serbian paranoia is overtly declared as the tribunal's main task.

III. DOMESTIC REMEDIES

35. Looking for legal protection against violations of his human rights, which has been inflicted on the applicant since the very moment of his abduction from Yugoslavia and since the first moment of his detention in the Netherlands in the premises of the tribunal, Mr. Milosevic has undertaken legal proceedings against the State of the Netherlands.

36. On 23 August 2001 he summoned the State of the Netherlands in interim injunction proceedings before the Regional Court in the Hague.

Stating in the writ of summons, inter alia:

- "1. Whereas by his abduction from the Federal Republic of Yugoslavia the plaintiff's fundamental human rights were gravely violated; and
2. Whereas, after all, this abduction blatantly infringed on the basic rights due to every person with regard to an intended extradition; and
3. Whereas the State of the Netherlands shares a heavy responsibility for this violation of the basic human rights of plaintiff and, by reason of this fact, is liable for the concerned actions in tort imposed upon plaintiff; and
4. Whereas, because of the deprivation of his liberty, plaintiff being subdued, also fundamental human rights of plaintiff are violated, which

provid protection against arbitrary deprivation of liberty; and

5. Whereas the State of the Netherlands also shares a direct co-responsibility for this deprivation of freedom, imposed upon plaintiff in breach of basic legal standards; and

(...)
13. Whereas the State of the Netherlands is also, and not in final regard, deeply implicated in these violations of human rights by its granting to this so-called tribunal a place on Dutch territory, by its co-operation with and facilitation of this institute; and
14. Whereas plaintiff invokes the legal protection of the Dutch judge against the violation of his rights, to which plaintiff is exposed, as a result of the actions of the so-called tribunal, as well as plaintiff is invoking this legal protection against the jurisdiction the so-called tribunal intends to pose upon him illegally; and
15. Whereas after all the Dutch judge is the competent judge regarding legal protection of the human rights of all people being on Dutch territory; and
16. Whereas Article 13 of the European Convention on Human Rights states that the national judge must give acces in cases of violation of human rights, so that this due access to the Dutch court involves also in itself another basic right that plaintiff is also explicitly claiming; and

(...)
19. Whereas plaintiff claims that the State of the Netherlands should ensure, without any further delay - or to make every necessary effort -, that plaintiff will be immediately and unconditionally released, or wil be immediately and unconditinally repatriated to the Federal Republic of Yugoslavia, in accordance with the following demands;

And the demands were:

"The President of the Reginal Court in the Hague is requested:

to order that the State of the Netherlands proceed to the unconditional release of plaintiff, within 8 hours after the pronouncement of the verdict;

Alternatively

to order that the State of the Netherlands , within 24 hours after the pronouncement of the verdict, proceed to repatriate plaintiff or to arrange for his repatriation to the territory of the Federal Republic of Yugoslavia;

More alternatively

to order that the State, without any delay, should explicitly urge the immediate and unconditional release of plaintiff at all relevant international institutes and embodiments;

Further alternatively

to order that the State, without any delay, should explicitly urge the immediate repatriation of plaintiff to the territory of the Federal Republic of Yugoslavia at all relevant international institutes and embodiments."

37. In these proceedings the State of the Netherlands has put forward:

- that the State of the Netherlands lacks any competence with regard to any aspect whatsoever of the so-called tribunal and its actions;
- that, as a consequence, the State of the Netherlands has no role in the protection of human rights with regard to persons under the authority and competence of the tribunal;
- that also the Dutch judge doesn't have any competence with regard to persons under the authority of the tribunal;
- that the State of the Netherlands, more specifically, has no say in the matter of the deprivation of freedom of accused, wanted by the tribunal, and that the Dutch judge shall have no competence at all in this respect.

38. By verdict, dated 31 August 2001, the Regional Court in the Hague, after the consideration that the so-called tribunal must be considered legally founded and an impartial and independent institute, and consequently a legal and legitimate court, rules further as follows:

"3.5. Now the foregoing considerations lead to the conclusion that it has to be assumed that the Tribunal is legal and legitimate, then has to be considered the defence of the defendant under 3.1. With regard to this the following is considered. It is certain that the State of the Netherlands has transferred its legal competence to examine the claim concerning release to the Tribunal according to the Agreement between the Netherlands

and the United Nations and the national law based upon this Agreement.

Now Article 9 par. 2 of the Statute with concern to the competence of the Tribunal determines that the primacy in the field of administration of justice layes above national judiciaries and is allocated to the Tribunal and Article 103 of the UN Charter lets prevail the rules according to the Charter and, consequently, attributes priority to the ruling by the Security Council above any other ruling, it has to be established that the Dutch judge has no competence to deal with the the request of plaintiff to decide on his deprivation of liberty.

All what is stated by plaintiff in connection with this shall fall through owing to this.

- 3.6. So the foregoing leads to the conclusion that the President has to declare the court incompetent to consider the primary claim of plaintiff. A direct or indirect return to the territory of the Federal Republic of Yugoslavia, as pleaded in the alternative claim, would actually mean that plaintiff would not be detained any longer with respect to the the facts as indicted by the prosecutor of the tribunal.

As such it has to be stated that this is in essence also a claim to release. It has to be added that the alternative claims also bring under discussion all kinds of subjects (for instance the removal from the Federal Republic of Yugoslavia, the transfer to the tribunal and a possible appeal to the immunity from prosecution), which, as previously considered, is also within the exclusive competence of the Tribunal.

Under these circumstances the President declares the court incompetent to consider the alternative claims.

4. The Decision

The President:

Declares the court incompetent to consider the claims of plaintiff."

39. Mr. Milosevic stipulates, after this verdict, that it is now clearly shown that, according to the opinion of State of the Netherlands and confirmed by the Dutch court, there are no domestic remedies at all.

Domestic remedies which could be used in a defence against human rights violations, are, according to the State of the netherlands, not accessible to persons in the hands of the tribunal.

40. Mr. Milosevic has reconciled himself to this joint judgment by the State of the Netherlands and the Dutch judiciary, as far as the existence of domestic remedies is concerned with regard to this proceedings and without further prejudices.

41. It is evident now, after this verdict, that even if domestic remedies were theoretically available, such remedies could be considered to constitute 'domestic remedies' within the meaning of Article 35 of the Convention. And, as a matter of fact, the State does not argue that domestic remedies even theoretically exist.

42. In addition, the European Court has consistently required that remedies be directly available to alleged victims in order to be adequate and effective. Now that it is clearly proven that the State of the Netherlands is denying Mr. Milosevic any domestic remedy, and Mr. Milosevic has given evidence that this is even backed up by the Dutch court, it cannot be maintained that there is any domestic remedy which is directly available to Mr. Milosevic within the meaning of Article 35 of the Convention.

IV. ADMISSIBILITY OF THE APPLICATION

IV.1.a. State of the facts concerning the domestic jurisdiction with regard to Mr. Milosevic

43. The High Contracting Party responsible for human rights abuses is the State of the Netherlands. Since Mr. Milosevic is in the Netherlands, more specifically into Dutch territory. And consequently within the jurisdiction of the Netherlands.

44. That Mr. Milosevic is within the jurisdiction of the Netherlands could only have been reasonably contested had there been a treaty-based relevant transfer of sovereign powers which would have warranted the conclusion that the State of the Netherlands had totally renounced any jurisdiction with regard to Mr. Milosevic under all circumstances regarding his presence here in the Netherlands.

45. This further assumes that such a broad abdication of jurisdiction is possible, according to Dutch positive law, without transfer of territoriality. This is seriously doubtful.

46. In any case, such an extra-territoriality is definitely not created in the present situation.

47. Though Article 17, introduced at the very last moment by means of amendment to the Dutch law which intended to settle the implementation of the ICTY into the Dutch legal order, namely the "Law setting forth regulations concerning the installation of the ICTY" (Wet, houdende bepalingen verband houdende met de instelling van het Internationaal Tribunaal voor de vervolging van personen aansprakelijk voor ernstige schendingen van het internationale humanitaire recht, begaan op het grondgebied van het voormalige Joegoslavië sedert 1991), states:

"The Dutch law is not applicable on deprivation of liberty, experienced by order of the Tribunal within the premises which are in the Netherland at the disposal of the Tribunal."

("De Nederlandse wet is niet van toepassing op vrijheids ontneming ondergaan op last van het Tribunaal binnen aan het Tribunaal in Nederland ter beschikking staande ruimten."),

whatever the true nature and precise implications of this for the rest of this quite obscure article might be, this article of domestic law is nevertheless overruled by what is settled between the State of the Netherlands and the United Nations in an agreement.

48. This agreement is called "Agreement between the Kingdom of the Netherlands and the United nations concerning the Headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991" (Trb. 1994, Nr 189).

49. Article VI of the Agreement states:

"1. The premises of the Tribunal shall be under the control and authority of the tribunal, as provided in this Agreement.

2. Except as otherwise provided in this Agreement or in the General Convention, the laws and regulations of the host country shall apply on the premises of the Tribunal.

3. The Tribunal shall have the power to make regulations operative on the premises of the Tribunal for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions. The Tribunal shall promptly inform the competent authorities of regulations thus enacted in accordance with this paragraph. No law or regulation of the host country which is inconsistent with a regulation of the Tribunal shall, to the extent of such inconsistency, be applicable within the premises of the Tribunal."

50. So it must be established that the national rule, which states that the Dutch law is not applicable on deprivation of liberty within the premises of the tribunal is quite contradictory to the rule of international law stipulating that the basic rule remains that the laws and regulations of the host country shall apply on the premises of the tribunal.

51. As far as this contradiction stretches, the regulation of international law prevails.

52. This regulation of international law clarifies two things:

1. The Dutch laws and regulations, however the above-mentioned domestic law regulation the above-mentioned domestic law regulation might be interpreted, do apply without any doubt fully also to so-called 'tribunal matters', even on the premises of the tribunal !

The only exception might be where the tribunal has made specific regulations.

And this - again - only so far regulations specifically with regard to the premises of the tribunal are concerned.

2. This Agreement do grant the tribunal no powers which could prejudice the Dutch sovereignty and jurisdiction, other than to 'regulations operative on the premises of the Tribunal'.

53. This means that this Agreement clearly stipulates that in general the Dutch jurisdiction is lasting unimpeded, even with regard to the tribunal's premises.

54. And that only in precisely defined regulations, which would only apply to situations within the tribunal's premises, the Dutch sovereignty - and thus the Dutch jurisdiction - could be considered at issue.

55. Such a regulation is explicitly to be reported to the State of the Netherlands.

56. So the conclusion has to be that, with regard to Mr. Milosevic, in general the Dutch jurisdiction is unimpeded.

57. A fortiori this Dutch jurisdiction is undoubtedly to be considered unimpeded, with regard to every time and every situation that Mr. Milosevic is being outside the premises of the tribunal.

58. So Mr. Milosevic is also, and all the more, explicitly claiming the full protection of the Dutch jurisdiction in every situation that he is outside the premises of the tribunal.

59. Moreover, there is no indication whatever that, within the framework of the Agreement, there would have been made any

regulation whatsoever by the so-called tribunal - even if legally conceivable at all - that would declare the European Convention and the Dutch jurisdiction regarding this Convention out of order.

Neither in general, nor with regard only to the premises of the tribunal.

60. The State of the Netherlands and the Dutch judiciary nevertheless hold the opposite view. And they argue that they have no competence anyhow and anywhere.

61. However, it is evident that Article 17 of the earlier mentioned Dutch law does not furnish legal grounds ruling out of order the Convention and the Dutch jurisdiction regarding this instrument, as part of the Dutch legal order. Nor might there be any other legal basis for such a ruling out.

62. If only because of the fact that, of course, treaty obligations, like those with regard to the Convention, cannot be put aside simply by a national rule.

Neither into the whole of the Netherlands, nor into only a part of its territory, like the premises of the tribunal.

63. Those treaty obligations with respect to the issue of the applicability of the Convention and the responsibility of the High Contracting Parties for compliance with this Convention are laid down in the Articles 1 and 13.

Article 1 of the Convention stipulates:

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

64. Since the Dutch jurisdiction in general is unimpeded, even within the premises of the tribunal, and all the more in situations when Mr. Milosevic is outdoors these premises, the State of the Netherlands is bound to guarantee these rights and freedoms fully to Mr. Milosevic.

Also against infringements by the tribunal which occur or threaten to occur.

65. But there occurs also a legal obligation for the Dutch judiciary.

According to Article 13 of the Convention.

This Article reads:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

66. So should there occur a violation of these rights, notwithstanding that the State of the Netherlands is bound to secure such rights and freedoms, then the Dutch judiciary must intervene.

67. Obviously this treaty obligation binding the Dutch judiciary to intervene with respect to infringements on human rights applies also for Mr. Milosevic.

68. That it most certainly should not to be assumed, as a quick judgement, that the jurisdiction of a party to a treaty within the framework of this Convention would be lifted, also follows from the jurisprudence of the European Commission and the European Court with respect to extraterritorial acts of by states.

69. It is a basic tenet of the Convention that states are bound to secure the rights of:

"all persons under their actual authority and responsibility, not only when that authority is exercised within their own territory but also when it is exercised abroad."
(Cyprus v. Turkey, App. No. 8007/77, Dec. Adm. Comm., 13 DR 85 at para. 19 (1978))

And in Cyprus v. Turkey, App. Nos. 6780/74, 6950/75, Dec. Adm. Comm., 18 YB 82 at 120 (1975) it is considered that the

"authorised agents of the State, including.. armed forces, not only remain under its jurisdiction when abroad but bring any other persons or property "within the jurisdiction" of that State, to the extent that they exercise authority over such persons or property. In so far as, by their acts or omissions, they affect such persons or property, the responsibility of the State is engaged."

NOTA BENE : 'by their acts or omissions'.

70. So even when there exist a certain measure of what is called 'actual authority' by State number one over some citizens of State number two, these subjects abroad can claim to be

'within the jurisdiction' of State one, in so far as they are affected by the acts or omissions of state one.

71. Since this applicable even to persons on the territory of another State, it must certainly be valid for persons within the territory of the State itself.

Like Mr. Milosevic being on Dutch territory.

72. It is abundantly clear that the person of Mr. Milosevic is affected repeatedly and profoundly by the 'acts and omissions' of the State of the Netherlands.

For instance in the act of hosting this so-called tribunal.

Or in the omission to host this tribunal by agreement, but without stipulating an adequate protection of human rights by this tribunal.

Or in the act of complicity in the illegal kidnapping and abduction of Mr. Milosevic to the Hague.

Or in the omission of failure to provide any legal instrument or provision to Mr. Milosevic in order to counteract the human rights violation he has to suffer at the hands of the tribunal.

And so on.

73. Consequently it is beyond any reasonable doubt that, with regard to the circumstances of Mr. Milosevic, there still exists a situation where, in general, the Dutch jurisdiction is unimpeded.

IV.1.b. Conclusion

74. This means that the State of the Netherlands, also with regard to Mr. Milosevic, is bound to the obligations of Article 1 of the European Convention on Human Rights.

75. Which implies that the State of the Netherlands, undoubtedly maintaining jurisdiction over Mr. Milosevic in general, is bound to safeguard his human rights as set out in the Convention.

76. And it means also that the Dutch judiciary is bound to the obligation of art. 13 of the Convention.

Which implies that the Dutch judiciary has to intervene immediately on his behalf in order to offer due protection against the violations of his human rights.

77. Nevertheless, the State of the Netherlands and the Dutch judiciary take a different view.

Holding that they have no competence at all with respect to violations Mr. Milosevic' human rights, since his abduction to the Netherlands.

IV.2.a. The theoretical situation that in general domestic jurisdiction with respect to Mr. Milosevic is to be considered lifted

78. But even in the situation that it is likely to be assumed that in general jurisdiction with regard to any treatment of

Mr. Milosevic would have been transferred to the so-called tribunal - which is without any doubt not the case -, still an enduring full commitment to the protection of his human rights by the Convention is compulsory for the Netherlands.

79. This obligation applies just as much to the tribunal.

80. In this regard all jurisprudence of the tribunal itself, which more or less overtly stipulates that the safeguarding of some of the human rights set forth in the Convention is only compulsory before domestic courts and not before a tribunal like this, is completely unacceptable and must be regarded as without any authority.

81. Also since this would create a large measure of inequality between accused persons who are brought before domestic courts, and persons who - for the same alleged offenses ! - would have the hard luck to be indicted before a tribunal like the ICTY.

82. And such a double standard would also deprive the norms, protected by the Convention, of their peremptory character.

83. Such a legal inequality would be a mockery of all basic principles of the rule of law.

84. So even in a situation where it is assumed that in general the jurisdiction with regard to any treatment of Mr. Milosevic would have been transferred to the ICTY, this so-called tribunal would still have to meet the same obligations in safeguarding the human rights set forth in the Convention with respect to Mr. Milosevic as any domestic court.

85. Under these conditions the State of the Netherlands, which would have transferred its primary jurisdiction to the so-called tribunal, remains at least jointly liable, in terms of the Convention, for all human rights violations which are committed by this tribunal, in as much as the State of the Netherlands should not have stipulated sufficient securities against possible breaches of human rights by this tribunal.

86. In general it must be stated that it is also the opinion of the European Commission that States may not escape their obligations under the Convention by delegating powers to private bodies or by maintaining that they had no control over their agents.

Vide 13 DR 231(1978).

87. So even under such circumstances an admissible application against the State which has transferred powers remains possible.

88. It must be understood that a far-reaching transfer of powers to the so-called tribunal has not taken place, as is set out in detail above, but - apart from that - it is true that:

"The transfer of powers to an international organisation is not incompatible with the Convention..".

As is also held by the Commission in M and Co v. FRG.

89. However, the Commission added explicitly to this observation:

"provided that within that organisation fundamental rights will receive an equivalent protection."

See application No. 13258/87, Dec. Adm. Comm., 33 YB 46, at 52 (1990).

90. So even when it is assumed, on a purely theoretical basis, that all jurisdictional powers with regard to Mr. Milosevic were to be transmitted to the so-called tribunal, this still could have been done only in accordance with the Convention and with full guarantee that these fundamental rights of the Convention would receive an equivalent protection.

91. Since in that specific case of M and Co v. FRG protection was afforded under European Union Law, the Commission declared the application inadmissible *ratione materiae*.

92. But even while the Commission declared the M and Co-application inadmissible, the Commission reiterated that the parties to the Convention remain responsible:

"[f]or all acts and omissions of their domestic organs allegedly violating the Convention regardless of whether the act or omission in question is a consequence of domestic law or regulations or of the necessity to comply with international obligations. [T]he Commission recalls that 'if a State contracts treaty obligations and subsequently concludes another international agreement which disables it from performing its obligations under the first treaty, it will be answerable for any resulting breach of its obligations under the earlier treaty. (cf. No.235/56, Dec.10.6.58, Yearbook 2, p. 256(300)). 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. Otherwise the guarantees of the Convention could wantonly be limited or excluded of their peremptory character. 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). Therefore the transfer of powers to an international organisation is not incompatible with the Convention provided that within that organisation fundamental rights will receive an equivalent protection." (ibid. at 51-52)

93. It is a matter of fact that, if the State of the Netherlands were supposed to have - more or less - transferred jurisdictional powers, originating from its own sovereignty, to the tribunal, this should have happened by way of the above mentioned Agreement between the Kingdom of the Netherlands and the United Nations. And it would then be the obligations arising from this treaty, which would possibly disable the State of the Netherlands from performing its obligations under the Convention. As it was the Netherlands that entered voluntary into this agreement.

94. So the State of the Netherlands remains, in any case, answerable for every breach of human rights under the authority of the tribunal, in as much as the Netherlands has not entered in any agreement that would have provided and safeguarded such complete protection of Mr. Milosevic' human rights of the same value as that available under exclusive Dutch jurisdiction.

95. As noted by the Commission in M & Co v. FRG:

"the legal system of the European Communities not only secures fundamental rights but also provides for control of their observance".

That was the conclusion of the Commission with respect to the legal system of the European Communities. But, as will be outlined in more detail here below, this could definitely not be concluded with regard to the so-called tribunal.

96. Since the tribunal's structure and self-fabricated rules do not offer a sufficient substantive and procedural protection for the fundamental human rights guaranteed under the Convention, neither do they provide such a protection in its practice as a performing court such a protection.

97. It is true moreover that in M & Co v. FRG it is stated by the European Commission that it can't be expected from a State which is transferring sovereign powers to an international organisation - under which certainly also the transfer of jurisdictional powers should be understood -, that this State, time and again, in each individual case should examine whether the basic rights of the Convention were respected.

So this judgement also says:

"The Commission has also taken into consideration that it would be contrary to the very idea of transferring powers to an international organisation to hold the member States responsible for examining, in each individual case before issuing a writ of execution for a judgment of the European Court of Justice, whether Article 6 of the Convention was respected in the underlying proceedings."

98. But the Commission could only arrive at this conclusion, because this case was concerning a transfer of powers to the European bodies and since, first of all, it was determined that, as cited above,

"The legal system of the European Communities not only secures fundamental rights but also provides for control of their observance."

99. So the criterion obviously should be, as is also laid down in this judgement and already is cited above, that there has to be provided:

"..that within that organisation fundamental rights will receive an equivalent protection."

100. Thus the conclusion is justified that, as long as it is not guaranteed that fundamental rights in that organisation will receive an equivalent protection, or it is not safeguarded that that organisation will provide for a proper control of their observance, the State which has transferred jurisdictional powers to the organisation in question, can not back out its ultimate responsibility to guarantee the observance of these basic rights.

101. In fact, as long as such a full observance is not ensured, the transferring State itself even could not abstain from the obligation to control, time after time and in each individual case, whether or not there might be a violation of basic rights at issue.

102. So here is the key question with regard to this, as yet, mainly theoretical issue : can the tribunal reasonably be regarded as an international organisation offering a balanced protection of human rights ?

103. If that is not the case, then the States whose intention it is to transfer jurisdictional power to this tribunal - or having already transferred such power -, cannot back out of their ultimate responsibility for the observance of these human rights.

IV.2.b. Final conclusion

104. So the final conclusion can be nothing else than that, whatever way you look at it, the State of the Netherlands preserves its responsibilities under the Convention, even with regard to the exercise of possibly transferred powers. No matter to what extent these powers are actually transferred.

105. As far as such powers are to be considered as actually transferred - which is, as set out here above, mostly not the case - this responsibility of the transferring state can only end when it is fully assured that there would be, in the context of the receiving organisation, an equivalent protection for the Convention's human rights and there would be provisions for control of their observance.

106. As will be elaborated here below, this is definitely not the case within the framework of the so-called tribunal.

V. THE VIOLATION OF THE CONVENTION'S HUMAN RIGHTS, GUARANTEED BY ARTICLE 5, UNDER DUTCH RESPONSIBILITY AND/OR CO-RESPONSIBILITY

V.1. Violation of the Article 5 par. 1-provision of the Convention

V.1.a. Violation of Article 5 par. 1 in general with respect to the requirements of a national legal basis for detention itself and for detention-procedures and/or the requirement of democratic legitimation for such a detention and detention-procedures

107. Article 5 par. 1 ECHR holds an enumeration of all cases in which deprivation of liberty is permitted. This enumeration is limitative.
See Ireland v. UK, Publ. ECHR, Series A, vol. 25 (1978) p. 74.

108. The deprivation of liberty imposed upon Mr. Milosevic is contradictory to what is stated with regard to all situations mentioned in Article 5 par. 1, namely that a deprivation of liberty is only legal and legitimate, when 'in accordance with a procedure prescribed by law' and likewise has to be 'lawful'.

109. With regard to all cases mentioned in Article 5 par. 1 it is required, as is evident from the terms of the opening words of the second sentence 'in accordance with a procedure prescribed by law', that the relevant procedure, by means of which the deprivation of liberty is imposed, has to be regulated in the national legislation, so that the legality and legitimacy of that deprivation of liberty can be tested on that basis.

110. So this national legislation has also to be itself in accordance with the Convention.
See Winterwerp-case, Publ. ECHR, Series A, vol. 33 (1980), p. 19.
111. In addition to this it is also prescribed for each case separately that this deprivation of liberty has to be 'lawful', which means that it also has to be permitted in the national law and that this national law itself should be 'lawful'.
See X v. FRG, Yearbook XIV (1971), p. 342 (346).
112. So these two requirements constitute a double key upon the legality and legitimacy of all forms of deprivation on freedom.
113. It is not asking too much also to apply this standard in the situation of an international tribunal being set up.
114. On the contrary, it must be considered that it was also completely feasible for the Dutch legislature fully to meet these two general and basic requirements at the moment that the possibility of deprivation of freedom by such a tribunal came at issue.
115. In fact, the second requirement, namely that each mode of deprivation of liberty which might be allowable, must be 'lawful' - i.e., law-based - is, nota bene, a basic feature of Dutch national criminal law.
116. And also the first requirement, namely that each mode of allowable deprivation of freedom has to be 'in accordance with a procedure prescribed by law', would have been, if desired, easily met by the State of the Netherlands by establishing such a national legal provision within the framework of the new Dutch law with regard to the implantation of the tribunal into the Dutch legal order: the above cited 'Law, holding regulations concerning the installation of the ICTY'.
117. After all, as being the State designated to facilitate deprivation of freedom by this tribunal on its territory and bearing not only the responsibility to accommodate its national legislation with the demands forthcoming from the establishing and functioning of the tribunal, but also with the responsibility to adapt this new national legislation to the requirements of the European Convention, the Dutch legislator has had enough opportunity to resolve this problem of the first requirement in a suitable way.
118. Nevertheless, the Dutch legislature deliberately neglects to do so.
As it also neglects to create a national provision that detention by this tribunal should be 'in accordance with a procedure prescribed by law'.
119. It must be re-stated: nevertheless.

Because this omission was explicitly pointed out in the Dutch Parliament in the course of the enactment of this 'Law, holding regulations concerning the installation of the ICTY'.

It was pointed out by the Dutch Labour faction (PvdA) in the Final Report with regard to this bill, stipulating:

"A gap is threatening to originate, since the Dutch law requires a legal base in order to keep persons here in detention. This legal base seems to be lacking, as far as the period is concerned in which someone is handed over for prosecution, but has not yet been tried. Article 27 of the Statute of the tribunal gives only a definite answer about the execution of a verdict. Imprisonment is to be according to the applicable law of the country involved. And Article 29 gives only a limited definitive answer. In the Statute there is nothing further to find about custody, except that, according to Article 15, the tribunal should create rules of procedure and evidence."
(Tweede kamer 1993-1994, 23 542, nr. 5, p. 2)

120. So the Dutch Labour Party came with an amendment, the Amendment Van Traa, in order to rectify this omission in the bill. It reads:

"The tribunal is competent to take and hold in custody persons whose arrest is ordered as a suspect by the tribunal."

And gave herewith the following explanation:

"By means of this amendment it is intended to comply with Article 15, par. 1 of the Constitution, saying that by or by virtue of the law the situations are determined in which someone could be deprived of his freedom."

121. It is to be stressed in this connection that it is not only a constitutional obligation, according to Dutch national law, that detention by the tribunal be considered lawful only when there is first created at least a national provision, like the proposed amendment by the Dutch Labour fraction, but that this is after all an obligation, imposed by the Convention.

122. However, the Dutch government refused to accept this amendment, with reference to the above mentioned Agreement between the Netherlands and the United Nations, and concluded the Memorandum in reply to the final report, inter alia:

"This implies that the Tribunal is responsible for the legality of the detention, for the way of execution of this detention, for the guarding and treatment of the detainees in these premises and for the detention regime, applicable to them."

and:

"In principle the Tribunal is responsible for the establishment of the necessary rules with concern to the executions of the detention into the available premises. Rather it will be included in the Agreement between the United Nations and the Netherlands that these regulations have to be in accordance with general standards, determined by the United Nations itself, for the treatment of detainees."

and:

"In so far as this detention is to be going through into the detention premises of the Tribunal, nothing is required to be settled in this present bill."

(Tweede Kamer, 1993-1994, 23 542, nr. 6, blz. 2-3)

123. So the Dutch legislature, consciously and fully aware of the possible choice of whether or not to achieve such a national provision, has deliberately refused to do so. And did create, acting like this, voluntarily and unnecessarily, a legal situation that made it inevitable that in the future, when the tribunal is into operational, not only would this constitutional obligation be violated, but so would be the obligation of the Convention would be violated.

124. Meanwhile nothing came out of the above mentioned promise by the government that 'it will be included in the Agreement between the United Nations and the Netherlands that these regulations have to be in accordance with general standards, determined by the United Nations itself, for the treatment of detainees'.

125. On the contrary, not only is no trace of any such regulation in this Agreement, but such a provision is even explicitly excluded between the treaty parties in this Agreement.

It is true that in Article VI, par. 3 of the Agreement, as is pertinent to this issue, it states that:

"The Tribunal shall have the power to make regulations operative on the premises of the tribunal for the purpose of establishing therein the conditions in all respects necessary for the full execution of its functions" [...]

However, there is no provision in the Agreement, with regard to the rules which the Tribunal will make 'for the full execution of its functions', that rules made with respect to detention should have to meet any standard whatsoever set by the United Nations.

126. And it is even explicitly layed down in the side-letter by the Dutch Chargé d'Affaires, dated 29 July 1994, that precisely the opposite, which means: nothing at all, about the conditions of detention should be stated in that Agreement:

"It is the understanding of the Parties that none of the regulations made operative by the Tribunal based on the power given to it under Article VI, paragraph 3, of the Agreement, shall relate to any question of the treatment of the suspect, accused or other persons detained on the premises of the tribunal; these matters shall be dealt with by the Tribunal in accordance with its competence under Article 15 of the Statute of the Tribunal adopted by the Security Council by its resolution 827 (1993) of 15 May 1993."

(Tractatenblad 1994, nr. 189, p. 17-18)

127. So the Dutch Parliament is deliberately deceived by the Dutch government on this issue.

The Dutch government has given the Dutch Parliament the false hope that the Parliament will continue to have a say with regard to the legislative creation of guarantees about the treatment of detainees would not be parted with completely.

But finally this national say has been completely abandoned.

128. This despite the expressed role, imposed by Article 5 par. 1 of the Convention on the national commitment.

129. However, also into this Article 15 of the Statute, mentioned in the side-letter, it is absolutely not determined that the rules which were to be applied by the tribunal, were to be in accordance with the general standards for the treatment of detainees.

This Article stipulates, on the contrary, only that the judges of the tribunal are supposed to make up themselves their own the 'rules of procedure and evidence', and this 'for conduct in the pre-trial phase'.

And as another task is moreover explicitly mentioned in Article 15 of the Statute: the making of rules 'for the protection of victims and witnesses'.

Yet as far as the making of rules for 'the protection of accused', also the Statute is as silent as the grave.

130. So the final result is that the safeguards as to the procedure on deprivation of liberty and the legality of the detention itself, which the Convention expects to be forthcoming from national regulations, are totally absent.

131. It could not even be said that the alleged basic legitimation regarding this tribunal, namely the Statute, gives any - substitute - regulation on this issue of deprivation of freedom.

The regulation of any procedure with regard to the deprivation of freedom by the tribunal is, on the contrary, transferred completely downwards.

To the tribunal's regulations themselves.

132. So the fact that there was no national involvement of any kind with respect to the regulation of the deprivation of freedom by the tribunal places a breach upon the Convention. This means that all democratic legitimation, which should be an integral constituent of such a regulation, is absent.

133. As far as it would have been possible to put opposite to this a substitutional, pseudo-democratic legitimation, to be represented by the Security Council as an important part of the United Nations, there should have been at least at issue a regulation of this aspect of deprivation of freedom into the Statute.

In any case, even of such a possible substitutional pseudo-democratic legitimation, there has come nothing at all.

It's all transferred down to the so-called tribunal itself. Causing all democratic control on this issue of deprivation of freedom, assumed by the Convention, to be totally lacking.

134. Besides, the regulations made in this respect by the tribunal itself are, to make matters even worse, poor and cannot stand up to even the minimum imaginable standards. Neither in theory nor in practice, as will be made evident further on in this application.

V.2.b. Conclusion

135. So the conclusion is that the detention of Mr. Milosevic is illegal.

136. First of all, since his deprivation of liberty is contrary to the **general** obligation of Article 5 par. 1 of the Convention: that any deprivation of freedom must be based upon a procedure prescribed by law - i.e., according to the jurisprudence of the European Court, prescribed by **national law**.

138. Even any kind of pseudo-democratic legitimation, directly derived from the Security Council as a representative of the United Nations, into the form of the Statute, is missing.

139. Secondly, since his deprivation of freedom is also contrary to the obligation, imposed by Article 5 par. 1 of the Convention, that all modes of detention, mentioned in Article 5 par 1, were only allowable when the specific mode would be 'lawful'.

I.e., would be layed down, according to the jurisprudence of the European Court, in a **national law**.

Or, alternatively, would at the very least derive some pseudo-democratic legitimation directly from the Security Council, as

substitute for the United Nations, along the line of the Statute.

Neither of which is the case.

V.3. Violation of the Article 5 par. 2-provision of the Convention

140. Article 5 par. 2 of the Convention reads, as far as relevant here:

"Everyone who is arrested shall be informed promptly (..) of any charge against him."

And Article 9 par. 2 ICCPR reads, as far as relevant:

"Anyone who is arrested shall be informed at the time of the arrest of any charges against him."

So the term 'promptly', used in the Convention's version of this basic human right, has the explication of 'at the time of the arrest' in the ICCPR's version.

Unmistakably it is a basic requirement that everybody who is arrested shall be enabled to get informed immediately of any charge against him.

141. This basic human right is not compatible with the procedure, layed down in Article 50 of the Rules of Procedure and Evidence, fabricated by the so-called tribunal.

Article 50 of the Rules reads:

"(A)(i) The Prosecutor may amend an indictment:

(a) at any time before its confirmation, without leave;

(b) between its conformation and the assignment of a case to a Trial Chamber, with the leave of the Judge who confirmed the indictment, or a Judge assigned by the President; and

(c) after the assignment of the case to a Trial Chamber, with the leave of that Trial Chamber or a Judge of that Chamber, after having heard the parties.

(ii) After the assignment of the a Trial Chamber it shall not be necessary for the amended indictment to be confirmed.

(iii) (...)

(B) If the amended indictment includes new charges and the accused has already appeared before a Trial Chamber in accordance with Rule 62, a further appearance shall be held as soon as practicable to enable the accused to enter a plea on the new charges.

(C) The accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges and, where necessary, the date for trial may be postponed to ensure adequate time for the preparation of the defence."

142. So, according to the tribunal's rules, the prosecution is permitted to introduce a nearly unlimited number of new indictments against any person already in custody under a certain 'basic' indictment.

143. And that is what has happened with respect to Mr. Milosevic, facing time and again, sometimes extensions of the original indictment, like the original 'Kosovo-indictment', and at other moments brand-new indictments.

Like the 'Croatia-indictment'.
And the 'Bosnia-indictment', even containing a brand-new indictment of genocide !

144. Mr. Milosevic was informed of this last and the most serious charge imaginable nearly half a year after his arrest !
And, moreover, while the alleged events occurred nearly ten years earlier !

145. The absurdity, impudence and obtuseness of this 'Bosnia indictment' of genocide by the so-called tribunal becomes quite clear when it is recalled that Mr. Milosevic was at the time praised by the entire world community for his peace-making role in Bosnia.

146. The so-called tribunal wants to make forget this, in its blatant effort to rewrite Balkan history.

147. And this is all happening under the pretext of 'an amendment' of the indictment.

148. Both this specific Rule and the tribunal's practice are in contravention of this basic human right of Article 5 par. 2 of the Convention, jo. Article 9 par. 2 ICCPR.

149. This tribunal's practice, at least with regard to the charges against Mr. Milosevic, even exceed Rule 50 in ample measure.

And therefore is also a serious abuse of power within the framework of the tribunal's illegal and illegitimate regulations on this field itself.

V.4.a. Violation of the Article 5 par. 4-provision of the Convention

150. The basic right, stating that every one who is detained is entitled to the right to a swift court decision on the legitimacy and legality of his detention, is continuously violated with respect to Mr. Milosevic.

151. On the occasion of the initial appearance on 3 July 2001 before the so-called tribunal and during the subsequent so-called status conferences on 30 August 2001 and 29-30 October 2001, Mr. Milosevic, time and again, denounced the illegality and illegitimacy of his detention in no uncertain terms.

He did so by stressing continuously the illegality and illegitimacy of the so-called tribunal.

152. Reasonably this charge could not be interpreted other than as including a challenge of the legality and legitimacy of his detention and a demand for immediate release.

So this challenge was clearly to be seen as a challenge according to Article 5 par. 4 of the Convention.

Article 5 par. 4 reads:

"Every one who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful".

153. Nevertheless, no response at all has been forthcoming on this continuous complaint, put forward by Mr. Milosevic, that his custody is illegal and illegitimate. This challenge, so clearly laid down already during the first session of the tribunal in his case and subsequently repeated time and again.

154. On the contrary, everytime Mr. Milosevic expressed this challenge and tried to begin explaining and substantiating this complaint, the president in charge was there like a flash to reach out immediately to the button of the microphone, in order to turn it off.

155. So there is certainly no doubt that there are no terms at all for any opinion that there would have been, in the course of this initial appearance and the subsequent status conferen-

ces, a judicial test of the legitimacy and legality of the detention of Mr. Milosevic, or that these court sessions in any way might have been seen as 'taking proceedings' according to the requirements of Article 5 par. 4 of the Convention.

156. On the contrary, the judge of the tribunal has done the utmost to prevent the issue of the legality and legitimacy of his detention from being raised by Mr. Milosevic and to prevent him from explaining his view.

157. This under the evident pretext that such foundations by Mr. Milosevic for his stand would be a purely political statement, not allowable in the court-sessions in question. Without giving any further arguments for this position.

158. So the protocols of the initial appearance of 3 July 2001 read with respect to this interferences:

"THE ACCUSED: I consider this Tribunal a false Tribunal and the indictment a false indictment. It is illegal being not appointed by the UN General Assembly, so I have no need to appoint counsel to illegal organ.

JUDGE MAY: Mr. Milosevic, in due course, you will have the chance to put motions challenging the jurisdiction or any other preliminary matters which you you wish to do. We take it that you wish to proceed without counsel, although it's a matter which you may wish to reconsider in due course. This Initial Appearance is simply to deal with these matters; first of all, the indictment itself and, secondly, for you, if you wish, to enter your plea of guilty or not guilty to it."

and:

"THE ACCUSED: [Interpretation] Mr. President --
JUDGE MAY: Just one moment please. The Trial Chamber will treat your response as a waiver of your right to have the indictment read out. The next part of the procedure is to move towards having that indictment put to you."

and:

"THE ACCUSED: [Interpretation] This trial's aim is to produce false justification for the war crimes of NATO committed in Yugoslavia.

JUDGE MAY: Mr. Milosevic, I asked you a question. Do you wish to enter your pleas today or are you asking for an adjournment to consider the matter further ?

THE ACCUSED: [Interpretation] I have given you my answer. Furthermore, this so-called Tribunal...

(Trial Chamber confers)

JUDGE MAY: The Rules state that if an accused fails to enter a plea, then the Trial Chamber shall enter a plea of not guilty on his behalf. Mr. Milosevic, we treat your response as a failure to enter a plea, and we shall enter pleas of not guilty on each count on your behalf.

THE ACCUSED: [Interpretation] As I have said, the aim of this tribunal is to justify the crimes committed in Yugoslavia. That is why this is a false Tribunal--

JUDGE MAY: Mr. Milosevic, this is not --

THE ACCUSED: [Interpretation] -- an illegitimate one.

THE INTERPRETER: I'm sorry, the microphone is not on.

JUDGE MAY: Mr. Milosevic, this not the time for speeches. As I have said, you will have full opportunity in due course to defend yourself and to make your defence before the Tribunal. This is not the moment to do so."

And the protocols of the Status Conference of 30 August 2001:

JUDGE MAY: Turning then to the accused. Mr. Milosevic, are there any issues you wish to raise in connection with your case or with your physical and mental condition? You know the rules. No speeches at this stage. You'll have the opportunity to defend yourself in due course. But if there are issues you want to raise about the case or about your condition, then this is the chance to do so.

THE ACCUSED: Well. I would like to know, first of all, can I speak or you are going to turn off my microphone like the first time?

JUDGE MAY: Mr. Milosevic, if you follow the rules, you will be able to speak. If you deal with relevant matters, of course you will be able to speak.

THE ACCUSED: Well, that is my next question. I would like to make presentation on the illegality of this Tribunal.

JUDGE MAY: You've already put a motion in on that topic. Are you asking to be able to address it -- the Chamber orally on that topic?

THE ACCUSED: If I cannot make the presentation orally that can take 40 minutes, I will give that in writing, and my -

JUDGE MAY: Yes. Well. Why don't you -- sorry.

THE ACCUSED: My associates will give it to the press if you don't allow me to make it public here.

JUDGE MAY: If you make it in writing, it can be made public in due course. If you have it in writing, it may be more convenient to deal with it in that way.

THE ACCUSED: Well, that is your decision.

JUDGE MAY: Very well.

THE ACCUSED: So we have to communicate as civilised persons, not with switching off the microphone or to use the force for that so we can understand each other, what is possible, what is not. So I will leave it to you in writing.

JUDGE MAY: Very well."

and:

"THE ACCUSED: The third question is why I am isolated from the press, especially in the circumstances in which every single day there is something printed or broadcast against me as a pure lie? So you are keeping me in isolation not to communicate to the press even by telephone, which is

only -- which is available to me. There are some representatives of the press. Maybe there are somebody within them who would like to know the truth. I believe that nobody has to be afraid of the truth, and if there is on one side all that machinery you represent, all that secret services, military machinery, media machinery, and everything else, and on my side only the truth, if you are isolating me from the communications with the press, then it is clear that it is completely discriminatory, and you cannot even mention the idea of even-handedness in any kind of that procedure you have in mind.

JUDGE MAY: Mr. Milosevic --

THE ACCUSED: And please, I want to remind you, I'm not recognising this tribunal, considering it completely illegitimate and illegal, so all of those questions about counsels, about representations, are out of any question. I saw in the newspapers that --

JUDGE MAY: Very well. Mr. Milosevic, there must be an end to this. Just one moment. Let me deal with the matters you raised. The Rules of the Detention Unit provide that there should not be communication with the press. Those are the Rules and they must be followed. They don't discriminate against you. They are applied to all the accused who are in detention. As for your point about not recognizing the tribunal, you have made it and we have heard it and there is no need to repeat it. Now, is there anything else you want to add ?

THE ACCUSED: Well, I understood that they were dealing with that problem of illegality of the Tribunal as a problem of jurisdiction. It is clear to any lawyer in the world that question of jurisdiction can be open when juridical institutions are concerned, and you are not a juridical institution; you are a political tool.

JUDGE MAY: You've made all these points. Mr. Milosevic, we're not going to listen to -- we are not going to listen to these political arguments. You have your motion on jurisdiction which you can put in and which we will consider.

THE ACCUSED: But that is not a question of jurisdiction, just because of that --

JUDGE MAY: We will consider it.

THE ACCUSED: You are a political tool of those who --

JUDGE MAY: Very well. This hearing will be adjourned now untill Monday, the 29th of October."

And the protocols of the so-called status conference of 29 October 2001:

"JUDGE MAY: Mr. Milosevic, it's now your opportunity to address us on the motions before us today. There is no need to repeat what's in the written submissions because we've read all those. It's also your opportunity to address us on the Prosecution motion to amend the indictment, if there's anything you want to say about that, it's now your chance to do so.

THE ACCUSED: [Interpretation] In the first place, I am not submitting any motions to this court because I do not recognise this Court. If what I am saying into this microphone is considered by you to be a submission on my part, that's up to you.

Secondly, with respect to amicus curiae, it is my understanding that your explanation, when appointing the amicus curiae, was that thereby a contribution would be made to a fair trial, if in such an illegal proceedings one can talk of a fair trial. I think in doing so, you have added a new concept to a set of new concepts, because now we are in a situation when two teams are working for the cause of the same party. So this could now be termed as the "Hague fair play".

As for this flood of new amendments and indictments, this deluge cannot flood and cover up the truth, because the truth is known to millions of people.

I have heard here, as I heard on the previous occasion, some concern because I am not reading the documents from this false indictment, because allegedly I should know what I am charging with.

Let me tell you, I know very well what I am being accused of. I haven been accused because in a legal way and with legitimate means on the basis of the right to self-determination that belongs to every nation, I defended my nation. I had the honor to defend my nation from the criminal aggression carried out against it, and to defend my people from terrorism whereby the the Clinton administration cooperated closely with.

And this is also something that no one will be able to deny.

The truth cannot be sunk by any kind of flood of false accusations.

And I have no intention still to familiarise myself with the contents of something that has been totally fabricated and that is far from the the truth.

As for the polemics I have been listening to as to who was competent and who was not and whether a particular government should have done something prior to another government, I wonder and I am astonished that not even the attorney from Belgrade, a member of the amicus curiae, that he should be speaking about competencies while forgetting that no government had the competence to enter into arrangements whereby the Constitution of Serbia and the Constituiton of Yugoslavia was being violated.

I'm glad that the gentlemen from the amicus curiae are aware that they cannot speak on my behalf and that I have nothing in common with them.

JUDGE MAY: Very well. Thank you.

(Trial Chamber confers)

JUDGE MAY: We will consider the motions, preliminary motions, on which we have been addressed this morning."

159. It is clearly outlined in the course of the above quoted interferences, that every opportunity is seized by the so-called tribunal to keep Mr. Milosevic away from the core of

the matter: this tribunal, and so his detention, being only an illegal and illegitimate political tool.

160. This is helped by phrases like: 'This is not the time for speeches'; or: 'We are not going to listen to these political arguments'; or: 'If you deal with relevant matters'.

161. While, on the other hand, there are introduced hypocritical and malignant phrases like: 'Are there any issues you wish to raise in connection with your case ?' And: 'If there are any issues you want to raise about your case, then this is the chance to do so.'

162. While Mr. Milosevic is constantly and systematically deprived of the opportunity to speak freely on his defence and to put forward those arguments relevant to reveal the truly political nature of this so-called tribunal, the amici curiae are given an uninterrupted and indefinite speaking time.

Speaking about all issues they want to deal with. Including the political matters which Mr. Milosevic was prohibited from arguing on.

As was to great extent the case during the so-called status conference on 29 October 2001.

The amici curiae were given the opportunity to speak about these so-called 'political matters' as registered on page 37 up to page 40 and page 50 up to page 56 of the protocols of this status conference.

163. The same is true for the prosecutor.

She also got the opportunity to speak freely and unimpededly for as long long as she wanted on all 'political' issues, connected with the case of Mr. Milosevic from her point of view.

As is registered in the protocols of this status conference of October 29th on pages 56 to 66.

164. And of course the tribunal finally could not refuse Mr. Milosevic the opportunity also to say something at the end. This, however, was done explicitly only under the deliberate wrong assumption that what, among other things, was at issue, was the consideration of a preliminary motion by Mr. Milosevic.

165. This misrepresentation misled Mr. Milosevic and threw him off balance.

Mr. Milosevic, after the flood of interruptions by the tribunal during the previous court session already in the dark about the very right even to mention in passing any question which could be interpreted by the tribunal as 'politics'!

166. The so-called tribunal thus distorting his 'right to speak' on 'political' matters closely connected with his case, only granted on this one occasion, furthermore purely a hollow ritual, by not addressing one single question to mr. Milose-

vic, showed also on this way that it is dead set on trivializing whatever defence by Mr. Miliesovic might present.

167. Thus also also this time reducing his 'right to speak' to an absolute mockery and a pure window-dressing.

168. As already has been stressed, on all previous occasions Mr. Milosevic was simply prohibited from speaking about these kinds of 'politics' by the so-called tribunal.

169. And this while, according to the so-called tribunal's own decisions, a jurisdictional plea cannot be considered as barred from examination by the possible political or non-legal character of the issues that may be raised.

So that the accused positively should be allowed to argue political and non-legal arguments to show the lack of independence of the so-called tribunal.

As is layed down for instance in par. 25 of the Tadic interlocutory appeal decision.

170. So in its fanaticism to create firm conditions that Mr. Milosevic can be brought down to, the so-called tribunal doesn't give even a damn about its own jurisprudence.

171. Mr. Milosevic has stressed permanently that he doesn't recognise the so-called tribunal.

The consequence is that none of his acts, wordings or writings can be interpreted as acts, wordings or writings within the tribunal's framework and regulations. Unless explicitly is stated the opposite.

Nevertheless, the tribunal has, as is already stipulated above, deliberately and in spite of Mr. Milosevic's intentions, regarded some documents, produced by him, as a 'preliminary motion' in the sense of the regulations of the tribunal.

This because it suited the tribunal, since it could interpret this as Mr. Milosevic performing an act in accordance with the tribunal.

172. However, even in this situation where Mr. Milosevic during the status conference of the 29th October repeated urgently - as is quoted above - that none of his documents should be regarded as 'a priliminary motion' in the sense of the tribunal's regulations, the so-called tribunal passed over all this in silence.

And it held on, in silence and without any further argumentation, male fides, to this false interpretation.

173. Instead of this, the tribunal should have taken the stand that these documents were only to be considered in the way they were intended: namely, as a challenge, once again and this time in a written form, by Mr. Milosevic to the legitimacy and legality of his detention according to Article 5, par. 4 of the ECHR, juncto Article 9, par. 3 ICCPR.

174. And again, another attempt to induce the court to deal with these provisions.
No more or less than that.

175. But instead of this, the tribunal considered Mr. Milosevic's documents a 'preliminary motion' in the sense of the tribunal's regulations at one hand, which was wrong, and at the other hand it qualified - afterwards ! - this alleged 'preliminary motion'-procedure as - also - 'proceedings' in the sense of Article 9, par. 3 ICCPR jo Article 5, par. 5 ECHR, which is - as is to be exposed further on - also wrong.

176. The tribunal came to this twofold interpretation of this procedure in a serious attempt to restore an earlier omission. Namely, it had still not met the requirements of this human right's provision with regard to the position of Mr. Milosevic.

For till that very moment of the status conference of 29 October 2001, the tribunal had permanently failed to comply with this peremptory norm, according to a reasonable interpretation to consider as continuously invoked by Mr. Milosevic from the beginning of his detention on the 28th June 2001 in the premises of the tribunal.

177. An attempt by the tribunal, which was, anyhow, doomed to fail.

Because, first of all, the procedure which was followed was wrong.

And secondly, this procedure was, moreover, very delayed.

178. So, if the tribunal had treated the documents produced by Mr. Milosevic indeed as they reasonably were to be interpreted, namely exclusively as another attempt - again and this time on a written basis - to force proceedings, and finally a decision, all in accordance with Article 5 par. 4 ECHR, jo. Article 9 par. 3 ICCPR, then this treatment still would have failed to meet essential requirements of this provision.

Because of essential procedural deficiencies.

And because it would still lack the imperative speed, as required in terms of this provision.

179. Which means that, in any case, there still would have been a situation of failure to meet the provision's requirements, even when the tribunal had finally manifest the intention to comply with this provision in the course of October-November 2001.

180. So that, in any case, even under such terms, there would have been a violation of this human right of Mr. Milosevic.

181. The first breach of the obligations for the fulfilment of this provision, which would have taken place, even under the above mentioned presupposed conditions, is a procedural failure.

Of course, Mr. Milosevic should have been notified beforehand, that a legal procedure, during which a test of the legality and legitimacy of his detention would have allegedly been at stake, was to be implemented.

It is of course unacceptable that any detainee, challenging the legitimacy and legality of his detention, should not have a fair chance even to be aware at the 'moment suprême' that such 'proceedings', as stipulated in this provision, were to be performed !

Nevertheless, such a preposterous situation was here at issue with regard to Mr. Milosevic.

182. This should be considered utterly inconvenient with the very essence of what to be seen as 'taking' proceedings in the sense of Article 5 par. 5 of the Convention.

And also this is in accordance with neither the jurisprudence of this Article by the European Court itself, nor the general requirements of due procedure and fair play !

183. Nevertheless, the tribunal suddenly pushed forward in the context of the so called 'Decision on preliminary motions', dated 8 November 2001, that the written documents of Mr. Milosevic were to be regarded not only as a 'preliminary motion', but also, from that very moment on and like a bolt from the blue, as a recourse to the provision of Article 9 par. 3 ICCPR - and so to Article 5 par. 4 of the Convention -.

184. This was came to pass even though, in the course of these alleged 'proceedings', nobody - and certainly not Mr. Milosevic ! - was aware that the procedure that was taking place, was to be considered as 'proceedings' in the sense of the Article 9 par.3 ICCPR, jo. Article 5 par. 4 Convention-provision.

185. Furthermore it was not possible to identify the procedure which was followed, as a procedure in the sense of this human rights provision, since this procedure was definitely not in accordance with the requirements of the term 'proceedings', as used similarly into Article 9 par 3 ICCPR and Article 5 par 4 ECHR.

186. Of course it is unacceptable that the demands on 'taking' and 'proceedings' might be regarded as having been met by such, from the perspective of the Convention, quasi-'proceedings', of which nobody even was aware, at the moment that they took place, that they actually were taking place. Not even the tribunal itself.

And certainly not the most interested party, Mr. Milosevic !

187. After all, the Article in the tribunal's regulations, dealing with preliminary motions, namely Rule 72 of the Rules of Procedure and Evidence, as amended 12 July 2001, doesn't mention at all the testing of the legality and legitimacy of detention as being within its scope.

And moreover, the enumeration, laid down this Rule 72, must be seen as limitative.

So that, reasonably, nobody should expect, in advance, that the tribunal was to go to qualify the decision within the framework of the so-called 'preliminary motion' as a decision in the sense of Article 9 par. 3 ICCPR, jo. Article 5 par. 4 ECHR, and the procedure followed within the framework of this 'preliminary motion' as 'proceedings' in the sense of this provision.

188. It is true that it is the official view of the State of the Netherlands that it might be possible to pick up the trail of the right of Article 5 par 4 at Rule 65 of the Rules of Procedure and Evidence of the so-called tribunal. However, this is an obvious misrepresentation.

Rule 65 deals only with the possibility of requesting a provisional release.

Regardless of the question whether the detention would be legal or illegal.

This provision seems to be only a grant.

So the character as well as the possible outcome of the provision of Rule 65 differ greatly from the the provision of Article 5 par. 4 of the European Convention.

189. That neither Rule 72, nor Rule 65, nor any other of the tribunal's regulations provides a basis for meeting the requirements of Article 9 par. 3 ICCPR and Article 5 par. 4 ECHR is also explicitly admitted by the tribunal itself.

In the 'Decision on preliminary motions' of 8 November 2001 the so-called tribunal itself states:

"38. This provision is not reflected in the International Tribunal's Statute. However, as one of the fundamental human rights of an accused person under customary international law, it is, nonetheless, applicable, and indeed, has been acted upon by this International Tribunal".

190. So this view of the State of the Netherlands that Rule 65 might be seen as an equivalent provision to Article 5 par. 4 of the Convention is not even shared by the so-called tribunal itself.

191. Evidently the absence of an antipode of Article 9 par. 4 of the ICCR - and so of Article 5 par. 4 of the ECHR - into the Statute of the so-called tribunal constitutes a serious omission.

192. This omission involves not only that the procedure which was finally followed at the moment that the tribunal decided to pick up this peremptory obligation was highly deficient, but also that another basic requirement of Article 9 par. 3 ICCPR jo. Art. 5 par. 4 ECHR was not met at all. And that is the requirement of speed.

193. The tribunal tries to create the impression that this specific moment in October/November 2001 was the first moment

to interpret the continuous challenge of the legitimacy and legality of the tribunal, as put forward by Mr. Milosevic from the beginning of his detention at the end of June 2001 as an appeal upon this human rights provision.

194. The 'Decision on the preliminary motions' of 8 November 2001 says:

"40. One of the essential features of the right of an accused person to challenge the legality of his detention is that such a challenge should be heard as promptly as possible."

'As promptly as possible' is here to be understood as: as soon as this challenge is made.

195. As is demonstrated above, Mr. Milosevic has raised this challenge already at the first court session, the initial appearance on the 3rd of July 2001.

196. The text of the Decision continues:

"For that reason, the Chamber will treat this motion as proceedings by which the accused is challenging the legality of his detention."

197. First of all, as is stressed above, there was no motion at all by Mr. Milosevic. And secondly, doubtless this challenge was already made by Mr. Milosevic many months earlier. So this action by the tribunal was definitely not carried out 'promptly' at all.

198. And this paragraph of the 'Decision' finally states:

"The Chamber is in the position to do this because the challenge has been raised by the accused, and it has heard arguments on this question from all parties, as well as the amici curiae."

199. First of all there is no reason why the tribunal should not be seen as being 'in the position to do this' months before.

Secondly, the suggestion that this challenge was only raised recently is false.

Thirdly, there is no reason why it would not have been possible to hear 'all parties' earlier.

And fourthly, it is certainly not an obligation of this provision to hear 'all parties'.

200. So clearly the tribunal is trying to cover up with these would-be argumentation that it has completely failed for a long while to comply with the requirements of this basic right.

And that it is now undertaking to redress this failure.

Trying to force the implementation of this provision into the straitjacket of a procedure, coincidentally at hand at the very moment that the tribunal realised itself that it was in serious default.

Giving shape to this provision to late and on a unlawful way, not according its basic requirements.

201. This supports the conclusion that the so-called tribunal actually is not interested at all in this basic right.

Though the so-called Yugoslavia-tribunal has now is existed for already many years and there have already been many people accused, this issue of the challenge of the legality and legitimacy of detention has never been raised before in the context of this tribunal.

With only one exception: by the Rwanda Tribunal in 1999 in the Barayagwiza-case.

To put it another way: the so-called tribunal has, till now, obviously and consistently been succesful in avoiding to identify and to handle any and all complaints about the legality-issues of detention as complaints in the sense of Article 5 par. 4 of the Convention.

202. So it sure that the so-called tribunal has turned this basic right into an illusion.

And that the wordings, quoted below, are only window-dressing and lip service paid to the peremptory character of this norm.

For the tribunal continues in the above quoted decision:

"39. In Barayagwiza (44) the Appeals Chamber of the International Criminal Tribunal for Rwanda stresses the importance of the right of the accused to invoke that provision, which in some common-law jurisdictions is called habeas corpus",

which doesn't mean at all that the tribunal doesn't make this basic right an illusion, since it is now sure that within the framework of the tribunal's regulations, there is no recourse at all to such a provision as required by Article 5 par. 4 of the Convention, and this is by now clearly revealed.

203. And since it is, after all, not only the procedure of the so-called 'preliminary motions', but it are also the procedures of the initial appearance and of the status conferences, held by the tribunal, which could not possibly be seen as a provision which affords the detainee the right 'to take proceedings', as stipulated in Article 5 par. 4 of the Convention.

This is a matter of fact, just because this procedure of the so-called preliminary motion and the procedure of the initial appearance and status conferences share both the same failure, namely not giving Mr. Milosevic the opportunity to give in further details his view on the issue.

And this opportunity to give one's further opinion is to be considered a requirement of adequate proceedings in the sense of Article 5 par 4 by the European Commission.

See Report European Commission dated 15 December 1977, par. 103 in the Winterterp-case.

204. So there is certainly no doubt that there are also no terms at all for any opinion whatsoever that the detention of Mr. Milosevic is based upon a judicial test. A judicial test preceded by a course of proceedings that provides with adequate guarantees.

See ECHR 18 June 1971, Publ. ECHR, Series A, vol. 12 (1971), p. 40-41.

205. And, with respect to the Tribunal's regulations, there is also a final failure in the light of the requirements of Article 5 par. 4.

206. Paragraph 4 gives the right to a decision by a 'court'.

In the Neumeister-case the European Court has assigned as the decisive criterion with regard to this point that the authority, competent to decide:

"must be independent, both of the executive and of the parties to the case."

See ECHR 27 June 1968, Publ. ECHR, Series A, vol. 8 (1968), p. 44.

207. So the final point is this. Since the set-up of the tribunal is deliberately so chosen as to represent a glaring breach on the principle of the separation of powers, finally nothing will come of 'independence', either of 'the executive' - since this tribunal is its own executive -, or of the 'parties to the case' - since this tribunal is also expressly a party to this case.

208. So even if the tribunal were able to develop a manner to deal with the obligation to offer some kind of provision in order to challenge the lawfulness of detention, such a provision would not be able to meet the requirements of Article 5 par. 4 of the Convention.

209. Even then it would remain impossible to implement this specific requirement. Because this 'court' fundamentally lacks the imperative independence.

210. The consequence of this is that for anyone who falls into the hands of this so-called tribunal, there is no adequate recourse to a provision, like Article 5, par. 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is part of basic human rights.

211. Mr. Milosevic's attempts to find otherwise protection for compliance with this basic right, by seeking access to the domestic - Dutch - court, have failed, now that this domestic court feels that it has to declare itself incompetent with regard to the protection of Mr. Milosevic's human rights.

212. All this makes it utterly clear that so far there has been no guarantee whatsoever that Mr. Milosevic can exercise this fundamental right.

In fact, until this very moment, this fundamental human right is simply denied him.

213. Besides, it is to be taken into account that Article 5 par. 4 of the Convention also establishes the right to challenge the legitimacy and legality of the detention - both formal and material - not only one time, but in regular control.

See the Winterwerp-case, in which is stated that the institute of detention:

"would appear to require a review of lawfulness to be available at reasonable intervals."

See ECHR 24 October 1979, Publ. ECHR, Series A, vol. 33 (1980), p. 23.

So to deny Mr. Milosevic this basic right, means consequently to deny him a fundamental right that does not occur just once, but is permanently recurring.

V.4.b. Conclusion

214. The deprivation of liberty to which Mr. Milosevic is submitted is also illegal and illegitimate, since the right of Article 5, par. 4 of the Convention is continuously denied to him by the so-called tribunal.

The tribunal even lacks a provision to meet this human right.

215. Alternatively, it must be stated that the so-called tribunal constantly denies him constantly the recourse to this provision in accordance with its requirements.

This is occurring deliberately and/or because of impotence as a result of the tribunal's structure and the content of its regulations.

216. Instead the tribunal finally offers a quasi-provision. The only right conclusion with respect to this quasi-accommodation, made under the pretext of a procedure in accordance with the provision of Article 5, par. 4, is that not only is the

requirement of a 'speedy decision' not met, but also that the so-called decision, made a long time after the beginning of this challenge to the legitimacy and legality of the detention, is also not taken in accordance with the other requirements concerning this provision, especially the requirements with regard to 'taking proceedings'.

V.5.a. Violation of the Article 5-right to liberty and security by illegal kidnapping, extradition to the Netherlands and surrender to the tribunal

217. It is to be considered as, on the one hand, a basic right with a separate identity and, on the other hand, as a right connected with the right of recourse to the judiciary in order to test the legitimacy and legality of a detention, as guaranteed in Article 5 par. 4 of the Convention, jo. Article 9 par. 4 ICCPR, that everybody is entitled to seek legal protection against extradition and surrender.

218. And it is also the State of the Netherlands, which fully recognizes this right as a basic right, inextricable from Article 5 par. 4 of the Convention, and subsequently also with Article 9 par. 3 ICCPR.

219. This recognition of the basic character of this right by the State of the Netherlands is, inter alia, expressed by the above-cited 'Law, holding regulations concerning the installation of the ICTY'.

A basic feature of this domestic law is that it holds the principle that the transfer of accused to the so-called tribunal can not be anyway in the least an automatic activity. And that, in any case, intervention by the (Dutch) judiciary is required in order to make such transfer legal and legitimate.

220. According to that principle, this law contains a series of provisions, in order to give shape to this principle.

221. The basic assumption of the State of the Netherlands is that the State is obliged to co-operate with the so-called tribunal.

But this obligation does not mean at all that there exists any obligation to comply blindly with all requests of the tribunal, also in the sphere of extradition and surrender.

222. So after first stating that there should be a co-operation with the tribunal, the Dutch government nevertheless in

the Explanatory Memorandum of the 'Law, holding regulations concerning the installation of the ICTY' goes on to state:

"We are of the opinion that States have the right, and in front of the persons put under custody the duty, to inquire whether they have in concrete circumstances indeed the obligation to co-operate with the Tribunal. Ultimately is here at issue the deciding of the legality of deprivation of liberty in the sense of Article 9 par. 4 of the International Covenant on Civil and Political Rights, under which every Contracting State which applies deprivation of freedom has to offer access to the own national judge. That's why the assignment of a role to the own national judge, as foreseen in Articles 2-5 can not be avoided.

Article 3 deals with the phase of the provisional arrest, preceding the consideration by the judge of the request for extradition and surrender to the Tribunal.

(...)

It is prescribed that a suspect, arrested into the Netherlands, is to be brought before the prosecutor in the Hague.

This is connected with the fact that in Article 4 the Regional Court in the Hague is declared, under exclusion of other courts, to be the competent court, in order to deal with surrender cases. (...)

Article 4 settles the procedure with regard to the considerations of and the decision on requests to surrender. The grounds which enable the judge to inquire the admissibility of the surrender are limited to those, mentioned in paragraph 3 (...).

The Minister of Justice, as the representative of the State, should decide finally upon the request, as it is applied by the Tribunal, and should take care, if the request is granted, that could be complied with the requirements of Article 5.

(Tweede Kamer 1993-1994, 23 542, nr. 3, p.4-5)

223. The Articles 2-5 of the 'Law, holding regulations concerning the installation of the ICTY' read as follows:

Article 2

'At the Tribunal's request persons can be surrendered to the tribunal due to penal acts to which the Tribunal is competent according to its Statute.'

Article 3

1. At the Tribunal's request persons whose arrest is warranted by the Tribunal and who were found into the Netherlands, can be placed under custody.
2. Every prosecutor and deputy-prosecutor is competent to order such a custody.

3. The content of the Articles 14, paragraph two up to and including five, 15, 16, paragraph one, ad a and 17 of the Law on Extradition is applicable accordingly, on the understanding that the person arrested should be brought in as soon as possible to the prosecutor in the Hague.

Article 4

1. In order to deal with requests by the tribunal with regard to surrender the Regional Court in the Hague is exclusively competent.
2. The Articles 21 up to and including 27 and 28, first paragraph, of the Law on Extradition are applicable accordingly.
3. When the court, dealing with the admissibility of the request by the tribunal, shall decide either that it can not be determined that the person brought into the court is the one whose surrender was requested, or that the surrender was asked with regard to penal offences, which are, according to its Statute, apparently beyond the competence of the Tribunal, then the court in its judgement will rule out the surrender.
(...)

Article 5

After granting the request with regard to surrender the person who is to be surrendered will be placed immediately at the disposal of the Tribunal. A deprivation of liberty, ordered according to Article 27 of the Law on Extradition, can be continued up to this moment.'

224. So the system which the Dutch State has in mind, within the relationship between the State of the Netherlands and the so-called tribunal with respect to surrender, is clear and plain:

with respect to the issue of surrender to the so-called tribunal explicitly a prominent role is allocated to the Dutch judiciary.

225. And it is the Dutch judge, who is specifically assigned by the Dutch legislator for this task, who finally has the last word with respect to such a surrender.

226. That legal obligation, namely to follow the way along the Dutch judiciary and not to surrender automatically on a demand by the so-called tribunal, has been clarified and underlined once again in the Memorandum in reply to the final report with regard to the bill:

"States have the obligation to lend their co-operation to the Tribunal, as asked, in cases within the sphere of competence of the Tribunal. But there lies also a responsibility - and up to the person who is to be brought

before the penal court the duty - to check whether the obligation based upon Article 29 exists indeed in any concrete case.

These checks will be, as we will assume, in a concrete situation marginal, but nevertheless with respect to content."

And elsewhere in the Memorandum:

"Secondly, Article 2 intends to clarify that the procedure with regard to surrender can not take place otherwise than according to the subsequent Articles (the Articles 3, 4 and 5), i.e., exclusively in accordance with a procedure, which provides for the intervention by the Dutch government in the form of the Public Prosecutor, Regional Court in the Hague and the Minister of Justice."

(Tweede Kamer 1993-1994, 23 542, nr. 6. p. 6 and 7)

227. When it is to be considered a general legal principle that surrender to the so-called tribunal cannot be handled as an automatic activity, but that it is always the judge who has to have the last word with regard to surrender, at least when persons are concerned who came across and were arrested on Dutch territory, then this same principle of legal protection should also be applicable to any accused person, arrested abroad.

Also according to Dutch legal perception.

228. Otherwise it would raise the anomaly that an individual, arrested abroad would enjoy less legal protection than the same individual - or any other person - in the case that he had been arrested on Dutch territory.

Such a inequality in legal protection would be unacceptable and so it cannot be presupposed that the Dutch government would endorse such an inequality.

229. It is consequently viewed in that light, that the system of Article 7 of the 'Law, holding regulations concerning the installation of the ICTY' must be interpreted.

Article 7 of this domestic law reads:

- '1. Transit of persons who are to be surrendered as suspects to the Tribunal by the authorities of a foreign State, shall happen under orders of Our Minister by and under guarding of Dutch civil servants.
2. (...)
3. The transporting outside the premises under the authority of the Tribunal of persons who are in the Netherlands deprived of their freedom, by order of the Tribunal, shall happen at the request of the Tribunal under orders of Our Minister by and underguarding of Dutch civil servants.'

230. So the fact that in such a situation of transport of a person, suspected by the so-called tribunal and arrested abroad, it is not prescribed by this domestic law that it is required that also such a person, first of all, has to pass before the Dutch judge, can only be reasonably explained when it is assumed that the Dutch legislature evidently presupposes that such a check by the judiciary would already have taken place in the country where the person concerned was arrested.

231. And, as a further assumption, that since the foreign judiciary in the land of origin would have already provided adequately for this legal protection and, as a consequence, the services of the Dutch judge would not be needed in order to meet this legal obligation.

232. This is also understood to be the case by the members of Parliament, the co-legislator.

So it became clear, among other things, by the words of the MP Sipkes at the oral debate on the bill:

"As far as I am concerned, the protection of the civilians - not only of the Dutch civilians, but of all civilians who possibly could be brought in here - remains really guaranteed and shall every State undertake investigations by itself whether the person concerned could come indeed before the tribunal; and is later on to be considered whether the granting of a pardon would be at issue.

To my opinion, there shall be then no contradiction with what is an obligation, to be fulfilled as legislator, in the direction of the subjects, namely to protect them, as far as they are under the Dutch jurisdiction."

(Tweede Kamer 1993-1994, 3 March 1994, 57-4243)

233. In the case of Mr. Milosevic nothing about this legal protection was realized.

He was extradited and surrendered on 28 June 2001 by a joint operation of certain elements of the Serbian government, the governments of a number of NATO-countries, especially of course of the Netherlands, and elements of the so-called tribunal.

234. Mr. Milosevic had resorted to the Yugoslav judiciary, in order to safeguard his right to bring about a final judgement by the domestic judge on the legality and legitimacy of an intended extradition and surrender to the so-called tribunal. Since it is, as clearly demonstrated above, a basic right for everyone who is about to be extradited and surrendered.

235. A fundamental right, also explicit according to the Dutch legislature.

236. In the case of Mr. Milosevic, the competent court to deal with this question was the Yugoslav Constitutional Court.

237. A Decree, made by the Federal Government, in order to establish a legal base for extradition of Yugoslav citizens and with regard to possible extradition and surrender to the so-called tribunal, was suspended by the Yugoslav Constitutional Court by a provisional judgement dated 28 June 2001.

In the same judgement, any action which could be performed by anyone, on the basis of the Decree was prohibited by the Constitutional Court.

All further decisions were adjourned.

This judgement of the Court was unanimous voted by all four to judges.

238. With that judgement Mr Milosevic was found himself explicitly under the protection of the national judiciary. A protection which has anyone who comes to deal with an intention to extradition and surrender, has the right to invoke. It's being an explicit human right.

239. So everybody was bound to respect and to observe this right of Mr. Milosevic.

So bound were the elements in the Serbian government, who had unlawfully and illegitimately extradited and surrendered Mr. Milosevic.

So too were the NATO-countries, which were involved in this operation, by lending a helping hand with respect to the preparation and execution of this transfer and its transit through their airspace.

So too were the elements of the so-called tribunal, who are bound by the rule of law, but have completely ignored it.

And so was finally the State of the Netherlands, without the full co-operation of which the whole operation would have been truly inoperable and impossible.

240. But instead of this, still on the same day that the Constitutional Court of Yugoslavia issued its provisional verdict suspending the Decree of the Federal Government and prohibiting any further action with regard to extradition and surrender, Mr. Milosevic was removed from his cell in Belgrade and transported to the Hague.

241. So while the decision to surrender him was suspended by this domestic court and any further decision was pending, the process of formation of a judicial opinion by the Yugoslav Constitutional Court, and the legal protection forthcoming from that process, was grossly interrupted and violated.

242. By a combined action of military precision, launched by a joint organisation of certain elements within the Serbian government, the Dutch government and elements of the so-called tribunal, Mr. Milosevic was kidnapped out of the jail in Belgrade where he had been detained, with civil assistance of the Netherlands extradited to the Netherlands, flying with military and civil assistance to Dutch territory and finally surrendered to the so-called tribunal.

243. Dutch co-operation with this unlawful extradition and unlawful surrender took the form of:

- the diplomatic support of the State of the Netherlands to the preparation and execution of this unlawful extradition to the territory of the Netherlands and the unlawful surrender to the so-called tribunal;
- the co-operation and coordination tuning with all other parties involved in this operation, among which were other NATO-countries;
- the opening of its airspace and borders to this illegal transport;
- the escorting of the transport by Dutch Apache helicopters;
- the providing of other military and civil facilities;
- the involvement of Dutch civil and military personnel in this operation;
- the unlawful surrender to the so-called tribunal, once arrived on Dutch territory;
- and finally the political support to this illegal and unlawful operation.

244. So his basic right to seek protection of the judiciary against illegal extradition or surrender, a fundamental right of everybody confronted with the intention to extradite and surrender him, was completely trampled by the above mentioned joint enterprise.

245. The fact that Mr. Milosevic is deprived, in a totally lawless way, of his right to acquire, first of all, a judicial decision about the legality and legitimacy of a possible surrender to the so-called tribunal, and the fact that he is now detained without such a decision by the judiciary, entails a completely unacceptable violation of the Rule of Law.

And at the same time, as a consequence, this constitutes a grave infringement on the right to liberty and security, as guaranteed by the European Convention.

246. On 6 November 2001, the Constitutional Court of Yugoslavia issued its final judgement, declaring the Decree of the Federal Government on extradition of Yugoslav citizens unconstitutional and illegal.

247. All these factors make the detention, posed upon Mr. Milosevic, completely illegal and illegitimate.

248. Doubtless the forcible removal of Mr. Milosevic from the jurisdiction of the District Court of Belgrade and the Federal

Constitutional Court of Yugoslavia was in se in contravention of Yugoslav law.

249. First of all Mr. Milosevic was detained in the district prison of Bgrade by force of decisions made by the examining judge of the District Court of Belgrade, re. Ki.nr. 318/01, and Kv.nr. 1042/01, dated 30 April 2001, for a duration until 1 July 2001.

So primarily he was being held under the jurisdiction of the District Court of Belgrade.

250. In respect to the intention to extradite him to the Netherlands and to surrender him to the tribunal, he had resorted to the Federal Constitutional Court of Yugoslavia.

251. This Constitutional Court had ruled, by provisional measure ofn the 28th of June 2001, that all further acts by any federal organ of the Federal Republic of Yugoslavia and by any organ of the Republic of Serbia, aimed at the extradition and surrender of Mr. Milosevic, must be suspended. Pending a further decision on the legitimacy and legality of extradition and surrender, according to a decree on extradition, of Mr. Milosevic and two other Yugoslav citizens.

252. So secondly he was being held under the jurisdiction and protection of the Federal Constitutional Court of Yugoslavia.

253. Nevertheless, the fact that Mr. Milosevic was being held under the jurisdiction of both this penal court and under the specific protection of the Yugoslav Constitutional Court was ignored by certain elements of the Serbian Government. Perhaps in co-operation with certain elements of the Federal Government of Yugoslavia.

254. And the prohibition by the Federal Constitutional Court to proceed with extradition measures was completely ignored and violated.

255. Certainly this was a breach of Yugoslav law and an infringement on the the Rule of Law in Yugoslavia.

256. So on the same night of the 28th June of 2001 the President of the Federal Republic Yugoslavia Mr. Kostunica addressed the Yugoslav public on television, stating, among other things:

"I address you at a very hard, nearly disastrous and decisive moment for our country.

(..)

The surrender tonight to the Hague of the former President of Yugoslavia and the preceding extradition of Milomir Stakic, could not be considered as lawful and constitutional.

The Federal Constitutional Court issued a temporal measure suspending the decree on co-operation with the Hague tribunal, pending a definitive judgement with regard to

257. The reason why certain elements in Serbia had put on the agenda that Mr. Milosevic was quickly to be turned into an ordinary object in order to be extradited and surrendered, is not an secret one.

It is well-known to the public all over the world.

It was the prosecutor of the so-called tribunal herself who had put pressure upon the United States to withhold his consent to an aid program of 1,3 billion dollar to Yugoslavia by a western donor conference, to begin at the 29th June 2001 at Brussels.

So, as a result of that action by the prosecutor, the United States were really threatening to veto this aid package.

With the result that Mr. Milosevic was handed over at the eve of the beginning of this donor conference.

In fact he was sold for money, as it was the public conclusion all over the world.

258. Into an interview with the American TV-station Fox on August 25, 2001, Mr. Milosevic compared his extradition and surrender to the tribunal with slave trade. "They can bargain me for money", so was stated by Mr. Milosevic in this interview.

An interview that really infuriated the tribunal's administration. Because all contacts with the press were to be considered prohibited.

259. Finally the traders were betrayed themselves on their turn. Into an interview with the German magazine Der Spiegel, a few weeks later on, the Serbian Prime Minister Zoran Djindjic lamented bitterly about the outcome of the donor conference:

Der Spiegel: You have taken the risk of the extradition and surrender of Milosevic to the war criminals-tribunal. Was it worthy the stake ?

Djindjic: We don't have attached any condition to the extradition. So we intended to show our good will with regard to the integration into the International Community. But I have to confess that I am really shocked about the farce of that western aid, which should be altogether 1,3 billion dollar...

Der Spiegel: What is 'a farce' ? This is quite a lot of money.

Djindjic: Better told, the donor conference has not taken place at all and we were thrust 50 million mark in our hands. We try here to reform the country and to propagate, despite the NATO-bombardments, a pro-western course - and in Brussels are ten burocrats, who act in accordance with the motto: when the light goes out, we slam on the brakes.

Der Spiegel: Can you more clarify yourself ?

Djindjic: In August we were to get the first part of 300 million Euro. Suddenly we were told that of that part instantly 225 million Euro would be hold back as debts, which were partly still made by Tito. Twotothird of this sum has te be seen as 'penal interst', since Milosevic has during ten years refused to pay back this credits. The remainder, 75 million Euro, we get payed at earliest in November. These are the principles in the West, they told us. (..)."

260. This bribing of the Yugoslav and Serbian administration by western powers, especially by the Untited States, instigated by the prosecutor of the so-called tribunal, is to be seen as part of the daily grind with respect to Yugoslavia, as already experienced by this country for more decades.

261. After the policy of monetary measures and economic coercion against Yugoslavia in the eighties, the sanction policy and, finally, the military aggression in the first part of 1999, and after the devastating effects of this consistent destruction policy to the standard of living of the people of Yugoslavia, this policy was continued again by the western powers after NATO's war against Yugoslavia by political means.

262. More the 100 million dollar was spended by the United States alone in order to bring downm the government.

By financing the opposition, by supporting the opposition media and by setting-up a chain of braodcasting and tv-stations all around Yugoslavia in order to spread around constantly a wall of anti-government and pro-western propaganda all over the country.

Threatening at the same time the people with endless continuation of the sanctions, and even aggrevation of the sanction regime already in existing.

263. All these continous actions being a flagrant, brutal and overt violation of the leading principle of the United Nations and its Charter, and so of the most important principle of international law, the principle of non-intervention.

264. As stated by Mr. Milosevic himself in his paper 'Presentation of the illegality of the ICTY and the illegality of the surrender to the ICTY' of 30 August 2001:

"In Yugoslavia, the U.S., in violation of international and domestic laws of both Yugoslavia and the U.S., has installed a government of its choice in the Republic of Serbia and ousted President Milosevic for the presidency of the Federal Republic of Yugoslavia by bombing, economic coercion including sanctions, physical threats, covert operations and corruption of the electoral process.

The U.S. Creates Client Governments By Forcing Elections, Using Millions Of Dollars To Purchase Unity For

**Its Candidate, Then Finance A Campaign That Buys Votes
And Corrupts Democracy.**

The U.S. injected more than 100.000.000 US dollar to defeat the government at peoples unity, in power until October 2000.

The U.S. has intervned in many foreign elections and often installed governments subservient to its interests by that means.

(...)

President Milosevic Was Surrendered To The ICTY By A U.S. Installed Serbian Government In Violation Of The Constitutions Of the Federal Republic Of Yugoslavia, The Republic of Serbia, The Statute Creating The ICTY, While The Supreme Constitutional Court Of Yugoslavia Reviewed The Request For Surrender For A Bribe Of 1.3 Billion Dollars.

The U.S. installed government of Serbia surrendered President Milosevic, in violation of the Constitution of the Federal Republic of Yugoslavia and the Republic of Serbia, while the request for surrender was under review by the Constitutional Court of Yugoslavia, and in violation of the Security Council statute creating the Tribunal, which provides that surrender shall be accomplished in accordance with domestic laws of the nation requested to make the surrender.

The United States threatened to block 1.3 billion U.S. in international aid unless the surrender was accomplished by the date it set.

Such conduct and the participation and acceptance of it reveals contempt for the rule of law by the Tribunal, the new government of Serbia, or United Nations.

The illegal seizure of an individual and his delivery to isolation in the prison of an illegal international tribunal in a distant nation threatens the freedom of everyone. For the United States to engage in, or accept, international kidnaping of political leaders tells that world the old ways of violence, deceit and coercion are its ways. Those ways will be met in the only way they can be met: by the same means.

The New U.S. Installed Government Of Serbia Is Using Its Police Power To Crush Political Opposition In Serbia.

The current government of Serbia is engaged in chrushing and demonizing its domestic political opposition. The Republic of Serbia will surrender accused persons to the ICTY in violation of its own laws, as it did President Milosevic, to destroy political opposition at home and receive payments of money and support from abroad.

It acts to frustrate any support, or investigation for the defense of President Milosevic hoping to eliminate rival domestic political power. It attempted to bar entry and deport Ramsey Clark when he flew to Belgrade in June to discuss the ICTY prosecution of President Milosevic. It may fabricate evidence, destroy evidence and control and coerce witnesses to assist in conviction by the ICTY, but it will seek to frustrate defense efforts to obtain documents, other evidence, and witnesses in Yugoslavia, needed for the defense in the Hague.

The People Of Serbia And Yugoslavia Risk A Tragic Future From The External Manipulation And Control Of Their Governments.

The new government of Serbia is a puppet for the United States."

265. The tribunal, and the State of the Netherlands, don't contradict that the extradition and surrender of mr. Milosevic were unlawful and in defiance of domestic legal and constitutional regulations, according to Serbian and Yugoslav law. They don't contradict that these acts constituted grave breaches of the Rule of Law, according to domestic law.

But at the same time it is the position of the tribunal that what is done was allowed, since these acts in contravention with Serbian and Yugoslav domestic law were to be regarded as compulsory upon the Serbian and Yugoslav authorities, according to international law.

266. And the position of the tribunal's prosecution section goes even more far. The prosecutor even alleges that the primacy of the so-called tribunal would be such that domestic legislation is totally important.

267. This stand is a mockery of the conception of law. The prosecutor makes the mistake to determine her own ambition, namely to replace the rule of law and the sovereignty of the states concerned by her own authority, as a matter of supreme law.

268. As it is constituted in all civilised law systems, the binding obligations of the Rule of Law oblige that the domestic judge would have the decisive voice, in order to determine whether a extradition or surrender would be lawful or not. Whatever extradition to the Netherlands and surrender to the so-called tribunal do not chance this principle at all.

Whether the prosecutor section of the so-called tribunal, in close connection to the judicial section, may like this or not.

269. We can see this principle also reflected in the above quoted domestic law system, established in the Netherlands itself, with respect to surrender to the so-called tribunal. Where also the primacy of the Dutch judiciary regarding surrender is firmly established as a principle of law, that cannot be surpassed.

270. As already indicated - as it is also the position of the State of the Netherlands itself -, this follows directly from the provisions of Article 5 par. 4 of the Convention, jo. Article 9 par. 4 ICCPR.

271. With regard to Yugoslavia the same legal principles are at work.

There no reason why the state of the Federal Republic of Yugoslavia should be prevented from examining the demands on extradition of this tribunal, and why it should not have been allowed to examine the jurisdiction of this boasting tribunal, in order to take the appropriate decision and to act accordingly.

Since everywhere in the world this domestic procedure should have been respected, also in this specific case, as an act of respect to the rights of the accused whose extradition and surrender was requested.

272. So the observations, made by the tribunal, in the so-called 'Decision on preliminary motions', dated 8 November 2001, under 45 up to 51 are completely wrong. And only bypass the core of the matter.

The essence is: was the way of acting by the so-called tribunal, in order to get Mr. Milosevic in its grasp, legally and legitimately, from the point of view of general legal principles and rules and, more specifically, its own rules, or not ?

273. In the 'Decision on preliminary motions' the trial chamber deemes all violations of law whatsoever legitimized. By using the trick of only highlighting, once and again, the obligation to obey orders of the tribunal.

274. And with turning a blind eye to the fact that this obligation, for what it is worth, furthermore couldn't be anyhow the end of the legal interpretation's problems about the consequences of this pretended obligation, but only the beginning.

275. Suggesting that no law on earth could give limitations to the right - and even the duty - to commit eventually the most severe breaches on whatever law, even the laws of the tribunal itself -, in order to obey an command by the tribunal.

This by stressing, under 45 and 46 of this Decision, among others:

"The importance of complying with requests under Article 29 cannot be overstressed."

And:

"The purpose of Rule 58 is to ensure that domestic procedures relating to the surrender and transfer of an person, from a State in respect of whom a request for arrest and transfer has been made, are not used as a basis for not complying with the request. (...)
That being the case, the Rule should be given an interpretation that takes full account of its purpose."

This paragraph of the 'Decision on preliminary motions' is unacceptable from a legal point of view.

Rule 58 stipulates:

"The obligations laid down in Article 29 of the Statute shall prevail over any legal impediment to the surrender of transfer of the accused or of a witness to the Tribunal which may exist under the national law or extradition treaties of the State concerned."

276. First of all, this Rule 58 itself is in contravention of international law with respect to human rights. Since it does not include the obligation of respect of the human rights guaranteed by the international law with regard to arrest and transfer of the accused to the Tribunal.

That obligation cannot in any way be derogated since those rights belong to the jus cogens.

277. Moreover, this specific Rule must considered to be void, because the tribunal was not legitimized to make such a regulation, as a hierarchically inferior legal power. As legislative power it is supposed to deal only with the procedure and evidence before the tribunal, since the legislative competence conferred to the judges of the tribunal is limited to those questions only.

And such a regulation therefore cannot determine the relations between a superior act like the Article 29 of the Statute and some other acts of a different nature.

278. Thirdly, the pretended purpose of the illegitimate Rule 58 is clear enough, namely to stipulate that the domestic order could not resist the Article 29-obligation ad 2(e): to comply, without undue delay, with an order by the tribunal to surrender or transfer the accused to the tribunal.

But then a new problem arises: Rule 58, already illegitimate in se, may also not be seen as a correct working-out of Article 29 of the Statute.

Article 29 mentions explicitly, as an integrated constituent, the factor 'without undue delay'.

This element is not to be traced back into Rule 58.

Which could not mean that this element would have been disappeared as an integrated part of pretended law.

279. Of course there could reasonably not exist a situation of 'undue delay', when a State is undertaking due action, as pretended to be legally bound to it, in order to change his domestic law.

With a view to making possible an extradition and surrender.

Which was to be done by the Yugoslav government at the moment of the abduction of Mr. Milosevic.

As will be demonstrated later on.

280. And finally, the content of Rule 58, whether legitimate or not, is relatively irrelevant with respect to this specific case.

Relevant is whether it was allowed or not to the tribunal to organise a joint operation, with assistance of Serbian elements and NATO-allies, as well as more specifically, in conspiracy with the State of the Netherlands, in order to extract Mr. Milosevic out of Yugoslavia and out of the jurisdiction of the Yugoslav domestic courts, at the very moment that the so-called Tribunal would have come to the conclusion that the Federal Republic of Yugoslavia was definitely in default to comply with his alleged obligation to hand over Mr. Milosevic.

And whether or not it would have been allowed to extract him out of Yugoslavia in an high-handed action and without even consulting the Security Council.

Let alone leaving further decisions to this latter embodiment.

281. And even from the point of view that the government of Yugoslavia should have been in principle obliged to co-operate with the so-called tribunal and to comply with orders of this institute, whether or not specifically on the basis of Rule 58 - which position is legally wrong -, even then it was, as expounded already above, flatly in contradiction to all customary and domestic basic norms - like also established into the Netherlands with regard to intentions on surrendering accused to the tribunal - to withhold him any recourse to the domestic judge.

282. But also for the rest don't give the above quoted considerations under 45 and 46 of the 'Decision on preliminary motions' even remotely an answer to the pinching question - at least when it is to be assumed that the so-called tribunal should be legal - namely, what kind of means might be used from a legal point of view, in order to achieve this aim of compliance.

And when these means might be put in.

And that's the very point here.

283. Furthermore, it can not be regarded as a right interpretation of law - even not by the believers in the legality and legitimacy of the so-called tribunal - that, as is said under 47 of the 'Decision':

"The Federal Republic of Yugoslavia has an obligation under the Statute to comply with the the request to arrest and transfer the accused and, therefore, cannot rely on its internal law (..)".

The pretended causal connection, holding that because there would be an alleged obligation to comply with a request to transfer an accused, the showing of some consideration with the the domestic legal order with respect to this extradition and surrender issue should be regarded as in contravention with international law is, from a view of legal systematics, false, illogical and inconsistent.

False, if only because it is a principle of law that everybody should have the right to appeal to the domestic judiciary against his extradition and surrender, as it is also explicitly settled in the Dutch legal system with regard to surrender to the so-called tribunal.

Like is to seen in the implementation of this basic right in national legal orders. As is demonstrated not only into the Netherlands and in the Dutch domestic legislation, but also in Germany.

As was showed is the case of Tadic.

Tadic was arrested in Germany.

And Germany worked for month on the adoption of a law on the basis of which Tadic was finally extradited and surrendered to the so-called tribunal.

284. Instead of showing due respect to this basic right, the so-called tribunal is pretending that there is established from now on a new doctrine of international law.

A doctrine which makes it possible that from the Republica Srpska - and now also from Yugoslavia - people - of course all Serbian people - were to be extradited and surrendered like objects.

On the American way, dating from the time that the West was won and lawlessness was there running rampant.

285. Sending NATO-posses behind accused persons, arresting them on territory of a sovereign state and surrendering them unconditionally to the Hague executioners.

This was the case for example with Mr. Milomir Stakic, Mr. Momir Talic, Mr. Dragan Nikolic, Mr. Steve Todorovic, Mr. Momcilo Krajsnik, Mr. Miroslav Vuckovic , Mr. Milan Vuckovic and other persons.

Killing already a lot of innocent people - all accused must be considered to be innocent - by this barbaric and terrorist actions.

286. Finally, also the quotations under 45 of the 'Decision on preliminary motions' of certain pronouncements by the Secretary-General of the United Nations do not alter these facts a bit.

They read:

"The significance of this legal obligation is highlighted in the Report of the Secretary-General who said that "the establishment of the International Tribunal on the basis of a Chapter VII decision creates a binding obligation on all States to take whatever steps are required to implement the decision" and that "an order by a Trial Chamber for the surrender or transfer of persons to the custody of the International Tribunal shall be considered to be the application of an enforcement measure under Chapter VII of the Charter of the United Nations."

287. First of all, it must be stressed that pronouncements of the Secretary-General do not create law and are even not a source of law.

Not the Secretary-General makes the law, but the Secretary-General has only to respect and implement the law.

288. Secondly, it has to be pointed out that it would be doubtful - even for the believers of the legality of the so-called tribunal - that the conception of the Secretary-General that any order by the tribunal for surrender should be considered to be an enforcement measure under Chapter VII of the Charter, is to be considered as a correct interpretation of the Charter.

The fact that the set-up of the so-called tribunal should be considered as an - anyway to the opinion of many scholars and others illegal and illegitimate - enforcement measure under Chapter VII of the Charter, doesn't mean at all, and certainly not automatically, that also **each order** by this tribunal should be considered to be an enforcement measure under the Charter.

That would suit the tribunal fine, but is neither just from a view of legal systematics, nor it is logic.

289. Not every demand made by any subsidiary organ of the Security Council can have automatically the same status as an order by the Security Council itself !

And it are the system and the rulings of the Charter itself which prevent that could be assumed that orders by anyhow whom or what might be regarded just as 'an enforcement measure under Chapter VII of the Charter'.
Of course it cannot be that simple !

290. It is more than clear that the Charter stipulates, for each enforcement measure within the framework of Chapter VII, time and again, the passing through of every stage of the comprehensive procedure of Chapter VII of the Charter.

That is something quite different from the assumption that whatever warrant would be issued from behind the tribunal's writing desks, would get automatically such a status !

291. And thirdly, even when these pronouncements of the Secretary-General could be considered as very well - at least from the stand of those who take the tribunal for legal -, even then the very question is: what action would be allowed from a legal point of view, if the State concerned refuses to comply with this obligation ?

Or, even less outspoken, if only the tribunal thinks that this State is not complying.

292. The so-called tribunal is suggesting in its 'Decision on preliminary motion' that really every action whatsoever, in order to get hold of an accused, should be deemed allowable.

293. If the tribunal really means this, then that will underline again the extent to what this so-called tribunal, parachuted into the legal order, is a true menace to that same legal order.

Like a cuckoo in the nest.
Pushing over the brink all attainments of the constitutional state and of the international legal order.
Including even its own internal regulations.

294. This pretensions by the so-called tribunal of what is considered to be lawful are not only a travesty of justice and an unadulterated abuse of power, but once more a manifest disregard of the tribunal's own regulations.

295. With respect to alleged non-compliance with so-called obligations to obey orders coming from the tribunal, there is first of all Article 9 par. 2 of the Statute itself.
Which states:

"The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal."

296. So it is clear that - even when the tribunal is considered to be legal -, in the situation that Mr. Milosevic was finding himself under the jurisdiction and protection of the District Court of Belgrade and, at the same time, of the Federal Constitutional Court of Yugoslavia, the way indicated by this Article had to be followed.

Namely, to make a formally request to this courts to defer to the competence of the so-called tribunal.

297. Such a request is not made by the tribunal, neither to the District Court of Belgrade, nor to the Federal Constitutional Court of Yugoslavia.

298. The only reasonable interpretation with respect to the fact that there is obviously a need to make a specific basic regulation concerning this obligation to give up the jurisdiction on a request by the so-called tribunal, as is stated in the above cited regulation, might be that when a domestic court has seized jurisdiction with regard to any subject, this jurisdiction is of a strong legal nature and not simply to put aside.

As also in the case of Mr. Milosevic.

299. Nevertheless, it is the tribunal's pretension that it could have simply brushed aside this jurisdiction of the District Court and of the Federal Constitutional Court in the case of Mr. Milosevic.

Even without adressing any formal request to these courts to defer its competence.

300. All the more there was - in the situation that there is any belief into the legality and legitimacy of this so-called tribunal - this obligation to address a formal request to these courts, since these courts are into the possession of concurrent jurisdiction, according to Article 9 par. 1 of the Statute, and it could not have been excluded beforehand that there was, with respect to the jurisdiction of these domestic courts regarding Mr. Milosevic, a situation at issue according to the terms of Rule 8 and 9 of the Rules of Procedure in general, and, more specific, of what is said by Rule 9 ad (ii) an (iii).

Article 9, par. 1 reads:

"The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violation of international humanitarian law in the territory of the former Yugoslavia since 1 January 1991".

And Article 8 and 9 of the Rules of Procedure give a more specific regulation with regard to the deferral of jurisdiction by domestic courts and read respectively:

Rule 8

"Where it appears to the Prosecutor that a crime within the jurisdiction of the tribunal is or has been the subject of investigations or criminal proceedings instituted in the courts of any State, the prosecutor may request the State to forward all relevant information in that respect, and the State shall transmit such information to the Prosecutor forthwith in accordance with Article 29 of the Statute".

Rule 9

"Where it appears to the Prosecutor that in any such investigations or criminal proceedings in the the courts of any State:

(i) the act being investigated or which is the subject of those proceedings is characterized as an ordinary crime;

(ii) there is a lack of impartiality or independence, or the investigations or proceedings are designed to shield the accused from international criminal responsibility, or the case is not diligently prosecuted; or

(iii) what is at issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal,

the Prosecutor may propose to the Trial Chamber designated by the President that a formal request be made that such court defer to the competence of the Tribunal".

301. So, according to its own pretended regulations, the so-called tribunal's prosecutor had at first to inform herself if there was possibly a situation of 'investigations or proceedings designated to shield the accused from international criminal responsibility' with respect to this domestic jurisdiction and prosecution.

302. The prosecutor was suggesting many times that this would have been the case.

So without taking the imperative procedural consequences out of this stand.

303. Further she had also to investigate whether there would have been a situation that 'the case was not diligently prosecuted'.

Since the prosecutor had not even taken any trouble at all to inform herself about the precise allegations and investigations of the Yugoslav prosecutors with respect to the domestic indictment against Mr. Milosevic, she was absolutely not in the position to ground herself on any opinion about the applicability of this part.

304. And finally the same can be said about the question whether 'what is in issue' in the course of these domestic investigations and allegations, was to be considered as 'closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecution before the Tribunal'.

305. In absolute disdain for the sovereignty of Yugoslavia and for the respectability of the Yugoslav legal institutions as well as for the domestic laws of Yugoslavia, and even with great disdain for the pretended regulations of the so-called tribunal itself, the prosecutor has leaved undone such due investigations and deliberately taken the road of lawlessness.

306. Because, in case of non-compliance with a possible request for deferral by the Yugoslav Courts, the following of

the course of the regulations of the tribunal itself would have brought the prosecutor straight to Rule 11 of the Rules of Evidence.

Saying that, in case of such a non-compliance, the procedure which must be observed shall be:

- 1) the Registrar must notify this failure of the State concerned;
- 2) the State concerned still get a last chance to satisfy the trial chamber about taking due steps and;
- 3) then it is up to this trial chamber to request the president of the so-called tribunal to report the matter to the the Security Council;
- 4) of course it is then up to the president to decide whether he would report this non-deferral to the Security Council or not;
- 5) And finally obviously it would be a matter of the Security Council to undertake any action with respect to this alleged non-deferral or not;

307. These many, many steps - steps along the registrar, along the trial chamber, along the president of the so-called tribunal and finally along the Security Council itself - are bypassed by the prosecutor, plotting together with the relevant judges of the so-called tribunal.

308. Keeping out on this way the Security Council, being the final decisive embodiment in cases of non-compliance with any request for deferral.

309. Instead of this, the prosecutor, in total abuse of her qualifications and putting first her own political anti-Serbian and anti-Milosevic agenda, has done everything what, according to general legal standards as well as according to the pretended legal standards of the so-called tribunal itself, illegally and illegitimately could be done, and has now acted completely on her own.

310. But even when it is deemed that, in this specific case, there wouldn't have been any need at all for a request for deferral to the domestic courts in Yugoslavia, so that also the procedure prescribed in Rule 11 wouldn't have been applicable, even then the final stage should have been the Security Council.

311. And even then it should have been up to the discretionary power of the Security Council to take further action or not.

And was it not considered to be up to the prosecutor to take any form of totally illegal and illegitimate high-handed and headstrong action.

Whether or not covered up by any judge of the so-called tribunal.

312. The exclusive and final decision power of the Security Council itself, also in cases like this, is beyond the shadow of a doubt reflected into the system of the tribunal's ruling itself.

This with respect to all cases of a non-compliance with such pretended obligations.

313. This system is stressed, as far is relevant here, in Rule 7bis, juncto Rule 61 final part.

Saying respectively:

Rule 7bis

"(A) In addition to cases to which Rule 11, Rule 13, Rule 59 or Rule 61 applies, where a Trial Chamber or a permanent Judge is satisfied that a State had failed to comply with an obligation under Article 29 of the Statute which relates to any proceedings before that Chamber or Judge, the Chamber or Judge may advise the President, who shall report the matter to the Security Council."

Rule 61

"(E) If the prosecutor satisfies the Trial Chamber that the failure to effect personal service was due in whole or in part to a failure or refusal of a State to cooperate with the Tribunal in accordance with Article 29 of the Statute, the Trial Chamber shall so certify. After consulting the President Judges of the Chambers, the President shall notify the Security Council thereof in such manner as the President thinks fit."

314. So also in case of non-compliance of any State with, directly, the surrender and transfer of an accused, it is finally up, again exclusively, to the Security Council to undertake further action or not.

315. It is amazing and shocking that not only the prosecutor don't give a damn on the tribunal's own regulations with respect to this crucial issue, but that this happens in close conspiracy with also the judges of this so-called tribunal.

316. By way of all of this it is the so-called tribunal itself, as an entity, that reveals ruthlessly its own legal standard.

Or better, the lack of it.

317. The aim of the all is quite clear: the whole tribunal is set up to describe the recent Yugoslav history as the outcome of, mainly, Yugoslav and Serbian aggression, genocide and barbarism.

And in order to legitimaze and to seal this falsification of Balkan history by condemnations.

Of course by, first of all, sentencing its former President.

319. This end justifies all means.
And certainly any illegal method in order to get him into the hands of the tribunal.

320. Furthermore, still even apart from this compulsory obligation to give shape to this basic obligation of giving access to a domestic court, in order to test the legitimacy and legality of extradition and surrender, and also even apart from the obligation to follow at least its own rules, there should have been no need for this tribunal to bring this question to a head.

321. With gravely violating the Yugoslav domestic legal order and the obligations of international customary law, as well as with bypassing the own self-fabricated rules.

There was after all no need to such a rush into this job. Like it was even stressed by the President at the time of Yugoslavia in the already above quoted TV-speech at the night of the kidnapping. Suggesting that this speed, not even asked for by the so-called 'international community', reflected someone's own agenda.

322. No need to such a rush - even when one departs from the assumption that co-operation to this so-called tribunal is compulsory, which is a false assumption -, because Yugoslavia undertook to pass regulations which would enable co-operation with the so-called tribunal precisely as stipulated in the tribunal's regulations.

And to set aside on this way the situation that there is no law in Yugoslavia on extradition and surrender of an national to a foreign body.

323. And at the very moment that the Federal Government was acting in order to create a domestic provision for extradition, elements of the republican government, jointly operating with the Tribunal and NATO-countries, first of all the Netherlands, fulfilled the kidnapping of Milosevic to the Hague.

324. As far as this was done by the government of the Serbian Republic, there was - even within the false assumption that the tribunal's word is law - no legitimation for such action at all.

Because Serbia is not a member of the United Nations and it had no obligation at all to implement orders by the tribunal.

325. Moreover, according to domestic law, this was something that only the federal government had the right to decide about.

By the federal organs through appropriate procedures.

326. And finally also the arrest warrants with regard to Mr. Milosevic, issued by the tribunal dated 24 May 1999 and 22

January 2001, were not directed at all to the Serbian authorities, but to the Federal Republic of Yugoslavia.

327. So there was not any legal obligation at all for the Serbian government to lend a helping hand to the tribunal, neither from the point of view of domestic law, nor from the position of international law.

328. On the contrary, by acting on the way like certain elements from the Serbian government actually have done, they have gravely violated the domestic legal order.

329. According to Yugoslav law extradition and surrender was not their business at all. So in terms of the domestic legal order and constitution this conduct was completely arbitrarily and purely kidnapping.

330. It is the president of the so-called tribunal Jorda himself, who don't hesitate to spread, among the public and even amid the UN General Assembly, a misinterpretation of responsibilities and obligations with regard to compliance to Security Council orders. Suggesting that it also should have been Serbia, which had to fulfil legal obligations in this field.

331. In his address to the UN General Assembly on 26 November 2001 he stated with respect to this issue:

"The arrest and transfer of Slobodan Milosevic to the Hague last June attests to the resolve of the authorities of Serbia to comply with its international obligations arising out of Security Council resolution 827 and Article 29 of the Statute of the International Tribunal."

332. By this deliberate false interpretation of obligations according to international law completely turning around this unlawful and arbitrarily way of acting by elements in the Serbian government into an action, not only lawful but even compulsory for Serbia.

333. How different is the tune of that same tribunal, standing in the need to give in courtroom a turn to this illegal practices, instigated by itself! Then, suddenly, these so-called 'obligations' of Serbia turn out to be transformed into 'not an egregious violation of rights'. Like is stated in the 'Decision on preliminary motions', dated 8 November 2001:

"51. In the light of that jurisprudence, the Chamber holds that the circumstances in which the accused was arrested and transferred - by the government of the Republic of Serbia, to whom no request was made, but which is a constituent part of the Federal Republic of Yugoslavia, to whom the request for arrest and transfer was made - are

not such as to constitute an egregious violation of the accused's rights."

334. Not only there was not made any request to Serbia, but moreover it is impossible to hold that Serbia, not being a member state of the United Nations, should have to comply with any pretended order at all.

335. So there was neither any obligation at all according to international law, on which ground Serbian governmental elements could have legitimized their breaches of the domestic legal and constitutional order.

Nor could the tribunal invoke any such a ground, in order to legitimize its instigation of those breaches on the Yugoslav legal order and the domestic Rule of Law.

336. The only conclusion that reasonably can be drawn is that, by instigating certain elements of the Serbian government to participate in the joint operation in order to kidnap Mr. Milosevic and to extract him out of Yugoslavia and out of the jurisdiction of the domestic Yugoslav courts, the tribunal has instigated these elements of the Serbian government to commit highly criminal activities.

337. The tribunal, making themselves by these actions the leader of a criminal organisation itself.

338. The tribunal, would it be at least in practice acting according to the standards of a legal and legitimate organ, should not only not commit constantly the most grave violations of law, like this tribunal is actually doing, for instance when it instigates others, e.g. elements of the Serbian government and authorities of the Netherlands, to assist in violation of international law, domestic law and the law of the tribunal itself, but it would even consider itself as bound to, more positively, also straightly upholding the Rule of Law.

339. This includes also a duty to annul any abuses of power that are carried out in its name.

340. Certainly when these direct breaches of the law, performed by the so-called tribunal itself, and the abuses of power, committed in its name, are of such a gravity as in question, the only correct conclusion can be that there is such a travesty of justice and such an unadulterated abuse of power, and, consequently, abuse of process, that - even when the tribunal is believed to be legal, which is not the matter - this so highly abusive tribunal would have completely forfeited its right to try Mr. Milosevic.

341. In the light of these egregious breaches of his basic rights by the tribunal itself, and by others in a joint conspiracy, the tribunal - even when it is believed to be legal

and legitimate - it would have reasonably no other choice then to abstain from trying mr. Milosevic.

342. In the R. v. Horseferry Road Magistrates' Court, Ex parte Bennett, it was held that, for the maintenance of the rule of law, where an accused person was forcibly abducted from another country in violation of international law and the laws of the state and in disregard to the extradition procedures, the prosecution of the accused was to be regarded as an abuse of process and, consequently, his release was ordered.

See Decision of the House of Lords dated 24 June 1993 (1994) I AC 42 (1993) 3 ALL ER 138 (1993) 3 WLR 90.

343. In the Barayagwiza appeal decision, para. 86, the tribunal itself held that a case should be dismissed, when:

"in light of serious and egregious violations of the accused's rights would prove detrimental to the court's integrity."

More harm to the tribunal's pretended 'integrity', as inflicted upon it by its own lawless actions, is not possible.

So, consequently, there is no integrity left to this tribunal. Even when one believes in its legality and legitimacy. And, accordingly, it lacks, also from this point of view, all jurisdiction with regard to Mr. Milosevic.

V.5.b. Conclusion

344. The so-called tribunal makes the false suggestion that it is a law of the Medes and Persians that all its orders must be followed without asking questions, as being of the same status as orders of the Security Council itself, acting under Chapter VII of the UN Charter.

345. But of course neither decisions of Security Council are sacred, nor at the very least decisions by the tribunal, even assumed that it would be a legal and legitimate institution.

346. It is this distortion of the legal reality that the tribunal tries to introduce, making a frantic attempt to give its way of acting the aureole of legitimacy.

347. Nobody is dutybound to accept and implement the Security Council decisions that are not in accordance with the UN Charter, which would, by the way, be clear by itself even if it were not written anywhere.

348. Like it is confirmed by the International Court of Justice in its Advisory Opinion dated 21 June 1971 'Legal conse-

quence of the protracted presence of South Africa in Namibia despite Security Council Resolution 276/1970'.

349. Once more this is applicable to decisions of the so-called tribunal.

350. All modalities as elaborated above show on a imperative way all at the same direction.

Namely that the abduction, extradition and surrender of Mr. Milosevic, just like the withholding of a recourse to the judge in order to decide on the legality and legitimacy of his extradition and surrender, as well as the breaches of the tribunal's own regulations - each fact on its own and all facts jointly -, constitute an intolerable infringement of the right of Mr. Milosevic to liberty as well as to security of person.

As guaranteed to everyone in Article 5(1) of the Convention.

351. Respect to human rights is a pillar of the UN Charter. So the decisions by the the so-called tribunal, violating Mr. Milosevic' human rights, are also in contravention of the Charter.

352. Since Mr. Milosevic was extradited - with violation of the tribunals's own process regulations - to the Netherlands and surrendered to the tribunal in an unlawful way and with grave violation of his basic right to resort to the judiciary with respect to extradition and surrender, even in contravention of human right principles of jus cogens-character, he is entitled to restitutio in integrum.

V.6.a. Violation of the Article 5-right to liberty and security by the unlawful arrest and prosecution of Mr. Milosevic as a former Head of State.

353. The exercise of jurisdictional power over one's own citizens is part of each State's sovereignty.

354. And there is not any rule of law whatsoever, whether of a treaty law-type or a customary law-type, that gives the Security Council the competence to usurp this right of sovereignty of any State and to determine that the Security Council henceforth will start to try individuals of that State, without considering the jurisdictional competence of that State concerned, by way of an organ te be erected to this end. Like the so-called tribunal.

355. As far as the States which were part of former Yugoslavia are concerned, it must be taken into consideration that none

of the States that were formed there, has recognised this competence of the Security Council to form a tribunal, in order, by doing so, to 'relieve' those States of this aspect of sovereignty.

Hence there can be no doubt whatsoever about nothing else than usurpation by the Security Council being at issue.

356. Thus, 'sovereign equality', being the explicit objective of the UN Charter, laid down in Article 2 par. 1 of the Charter, is actually no longer a reality for States which were a part of the former Yugoslavia.

357. In the perspective of this usurpation of the right of the State to try individual domestic citizens - being in itself alone already a clear-cut violation on the sovereignty of all those States of the former Yugoslavia which thereby already have been victimised by the Security Council -, an even more drastic infringement of this sovereignty was affected by the Security Council, by attempting as well to enforce on the States concerned that their Heads of State should not be entitled to immunity from prosecution.

358. This attempt to rewrite international customary law to its own liking was formulated by the Security Council in Article 7 par. 2 of the Statute of the so-called tribunal and reads as follows:

"The official position of any accused person, whether as Head of State or Government or as responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment."

359. But it is definitely not up to the Security Council to determine the contents of international law, but to international law itself.

360. First and foremost, there is nothing in international law indicating that the Security Council could, merely by one single stroke of its pen, declare defunct the right of immunity of Heads of State.

361. Never before there was evidence of even a possibility that Heads of State - and we talk here explicitly about Heads of Sovereign States - could randomly be declared defunct of their immunity.

362. With respect to this issue, it is impossible to consider the Tribunals of Nürnberg and Tokio, set up after World War II to sentence the crimes of the Axis-powers, as a precedent.

If only because these countries were defeated and occupied, and their rights of sovereignty were at that moment explicitly suspended by the winning parties.

The Tribunals of Neurenberg and Tokyo thus clearly established a winner's-type of 'justice'.

363. As regards the states of the former Yugoslavia however, time and again, the complete integrity of their sovereignty and their full entitlement to be therein respected, has been expressed in the resolutions of the Security Council.

364. Time and again this full entitlement to the own sovereignty was also stated by the same Security Council, trying on the other hand at the same time to erode this very sovereignty, not only by usurping jurisdictional power over individual domestic citizens through the so-called tribunal - which was, after all intended to be a subsidiary organ of the Security Council itself -, but at the same time even trying to further dismantle this sovereignty, by stipulating that Heads of State of these particular states should not be entitled to immunity.

365. The immunity accruing Heads of State is after all closely tied up with the sovereignty of the State itself, and forms an important mode of expression thereof.

366. Immunity of Heads of State is therefore first of all immunity *ratione materiae*. Which means more an instrument to safeguard the sovereignty of the State than a personal prerogative.

367. The most important reason for the principle of immunity of Heads of State is indeed that whatever a Head of State does in his function of Head of State, is to be regarded as being acts of the State itself.

368. The customary rules are on this subject for Heads of States and former Heads of State the same.

369. In other words: if a Head of State, or a former Head of State, might be prosecuted elsewhere and might to have stand on trial for his acting in the function of Head of State, the State itself would come to stand on trial.

370. Sentencing the Head of State would then automatically imply a sentencing of the State itself.

371. With respect to Mr. Milosevic this would mean that, if his immunity as a former Head of State would indeed, on the mere authority of the Security Council, have to be considered as being neutralized, it would be not so much him who would stand on trial and then would be sentenced, but, with him, the whole Federal Republic of Yugoslavia.

372. In view of the principles of civil liability for criminal acts, which are now widely recognised also in international law, this means then that, if Mr. Milosevic would be sentenced for alleged acts, unmistakably committed in his function of Head of State, the Federal Republic of Yugoslavia would be then, according to civil law, automatically and promptly liable for the consequences of these alleged crimes, attributed to him.

373. This liability in terms of civil right standards for violations of fundamental humanitarian law, is primarily of customary character, but also treaty-based in some conventions.

This was already the case in the Fourth Hague Convention of 1907 in Article 3. But also in the First Additional Protocol of 1977 at the Geneva Conventions this liability for compensation with regard to violations of the norms of humanitarian law is explicitly expressed.

374. Consequently, in case of a condemnation of Mr. Milosevic for alleged acts, allegedly undertaken by him in his function of Head of State, the Federal Republic of Yugoslavia then risks to be confronted with claims of billions of dollars for damages.

In just the same way as this is now happening to Iraq.

375. With as a consequence that the country and the Yugoslav people then, for an unforeseeable number of years to come, would remain once more doomed to pauperism.

376. This principle of civil liability for alleged crimes against humanitarian law is also expressed in par. 7 of Resolution 827 (1993), concerning the set up of the tribunal:

"Decides also that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law."

377. Billions dollar claims for damages are already filed against Yugoslavia by Croatia at the International Court of Justice.

When the Yugoslav leadership, in the person of the former Head of State, would be condemned for alleged violations of humanitarian law, then there is no stopping anymore and nothing stands anymore in the way of a full and unconditional awarding of that claim.

378. This is the ominous ultimate consequence of the Security Council's attempt to deprive, in contravention of international law, the Heads of State of the countries of the former Yugoslavia of their immunity.

379. First of all - and exclusively ! - victimizing the State of the Federal Republic of Yugoslavia and the Yugoslav people. Because - deliberately - the former Head of State of Yugoslavia is the only Head of State of the Republics of the former Yugoslavia, who is indicted by the so-called tribunal.

380. Deliberately, because Yugoslavia and the Serbs have the role of scapegoat.

And the very raison d'être of the so-called tribunal is to bring this matter to a conclusion by the pronouncement of condemnations, first of all of the Yugoslav leadership.

381. That's why there is this utterly discriminate prosecution policy by the so-called tribunal.

Setting course for the destruction of the former Head of State of Yugoslavia.

And, consequently, further destruction for Yugoslavia itself and its people.

For punishment, because they have dared to resist western dictates and NATO-terror.

And leaving alone persons like the former President of Croatia Tudjman and the President of Bosnia Izetbegovic.

383. Moreover, this prosecution of Mr. Milosevic as a former Head of State, of all things, once more under the explicit fiction, unreconcilable with this aspect, that the sovereignty of the State concerned would remain nevertheless intact !

384. Since it is indeed a condition made by the UN Charter itself, that this unlimited respecting of the sovereignty of the State concerned should be reality.

385. And the same Security Council, which is denying Mr. Milosevic his right of immunity as a former Head of State and not only is breaking down the sovereignty of Yugoslavia, but also is acting as a tool by bringing not only Mr. Milosevic at trial but actually the whole Yugoslav nation, this same Security Council is, at the same time, bound to the UN Charter provisions, which gave this organ explicitly order to respect and safeguard the sovereignty of the UN Member States!

386. Sovereignty of the state doubtless is a matter of peremptory law.

The UN Charter knows only a few basic assumptions.

And the paradigm of the sovereign equality of all States is the most important one.

387. So as a matter of consequence sovereignty cannot be harmed or restricted without the explicit consent of the State concerned itself.

Only by free will the State can give up parts of its sovereignty, for instance on a treaty law base.

Which is in fact frequently the case in the common state practise.

388. However, no matter how frequently States in everyday's life with other States are being in complete agreement with limitations on their sovereignty, this is always only on the basis of free will.

389. Sovereignty is thus an absolute prerogative of the State.

Nobody can touch it without its approval.
And the UN Charter is even build around this basic principle.

390. As sovereignty of States is definitely the most widely recognised example of a norm of international law of a *ius cogens*-character, then it must be stressed that also the immunity of a Head of State, as basic condition for and most important expression of this sovereignty, is also to be seen as an peremptory norm of international law.

391. So it is a matter of well established customary law that a Head of State enjoys immunity from criminal, civil and administrative jurisdiction.
And that he still keeps such immunity for acts, or alleged acts, committed in his function as a Head of State, when he is no more in function.

Sir Arthur Watts put it this way in his monograph in the the Hague Letters, entitled 'Legal Position in International Law of Heads of State, Heads of Governments and Foreign Ministers' (1994) 247 *Receuil der Cours*, 53, 88 and 89:

"A Head of State's immunity is enjoyed in recognition of his very special status as holder of his State's highest office...A former Head of State is entitled under international law to none of the facilities, immunities and privileges which international law accords to heads of States in office...After his loss of office he may be sued in relation to his private activities, both taking place while he was still head of State, as well as those occurring before becoming Head of State or since ceasing to be Head of State...A Head of State's official acts, performed in his public capacity as Head of State, are however subject to different considerations. Such acts are acts of the State rather than the Head of State's personal acts, and he cannot be sued for them even after he ceased to be Head of State."

Satow comes in his 'Guide to Diplomatic Practice' (5th edition, 1978) to the same conclusion:

"The personal status of a head of a foreign state therefore continues to be regulated by long established rules of customary international law which can be stated in simple terms. He is entitled to immunity - probably without exeption - from criminal jurisdiction..(2.4) A head of state who has been deposed or replaced or has abdicated or resigned is of course no longer entitled to privileges or immunities as a head of state. He will be entitled to continuing immunity in regard to acts which he performed while head of state, provided that the acts were performed in his official capacity."

And Oppenheim formulates it in his famous 'International Law' (9th edition, 1992, par. 456) as follows:

"All privileges mentioned must be granted to a head of state only so long as he holds that position. Therefore, after he has been deposed or has abdicated, he may be sued, at least in respect of obligations of a private character entered into while head of state. For his official acts as head of state he will, like any other agent of a state, enjoy continuing immunity."

392. Now taking the case that a former Head of State would have allegedly committed crimes during the period that he was a head of state.

Might he be considered as having done this in his function as Head of State ? Or should he always be regarded as having committed these crimes as private activities ? Because it would be a fact that it cannot be seen as a part of the task of a Head of State to commit crimes ?

This last conception is manifestly untenable.

Like Sir Arthur Watts indicates already in his above quoted monograph (p. 56/57):

"A Head of State clearly can commit a crime in his personal capacity; but it seems equally clear that he can, in the course of his public functions as head of State, engage in conduct which may be tainted by criminality or other forms of wrongdoing. The critical test would seem to be whether the conduct was engaged in under colour of or in ostensible exercise of a Head of State's public authority. If it was, it must be treated as official conduct, and so not a matter subject to the jurisdiction of other States whether or not it was wrongful or illegal under the law of his own State."

393. So, since the character of the allegations against Mr. Milosevic by the so-called tribunal is indisputable that of alleged crimes which were only to be committed in his function of a Head of State, his immunity as a former Head of State stretches doubtless also over the whole of these false incriminations.

394. Since Mr. Milosevic enjoys immunity with respect of all false incriminations, brought forward against him by the so-called tribunal, as a matter of customary international law, even of a peremptory character, Article 7, par. 2 of the Statute, stipulating that the official position of a Head of State shall not relieve of criminal responsibility nor mitigate punishment is unmistakably to be considered as void.

395. The tribunal writes down in the 'Decision on preliminary motions' of 8 November 2001 that:

"28. There is absolutely no basis for challenging the validity of Article 7, paragraph 2, which at this time reflects a rule of customary international law."

The tribunal continues:

"29. The history of this rule can be traced to the development of the doctrine of individual criminal responsibility after the Second World War, when it was incorporated in Article 7 of the Nuremberg Charter (33) and Article 6 of the Tokyo Tribunal Charter (34)."

396. But it has to be stressed that there existed in Germany as well as in Japan after World War II very specific conditions and circumstances, with a decisive influence on the legal appreciations according to international law. These conditions were unique and once-only, just like the value of the judgements connected with them. So also the legal qualifications must be seen as non-recurrent.

397. Most important fact is that the Nuremberg and Tokyo Tribunals were held after Germany and Japan were completely defeated and occupied. In fact they had ceased to exist as political entities and they were purely occupied territories. So also all elements of sovereignty had ended.

398. In such a specific situation all claims based on sovereignty, like also the claim to immunity of Heads of States which is to be derived from this, had lost their basis. And were no more of any significance.

399. How different is the situation with regard to the new States, formed upon the territory of the former Yugoslavia. They are States in the full possession of their sovereignty. Like it is also stressed, once and again, in Security Council resolutions. Those resolutions also repeatedly stating that their sovereignty must be respected.

400. And it cannot be denied that immunity of their Heads of State is an important constituent of this sovereignty.

401. That the tribunals of Nuremberg and Tokio cannot be viewed as the expression of an *opinio juris*, which would have brought to an end the customary international rule that Heads of States enjoy immunity, is also clearly demonstrated by all post-war scholars and their scientific works.

They consistently have expressed over the past decades that there exists a very broad *communis opinio juris* that the immunity of Heads of States still is to be considered as a matter of customary international law, even of a *ius cogens*-character. So unaffected by the assumptions at the Nuremberg and Tokio Tribunals.

402. The so-called tribunal, as already cited above, mentions further in the 'Decision on preliminary motions', in the same quote under 29, with respect to this point of alleged criminal responsibility of Heads of States:

"The customary character of the rule is further supported by its incorporation in a wide number of other instruments, as well as case law.

30. As for instruments, the following may be mentioned: Article IV of the Convention for the Prevention and the Punishment of the Crime of Genocide; (35) Principle III of the Nuremberg Principles; (36) Article 6 of the Statute of the International Criminal Tribunal for Rwanda; (37) Article 6, paragraph 2, of the Statute of the Special Court for Sierra Leone; (38) Article 27 of the Rome Statute of the International Criminal Court ("ICC"); (39) and Article 7 of the Draft Code of Crimes against Peace and Security of Mankind (40).

31. Particular mention must be made of the Rome Statute of the ICC which, although not yet in force, has been signed by 139 States and now has 43 of the 60 ratification required for its entry into force. This is a multilateral instrument of the greatest importance, which, even at this stage, has attracted fairly widespread support. The Chamber also attaches particular significance to the International Law Commission's Draft Code for Crimes against Peace and Security of mankind, prepared in 1996. The Chamber cites this two modern instruments as evidence of the customary character of the rule that a head of State cannot plead his official position as a bar to criminal liability in respect of crimes over which the International Tribunal has jurisdiction."

403. If the norm that Heads of State enjoy immunity really is to be considered as a norm of international customary law of *ius cogens*, then, first of all, deviation of such a norm is not allowable.

As is also explicitly stated in Article 53 of the Vienna Convention on Treaties.

404. Moreover, in order to change such a peremptory norm there apply very severe criterions, as is also stipulated by Article 53 of the Vienna Convention.

Such a change could only take place 'by a later norm of general international law of the same nature'.

405. Such 'a later norm of general international law of the same nature' could only emerge after the long route of origin of an *opinio iuris* and after a long standing state practice.

406. The fact that there is now existing the Rome Statute of the ICC, which stipulates that also Heads of State are liable in respect of severe crimes against humanitarian law, certainly does not mean that it is to be concluded now that there would have been raised a new *opinio iuris*.

407. First of all, the Rome Statute of the ICC is a matter of treaty-based law.

Which means that all 43 States which have ratified this treaty, have done so purely on a volutary basis.

408. As is already pointed out earlier, of course every State is free to give up as much sovereignty as it wants. The immunity of its own Head of State is part of this sovereignty.

So if a State joins a treaty, implying to give up the immunity of its own Head of State as a part of its sovereignty, then the very essence of this is that it happens by free will.

409. But that does not mean at all that any voluntary relinquishment of such a part of sovereignty, within the framework of a treaty, tends to establish a new *opinio iuris*.

410. On the contrary, not the fact that 43 States now have ratified is decisive, but the factor that all more than hundred other States of the UN not have ratified the Rome Treaty.

411. As long as the vast majority of States of the international community has not ratified this treaty, there absolutely could not be derived from the mere existence of Rome Treaty that there would be an alternative *opinio iuris*, indicating that, from now on, Heads of State no longer enjoy immunity.

412. But there is more.

Though all states are equal according to international law, it must be stressed that political, economical and military important countries wouldn't even think of ratifying this Rome Treaty.

At the first place the United States, and further Russia and China.

Just because they absolutely refuse to make not only their Heads of State, but even all their subjects subordinate to non-domestic prosecution.

413. In the United States is recently passed through the Congress even a domestic law, which provides the American administration with the right even to undertake armed action in a land that hold prison American subject, in order to bring them before the ICC !

414. The fact that the US have meanwhile signed the Rome Treaty, acting so *male fides*, has no other significance than that, by acting on this way, the US try to hold some grasp on the Rome Treaty Process.

They never intend to ratify it.

415. So, as long as the vast majority of States do not participate in the Rome Treaty and the today's world most important States even simply can't imagine that their Heads of State might be subject of trial by a non-domestic judiciary, the Rome Treaty only shows that there is even not remotely a new *opinio iuris*.

416. Also the mention by the so-called of the Draft Code of Crimes against Peace and Security of Mankind, made by the International Law Commission, is meaningless.

The point is that the work on this Code has come to a standstill.

Just because important States, like for instance again the US, have blocked all further developments.

Since they don't accept the idea that their own citizens would be subject of strange jurisdiction and might be punished for crimes by non-domestic judges.

Let alone that they would accept that their own Head of State ever might be submitted to non-domestic jurisdiction !

417. Anyway, it is strange that the so-called tribunal invokes a legal instrument which mentions explicitly crimes against peace as the most prominent crimes against humanitarian, while this same tribunal pretends that crimes against peace are beyond its competence.

Taking this wrongfull position, not by reason of severity of crimes or by reason of legal systematics, but under dictates by the US.

418. It are especially the Nuremberg principles and Nuremberg judgements, which stress explicitly that crimes against peace do not differ from other war crimes and crimes against humanity, otherwise that 'they contain into themselves the evil of the whole'.

419. Nevertheless the so-called tribunal takes the position that it is not competent to deal with crimes against peace.

Though the Charter of Nuremberg is explicitly named by the Secretary-General of the United Nations as part of conventional international law, applicable by the so-called tribunal.

As is stated in his report pursuant to paragraph 2 of the Security Council resolution 808 (1993), S/25704, dated 3 May 1993.

420. But the Unites States, the real master of this tribunal, has ruled out the power of the so-called tribunal over crimes against peace.

To keep out of range for taking the lead into NATO's aggression war against the Federal Republic of Yugoslavia.

421. Finally, the tribunal mentions the Pinochet case, in order to defend the thesis that there would have been established a new opinio iuris and a new state practise.

422. With respect to this, first of all one example of a judgement pro a certain thesis of course cannot be regarded as the establishment of a state practice !

Secondly, this verdict in the Pinochet case by the House of Lords of the United Kingdom was certainly a touch and go.

It was a pronouncement by the smallest possible majority.

Thirdly, the fact that Pinochet was a dictator, who had come in power by a bloody putch, has certainly contributed to the outcome.

Mr. Milosevic is democratically elected President, reflecting as such the not only the sovereignty of the State, but also acting democratically legitimized.

423. And even when you would consider the conviction of Mr. Jean Kambanda by the Rwanda Tribunal a second example, mentioned by the tribunal, that makes only two. And two cases make not a state practice.

Moreover, the Kambanda verdict originates from the same source as the indictment against Mr. Milosevic. Because there are evident cross-connections between the Rwanda tribunal and the Yugoslavia tribunal. So this could not be put on record as a verdict, separate of the so-called tribunal.

V.6.b. Conclusion

424. The customary international rule that Heads of State enjoy immunity is still in existence.

There is not such 'a rule of customary character that a head of State cannot plead his official position as a bar to criminal liability', as pretended by the so called tribunal. Not even as 'coming law'.

425. So Mr. Milosevic is illegally deprived of his freedom and security as a former Head of State. In contravention to Article 5, also on this specific ground.

VI. THE VIOLATION OF THE CONVENTION'S HUMAN RIGHTS, GUARANTEED BY ARTICLE 6, UNDER DUTCH RESPONSIBILY OR CO-RESPONSIBILITY

VI.1. Standing jurisprudence of the European Court with regard to the compliance of the tribunal with Article 6 of the Convention

426. It is true that in the view of the European Court, as expressed in Naletilic v. Croatia, ECHR 4 May 2000 (Appl. no. 51891/99), the so-called tribunal is to be considered

"..an international court, which, in view of the content of its Statute and Rules of Procedure, offers all necessary guarantees including those of impartiality and independence."

And that consequently the European Court concludes then:

"Accordingly, no issue arises under Article 6 par. 1 in this respect."

427. However, this judgement has only to be taken the way it is, no more.

And certainly you cannot generalize this pronouncement. Concluding that the European Court also would have stated definitely by this specific ruling that the tribunal is to be regarded as acting according to the Art. 6 par. 1 obligations in the course of his functioning as judiciary body as well.

428. Doubtless this judgement don't stretch so far.

The court let this point completely aside.

It only stipulates that 'in view of the content of its Statute and Rules of Procedure' 'all necessary guarantees' would be offered.

And that 'in this respect' no issue under Article 6 par. 1. would arise.

429. In other words: the European court's view in this respect is that the procedural law of the tribunal is deemed to provide a sufficient base for an impartial and independent treatment.

But this means not at all that the tribunal's practice should be also regarded as automatically in accordance with these standards.

430. In the following is will be clearly demonstrated that at least the tribunal's practice is in a massive and multiple way in severe breach of the Article 6 par. 1-standards.

In general as well as specifically with regard to Mr. Milosevic.

431. But that is not the only point.

In the following it will also be proven that the opinion of the court, as expressed in the above mentioned judgement, namely that, anyhow, the content of procedural law of the tribunal is to be seen as offering sufficient guarantees according to Article 6 par. 1, which opinion has clearly the character of a provisional ruling given without a profound searching of the state of affairs concerning this tribunal, has to be reviewed as well.

VI.2. Violation of the Article 6-right to a fair trial by an independent tribunal by the fact that it will be impossible in se to declare this so-called tribunal an independent tribunal

432. The tribunal is raised as a subsidiary organ of the Security Council, in accordance with Article 29 of the UN Charter.

A subsidiary organ of the Security Council is a subsidiary organ of the Security Council, and cannot be, at the same time a totally independent institution.

433. As a subsidiary organ of the Security Council, it has also received a clear assignment by the Security Council: to function as a Security Council measure to restore peace and order in the territory of the former Yugoslavia.

434. Of course this assignment clearly underlines, once more, that this tribunal simply cannot be an independent organ. It is contrary to each logics to qualify a subsidiary organ, with a clear political assignment, nevertheless independent.

435. To state it the other way around: the tribunal cannot be, at the same moment, independent and a political peace serving instrument.

Because it can only perform the service of peace as an extension piece of the Security Council.

Being the service of peace a exclusive prerogative of the Security Council.

436. So the pretended independence can only exist in the imagination of the tribunal's protagonists, but not in reality.

That would be an inherent contradiction.

437. The fact of being a subsidiary organ, and moreover being ordered with a clear assignment, was casting its shadows already before really beginning its performance.

Like it is stated by Mr. Milosevic in his 'Presentation':

"The very psychology of the enterprise is persecutorial. Few judges appointed to serve on a tribunal created under such circumstances will feel free to acquit any but the most marginal, or clearly mistaken, accused, or to create an appearance of objectivity."

438. That the so-called tribunal is not independent is further also proved by the fact that it is up to the Security Council to decide on its ending.

440. With respect to this factor, it is finally to be stressed that this datum greatly influences also the prosecution policy by the tribunal.

For knowing that its existence is only temporarily, and that it is up to the Security Council to decide when it will end, it has to set its prosecution aims.

441. That the tribunal is not only not independent in se, but that it also abundantly shows this lack on independency in practice_as well, will be considered later on in this application and in an additional application.

VI.2.a. Violation of the Article 6-right to a fair trial by the fact that the so-called tribunal is illegally founded by the Security Council as an abuse of power and consequently do not represents 'an independent and impartial tribunal established by law'

442. The so-called tribunal was established by the Security Council resolutions 808/93 and 827/93 and, as explicitly stated in this acts, in accordance with Chapter VII of the UN Charter.

So here is at issue a decision of the Security Council, and besides a unique and far-reaching one.

443. Without also explicitly pronouncing this, it is continuously suggested by many sides, that Security Council resolutions are ultimate law and must always be obeyed unconditionally.

This suggestion, mala fide also strongly supported by the so-called tribunal, is false.

As already mentioned above and is confirmed by the International Court of Justice: States are not duty-bound to accept and implement the Security Council decisions that are not in accordance with the Charter.

See Advisory Opinion 21 June 1971 'Legal consequence of the protracted presence of South Africa in Namibia despite Security Council Resolution 276/1970'.

Which would, by the way, be clear by itself even if it were not written anywhere.

444. The fact that there is no obligation to label all Security Council resolutions automatically as ultimate law, just blindly to comply, implies and justifies at the same time

a right - and even a duty - to inquire and test any Security Council resolution, in case that there will be reasonably ground to doubt its legality and legitimacy.

445. Definitely there is abundant reason here to question the legality and legitimacy of this particular resolution. Numerous scholars and other legal experts all over the world cast doubt on this this legitimacy and legality, or even renounce this quite openly.

Including the indubitable authority of Professor M. Bedjaoui, former President of the International Court of Justice. Who included in his book "The new world order and the control of the legality of the Security Council acts" ("Nouvel ordre mondiale et controle de la legalité des actes du Conseil de Sécurité"), Bruxelles, 1994, in the eight Security Council Resolutions that he considered legally most disputable and to be the first to be submitted to control, also both mentioned resolutions on the establishment of the so-called tribunal.

And like the eminent Dutch scholar in international law, Prof. P. de Waard, saying on Dutch radio on August 10, 2001:

"I think that the Security Council has transgressed its competence by creating this tribunal. That it is not to be sneezed at that the tribunal is about to make deep inroads into the private life of individual persons, and that this is going to be done by the Security Council, an non-democratic institution."

Also like, for instance, the American politic philosopher Lummis in The Nation of September 26, 1994:

"Where does the U.N. get the power to prosecute individuals ? The International Tribunal was established by Security Council resolutions, but that answers nothing. Where does the Security Council get such power ? The legal fiction is that the power comes from Chapter VII of the U.N. Charter. Chapter VII authorizes the U.N. to deploy the armed forces of member states in peacekeeping operations. Stretch the words as you will, you cannot make them say that the U.N. has the power to put people in jail under criminal charges. On the contrary, the Charter, written by representatives of states jealous of their power, fall all over itself to insist that the U.N. may never usurp the sovereign rights of states."

446. In a separate addition to this application will be presented a further comprehensive survey of scholars and their pronouncements, discrediting the legality and legitimacy of the so-called tribunal, from all over the world.

447. Of course there can be no discussion about the point that Article 41 of the UN Charter 'empowers the Security Council to adopt measures, not involving the use of force, to give effect to discharge its obligation under Article 39 to maintain or

restore international peace and security' and that 'Article 41 lists certain measures which may be taken by the Security Council', as is stated by the tribunal in the 'Decision on preliminary motions' of 8 November 2001.

These are matters of fact.

448. But even when it would be true that, as is also declared under 6 of this Decision, 'it is perfectly clear that the list is not exhaustive..', which can already seriously doubted from a legal point of view, even then the continuation of this sentence, layed down by the tribunal, is absolutely and manifestly untenable.

This sentence continues: '..and that it is open to the the Security Council to to adopt any measure other than those specially listed (emphasis added), provided it is a measure to maintain or restore international peace and security.'

449. It is impossible to view this position of the tribunal as a correct interpretation of law.

For of course it is untrue that the Security Council might adopt any measure whatsoever, if aimed at maintaining or restoring international peace and security.

Nevertheless this is what the so-called tribunal wants everybody to believe.

450. The implicit assumption that is hidden behind this statement and that the so-called tribunal intends to introduce, is that the words of the Security Council are ultimate law.

And that the authority of the Security Council is so absolute, that any decision by the Security Council is to be accepted without further ado as legal and legitimate, and finally that thus a check with regard to legality and legitimacy would be not only unnecessary, but even contrary to international law.

451. Like it is stated by Mr. Milosevic in his 'Presentation on the illegality of the ICTY and the illegality of the surrender to the ICTY', dated 30 August 2001:

"Unless It Is Limited By The U.N. Charter And International Law, The Security Council Can do Whatever It Chooses To Do

If is is not restrained by the United Nations Charter, the Security Council can commit any act it desires disregarding all law. Early proponents of the United States world power claimed such unbridled discretion for the Security Council publicly. Thus in 1950 John Foster Dulles wrote:

"The Security Council is not a body that merely enforces agreed law. It is a law into itself.. No principles of law are laid down to guide it, it can decide in accordance with what it thinks is expedient."

If unchallenged, this concept of Security Council power means that the most powerful international organ created

by the Charter of the United Nations "to end the scourge of war" is above all law, domestic and international."

452. But such a thesis, also mala fide sponsored by the the so-called tribunal, cannot be accepted.

Because, like also is emphasized in the above mentioned judgement of the International Court of Justice of 21 June 1971, States are not duty-bound to accept Security Council resolutions that would be in contravention to international law.

453. And this being so, will next, on his turn, as a consequence presuppose and underline, as a further assumption, that there must be in existence a basic right to check the legality and legitimacy of Security Council resolutions.

So that it is finally also to be accepted that there must be place for such a check.

So a check on the legality and legitimacy of the Security Council resolutions with respect to the establishment of the tribunal is permissible and lawful.

454. But even besides this, it is of course a matter of leading up the garden path, when the tribunal is trying to make to believe that the Security Council, from a legal point of view, might adopt 'any measure, other than listed in Article 41 of the Charter'.

The Security Council may not, because also the Security Council is bound to the Rule of Law, especially of course to the UN Charter.

So the Council cannot take measures which exceed this framework.

And when the Council nevertheless will do, it exceeds inevitably its authority.

455. From this perspective inquiring the establishment of the tribunal by the Security Council, the following is to be recorded.

456. Nothing in the UN Charter tends to the existence of a right by the Security Council to perform any judicial function.

457. All the more there is no indication at all within the framework of the United Nations, its embodiments and regulations, that the Security Council would have the right to perform any judicial function with regard to the legal position of individual citizens.

The so-called tribunal is intended to be a subsidiary organ of the Security Council, according to Article 29 of the UN Charter.

Since the Security Council don't possess a right to perform such judicial function in general, it also cannot transfer such competence in general to any subsidiary organ.

Because the Security Council cannot transfer any powers that it does not held.

458. All the more the Security Council cannot transfer any judicial function with regard to, more specifically, the legal position of individual citizens.

This because there is no trace in the UN Charter that permits any embodiment of the United Nations to penetrate directly into the private life of individual citizens of the UN Member States.

459. So this non-existent power also cannot be transmitted by the Security Council to a so-called tribunal.

Like Mr. Milosevic has already stressed in his 'Presentation':

"There are three fatal legal flaws in the so called International Criminal Tribunal for the former Yugoslavia. Each has disastrous consequences for the human quest for peace, the rule of law, democracy, truth and justice.

1. The Charter Of The United Nations Does Not Empower The Security Council To Create A Criminal Court

The U.N. Security Council has seized power it does not possess, corrupting the Charter of the United Nations, placing itself above the law and threatening "We Peoples of the United Nations" with a lawless future in which a superpower employs the scourge of war to have its way. Nothing in the history of the planning, drafting, discussion, approval or ratification of the U.N. Charter implies, or is consistent with an intention to empower any body created by, or under, the Charter to establish any criminal tribunal. The words of the Charter and their textual inferences, the structure and allocation of power and duties, including those in the incorporated Statute for the International Court of Justice, all negate the existence of any capacity under the Charter to ordain criminal courts. The Criminal Tribunal for Former Yugoslavia is illegitimate and its creation a corruption of the United Nations.

There would never have been a United Nations if its Charters stated, or implied, that a criminal court could be created under its authority.

No one who believes in historical truth, or that words have meaning, can, after examining the history of its creation and its text, contend that the Charter of the United Nations empowers the Security Council to create a criminal court."

460. As said, any proposition that all what is done by the Security Council is to be viewed beforehand as well done from a legal point of view, cannot be accepted.

461. The so-called tribunal claims this discretion for the Security Council - and so for itself -, in order to achieve its political aims.

Like also stressed by Mr. Milosevic in his already cited 'Presentation':

"Creation Of The International Criminal Tribunal For The Former Yugoslavia Was A Lawless Act Of Political Expediency By The United States Designed To Demonize And Destroy An Enemy And Frustrate Creation Of A Legitimate International Criminal Tribunal

At the insistence of the U.S. the Security Council nearly fifty years after it came into being forged a new and powerful weapon capable of demonizing a nation and its people and depriving individuals of their liberty for the rest of their lives and placed it largely in the hands of the United States.

The principal precedents for such pseudo-judicial actions over several millennia preceding the creation of the U.N. are trials of leaders and soldiers of vanquished populations by the victors in war, and courts used by colonial powers to control and punish subjugated peoples. The precedents are many and the violence and hatred they usually exposed and caused was extreme."

462. So the establishment of the so-called tribunal was a lawless act by the Security Council.

463. But even when the Security Council was to be considered as being competent to perform judicial functions, and with respect to that, even to penetrate directly into the private life of individual citizens - which is definitely not the case -, then still the Security Council would not be allowed to transfer such a competence to any subsidiary organ, like for instance the tribunal, if this presupposed competence was meant to have the scope of measure under Article 39 of the UN Charter, so intended to be a measure under Chapter VII of the Charter, aimed on maintaining and restoring international peace and security.

464. Because, within the the powers it has, the Security Council may not transfer to its subsidiary organs any of its decision-making rights.

465. This interpretation is also confirmed by Article 28 of the Rules of Procedure of the Security Council, adopted on 24 June 1946 and based upon Article 30 of the UN Charter. Though these Rules of Procedure, after more than 55 years still have a provisional status, they nevertheless represent an important source for explication.

466. Article 28 of the Rules of Procedure of the Security Council reads:

"The Security Council may appoint a commission, a committee or an rapporteur for a specific question."

So this is the way the UN Charter's most important interpreters, a year after the adoption of the UN Charter, were going to deal with the question what kind of subsidiary organs the Security Council might establish, in order to implement Article 29 of the Charter.

An interpretation by the founding fathers, representatives of the Key UN founding members, playing a dominant role and other notably important persons, such as Ernest Bevine, George Biddiscombe, Joseph-Paul Boncour, Edward E. Stetinius Jr., Andrei Y. Vyshinsky and Andrei A. Gromyko.

Appointment of a committee, commission or rapporteur is miles away from trying to make use of Article 29 UN Charter, in order to transmit decision-making rights, belonging inbreakably to the Security Council itself, to one of its subsidiary organs.

467. And finally this.

Even when the Security Council was to be considered as competent to perform judicial functions, even to the extent of penetrating directly into the legal order of the UN Member States and consequently into the private life of individual citizens of these Member States, and even when the Security Council would be competent to transfer decision-making power to its subsidiary organs, even this still would, as it is, not provide the so-called tribunal with the competence to present all its separate decisions, orders and warrants as measures within the framework of Chapter VII of the UN Charter.

468. Because, in order to reach this specific status there are strictly prescribed procedures. And it is not possible to derogate of this provisions.

469. So even when it, as it is, has to be regarded as not impossible for the Security Council to transfer decision-making power to any of its own subsidiary organs, even then this competence actually could not be properly executed by this subsidiary organ.

Since each decision of this subsidiary organ will have to follow the same comprehensive procedure as any decision by the Security Council itself, in order to gain the status of 'measure to maintain or restore international peace and security'.

470. So even in that case each order, decision or warrant, issued by the so-called tribunal, not having gone along these lines of the comprehensive procedure, prescribed in order to reach a valid 'measure to maintain or restore international peace and security' definitely could not be sold as 'a measure to maintain or restore international peace and security'.

471. Nevertheless, the so-called tribunal is founding its whole pretended power on this clearly false and untenable

assumption that all its - countless ! - orders, decisions and warrants must be seen as, one by one, just as much separate 'measures to maintain or restore international peace and security' !

472. Clearly nonsense, from the perspective of the UN Charter.

473. However, establishing that this pretension of the tribunal is nonsense, from a legal point of view, this knocks down at the same time the very fundamentals under this so-called tribunal.

VI.2.b. Conclusion

474. The Security Council cannot perform any judicial function.

All the more, it cannot perform any judicial function, interfering with the sovereignty of States.

The Security Council, anyhow, cannot claim lawfully judicial functions, directed against individual citizens of States and penetrating directly into their private lives.

475. If the Security Council nevertheless is to be supposed to have such a power, as a legal and legitimate power under Chapter VI of the UN Charter, then this power is definitely to be considered as a decision-making right.

It is then to hold that such a decision-making power is only to be used by the Security-Council itself and cannot be transferred.

476. If, in spite of this, it is to be assumed that the Security Council could transfer decision-making power to any of its subsidiary organs, then such a subsidiary organ can only claim that any of its measures should be judged as a measure according to Chapter VII of the UN Charter, when such a measure would be established in accordance with the procedure, prescribed in the UN Charter for the establishment of measures of enforcement.

477. There is no order, warrant, measure or verdict, issued by the so-called tribunal that can meet this standard.

478. So there are definitely no legal terms to qualify any order, warrant, measure or verdict by the so-called tribunal as an enforcement measure in accordance Chapter VII of the UN Charter.

479. As a consequence, anyhow, nobody is held to comply with such acts of the tribunal.

VI.3.a. Violation of the Article 6-right to a fair trial by the fact that the tribunal is also illegal, and consequently not an impartial and independent institution, since it infringes, on a twofold basis, the principle of sovereign equality of states

480. Like it is already pointed out under chapter V of this application, the most outstanding principles of international law are the principles of sovereignty and equality of States. The very UN Charter is even build around this two basic principles.

481. And they have the status of ius cogens. Which means that these leading principles must be respected under all circumstances.

VI.3.1.a. Violation of the principle of sovereign equality by the mere set up of the tribunal and, by acting so, the creation of a discriminatory prosecution in contravention to Article 6 of the Convention

482. So it undeniable that also the Security Council is bound to respect this principles unimpairedly.

483. In fact double-bound.
Since firstly bound in general to these principles of customary international law with a peremptory status, and secondly, more specifically, once again by the UN Charter itself.

484. As it is also pointed out already under chapter V of this application, this tribunal, as it is as well as by its set up and its performing, violates drastically just as well the principle of sovereignty as the principle of equality.

485. The fact that the Security Council pretends that it may set aside, at the same time, and the principle of sovereignty and the the principle of equality, and this even under the blatant hypocritical pretext that the victimized States would hold their sovereignty, is to be qualified as the worst thinkable violation of international law and of the UN Charter by the Security Council.

486. In fact this is a pernicious action, instigated and wringed by the United States, the sole remaining superpower in the world, which succeeds more and more in moulding also the Security Council to its will.

With total disregard of what is law or not.

487. The position of domination by the the Security Council - and within the Security Council itself, by the United States - is also strongly denounced by Mr. Milosevic in his 'Presentation':

"All but fifteen nations are excluded from Security Council counsels. Each of the five permanent members can veto its actions. The Security Council is subject to domination by a single nation. The representative of each member votes as instructed by the national governments that appoints him and to serve the interests of that government, not as an international statesmen serving all peoples and the purposes for which the U.N. was created. The Security Council is inaccessible, anonymous and less responsive to democratic processes than any other international political institution."

Nevertheless, as is also stated by Mr. Milosevic in his presentation:

"All rights of all nations, races, religions, cultures, political parties and individuals are thereby subordinated to the will of the Security Council, and the single superpower that too often will dominate it."

488. A pernicious action by this single remaining superpower, the United States.

That would never tolerate such blunt interferences with its sovereignty for itself, as it has instigated to impose upon the States on the territory of the former Yugoslavia. By forcing the set up of this so called-tribunal.

489. So not only making a mockery of the principle of sovereignty with respect to these States, but also making a travesty of the basic principle of equality between states, as leading principle of the United Nations, the UN Charter and international law.

VI.3.2.a. Violation of the principle of sovereign equality by the set up of the tribunal as limited in space and time in its competence and, by acting so, the creation of a discriminate prosecution in contradiction with Article 6 of the Convention

490. There is also a second important breach of the principle of sovereign equality.

And that is the fact that the tribunal and its task are limited to the territory of the former Yugoslavia only, and that this so-called tribunal is further also limited in time.

491. The last point, the limitation in time, will be considered later on.

Now directing to the first point

492. In the 'Decision on preliminary motions', dated 8 November 2001, it is stated by the so-called tribunal that this will be no problem:

"8. The accused argues that the creation of an ad hoc court targeting one country "corrupts justice and law"; that an ad hoc court "violates the most basic principles of all law (...)".

9. Human rights bodies have, on several occasions, pronounced on the legitimacy of ad hoc tribunal (13). The decisions of these bodies establish that there is nothing inherently illegitimate in the creation of an ad hoc judicial body, and that the important question is whether that body is established by law, in the sense that, as it is stated in the Tadic Jurisdiction Appeal, it "should genuinely afford the accused the full guarantees of fair trial set out in Article 14 of the International Covenant on Civil and Political Rights. (14)"

493. First of all, the so-called tribunal builds its defense on this specific point primarily upon its own ruling. Actually in the Tadic case.

Of course this cannot be seen as a strong argumentation: an ad hoc tribunal parrying the challenge of the legitimacy of its own ad hoc status with reference to its own jurisprudence.

494. Secondly, the reasoning in the Tadic verdict is careless and manifestly incorrect.

Since of course there must be ascribed independent importance to the factor 'establishment of a court by law'.

As a separate basic human right to be claimed.

495. And incorrect is the conception, pronounced in the 'Decision', that this specific requirement would be covered automatically when 'is afforded the full guarantees of fair trial set out in Article 14 of the International Covenant on Civil and Political Rights'.

At least there must be showed any evidence of this implementation.

Which is, by the way, completely lacking.

496. Thirdly, it is simply not true that, when an ad hoc court once would have been 'established by law' and/or 'the full

guarantees of fair trial set out in Article 14 ICCPR would be afforded', herewith the objections against the selective and discriminate character of prosecution would be lifted. Such objections are, after all, of a complete different nature as covered by the Article 14 ICCPR-provisions.

497. The posing that is put forward by this application, is that there exists a discriminate prosecution policy, by the fact that only particular alleged suspects are going to be prosecuted, but elsewhere on earth everyone suspected of the same kind of crimes goes free.

498. And this problem is not met by any guarantee whatsoever that this discriminated category suspects, who really are prosecuted, will be prosecuted by a court - yes or no - 'established by law' and - yes or no - in accordance with 'the full guarantees of fair trial set out in Article 14 ICCPR'.

That affects not at all the discriminate nature of this prosecution and the assault on the principle of sovereign equality, represented by this discrimination.

499. So this reasoning by the so-called tribunal, in the Tadic decision as well in the 'Decision on preliminary motions' of 8 November 2001, lets even these objections completely untouched !

500. Moreover, this reasoning by the tribunal is even unfair with respect to the own position of the tribunal, which is - as said - already in itself passing the problem.

501. First of all, the tribunal suggests that it would be the law that would have no further problems with such discriminate courts, when once the requirements of Article 14 ICCPR would be properly met.

However, on the other hand the tribunal itself produces a footnote in the 'Decision on preliminary motions', expressing that it will be 'the Covenant' that might not be radically against 'military or special courts', at least according to the General Comment of the Human Rights Committee on Article 14 of the ICCPR.

There is no identity between the Covenant and the law. This specific point will be elaborated later on.

502. However, the first question is here, whether this specific Yugoslavia tribunal, only prosecuting crimes against humanitarian law in the former Yugoslavia, is of the type of courts as meant in the comment of the Human Rights Committee on Article 14 ICCPR.

503. But moreover, this comment, taking it for what it is worth, is reproduced unfair by the tribunal in the body of the 'Decision on preliminary motions'.
The full text of the relevant footnote 13 reads:

"See, e.g., paragraph 4 of the General Comment of the Human Rights Committee on Article 14 of the ICCPR where it is stated: "[T]he Covenant does not prohibit [military or special courts which try civilians], nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts **should be very exceptional** (emphasis added) and take place under conditions which genuinely afford the full guarantees stipulated in Article 14."

504. So the first condition, stressed by the General Comment, for any 'special court' is that the trying of of civilians by such courts 'should be very exceptional'.

505. It is this prominent element that is totally stashed away by the so-called tribunal in the body of the 'Decision on preliminary motions' !

506. So it is even not tenable that the General Comment backs any 'special court' whatsoever, more than that the trying of civilians by such 'special court' has to remain 'very exceptional' !

507. Which is a complete different outcome than what is falsely suggested in the 'Decision'.

508. And this still apart from the question, whether the Yugoslavia tribunal truly is to be seen as a 'special court' in the sense of this General Comment.

509. But even when a so-called court like the Yugoslavia tribunal is to be regarded as a 'special court' in the sense of the General Comment, and this General Comment would form indeed a correct interpretation of the content of the ICCPR, then this only entails that the Covenant **does not prohibit** such a so-called court like the Yugoslavia tribunal, en this still under the strict condition that 'the trying of civilians should be very exceptional'.

510. And also in these circumstances that the Covenant does not prohibit such tribunal, it cannot be reasonably concluded that therefore the law positively allows such type of tribunal. Because of course the Covenant is not the whole law and not the only source of law.

511. The point is: criminal offences of the same nature, as only prosecuted into the territory of the former Yugoslavia - and some other particular assigned relatively small areas, like Rwanda - are going to be committed in many war-torn areas all over the world.

And dealing with such crimes only in a particular space, and subdueing to punishment for such crimes only people witin this specific area, is nothing less than the establishment of a highly selective justice.

But selective justice cannot be considered true justice.

512. Like it is stated by Mr. Milosevic in his 'Presentation':

"2. A One Time, One Episode Court Targeting One Country, Created By International Political Power To Serve Its Geo-Political Interests Is Incapable of Equality And Conducive to Division and Violence

The illegitimate Criminal Tribunal for Former Yugoslavia corrupts justice and law because it is incapable of acting equally among nations, or within the politically targeted nation. It will increase violence, division and the risk of war with neighboring nations and peoples and within Yugoslavia among the segments of the society the U.S. policy of balkanization of the Former Yugoslavia has set against each other and against the new government the U.S. has installed for its own purposes.

If the United National Charter had authorized the Security Council to create criminal courts, it could not create a court for one nation, or episode for political purposes, to persecute selected groups, or persons and such a court is incapable of equal justice under law.

An ad hoc court violates the most basic principles of all law. Equality is the mother of justice. An international court established to prosecute acts in a single nation and primarily, if not entirely, one limited group is pre-programmed to persecute incapable of equality.

If the Security Council can create a criminal court to prosecute conduct in a single country like Yugoslavia, it can appoint a court for any country, selecting enemies or political and economic opportunities for targeting one at a time, while never exposing itself, or those who comply with its wishes to such selective prosecution.

If the U.S., or any ally or client state it chose to protect, was the subject of a serious effort by the Security Council to be honored with a criminal tribunal in its own name, the U.S. would veto the threatening action.

A Court created only for crimes in one country is by definition discriminatory, incapable of equal justice, a weapon against chosen enemies, or antagonistic interests and war by other means. If there is to be any international criminal court, it must act equally as to all nations with none above the law. The ad hoc tribunal for a single nation corrupts international law.

By its very nature, the ad hoc Tribunal can be created only after the conduct the Security Council decides that justifies creation of the Court, since there is no other excuse for its creation. It is in every case ex post facto. This violates an ancient principle of law.

It also requires the Security Council, if there is to be a rational basis for its action, to make some preliminary claim to finding of facts. A task such a political body is not designed for, that inherently incriminates a country, or faction by placing the imprimatur of the Security Council of the United Nations on a political decision of fact necessary to justify creation of the Tribunal. The very charge of the security Council - genocide, crimes against peace, war crimes, or crimes against humanity, demonized any person thereafter accused.

The Selection Of A Nation For Prosecution On Political Findings Of genocide, War Crimes And Crimes Against Humanity Creates A Compulsion To Convict

Investigators, prosecutors and administrative personnel who join a temporary Tribunal to pursue allegations of humanities' greatest crimes against a people and leaders already demonized will feel they have failed if there are not convictions.

The very psychology of the enterprise is persecutorial. Few judges appointed to serve on a Tribunal created under such circumstances will feel free to acquit any but the most marginal, or clearly mistaken, accused, or to create an appearance of objectivity.

Powers That Create Ad Hoc International Criminal Tribunals Divert Attention From Their Own Offenses, Or Failures, Or Those Of Allies And Their Political Surrogates While Continuing To Inflect and Threaten Mass Destruction With Impunity

The ad hoc Tribunal which targets a country is incapable of prosecuting what may be greater crimes committed in the same conflict, by a power, coalition ally or political agents that was and remains a much greater source of violence and threat to peace.

Most often the power which forced the creation of the target tribunal to further damage and demonize their enemy is shielded from criticism by the avalanche of propaganda against the accused supported by the appearance of United Nations neutrality and peace making efforts.

What court will consider the criminality of the aerial bombardment by U.S. aircraft of defenseless civilians, their housing, water systems, power plants, factories, office buildings, schools, hospitals, which take thousands of lives directly and causes billions of dollars of property damages in Belgrade, Nis, Novi Sad and scores of other cities, towns and villages? What threat to peace continues from the U.S. bombing of the Chinese Embassy? Who will be held accountable for the devastation of Pristina by NATO planes, or the attacks on refugee columns in Kosovo? Is the U.S. use of cluster bombs exploding razor

sharp metal fragments over an area as large as a soccer field in the courtyard at the hospital in Nis no crime ? Will the Security Council act to prevent and punish the use of depleted uranium by the U.S. which is as indiscriminate in its radiation as the air, the water, the soil and food hain it touches and contaminates for millions of years ?"

513. What further is already pointed out in chapter V of this application on the specific issue of the present paragraph must be seen as also here repeated and inserted.

VI.3.b. Conclusion

514. The set up of the so-called tribunal creates already in itself a grave violation of sovereign equality of states, which violation is further strengthened by the determination that the so-called tribunal is limited in space and time.

515. These violations of the sovereign equality generate inevitably a discriminate prosecution policy, charging only people of the States with afflicted sovereignty with crimes against humanitarian law, and keeping out of range people from elsewhere on earth, suspected of the same crimes, but coming from States with a sovereignty not equally affected.

516. This inherent discriminatory persecution is a violation of Article 6 of the Convention.

VI.4.a. Violation of the Article 6-right to a fair trail by the fact that the tribunal is also unlawfull and consequently not an independent and impartial institution, since this so-called tribunal lacks democratic legitimation as deemed to be essential for any penal court in the world

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517. Formally the so-called tribunal is a product of the Security Council, but actually it is forced by only one power, the United States of America.
As the whole world knows very well.

518. But even just in view of this formal side - being a product of the joint Security Council -, there were only a few countries involved in the set up of this tribunal. Namely the mere handful of States, that constituted the Security Council at that time.

519. And nothing was asked to the sovereign States themselves, being nevertheless subject to this humiliating operation. In fact they all firmly and constantly have opposed this abuse of power.

520. But the Security Council, under the decisive influence of the United States, did not care at all about this resistance, nevertheless to be regarded as a matter of great legal importance.

521. Instead of caring about this, the Security Council opposed threats and measures of enforcement against this general defiance by the duped States.

Actually, of course, instigated by the so-called tribunal, harsh enforcement measures against Yugoslavia and only threats against the other defiant States.

522. So all what was concerned and involved in this process of giving birth to this tribunal, its implantation into the international legal order and its interferences with the sovereignty of the relevant States on the territory of the former Yugoslavia was only, to be honest, actually decisively influenced by one state. Or, formally viewed, at the most a matter of a handful of States, united in the Security Council.

523. It is in this context that the demands must be viewed, made by the most important human rights instruments, in the sphere of legality and legitimacy for any court, may such a type of court be democratically acceptable.

524. The first sentence of Article 6, par. 1 ECHR reads:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

And the last part of the second sentence of Article 14, par. 1 par. 3 ICCPR reads:

"...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

526. So, according to both the most important human rights provisions, the element 'established by law' forms an integral and constituent element for any court, could it lay claim to legitimacy and legality.

527. The background is clear: an essential and indispensable condition for any court will be, that it shall be democratically legalized and founded.

528. The element 'establish by law' first of all means that it should be guaranteed that any court, that is going to be established, will be based upon and supported by a broad and solid backing.

Providing the court concerned with this with the element 'democratic legalization'.

529. But there is more.

The democratic process, presupposed by the human rights condition 'established by law', not only guarantees a broad and democratic backing, but also will guarantee that there may be a deep discussion in the phase of the creation of the court about all aspects of the bill, and an in-depth investigation on all issues of legality and legitimacy among different stages of the law making-process.

530. These are just as much safeguards, not only against the unlikely event of a the sudden arising of any occasional court as instrument of power and oppression by undemocratic elements, but also against the origin of any court that may be not in accordance with basic requirements of legality and legitimacy.

531. Both safeguards were totally absent when the Security Council gave birth to this so-called tribunal.

There was not any 'democratic legitimation' at all.

532. And any controll that the so-called tribunal henceforth, as far as possible, would comply with basic requirements of legality and legitimacy, guaranteed by any democratic process, was also completely absent.

Any controll of compliance with basic requirements of legality and legitimacy, not only with regard to the realization of the tribunal itself, but also regarding the creation of the so-called tribunal's rules, fabricated afterwards by the tribunal's judges and judiciary apparatus itself.

533. All that business of the creation of the tribunal and the creation of its rules was over and done with the performing of all of it, done by, at the most, a handful of States and the tribunal's incrowd itself.

534. Even the United Nations as such didn't get a chance to get involved in this process.

So it obviously didn't suit the purpose of the most powerful elements within the Security Council and the so-called tribunal itself as well, to seek, one way or another, the involvement of the United Nations as such.

535. The participation of the United Nations still would have provided at least a tendency towards democratic legitimation. But even that was asking to much.

It was all done by the Security Council and the tribunal itself, based upon their pretended discretion.

536. In spite of the fact that, like it is stressed by Mr. Milosevic in his 'Presentation':

"... absolute discretion is the very definition of lawlessness and has been called 'more destructive of freedom than any other of man's inventions' by U.S. Supreme Court Justice William O. Douglas."

537. In Prosecutor v. Tadic, Case, Case no IT-94-I-T, T.Ch.II, 10 August 1995 I ICTY JR 63, ALC-I, p. 13 etc., confirmed by Appeals Chamber, Case No. IT-94-I-AR72, 2 October 1995, I ICTY JR 353, ACL-I, p.33, etc., the so-called tribunal itself admits, under 43, that the element of 'establishment by law' is absent as far as the tribunal is concerned.

538. Nevertheless the tribunal calls this absence of this basic human rights condition in the Tadic sentence necessarily in case of an international embodiment like the Yugoslavia tribunal, since an international organisation like the the United Nations could not accommodate the element of the separation of powers in conformity with the demand of Article 14 ICCPR that a judicial organ has to be 'established by law'.

539. That this argument, being an argument of 'having clean hands' is also as a fact completely unjustified, and so a false argument, will be appointed later on.

540. Here it is only the place to state that this explicit admission that there is no provision within the regulations of the so-called tribunal, which can cover this Article 14 ICCPR, jo. Article 6 par 1 Convention-requirement in this Tadic-case, is contradictory to what the tribunal put forward in the 'Decision on preliminary motions' of 8 November 2001 in case of Mr. Milosevic.

541. In this 'Decision' is proclaimed under 9 that the Tadic-case would learn that when a 'body is established by law, in the sense that (...) it "should genuinely afford the accused the full guarantees of fair trial set out in Article 14 of the International Covenant on Civil and Political Rights"', everything would be alright, suggesting that this human rights demand of being 'establishment by law' is not lacking at all within the framework of the tribunal's regulations, but must be seen as implemented within the whole of the 'already guaranteed Article 14-provisions'.

542. So once more it is clear that the tribunal, in order to keep Mr. Milosevic in its jail, is prepared to rewrite its own former jurisprudence.

543. Even not hesitating to write down statements flatly contradicting any inherent logic.

Since how might it be possible to assure to whatever person 'the full (emphasis added) guarantees of fair trial set out in Article 14 of the International Covenant on Civil and Political Rights', when the Article 14-element of 'establishment by law', is completely lacking ?

544. The need to provide such an far reaching step as the set up of an international criminal tribunal with democratic legitimation, as stipulated for any penal court by the most distinguished human rights conventions, leads inevitably to the conclusion, as drawn by Mr. Milosevic in his presentation:

"An International Criminal Court Can Be Created Only By A Multinational Treaty, Or Amendment To The Charter Of The United Nations

The national representatives who have served on the Security Council and in the General Assembly and the scholars, lawyers and experts who have labored for more than thirty years to bring into being an international criminal court have recognized that the only lawful and binding way such a court can be created is by an agreement among nations through a treaty agreed upon for that purpose, or by amending the Charter of the United Nations under its strict provisions regulating amendments to authorize, or establish such a court."

545. It is also the Secretary-General of the United Nations who realized that this ought to be the procedure to be followed.

In his 'Report pursuant to paragraph 2 of the Security Council Resolution 808 (1993)', S/25704, dated 3 May 1993, he writes:

"18. Security Council resolution 808 (1993) states that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. It does not, however, indicate how such an international tribunal is to be established or on what legal basis.

19. The approach which, in the normal course of events, would be followed in establishing an international tribunal would be the conclusion of a treaty by which the States parties would establish a tribunal and approve its statute.

This treaty would be drawn up and adopted by an appropriate international body (e.g., the General Assembly or a special convened conference), following which it would be opened for signature and ratification. Such an approach would have the advantage of allowing for a detailed examination and elaboration of all the issues pertaining to the establishment of the international tribunal. It also would allow the States participating in the negotiation and conclusion of the treaty fully to exercise their sovereign

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will, in particular whether they wish to become parties to the treaty or not."

546. And that's exactly the point !

So the Secretary-General realizes quite well what has to be the lawful procedure to reach such a tribunal, as wanted.

547. However, with regard to the Balkans- the former Yugoslavia -, such principles suddenly would no longer play a role and can be abandoned without any problem.

548. The Secretary-General continues:

"20. As has been pointed out in many of the comments received, the treaty approach incurs the disadvantage of requiring considerable time to establish an instrument and then to achieve the required number of ratifications for entry into force. Even then, there could be no guarantee that ratifications will be received from those States which should be parties to the treaty if it is to be truly effective.

21. A number of suggestions have been put forward to the effect that the General Assembly, as the most representative organ of the United Nations, should have a role in the establishment of the international tribunal in addition to its role in the administrative and budgetary aspects of the question."

549. But the United States disagreed with this proposed involvement of the UN General Assembly, so the General-Secretary continues:

"The involvement of the General Assembly in the drafting or the review of the statute of the International Tribunal would not be reconcilable with the urgency expressed by the Security Council in resolution 808 (1993). The Secretary-General believes that there are other ways of involving the authority and prestige of the General Assembly in the establishment of the International tribunal.

22. In the light of the disadvantages of the treaty approach in this particular case and of the need indicated in resolution 808 (1993) for an effective and expeditious implementation of the decision to establish an international tribunal, the Secretary-General believes that the International Tribunal should be established by a decision of the Security Council on the basis of Chapter VII of the Charter of the United Nations. Such a decision would constitute a measure to maintain or restore international peace and security, following the requisite determination of the existence of a threat to the peace, breach of the peace or act of aggression ".

550. So the the Secretary-General creates the impression that it was him who was the 'auctor intellectualis' of the idea to

pass completely the appropriate procedures and to avoid totally the concept of treaty-based law as well as any role in the establishment of the so-called tribunal by the UN General Assembly.

By putting forward the alleged possibility to put up the umbrella of 'measure to maintain or restore international peace and security' above the suggested manoeuvre.

551. In important matters the Secretary-General is the mouth of the United States. So the hand of the United States is definitely behind this manoeuvre.

552. The Secretary-General deemes it also desirable, in order to give more shine of credibility to this manoeuvre, to give a misinterpretation of the need for an expeditious implementation, which would be expressed in resolution 808, but which is more a product of his own agenda than really layed down in the text of this resolution.

He continues:

"23. This approach would have the advantage of being expeditious and of being immediately effective as all States would be under a binding obligation to take whatever action is required to carry out a decision taken as an enforcement measure under Chapter VII.

24. In the particular case of the former Yugoslavia, the Secretary-General believes that the establishment of the International Tribunal by means of a Chapter VII decision would be legally justified, both in terms of the object and purpose of the decision, as indicated in the preceding paragraphs, and of past Security Council practice."

553. There is nothing like a 'past Security Council practice', as the Secretary-General is invoking here falsely. Such a manoeuvre never happened before.

554. But of course the Secretary-General is right when he reveals that such a manoeuvre only and exclusively can be forced upon States, not being member states of the Security Council or client-states of Security Council members, by expressing that this 'would be legally justified' 'in the particular case of the former Yugoslavia'.

555. So in the conception that power is equivalent to law, such an assault on the sovereignty of powerless nations could be easily declared 'legally justified'.

556. And finally the Secretary-General stated:

"(...)

30. On the basis of the foregoing considerations, the Secretary-General proposes that the Security Council,

acting under Chapter VII of the Charter, establish the international tribunal. (..)."

VI.4.b. Conclusion

557. The conclusion must be as follows.

The most important human rights conventions stress that a penal court can only be a legal and legitimate court, when it is 'established by law'.

The very essence of this stipulation is that a penal court must have a broad and intense democratic legitimacy.

558. The need for such a democratic legitimacy, also in order to guarantee a profound research and check about issues of legal requirements, must be considered as compulsory customary law, also with respect to international tribunals.

Since this principle of 'established by law' is laid down so explicitly in both human rights instruments.

559. If such a requirement is made for State-bound courts, then the same requirement must be supposed to apply on any international court.

Otherwise a person tried before an international court would have less legal protection, than a person tried for the same crimes before a domestic.

560. Such an inequality in legal protection cannot be intended by the law.

561. All the more, since Article 9 of the Statute stipulates clearly concurrent jurisdiction between the so-called tribunal and national courts !

This is all the more reason why, with respect to this specific question, the same demands of democratic legitimation must be accepted. For domestic courts and the tribunal alike !

562. Moreover, it is to be recalled that, though, according to the jurisprudence of the European Commission:

"The transfer of powers to an international organisation is not incompatible with the Convention",

there is an explicit reservation:

"provided that within that organisation fundamental rights will receive an equivalent protection."

(M and Co v. FRG, application no. 13258/87, Dec. Adm. Com. 33 YB 46, at 52 (1990))

563. Such 'equivalent protection' must be provided also here. Nevertheless, such an 'equivalent protection' is absent. Which means that the tribunal can not stand the check of legitimacy and legality.

564. So it can not be seen as an independent and impartial institution, as prescribed in Article 6 of the Convention.

VI.5. Violation of the Article 6-right to a fair trial, by the fact that the tribunal is also unlawful and consequently not an independent and impartial institution, since the task, allegedly charged to the tribunal, is not in accordance with the aims of the Security Council, as set forward by the UN Charter, so committing abuse of power

565. It is the tribunal's firm conviction, realized under American pressure, that it is not competent to deal with an important category of crimes against humanitarian law. Namely that category that - speaking with the Nuremberg tribunal - 'differs only from other war crimes and crimes against humanity, because it contains in itself the evil of the whole': e.g. crimes against peace.

566. United States-originated legal advisers, overcrowding the prosecutor's office at the so-called tribunal, have simply ordained that there should be not only a distinction between crimes against peace - i.e. crimes against the 'ius ad bellum' - and war crimes/crimes against humanity - i.e. crimes against the 'ius in bello' -, but also a clear division.

567. So, according to this U.S.-international law doctrine, the first category, crimes against peace, would fall outside the scope and the competence of the so-called tribunal.

568. Though neither in the tribunal's statute, nor in the Nuremberg Tribunal's practice any lead might be found for such an approach, the U.S.-dictates are also here blindly followed by the so-called tribunal. And so this is declared law.

569. So NATO's crime of aggression, committed against the Federal Republic of Yugoslavia, is at one go safeguarded against difficult questions.

570. Like it is stated by Mr. Milosevic in his 'Presentation':

"International law accepts bombing of defenseless civilian populations by a military advanced technology that can destroy a country without even setting foot on its soil, because the super power controls international prosecutions and determines violations.

The dominant element in modern military power is mass destruction. Victors are nations with the greatest capacity for mass destruction. This places civilian populations at maximum peril, infrastructure supporting civilian life, buildings, water, power, transportation, communication, food production, storage and distribution, health care, schools, churches, mosques, synagogues, foreign embassies were the direct object of U.S. aerial and missile attacks.

Many tens of thousands of civilians were killed directly and many more indirectly. The U.S. claims it had 159 casualties, a third from friendly fire, none from combat.

In 1998, the U.S. directed 21 Tomahawk Cruise missiles from international waters to destroy the El Shifa pharmaceutical plant in Khartoum, Sudan, which provided more than half the medicines available for a people who are very poor and have been unable to replace that supply. The U.S. continues to support insurrection in the South of Sudan and threatens Sudan with prosecution in an ad hoc international criminal tribunal.

In 1999 the U.S. and NATO countries, after they came into Kosovo and Metohia as a security force, refused to intervene on the ground to protect people it said were endangered in Kosovo. Instead NAVO does not claim it prevented violence within Kosovo among the Serbian, ethnic Albanian and other peoples. In fact, NATO accelerated that violence. It bombed Serbia, Kosovo and Metohija heaviest of all, in Serbia for 79 days targeting civilians and citizens, destroying billions of dollars of civilian facilities. using illegal weapons, including cluster bombs, destroying the civilian Serbian TV and radio buildings, destroying most of Pristina, killing thousands of Albanians, Muslims, Serbs, Romani, Turks and others and causing hundreds of thousands people to flee from Kosovo, nearly all of whom have returned.

Damage to the Yugoslavia military was negligible. In the summer of 2001 the U.S. continues to use cluster bombs in northern and southern Iraq, which it attacks on most days.

There will be no remedy, no relief for Serbian victims of atrocities, some 500.000 purged by Croatia with the approval, if not on instructions of the U.S., forever from their homes in Krajina; the more then 330.000 permanently purged from Kosovo since the cease fire in 1999. Or for

the the thousands of Serbs, Romani and others killed by the U.S. and NATO bombing assaults, or by the U.S supported terrorist organisation, the so called KLA, before, during and after the assaults.

The Macedonians killed, injured and driven from their homes, by the U.S. condoned if not instigated KLA aggression, which threatens civil war in Macedonia and general war in the Balkans, will not lead the Security Council to create a Court to prosecute the perpetrators.

Major Powers Are Not Accountable For Their Actions Which Cause War, Insurrection And Violence Within Targeted Countries

There will be no accountability by the U.S., Germany and other nations whose acts and pressures forced the break-up of Yugoslavia, stripping Slovenia, Croatia, Bosnia, Macedonia and parts of Serbia, like Kosovo and Metohija.

The U.S, and several European nations, have balkanized the region in the most artificial and forced apartheid the Balkans, or any other part of the world, has ever known.

Their acts have made peace, stability and prosperity impossible.

Economic viability of small fragmented parts depends on foreign economic interests, intending to dominate and exploit the region. The new apartheid leads to U.S. planned conflicts between the western Catholic Croatians and the eastern Orthodox Serbs, creating conflict and a wall between western and eastern Europe.

More dangerous, it sets the stage for violence, attracting international participants between Slavic peoples and Muslims, to decimate and debilitate obstacles to U.S. world order.

Kosovo, as a part of Serbia, and Macedonia are current examples in a long list of tragic and avoidable violence between Muslim and Slaves, including Afghanistan, dagestan, Chechnya, Kazakstan, Kyrgyzstan, Tajikstan, Turkmenistan, Uzbekistan and Bosnia.

A Federal Republic Of Balkan States, Long Set Up Against Each Other By Foreign Powers, Was Formed To Establish Peace, Cooperation And Prosperity

The idea of Yugoslavia, a Balkan federation to heal divisions and provide a better chance for living together in peace and prosperity, was seen as important in the years after World War I as a means to peace. While the idea floundered between the two worst wars in history, it worked with remarkable success after World War II, in which it was ravaged but unconquered.

An independent and unified Federal Republic of Yugoslavia was a long term successful solution for South Slavic people. It was a bulwark of the Non Aligned Movement.

With the collapse of the Soviet and Eastern bloc economy it was the remaining socialist government, threatening capitalist control of Europe. With its mixed market economy it offered an example to former Eastern bloc countries for revival of their economies and political independence. With a successful, functioning Federal Republic of Yugoslavia there was a living proof history had not ended, that more than one economic system was possible.

After the collapse of the Eastern bloc economy a greater Balkan federation, a south eastern European Union, was seen by many in the region as the means to prevent economic exploitation, avoid violence and develop a strong and independent political, social and economic region.

Foreign capital and the geopolitical interests of the U.S. considered this a dangerous obstacle to their plans for the new world order, globalism and new colonialism.

The United States Having Demonized Yugoslavia Attacks It With Impunity And Persecutes Its Leadership

The U.S. mercilessly bombed Yugoslavia for 79 days without suffering a casualty.

It tried to assassinate me by bombing my home, offices and other places, where it believed I might be.

It attempted to kill Libya's head of state Mummar Quaddafi in its 1986 raid on Tripoli and Saddam Hussein on numerous occasions, beginning in 1991, including its 1993 cruise missile attack on the Al Rashid Hotel in Bagdad, at a time it believed he would be there, meeting international Islamic leaders.

Through economic sanctions, the most extreme and overt form of forced impoverishment and economic assault, the U.S. has coerced the Security Council into complicity in the longest, deadliest and cruelest genocide of the last decades, the sanctions against its enemy Iraq, which have killed at least 2 million people, the majority children.

The U.S. has forced economic sanctions against Yugoslavia, severely damaging its civilian economy and eroding its will to independence.

Can a criminal tribunal for Yugoslavia, which ignores pervasive violence by the U.S., and diverts public awareness from United States conduct, legitimatizes, by silent acceptance, aerial and missile assaults on civilians, and illegal weapons use against one country after another,

making its repetition expected before it occurs, contribute to the hope for the rule of law, justice or peace ?

The United States itself, immune from control, or persecution and above the law, uses its power to cause the persecution of enemies it selects to terrorize and further demonize. It manufactures and sells arms to chosen nations, to groups seeking to overthrow governments it opposes, uses illegal weapons against defenseless people with impunity, continues to consolidate and expand its near monopoly of nuclear weapons and sophisticated rocketry, spends trillions on unilateral protection from Star wars, assuring a continued arms race. While poverty overwhelms billions, hunger cripples millions, starvation takes hundreds of thousands of lives and AIDS spreads among poor nations.

It cripples international environmental protection, undermines control of nuclear weapons by threatening to withdraw from long standing protections of the ABM and Non Proliferation treaties. It refuses to ratify treaties to protect life from land mines, which it continues to manufacture, sell and deploy. It threatens to undermine a treaty controlling biological and chemical warfare. And the United States regularly engages in covert operations and violent military interventions in other nations, in violation of their sovereignty and law.

The so called ICTY is not just another arrow in the arsenal of the United States, with which it persecutes and demonizes enemies and corrupts international law. The ICTY celebrates inequality in the rule of law, using criminal sanctions to destroy selected leaders and governments.

It is a poisonous arrow, destructive of the foundations of peace among independent nations of equal rights and dignity."

571. So it is an historical fact that, during the past decades, the U.S. have committed continuously acts of aggression, .i.e. crimes against peace.

572. And it is completely in line with this using of the so-called tribunal as a U.S. tool for their foreign politics, that the tribunal simply declares that it has no power to act against the perpetrators of crimes against peace. Being usually the U.S.

573. So continuous crimes as described above, perpetrated year after year by the United States, remain safeguarded against any form of even criticism, and all the more against any form of prosecution and punishment.

574. However, the main and first commitment of the UN Charter, and consequently of the Security Council, is to deal with questions with regard to international peace.

Article 24 of the UN Charter reads:

"1. In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security and agree that, in carrying out its duty under this responsibility, the Security Council acts on their behalf.

2. In discharging these duties, the Security Council shall act in accordance with the the purposes and principles of the United Nations."

575. As part of the thus defined function, the Security Council's key task is to take care of respect for the principles, as mentioned in Article 2, item 4 of the Charter, stipulating that:

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other way inconsistent with the purposes of the United Nations."

576. In case this principle is violated, i.e. that there exists:

"a threat to peace, violation of peace or aggression",

according to Article 39 of the Charter, the Security Council may decide on the implementation of measures, based upon Chapter VII of the UN Charter and aimed at the maintaining or restoring peace and security.

577. And it's exactly the so-called tribunal, being itself an alleged measure in order to restore peace, which maintains that it would have no competence and no power to undertake action in the field of punishment of crimes against peace !

578. So everyone who thinks that, in the perspective of the clear responsibilities, duties and competences of the Security Council, the punishing of crimes against peace got assigned an important place within the framework of the tribunal, will be disappointed.

Because that would be contrary to U.S. interests.

579. So no task at all in this field for this so-called tribunal !

580. Since the so-called tribunal only counts as its task alleged crimes within the framework of the 'ius in bello', and considers as excluded of his commitment crimes within the framework of the 'ius ad bellum', the tribunal does not deal

with those offences that violate the values for whose preservation the Security Council is primarily responsible.

581. Which makes that there exists an impermissible divergency between what is aimed primarily by the UN Charter and what is considered to be the aim of the so-called tribunal.

582. A tribunal, holding such a position of serfdom to the United States, even in blatant contrast with the main duties of the Security Council as assigned by the UN Charter, can impossibly be considered an independent and impartial legal institution.

VI.6.a. Violation of the Article 6-right to a fair trial by the fact that the tribunal forms an embodiment that unites in itself administrative, legislative and judicial functions, which represents a breach of the fundamental and intransgressible legal principle that there has to be in existence a separation of powers, so that it must be concluded that the so-called tribunal is unlawful, or at any rate cannot be considered an independent and impartial institution.

583. One of the pillars of the Rule of Law is the principle of separation of powers.

584. This is a fundamental achievement since the time of the French Revolution, a basic assumption that has saturated all modern and civilized civil, democratic and legal systems all over the world.

585. Such a separation of powers is not only a basic assumption, but at the same time an absolute condition for democratic relationships and Rule of Law.

As such it forms an intransgressible legal principle.

586. However, the tribunal absolutely does not take this into account anyhow.

It thwarts bluntly and fundamentally this legal principle.

587. Within the framework of this so-called tribunal all functions - administrative, legislative and judicial ones - are tightly knitted together in one inextricable knot. So blatantly violating this already centuries-old ordination principle.

588. As already mentioned above, in the Tadic-case, standing for the first time in the need to justify this absence of separation of power, the so-called tribunal has put forward the story that it would be impossible to meet this fundamental legal requirement within the framework of the United Nations itself or any United Nations organisation.

589. It is already stressed above that this is a false argument.

590. First of all, in the very sense here at present, the so-called tribunal is not primarily a 'United Nations organisation', but first and foremost a 'Security Council organisation'. Which makes already a big difference.

591. Since when it, for instance, would have been organized that, let's say, the rules of the Tribunal were generated under supervision of the General Assembly itself, instead of self-fabricated by the tribunal, then already a part of this obstacle of absence of separation of powers would have been dwindled.

592. If it would have been intended by the tribunal and its founding fathers in the bosom of the Security Council - so, to be honest, primarily by the United States - than of course it should have been possible, without too much difficulties, to organize that this basic legal demand of separation of powers would be met by the so-called tribunal. But the point is: this was not intended by the its founding fathers, up to 90% the United States.

593. If this truly would have been the intention, than it would have been organized that, as said, the rules were made, for instance, under supervision of the United Nations itself, let's say by the International Law Commission, or by any other committee of eminent and independent legal experts.

594. And then the Administration of the so-called tribunal would have been laid down in the hands of another separate and specific United Nations-organ, of any other organ assigned for this task, or even of just another organ specifically set up for this task.

595. So it would have been certainly and quite well possible to meet the requirements of the separation of the powers in the context of the tribunal, if it would have been wanted.

596. But the point is that this was not wanted by the masters of the tribunal, who intended to use this tribunal as their tool.

And whose intentions were to safeguard a smooth and easy condemnation of primarily the Serbs and the Serbian leadership.

As a lightning rod for the western role and responsibility in the break-up of Yugoslavia, resulting from the striving after geopolitical interests.

And a lightning rod for the western role in the Balkans-catastrophe, caused by these western political manoeuvres.

597. The result is that the tribunal appears as an administrative, legislative and judicial body at the same time.

598. As a consequence, viewed from the perspective of the detainees, like Mr. Milosevic, every aspect of their lives, their material position, their legal position, literally everything, is determined by and submitted to the so-called tribunal.

599. Later on in this application it will be shown how blatantly this absolute power by one and the same institution over every aspect of persons in its grasp is continuously misused by the so-called tribunal.

600. But in the context of the present paragraph it is enough to lay down that such a compilation of all powers in the hands of one and the same institution is yet in itself absolutely unacceptable, according to all legal standards. No matter how this institution concerned actually is behaving itself with respect to this compilation of powers.

601. The mixture of administrative, legislative and judicial power in one and the same hand is also reflected in the so-called tribunal's organisation structure.

602. The trial chambers and the prosecutor's office represent a single organisation unit, with a joint secretariat. And also such an institutional unity of the prosecutor's office and the judiciary part of the tribunal is unacceptable and inconceivable in any modern judicial system.

603. Also the prosecutor's and the judge's functions are mixed.

According to its Statute, the tribunal was established as 'International Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991', which is how it is defined also in the Rules of Procedure and Evidence.

604. Consequently, judging along the text of the Statute, the tribunal's task is 'prosecution'.

This is clearly not a normal function of a court.

The French version of the Statute, it is true, is more correct and speaks of 'trying in court' - 'juger'.

However, in the text of the Rules of Procedure, the word 'juger' has been replaced by the word 'poursuivre', which means 'prosecute'.

605. So, according to what is ordered by the 'law-making' judges themselves, the tribunal is primarily a prosecution organ.

And the French nuance of 'juger', as task for the so-called tribunal, mentioned in the text of the Statute, is definitively banned by the judges in their home-made rules of procedure.

597. Further materialisation of the mentioned 'prosecution' as the proclaimed role of the tribunal is effected through its actions, that are characterised by violations of a number of rights of the indicted persons and by prevention of adequate defence, to be elaborated later on in this application.

598. The judges write the rules themselves. And in certain cases the rules are written by the registrar or even by lower administrative functionaries of the so-called tribunal.

599. They not only write them themselves, but they also amend them themselves and they do this so frequently that is it nearly unbelievable.

In the eight years of the tribunal's existence already alone the Rules of Procedure and Evidence, fabricated by the tribunal's judges themselves, are eighteen times amended.

Other rules, made by the registrar, or even by lower personnel of the tribunal, share the same history of endless amendments.

600. Of course this further affects the already non-existent legal security.

601. The absence of separation between the legislative function and the judicial function also gives the judges the possibility and authorisation to interpret these rules depending on the circumstances, arbitrarily and without any control.

602. The defence or the accused has no means or possibility to challenge this interpretation of the rules, otherwise than - if possible at all - again at the same tribunal. Even when that interpretation is evidently incorrect.

603. The defence and the accused have neither the possibility to challenge the legality of these rules, even in cases when they evidently contravene the Statute's provisions, which often happens in practice.

VI.6.b. Conclusion

604. The tribunal is an institution of primarily inquisitory character, uniting in itself - in contravention to all legal

standards - all administrative, legislative and judicial power with respect to every subject, held in his grasp.

605. Nobody is in control of any aspect of this legally perverse knot of judges, prosecutors and administrative functionaries. And nobody is in control of the way this inquisitory complex is performing its acting with respect to the subjects of human rights, subdued to its power in every detail of their existence.

With the exception of the conglomerate itself.

VI.7. Violation of the Article 6-right to a fair trial by the fact that the tribunal represents implicit - in its structure and regulations - and explicit - in the course of its performance - breaches of the principle of the praesumptio innocentiae, and thus cannot be considered an independent and impartial institution

VI.7.1. Violation of the principle of the presumption of innocence in the very structure and regulations of the tribunal

606. As is already mentioned above, the very character of the so-called tribunal is fundamentally inquisitory in its ruling. This already by defining that the tribunal is to be set up in order to 'prosecute persons responsible for serious violations of humanitarian law'.

607. Defining the aims of the tribunal in this way runs counter to any civilized legal system, characterized by the fact that court try 'indicted persons', who are presumed innocent until proven guilty.

So Article 14 par. 2 ICCPR reads:

"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according the law."

And Article 6 par. 2 Convention reads:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according the law."

608. So doubtless the praesumptio innocentiae is one of the most prominent human rights.

609. This makes that also the tribunal and its founding fathers meant that they at least had to pay lip service to this principle.

So in Article 21 par. 3 of the so-called tribunal's Statute is layed down:

"The accused shall be presumed until proved guilty according to the provisions of the present Statute."

610. However, at the same time this strict regulation is at once immediately brought down in the same Statute, mentioning as its assignment:

- "to prosecute persons responsible for serious serious violations of international humanitarian law" - Article 1 of the Statute;

- "to prosecute persons committing (...) grave breaches of the Geneva Conventions" - Article 2 of the Statute;

- "to prosecute persons violating the laws or customs of war" - Article 3 of the Statute;

- "to prosecute persons committing genocide" - Article 4 of the Statute;

- "to prosecute persons responsible for the following crimes (...)" (i.e. crimes against humanity) - Article 5.

611. So already in the same Statute nothing is left from the alleged rule of the presumption of innocence.

612. Like this presumption is also already mocked by the very name and definition of the tribunal as an organ for "the prosecution of persons responsible".

613. The french version of the name of the tribunal is on the one hand slightly more nuanced, but on the other hand even more directly in its wiping the floor with this presumption of innocence.

It reads, in English translation: "persons presumed responsible".

614. So the so-called tribunal doesn't prosecute indicted persons on the basis that they are presumed innocent, but it prosecute indicted persons on the basis that they are flatly considered guilty on the alleged crimes, or - as in the french version - at any rate presumed to be guilty.

615. A tribunal, already presupposing the guilt, or at least the presupposed guilt, of the accused indicted by it,

of course disqualifies itself immediately and totally as an impartial and independent penal institution.

VI.7.2. Violation of the principle of the presumption of innocence by the tribunal in its practical performance.

616. Not only in its very structure and regulations the tribunal infringes this basic human rights principle of the presumption of innocence, but also the course of its performance is characterized by an endless and incessant sequence of the most blatant and crude violations of this human rights principle.

617. And not only by the prosecution-section of the tribunal, but also the judiciary-section, the judges themselves. They voice constantly the most shameless prejudices with respect to suspects, being at right angles to the praesumptio innocentiae.

618. This not as a matter of incidents, but as a matter of the tribunal's culture.

619. So by this way of acting the so-called tribunal is showing once more how far it got out of hand as a collective with regard to the human rights requirements and how bold it really is in its human rights abuses. Knowing quite well, after all, that there is nobody in charge to control its abuses.

620. In an specific addition to this application there will be showed ample evidence of this consistent violation of this human right represented by the praesumptio innocentiae, in the form of countless pronouncements and quotations, which really shake this principle.

621. Pronouncements not only by prosecutors, but in the same measure by the judges of the so-called tribunal as well. And not only with respect to Mr. Milosevic, but in general and with respect to any other suspect as well.

VI.8.a. Violation of the Article 6-right to a fair trial, since a number of fundamental human rights principles lack an antipode within the structure and regulations of the so-called tribunal, or are not imple-

mented anyhow by the tribunal, so that, in the absence of the application of these basic human rights provisions, a fair trial will be ipso facto impossible.

622. The absence of a number of human right provisions, in the regulations of the tribunal and in its practice, is already mentioned in the course of this application.

623. There is no compliance with the Convention's Article 5 (1) ad c-provision, that there ought to be a lawful arrest or detention, in accordance with a procedure prescribed by law.

624. There is also no counterpart of the Article 5 (3)-provision, as far as it states:

"Everyone arrested or detained (...) shall be entitled to trial within a reasonable time or to release pending trial".

And Article 9 par. 3 ICCPR stipulates:

"Anyone arrested or detained on criminal charge (..) shall be entitled to trial within a reasonable time or to release."

625. So this is clearly an important human right, not met anyway by the tribunal's regulations.

626. As admitted already by the tribunal itself, there is no antipode for the Article 5 (4)-provision within the framework of the Tribunal's regulations and procedures that everyone who is deprived of his liberty by arrest or detention should be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release should be ordered if the detention is not lawful.

627. Missing is also any provision in the tribunal's regulation as an antipode of the Article 5 (5)-provision, that everyone who has been the victim of arrest or detention in contravention of the provisions of Article 5 should have an enforceable right to compensation.

628. As also already admitted by the tribunal itself, this tribunal doesn't meet the Article 6 (1)-requirement of being established by law.

629. As already showed above, the regulations of this tribunal are flatly in contravention with the Article 6 (2)-provision that everyone charged with a criminal offence should be presumed innocent until proved guilty according to law.

630. And then there is the Article 13-provision, guaranteeing everyone whose rights and freedoms are violated, an effective remedy before a national authority.

631. Within the framework of the so-called tribunal such a kind of provision is also totally absent. The tribunal's regulations don't provide such a human rights guarantee against human rights infringements.

632. Nevertheless, as since the tribunal exercises all kinds of powers upon the subjects in its grasp - the full administrative power, full legislative power and also the full judicial power -, reasonably anyone will agree that there of course can arise a situation of violation of human rights.

633. So that, from a point of view of legal protection, a provision against eventual human rights violation by the tribunal is bitterly required.

In front of those absolute powers by the so-called tribunal.

634. So it is absolutely impossible to put up with such a total absence of any provision, parallel to Article 13 of the Convention, as a remedy to enable a challenge of any human rights violation by the tribunal, in the performance of one of its absolute powers.

635. However, not only the absence of human rights provisions, laid down in the European Convention, prevents already in general the possibility of a fair trial.

For also the absence of human rights provisions, specifically mentioned in the International Covenant on Civil and Political Rights, being equally well minimum human rights guarantees, makes beforehand the exercise of a fair trial impossible. Though this particular ICCPR-provisions are not specifically protected by the Convention.

636. So the tribunal is in violation of the two-instances principle, as laid down in Article 14, par. 5 ICCPR, reading as follows:

"Everyone convicted of a crime shall have the right to his conviction being reviewed by a higher tribunal according to law".

637. This provision evidently presumes a distinction between a lower and a higher judicial instance, what is considered to be normal and compulsory in all modern legal systems.

638. With respect to the so-called tribunal the same judges are members of both the first-instance and appeal chambers.

Rule 27 of the Rules on Procedure and Evidence reads:

"(A)Permanent Judges shall rotate on a regular basis between the Trial Chambers and the Appeal Chambers. Rota-

tion shall take into account the efficient disposal of cases.

(B) The Judges shall take their places in their new Chamber as soon as the President thinks it convenient, having regard to the disposal of part-head cases.

(C) The President may at any time temporarily assign a member of a Trial Chamber of of the Appeals Chamber to another Chamber."

Therefore, a judge may be member of a first-instance chamber in one case and a member of the appeals chamber in another. So the decisions of every judge, acting as a member of a first-instance chamber, are subject to control by other judges, acting in that case as members of the appeals chamber.

While in other cases that very same judge takes part in appeals chamber proceedings, in the control of the work done by those other judges.

This is how the the system of mutual cross-control functions may result in deviations primarily towards a benevolent attitude and an attitude of confirmation of first-instance decisions.

First-instance decisions, made by other judges when acting in appeal proceedings, so that they can be expected to reciprocate this benevolence when their roles are reversed.

639. So any clear two-instances proceedings are actually impeded.

And this double position of the permanent judges undermines considerably their independence and impartiality.

Representing thus a further undermining of the independence and impartiality of the so-called tribunal.

640. This organisation enables the judges also to participate in the decision-making as an appeal judge and at the same time to apply the stands regarding such decisions as the court's practice, established in this appeal decision, when he tries as a judge in first instance proceedings.

641. The paradoxal possibility for the same judge to decide on the same legal issue in one case within the framework of a first-instance chamber and at the same time in a second case within the framework of an appeals chamber gives this judges a legally unacceptable benefit of providing to his stand and first-instance decision simultaneously the legal force and the confirmation of judicial practice, established at the appeals level.

642. The true unacceptability of such a rule that allows the same judges to participate both in first-instance and appeals chambers is further strongly accentuated by the fact that the rotation doesn't take place under any rules laid down in advance, but according to the decision of the President, who

is authorized at any moment to temporarily a judge to another chamber.

643. In the tribunal's regulation is also absent an antipode to the Article 9 par. 3-provision of the ICCPR, stipulating:

"It shall not be the general rule that persons awaiting trial shall be detained in custody (..)".

644. However, with respect to the tribunal detention it is the general rule.

And actually, this detention is of an indefinite duration. Some people in the grasp of this tribunal are already waiting nearly two years on trial.

645. So when Mr. Milosevic is to be brought to trial within a few months after the turn of the year 2001, then it is for sure that other detainees, waiting already much longer, has to face another extension of their pre-trial period, because priority is given to the trial of Mr. Milosevic.

646. Such a discriminatory practise is unacceptable from the point of view of equality and equal treatment for all.

647. All the more this is unacceptable, since this contravenes, for the detainees concerned who are facing a extension of their pre-trial period by this discriminatory priority given to mr. Milosevic, also the above mentioned provision, stipulated in Article 5 par. 3 Convention and Article 9 par. 3 ICCPR, that release must be ordered when there is no trial within a reasonable time.

Wich never happens at the Tribunal.

VI.8.b. Conclusion

648. Since there are quite a number of human rights provisions, relevant to Mr. Milosevic' case, protected by the European Convention and/or by the ICCPR, which don't have a counterpart in the so-called tribunal's regulations and find no implementation into the tribunal's practise, a fair trial will be ipso facto impossible.

VI.9. Violation of the Article 6-right to a fair trial, since their is a long list of human rights, relevant to Mr. Milosevic, violated by the so-called tribunal, which makes a fair trial further impossible.

649. All human rights violations, enumerated and elaborated in this application, are here included. They, one by one and also all together, contribute to the impossibility of a fair trial under the present conditions.

VI.10. Violation of the Article 6-right to a fair trial, since the so-called tribunal has, in the course of its performance, provided shattering and shocking evidence of being an institute of a complete discriminate nature.

650. As already mentioned before in this application, this tribunal is a political tool, set up mainly by western powers, first and foremost by the United States, to serve political goals.

Most important of all is to turn Yugoslavia and Serbia out to be a lightning rod for the pernicious western role with regard to the falling apart of the former Yugoslavia and the subsequent humanitarian catastrophes in the Balkans.

And secondly there is another main goal, which came upon the stage later on.

Namely to cover up NATO's crimes against humanitarian law, committed against Yugoslavia in an blatant and overt war of aggression.

651. So this all by blaming mainly the Serbs, and especially the Serbian and Yugoslav leadership, for by far the most of all evil, happened on the Balkans.

652. Misusing the reputation of independency and objectiveness of law, in order to contribute to the rewriting of this recent chapter of the Balkans history, in terms of Yugoslav and Serbian guilt.

So fundamentally perverting the notion of law.

653. Of course every reasonable person is completely through with this so-called tribunal, if it can be convincingly demonstrated that this institute is a discriminate organ.

654. Actually, the evidence for that is really massive and overwhelming.

This evidence will be presented mainly by means of an comprehensive additional application.

655. It is the State of the Netherlands itself, which has already stressed during the legislative procedure with respect to the bill of the 'Law, holding regulations concerning the installation of the ICTY', that truly the bottom would fall out of any - alleged - obligation for the State of the Netherlands to comply with orders to surrender suspects to the tribunal, if the tribunal would turn out to be a discriminatory institute.

656. At least this is to be derived from the fact that the Dutch legislator has laid down that there must be an opportunity for judicial intervention and for a domestic judicial check, at least on a marginal basis, on the legality and legitimacy with regard to every surrender to the so-called tribunal. And that one of the possible grounds to refuse such an ordered surrender might be that this would implicate a surrender to a discriminate court.

Which could the Dutch legislator, by the way, not imagine that such a thing really ever would be the case with respect to this tribunal:

"There is further the question how far the Statute of the tribunal leaves an opportunity to States, which see themselves confronted with a request at co-operation or a arrest warrant by the Tribunal, to provide themselves with a procedure, according to which a person wanted by the tribunal could challenge in court the permissibility and the expediency of his surrender. After all, Article 29 of the Statute puts upon every State the obligation to cooperate and to comply with the requests or the orders for arrest and surrender, made by the Tribunal. It is our opinion that with that fact the opportunities for States to invoke the grounds for refusal, usual in the law of extradition, are indeed considerably limited. A number of those grounds is not relevant, like grounds with respect to a possible dead sentence (to which the Tribunal is not competent), triviality of the facts, limitation or the fear for discriminate prosecution." (emphasis added)

(explanatory memorandum, TK 1993-1194, 23 542. nr. 3, p. 3-4)

657. So also according to the opinion of Dutch legislator, discriminate prosecution has to be considered a ground to refuse co-operation with the so-called tribunal. Although the Dutch legislator absolutely could not imagine that such a ground ever would arise within the context of the tribunal.

658. A premature and wrong assumption, as is abundantly clear demonstrated by the tribunal's practice in the meantime.

659. In the indictments the tribunal's prosecution section tries to put a suffocating blanket of forgery over history.

660. It is the tribunal's blatantly and publicly declared intention - by the prosecution section by means of its indictments and overt statements about its prosecution policy as well as by the content of its indictments against prominent Serb accused, and by the judiciary section of the tribunal by its routine confirmation of no matter how absurd indictments - to 'proof' that all misery on the territory of the former Yugoslavia was caused by the 'Serb striving for a Greater Serbia', going hand in hand with an enormous and continuous mass of deliberate onslaught, ethnic cleansing, murder, rape, torture and all other thinkable crimes against international law. Intending to sweep away all and everyone which might stand in the way of this Serb intention.

661. This ultimate evil masterminded by the Mr. Milosevic and trickling downwards along pyramidal lines of authority to constantly lower command echelons, till the very bottom of each alleged anti-humanitarian act by each individual in the most remote parts of the country under the most uncontrolled conditions all over the years of raging civil wars in the former Yugoslavia.

662. And this diabolic, but at the same time ridiculous and ultimately thin, effort to make out of the Serbs and Mr. Milosevic the source of all evil - wholeheartedly backed up by the judiciary section of the so-called tribunal by constantly confirmation of such slanderous practices by the prosecution section -, result finally in misshapen distortions and falsifications of history.

663. Like for instance is showed by the obsessively derailed indictments, dripping with anti-Serbian hatred, against primarily mr. Krstic in the 'Srebrenica-indictment' and the 'Kosovo-indictments', 'Croatia-indictment' and 'Bosnia-indictment' against mr. Milosevic.

664. Indictments, being crimes against history.

665. History, that was te be respected by everyone. And being indissolubly and indelibly connected with the following facts.

666. Already before the Wall broke down there was a huge western interference in the former Federal Republic of Yugoslavia.

This foreign intervention, in contravention with the basic principle of international law, was in the beginning mainly of a political and economical nature.

By means of financial and monetarian manipulations, in which also the position of the Yugoslav debts was used against the status quo.

In order to destabilize the economic situation and, by that, to stir up dissatisfaction and internal dissention.

667. After the Wall broke down these western interventional manoeuvres were intensified by illegal funds for favorite social and political groups, illegal importations of arms and further divide and rule politics.

668. Especially Germany, re-united, eager to re-take its position as main power in Central Europe and to restore its position in the Balkans as part of its traditional sphere of influence, played an important role in these politics of deliberate destabilization of the former Yugoslavia.

669. Yugoslavia, once an important buffer state between the two blocks, but now, after the collapse of the eastern block, turned around from buffer into an obstacle for western economic and politic expansion eastward.

670. Yugoslavia, with very much a feeling and a proud tradition of independence. And certainly not about to give up its economic traditions and to exchange its own economic system for western economic values and to open up for western economic interests and dominance.

671. So the split up of the former Yugoslavia, in order to break down this independent and self-confident nation, came gradually more and more prominent on the western agendas. In order to gain definitively hegemony over those territories in southern Europe and to establish by this way also western economic systems in this last part of Europe, free of it.

672. So, as it is well known, Germany took the lead in order to arrange a western recognition of the secession of Croatia and Slovenia, just proclaimed in the full awareness by those secessionist states that Germany would be back up their aspirations.

673. So at the same time that, for instance, the Kurdish secessionist movement in Turkey was crushed with western political support in general and German military equipment in special, Germany and the other western countries were giving full support to the secessionists in Croatia and Slovenia. Invoking the right to selfdetermination.

674. Fully aware of the inevitability, as a consequence the recognition of Croatia and Slovenia, then also to be bound to recognize, sooner or later, the independence of Bosnia. Knowing that this powder keg then undeniably would explode.

675. Nevertheless accepting this absolute knowing for certain of these coming humanitarian catastrophe as part of their cynical 'real politik'.

676. However, these politics of encouraging the falling apart of the former Yugoslavia and these acts of recognition of the secessions which took place, were not only a matter of cynical 'real politik' in face of a coming humanitarian catastrophe.

ties, inextricable bound up with it, but also acts of violation of international law.

677. Like is admitted later on, even by the former Secretary of State of the United States James Baker, that when

"the European powers and the United States ultimately recognized Slovenia, and then Croatia, and then Bosnia as independent states and admitted them to the United Nations",

they committed an

"act in violation of the Helsinki principles".

The Helsinki principles stipulate in clear terms the inviolability of the European borders.

He added:

"The real problem was that there was an unilateral declaration of independence rather than a peaceful negotiation of independence, which is the way it should have happened."

678. That this premature recognition of the secessionist states in Yugoslavia has been a grave flaw is openly admitted afterwards by the main actors of the Yugoslav crisis, like UN Secretary-General Perez de Cuellar, Lord Carrington, the French Foreign Minister Roland Dumas, Italian Foreign Minister Gianni de Michelis, United States Former Secretary of State James Baker, etc.

679. One who is not able to understand this could not understand the roots of the Yugoslav tragedy. There is no genius to draw up a map which would satisfy anybody in the broken up Yugoslav State.

680. According to the former United States Secretary of State Dr. Henry Kissinger in the Washington Post of 5 July 1993,

"the most irresponsible mistake of the current Bosnian tragedy was international recognition of a Bosnian state governed by Muslims. Blindly following the precedent of Germany's hasty recognition of Slovenia and Croatia."

In Kissinger's opinion:

"It is important that Bosnia has never been a nation; there is no Bosnian ethnic group or specific Bosnian cultural identity. Serbs, Croats and Muslims - who are descendants of Slavic Christians converted to Islam during Turkish rule - have managed to coexist only under alien rule. The last time that Bosnia was the subject of an international agreement was at the Congress of Berlin in 1878. When it was organized on the basis of Turkish suzer-

rainty, Austrian military control and local self-government - hardly a precedent for a modern nation state."

681. It underlines once again that the western role into the break up of Yugoslavia was not only an action against domestic Yugoslav law and against international law, but also straightly an action of a grave criminal character.

682. "But where Croatia and Slovenia had there own identity",

Kissinger continues,

"Bosnia was a Yugoslavia in microcosm. It is a mystery why anyone could think that Croats and Serbs, unwilling to stay together in the larger Yugoslavia could be induced to create a joint state in Bosnia - together with Muslims they had hated for centuries."

683. Although there is reason to disagree on many points with this view by Kissinger, especially on the point of the 'centuries old hatred' against the Muslim population in Bosnia, his analysis nevertheless clarifies matters.

684. Not a single element of these historical facts are to be traced back in the tribunal's 'Kosovo'-, 'Croatia'- or 'Bosnia'-indictment against Mr. Milosevic, or in, for instance, the 'Srebrenica'-indictment against Mr. Krstic.

685. Reading for instance this 'Srebrenica'-indictment, there was only Serb bloodthirstiness, coming like a bolt from the blue, against totally innocent non-Serbian victims, in a clear-cut act of genocide.

686. All relevant historical elements, which could lead to an understanding of what allegedly has taken place there, are carefully suppressed.

687. Reading this indictment nobody will ever learn that there was a long previous history of using this safe haven, totally contrary to the Security Council resolutions demanding a complete disarmament and demilitarization of the enclave, as an operating base for thousands Bosnian troops and irregulars to undertake raids against mainly Serb populated villages in the surrounding areas.

688. During these incursions, accompanied with extreme violence and brutality, undertaken by those Bosnian regulars and irregulars - with safe haven Srebrenica as completely misused sortie base -, more than hundred mainly Serbian villages were destroyed or severely damaged, and the Serb population there terrorized and en masse put to flight.

More then thousand Serbian villagers were killed or wounded during this actions of terror from inside safe haven Srebrenica.

689. This all is no secret at all but, on the contrary, carefully documented and recorded.

Numerous terrorist operations and horrible cruelties against the Serb villagers in the Srebrenica surroundings, made under the command of Nasir Oric, are videotaped by himself. And he is openly boasting about these crimes.

690. Nothing of all this in the Srebrenica indictment against Mr. Kstic.

Nothing about the completely illegal presence of thousands Bosnian troops and irregulars in Srebrenica.

Nothing about the fact that they were not disarmed, flatly in contravention with the Security Council resolutions concerning the installation of the safe havens.

Nothing about the massacres and onslaught by these Bosnian regulars and irregulars upon the Serbian villagers in those surroundings, with 'Srebrenica' as operation base.

Nothing about those Serbian victims.

Nothing about their well-known perpetrators.

691. Oric is once heard by functionaries of the tribunal. Afterward the tribunal has declared that he was not suspected of anything.

692. So not indictment at all against Oric.

According to the tribunal, this could only distract attention from what the tribunal considers its main task: making the Serbs the culprits and all the others the victims.

693. So no construction here of a 'joint criminal organisation', going back in the chain via Oric to Izetbegovic, with respect to those crimes of systematic terror against the Serbian villages in the surroundings of Srebrenica.

Like the construction of a 'joint criminal organisation' in the indictments against Mr. Milosevic.

694. And most pernicious and disgusting of all: all alleged victims of 'Srebrenica' are presented in the indictment against Mr. Krstic as innocent civilians.

With this implicit lie the falsification of history by the so-called tribunal with regard to 'Srebrenica' culminates in a new height.

695. No wonder that Mr. Krstic' lawyers at the so-called tribunal, who have omitted to unravel and to refute this shameless indictment, are publicly held in high regard by the so-called tribunal and are openly praised as excellent and cultivated counsels !

696. The intention of western powers is to reformulate all civil wars in the former Yugoslavia in term of wars of aggression of Yugoslavia, mainly Serbia, against the innocent and peace-loving Croatian, Bosnian and Kosovo-Albanian people.

The so-called tribunal playing the part to clinch this falsification of history by judicial means.

697. What is not comparable with this distorted and deluded representation, is simply disregarded.

698. Like the impartial facts about Serbia as, by now, the only true multicultural state on the territory of the former Yugoslavia.

699. When Serbia is to be considered the villain and the source of all evil on the territory of the former Yugoslavia, and the Serbian and Yugoslav leadership a bunch of genocidal criminals, conspiring year after year in order to commit one ethnic cleansing after another, striving for a Greater Serbia, than it is at least very strange that this Serbian and Yugoslav leadership, during all those alleged ethnic cleansings and genocidal actions, simply has overlooked their own main country.

700. Because this is the reality with regard to the ethnic situation in Serbia itself, as recorded in the Dutch magazine 'Elsevier' of 2 October 1999 by the Dutch reporter Abe de Vries, a situation still quite the same up till now. And an objective reality, easily to check for everybody. He states:

"After four Balkans-wars and two NATO-bombardment campaigns in the name of multi-ethnic ambitions there is just one single piece of former Yugoslavia left that is still multi-ethnic. Neither Slovenia, that never has known big minorities, nor Croatia, that has "cleaned" itself of hundreds of thousands of people. Nor Bosnia-Herzegovina, that is forcefully splitted up in three ethnic territories, nor also Kosovo, where Albanian nationalists have meanwhile driven out 90 % of all minorities. It is Serbia.

The permanent crisis on the Balkans has disgraced the Serbians as the ethnical cleansers pre-eminently. Nevertheless their homeland, counting eleven million people, harbours 26 nations, ethnic groups and minorities. Including the two million Albanians in Kosovo one-third of the population is non-Serbian. A quarter is muslim. (...)

In the years that in Croatia every single trace of Serbian culture systematically was destroyed and hundreds of thousands Serbs were ethnically 'cleansed', the Croats in Serbia were simply enabled to stay where they lived. They live mostly along the Sava and the Danube, and in the province Vojvodina, in cities like Belgrade, Novi Sad, Pancevo and Zemun.

Without being touched a hair of their heads.

In all Serbian multi-cultural towns - which are all cities - the non-Serbian ethnical groups didn't have locked-up themselves in "own" town districts. With the exception of Kosovo, everybody lives criss-cross mixed up and next each other."

701. So the bestial Serbs and Serbian leadership have obviously forgotten to set things right in their own mainland ! It is like Hitler, destroying the Jews all around, but forgetting to persecute them in Germany itself ! Living Jews and Nazi-Germans peacefully together there; like lambs and lions.

702. This absurdity in the idea of the Serb and the Serbian leadership as the ethnic cleansers par excellence, as it is continuously presented to the public opinion and pushed forward in the tribunal's main indictments, should at least give cause to any scepticism about the truth of this representation.

703. However, nothing at all in circles of the so-called tribunal.

On the contrary, the more giant-scaled ethnic cleansings against Serbs are even directly and momentarily taking place, the more the so-called tribunal seeks at the same time to criminalize the Serbs for remote alleged ethnic cleansings.

704. Like with regard to Kosovo after the cease-fire in NATO's war of aggression against Yugoslavia. When more than 330.000 people of all minorities, mainly Serbs, were driven out. The so-called tribunal not only turning a blind eye to this enormous anti-Serbian humanitarian crime, but at the same time only working on further anti-Serbian indictments and presenting those new anti-Serbian during the very height of this Serb humanitarian tragedy.

705. The 'Srebrenica'-indictment against Mr. Krstic is a clear example of the historic falsifications the so-called tribunal is throwing into the fray, by simple reshuffling and omitting important facts.

706. The same simple tactics, even transparent to a child, of appropriation of essential facts and historical elements are used by the tribunal in the indictments against Mr. Milosevic.

707. So from the 'Kosovo indictment' nobody might be able to learn that during the most important period with concern to this indictment there was a full-scale NATO-war of destruction raging against Yugoslavia and thus also in Kosovo, accompanied with months long bombardments on a scale never seen before in European history, causing thousands of casualties under civilians and more than 100 billion dollar direct damages, afflicted to the country and to the people.

708. The so-called tribunal turns out to dare simply to stash away these facts.

And, as a consequence, also all the outcomes of this big-scaled war. Simply wiped out from this so-called 'Kosovo'-indictment. And thus all tracks of this horrible crime against humanitarian law carefully covered up.

With the exception of two short sentences, into the 23 pages counting indictment, reading:

"36. On 24 March 1999, NATO began launching air strikes against targets in the FRY. The FRY issued decrees of an imminent threat of war on 23 March 1999 and a state of war on 24 March 1999."

That's all !

About these far-reaching and major war and its radical consequences !

709. And by these manipulation and falsification of history - falsification by omission of this crucial and decisive factor - the so-called tribunal paves the way for the next assault on the truth.

Representing the most crazy allegation in history.

And that is the allegation in the 'Kosovo'-indictment that all allegedly 740.000 Kosovo Albanian refugees were driven out of their homesteads exclusively by Serb violence.

Since par. 99 of the 29 June 2001-version of the 'Kosovo'-indictment reads:

"By 20 May 1999, over 740.000 Kosovo Albanians, approximately one third of the entire Kosovo Albanian population, had been expelled from Kosovo."

And par. 23 reads:

"Beginning on or about 1 January 1999 and continuing until 20 June 1999, the forces of the FRY and Serbia, acting at the direction, with the encouragement, or with the support of Slobodan MILOSEVIC, Milan MILUTINOVIC, Nikola SAINOVIC, Dragoljub OJDANIC and Vlastko STOJILKOVIC perpetrated the actions set forth in paragraphs 18 through 22, which resulted in the forced deportation of approximately 740.000 Kosovo Albanian civilians."

So, according to this indictment, Mr. Milosevic and his companions were to blame for all alleged 740.000 Kosovo-Albanian refugees.

No one excepted.

This indictment was issued at 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 delusions of the prosecution section - and also confirmed by the judiciary section of the so-called tribunal -, 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 Kosovo Albanian refugee, fleeing outside the boundaries of Kosovo.

All Kosovo Albanian refugees were put to flight by the forces of Mr. Milosevic !

How absurd and lunatic this accusation that the war acts and NATO's bombardments would not have caused a single Kosovo Albanian refugee really is, becomes immediately clear when the situation in Macedonia and in Afghanistan is considered.

In Macedonia direct acts of war in a 'low intensity-conflict' of limited scope caused in the summer of 2001 already almost 100.000 refugees, according to the figures of the UNHCR.

And it is clearly documented by the UNHCR that the U.S.-bombardments in Afghanistan in autumn 2001 created hundreds of thousands refugees.

But the gruesome war waged by NATO and its UCK-allies in Kosovo did not result in a single Kosovo Albanian refugee outside the boundaries of Kosovo, so the so-called tribunal wants us to believe.

They were all Mr. Milosevic fault !

In the meantime there were also over 100.000 Serbian refugees in Kosovo during the period of NATO's aggression.

Like it is well documented in a OECD-report.

If the tribunal is well understood, this 100.000 Serbian refugees were the only one's put on flight by the acts of war on the ground and by NATO's continuous heavy bombardments in Kosovo.

But all Albanian Kosovars didn't care a dime about all this and stood firm in this hurricane of violence.

Till Mr. Milosevic came and to drove them out.

710. The prosecution section of the so-called tribunal could not have shown a better picture of its own servility to NATO !

711. But the discriminate anti-Serbian character of the tribunal is also clearly manifested by the 'Croatia'-indictment against Mr. Milosevic.

Already nearly two years ago the prosecutor pronounced, time and again, in public that certain crimes, committed in Bosnia, were actually to assign to the President at the time of Croatia Tadjman.

This was in the Blaskic case.

It has been repeatedly stressed in this case by the prosecutor that these crimes, assigned to general Blaskic, were actually brewed in the palace of Tadjman and that there was an abundant mass of evidence in order to indict not only Blaskic, but Tadjman as well for these alleged crimes.

In spite of these already two years ago existing abundance of evidence against the former President of Croatia Tadjman,

according to public statements of the prosecution section itself, the so-called tribunal never proceeded to action against the former President of Croatia during his lifetime. Now he is dead, the prosecutor states that he certainly would have been indicted when he still was alive ! The prosecutor seems to think that the world swallows such a pernicious cynicism !

712. As long as the prosecutor don't places in position the same distorted construction of indictment against the Tudjman administration and leadership, as set up against the Milosevic administration and leadership - this specifically with regard to the above mentioned crimes in Bosnia - this 'Croatia'-indictment against Mr. Milosevic proves once again thoroughly the political and discriminate character of these charges against him.

713. Just like in the 'Kosovo'-indictment, the prosecutor - confirmed by the tribunal's judge -has done also in the 'Croatia'-indictment the utmost to mystify the nature of the armed conflict that existed in Croatia during the timespan of this indictment.

The prosecutor simply manoeuvres out of view that there was also a Croatian side on the theater of violence in Croatia, formed by Croatian military and irregulars. The prosecutor simply completely conceals this Croatian side of the spectrum of violence in this 'Croatia'-indictment, in the same way as the prosecutor also completely manipulated out of view the NATO as contesting party in Kosovo in the 'Kosovo'-indictment.

714. By these subsequent extreme and insolent falsifications of history, the so-called tribunal shows fully its true nature as a tool of the western powers, meant to rewrite history in a way as prescribed by those western powers.

715. In an comprehensive additional application there will be presented further overwhelming evidence of the tribunal's discriminate prosecution policy.

Elaborating also all systematic and continuous refusals by the so-called tribunal to respond to the countless efforts, undertaken from all directions - not only Serbian and Yugoslav - to bring the tribunal in motion against large-scaled violations of humanitarian law, committed against the Serb and other non-Croatian and non-muslim populations all over the territory of the former Yugoslavia.

Including the violating of humanitairian law by NATO's war of aggression.

Efforts, which all have runned ashore by the manifest unwillingness of the so-called tribunal.

716. For the time being it is clarifying to end with this:

As it is confirmed by the figures of the UNHCR, there are more than one million refugees in the Federal Republic of Yugoslavia.

So Yugoslavia holds the third position in the world regarding the numbers of refugees it harbours. After Afghanistan and Pakistan.

Most of the refugees are Serbs, but further also all kind of minorities are represented. Under which more than 250.000 of Europe's today most vulnerable ethnic group, the Roma. Driven out by Europe's and the United States's friends in Croatia, Bosnia and Kosovo. And finding shelter in Yugoslavia, mainly in Serbia.

Nobody, reading whatever indictment issued by the so-called tribunal - separate or all indictments together - might get any awareness of this fact that by far the Serbs are most numerous refugees.

So the question is:

Where are all those displaced Serbians in the Tribunal's indictments ?

They are completely absent in the indictments.

Where are the indictments against the perpetrators of these million-fold act of anti-Serbian ethnic cleansing ?

They are totally absent.

Many names of victims are mentioned in the above mentioned 'Srebrenica'-, 'Kosovo'-, 'Croatia'- and 'Bosnia'-indictments. But where are the names of the countless Serb victims in whatever indictment ?

The Serb victims have no name. In the so-called tribunal's indictments.

There are no Serb victims. Within the scope of the so-called tribunal's indictments.

VI.11. Violation of the Article 6-right to a fair trial, since the so-called tribunal acts consistently in violation of its own rules, so that, by this specific arbitrariness, a fair trial would be impossible.

718. In this application already a number of own rules, constantly broken by the tribunal itself, are mentioned.

719. The most serious violations of its own rules of course with regard to the tribunal's lawlessness of acting, with the help of NATO-forces, against - of course Serbian - accused in Bosnia, and now also acting lawless in Yugoslavia with respect to Mr. Milosevic.

Acting completely without even consulting the Security Council. Let alone leaving the decision up to this organ, as it is prescribed by its own rules.

720. But also other breaches of the own rules, as mentioned in this application, are relevant here.

In a comprehensive additional application there will be presented a further view of constant violations by the tribunal of its own, self-fabricated rules.

VI.12. Violation of the Article 6-right to a fair trial by the fact that Mr. Milosevic' defence rights are systematically breached

721. Article 6 par. 3 Convention reads, as far as is relevant here:

"Everyone charged with a criminal offense has the following minimum rights:

c. to defend himself in person or through legal assistance of his own choosing (...)."

VI.12.a. Violation of Mr. Milosevic' defence rights by the usurpation of the right to defend himself by the assignment of 'amici curiae', with as clearly appointed task to perform acts which are an inalienable right of Mr. Milosevic himself or his counsel.

722. The so-called tribunal has assigned three 'amici curiae', in order "to guarantee that Mr. Milosevic' basic rights in the course of the pre-trial and trial period will be safeguarded". This against the clearly expressed wishes of Mr. Milosevic himself.

723. By this assignment of the 'amici curiae', performing acts which are privileges of the indicted himself or his counsel, the tribunal usurps these defence rights of Mr. Milosevic and thus contravenes his human rights.

724. These 'amici curiae' are, inter alia, tasked by the tribunal to undertake the coming cross examinations on behalf of Mr. Milosevic.

While Mr. Milosevic doesn't want anything to do with them !

This question will be further elaborated in an additional application.

VI.12.b. Violation of Mr. Milosevic' defence rights by systematically interfering contact with his legal advisers and finally totally obstructing further contacts with his legal advisers, except with two legal advisers, assigned by the tribunal itself

725. From the beginning of his detention by the so-called tribunal, contacts between Mr. Milosevic and legal advisers of his own choice, necessary for preparing his own defence, are extremely hampered by the tribunal.

726. Free and unmonitored access was not allowed.

727. Now all contacts with legal advisers of his own choosing are totally blocked.
He is only allowed to communicate further with two legal advisers, assigned by the tribunal itself.

This question will be further elaborated in an additional application.

VII. THE VIOLATION OF CONVENTION'S HUMAN RIGHTS, GUARANTEED BY OTHER PROVISIONS, UNDER DUTCH RESPONSIBILITY OR CO-RESPONSIBILITY

VII.1. Violation of the Article 10-right to freedom of expression by the fact that Mr. Milosevic is barred from all contact with the media and press.

728. As a weapon to keep covered up its illegality and illegitimacy and its consistent human rights violations, the so-called tribunal bars Mr. Milosevic from all contacts with the press and the media.

729. While at the same time on a daily basis lies are publicly spread around by politicians, media and press about him, the Serbs and the Serbian leadership, Mr. Milosevic get no chance to counter this continuous smear campaign.

As it is already stressed many times by Mr. Milosevic himself.

730. So this bar highly contributes to the fact that he is already sentenced by the public opinion. Which is exactly the so-called tribunal's intention.

731. The tribunal's effort to defend itself by declaring that this barring from all contacts with the media should be considered allowed, since this is a general rule for all the tribunal's prisoners and since it should be allowed to make limitations on the freedom of expression, according to par. 2 of Article 10 of the Convention is a very poor defense.

This question will be considered further comprehensively in an additional application.

VII.2. Violation of the Article 13-right to an effective remedy against human rights violations by the tribunal in the execution of its absolute administrative, legislative and judicial powers.

732. Just because the tribunal combines in itself all powers towards the persons in its grasp, which is already unacceptable in itself, it is all the more unacceptable that there is no recourse to an effective remedy against human rights violations by the so-called tribunal itself.

This question will be considered further in an additional application.

VII.3. Violation of the Article 14-right of prohibition of discrimination

733. As already elaborated in this application, this provision of prohibition of discrimination is being consistently violated by the so-called tribunal.

This question will be considered further on in an additional application.

VIII. REQUEST TO AFFORD A JUST SATISFACTION ACCORDING TO
ARTICLE 41 OF THE CONVENTION

734. Mr. Milosevic requests the Court to afford a just satisfaction for the violations of the his human rights.

735. First of all he requests that the Court would rule his immediate release.

736. Secondly he requests for damages, as to be calculated in an additional application, certainly also including the costs of legal defence in this European Court case.