

ICTY

4-3

ART. 6 Schendlingen

van holst en steijnen

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Sent: zondag 18 november 2001 14:08
Subject: bdb

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Grotere rol Duitsers bij einde Joegoslavië

Door onze correspondent Cees van Zweeden

BOKA KOTORSKA - Duitsland heeft een grotere rol gespeeld bij de ontbinding van het oude Joegoslavië dan tot nu toe werd aangenomen. Hans-Dietrich Genscher, voormalig minister van buitenlandse zaken, beloofde een half jaar voor het begin van de oorlog al het Kroatische streven naar onafhankelijkheid te steunen. In een geheime ontmoeting met Kroatische nationalistten eind 1990 gaf hij hun 800 miljoen mark.



Hans-Dietrich Genscher

Deze onthulling werd deze week gedaan door Anton Duhacek, die de hoogste baas was van de Joegoslavische inlichtingendienst, de Slusba Bezbednosti. Volgens de nu gepensioneerd Duhacek, -die aan de Baai van Kotor (Montenegro) woont, zaten ook Italië en Oostenrijk in het complot. Nadat eerst Slovenië zich vrij geruisloos van Joegoslavië had afgescheiden, begon in juni 1991 de burgeroorlog in het voormalige Joegoslavië met de onafhankelijkheidsverklaring van Kroatië. De Kroaten wisten toen al, zo zei Duhacek, dat ze op steun van de Duitsers konden rekenen. De oorlog in ex-Joegoslavië zou een kwart miljoen levens eisen.

Geheim

"De eerste contacten tussen de Duitsers en de Kroatische nationalistten werden al in 1989 gelegd", verklaarde Duhacek. "Maar hun samenwerking kwam in een stroomversnelling toen Genscher eind 1990 in het geheim Josip Manolic (de rechterhand van de latere president Tudjman, red.) ontving. Genscher beloofde Manolic 800 miljoen mark, op voorwaarde dat een onafhankelijk Kroatië niet door de communisten werd geleid." De onthulling maakt het gedrag van Genscher tijdens een top van de Europese Gemeenschap in december 1991 duidelijker. Genscher dwong toen een onwillige EG om Kroatië te erkennen door ermee te dreigen dat Duitsland die stap anders alleen zou zetten. Het argument dat de Duitser gebruikte, was dat de oorlog niet meer gestopt kon worden. De uitkomst van de top deed de bemiddelaar van de EG voor de Balkan, de Brit Lord Carrington, in woede ontsteken. Hij voorspelde dat Bosnië zich ook van Joegoslavië zou afscheiden, waarmee een nieuwe oorlog onvermijdelijk werd. De Kroaten waren echter in de zevende hemel. De 800 miljoen mark was volgens Duhacek bestemd voor drie doelen. Een deel verdween in de kas van de nationalistische HDZ, de partij van Franjo Tudjman. Een ander deel werd aangewend om Kroatische officieren in het Joegoslavische Nationale Leger om te kopen. Maar het meeste geld werd op aandrang van Genscher gebruikt om de terugkeer van Kroatische immigranten te financieren. "Minstens 11.000 Kroaten keerden terug uit de diaspora", zei Duhacek. "Velen van hen waren extremisten, die de ideeën van de fascistische Ustase (die Kroatië tijdens WO II regeerde, red.) aanhingen. De ontbinding van Joegoslavië wordt door de meeste historici gepresenteerd als een proces dat ondanks, en niet dankzij de westerse mogendheden plaatsvond. Maar de buurlanden begonnen volgens Duhacek al met hun lijfroof voordat Josip Broz Tito, de leider van Joegoslavië, in mei 1980 overleed.

Verslag

"Toen Tito in Ljubljana op zijn sterfbed lag, onderschepten we het verslag van een zitting van het Italiaanse kabinet", zei hij. "De minister van buitenlandse zaken maakte zich daarin sterk voor de gedachte dat Italië na Tito's dood Istrië (een streek in Noord-Kroatië) zou opeisen." "We kregen soortgelijke informatie uit de andere buurlanden. De Oostenrijkers wilden de streek rond Maribor in Slovenië, de Bulgaren waren geïnteresseerd in Perinski in Oost-Macedonië, de Grieken wilden Zuid-Macedonië, en Hongarije wilde meer rechten voor de Hongaarse minderheid in Vojvodina."

← terug

van holst en steijnen

From: Despotovic, Ruza <despot@wish.net>
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Sent: woensdag 14 november 2001 14:08
Subject: Fw: - Ljudska prava - James Bissett// War on terrorism skipped the KLA

— Original Message —

From: Miroslav Antic <miroslav@antic.org>
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Cc: <sin@antic.org>; NATO <ANTINATO@topica.com>; lhydro <hydro@topica.com>; 'KPJ' <KPJ@topica.com>; ljudska_prava <ljudska_prava@yahoo.com>
Sent: Tuesday, November 13, 2001 11:36 PM
Subject: - Ljudska prava - James Bissett// War on terrorism skipped the KLA

>
 > <http://www.nationalpost.com/commentary/story.html?f=/stories/20011113/783573.html>
 > .html
 >
 > November 13, 2001
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 >
 > War on terrorism skipped the KLA, by James Bissett
 >
 > National Post, CANADA
 >
 > U.S. President George W. Bush has made it clear the war against
 > terrorists will be unrelenting and relentless. Even those countries
 > affording shelter to terrorists will not be spared. These words come too
 > late for the Serbs, Gypsies, Jews, Turks and other non-Albanians who
 > have been driven from their ancestral homes in Kosovo by the terrorist
 > Kosovo Liberation Army. It is too late as well for Macedonia, which has
 > been forced by the United States, the European Union and NATO to yield
 > to all the demands of the Albanian terrorists in that country.
 >
 > This double standard and lack of consistency when dealing with
 > terrorists calls into question the policies the United States and its
 > NATO allies followed in the Balkans. It also underlines the necessity
 > for the United States and its allies to clean up their act if they wish
 > to retain credibility in the war against terrorism.
 >
 > The bombing of Yugoslavia in the spring of 1999 allegedly to stop ethnic
 > cleansing and prevent the Balkans from becoming once again the powder
 > keg of Europe has backfired. Kosovo has become exclusively an Albanian
 > province with the exception of a few stalwart Serbians in the Mitrovica
 > area who live surrounded by barbed wire and are threatened daily with
 > murder and mayhem by their Albanian neighbours. The Balkans, since the
 > end of the bombing, have been in constant turmoil caused by the KLA
 > terrorist activities.
 >
 > NATO allowed the KLA, which under the terms of United Nations Resolution
 > 1244 was to be disarmed after the end of the bombing, to keep its
 > weapons. The KLA was renamed the Kosovo Protection Force and been given
 > the task of maintaining peace and security in Kosovo. How well it has
 > been able to carry out this task is summed up in a report dated Feb. 26,
 > 2001, to the Secretary-General of the United Nations, Kofi Annan, which
 > accuses the protection corps of widespread acts of murder, torture and
 > extortion.
 >
 > That condemnation should not have come as a surprise. As early as 1998,
 > the U.S. State Department listed the KLA as a terrorist organization
 > financing its operations with money from the international heroin trade
 > and funds supplied from Islamic countries and individuals, including
 > Osama bin Laden. This did not stop the United States from arming and
 > training KLA members in Albania and in the summer of 1998 sending them

- > back into Kosovo to assassinate Serbian mayors, ambush Serbian policemen
- > and intimidate hesitant Kosovo Albanians. The aim was to destabilize
- > Kosovo and overthrow Serbian strongman Slobodan Milosevic.
- >
- > Bin Laden and radical Muslim groups have been deeply involved in the
- > Balkans since the civil wars in Bosnia from 1992 to 1995. Despite a UN
- > arms embargo and with the knowledge and support of the United States,
- > arms, ammunition and thousands of Mujahideen fighters were smuggled into
- > Bosnia to help the Muslims. Many remain in Bosnia today and are
- > recognized as a serious threat to Western forces there. The Bosnian
- > government is said to have presented bin Laden with a Bosnian passport
- > in recognition of his contribution to their cause. He and his al-Qaeda
- > network were also active in Kosovo, and KLA members trained in his camps
- > in Afghanistan and Albania.
- >
- > Emboldened by the knowledge it could achieve its political objectives by
- > terror, the KLA moved into southern Serbia and initiated, under the eyes
- > of 40,000 NATO troops, a campaign of terror against the Serbian
- > population. Not until NATO permitted the new democratic government of
- > Serbia to send the Serb army back into the area was the KLA routed and
- > sent back across the border into Kosovo.
- >
- > Macedonia, with its large Albanian minority, was the KLA's next target.
- > In February, its forces moved against this small and newly independent
- > democracy. The familiar pattern of murder, ambush and intimidation
- > followed. Unlike Serbia, which still possessed a powerful and
- > well-equipped army, Macedonia had little with which to defend itself
- > against the well equipped and battle-hardened KLA fighters. The promises
- > of assistance made by former U.S. president Bill Clinton in return for
- > Macedonia's co-operation during the Yugoslav bombing were forgotten.
- >
- > Nevertheless, when the fighting started, it appeared NATO and the
- > European Union might help Macedonia resist the terrorist threat. In
- > March, Lord Robertson, the Secretary-General of NATO, condemned the KLA
- > terror campaign and described them as "murderous thugs." He supported
- > the Macedonian government's refusal to negotiate with the terrorists.
- > Obviously, Lord Robertson was not aware the United States had other
- > ideas about which side to support in Macedonia.
- >
- > The message was made clear in May, when U.S. diplomat Robert Fenwick,
- > ostensibly the head of the Organization for Security and Co-operation in
- > Europe, in Macedonia, met secretly in Prizren, Kosovo, with the leaders
- > of the Albanian political parties and KLA representatives. Macedonian
- > officials were not invited. It was clear the United States was backing
- > the Albanian terrorist cause. This was confirmed a month later, when a
- > force of 400 KLA fighters was surrounded in the town of Aracino near
- > the capital, Skopje. As Macedonian security forces moved in, they were
- > halted on NATO orders. U.S. army buses from Camp Bondsteel in Kosovo
- > arrived to remove all the heavily armed terrorists to a safer area of
- > Macedonia. German reporters later revealed that 17 U.S. military
- > advisors were accompanying the KLA terrorists in Aracino.
- >
- > In August, fearing the Macedonian forces might be able to defeat the
- > KLA, U.S. Security Advisor Condoleezza Rice flew to Kiev and ordered the
- > Ukrainian government to stop sending further military equipment to
- > Macedonia. Since Ukraine was the only country supplying Macedonia with
- > military assistance, the Macedonians realized continued resistance
- > against the KLA terrorists, the EU and NATO was futile. Macedonia was
- > forced to concede defeat and obliged to accept all the terrorist
- > demands. When the peace treaty was signed, Lord Robertson proclaimed,
- > "This day marks the entry of Macedonia into modern, mainstream Europe
- > ... a very proud day for their country."
- >
- > James Bissett is a former Canadian ambassador to Yugoslavia, Bulgaria
- > and Albania, 1990-1992.
- >
- > Letters to the editor:
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Despotovic, Ruza

Van: Despotovic, Ruza [despot@wish.net]
Verzonden: donderdag 22 november 2001 22:49
Aan: Ruza Despotovic; Richard van Houten
Onderwerp: Fw: AMERICAN ALLIANCE WITH TERRORISTS (a part of the story)

Urgentie: Hoog

----- Original Message -----

From: Vladimir Krsljanin <mailto:vlada@sps.org.yu>
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Sent: Thursday, November 22, 2001 6:19 PM
Subject: AMERICAN ALLIANCE WITH TERRORISTS (a part of the story)

What follows is an "official" version.
Many important facts and emphases are missing.

1. Why the terrorists have been tolerated for years in totally American-controlled Albania?
- Because they've been used to organize terrorism in Kosovo and even to fight there. In the whole "Wall Street Journal" story Kosovo is almost not mentioned.
2. With all this knowledge, about Egyptian Jihad and Saudi born al-Qaida, why there was no major American action against them after the embassies in Africa have been targeted?
- Because they were considered as still useful - aggression against Yugoslavia and other dirty work in the Balkans was only under preparation.
3. How successful was the described action against the terrorists in Albania?
- US embassy in Tirana was for some time temporary closed (also not mentioned in the article). And the Islamic terrorists and their Albanian branch - KLA are still alive and very much active in the Balkans, under support of USA. Remember the spectacular "Rescue the Terrorists and Return them Safe to Kosovo" action in Arachinovo, Macedonia?! And their leader Hashim Tachi "The Snake", although defeated in the "elections" is now a member of "Parliament" of Kosovo and perhaps member of "Presidency" of Kosovo?!

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

CIA-Backed Team Used Brutal Means to Break Up Terrorist Cell in Albania Officials Call Operation One of the Agency's Great Successes

**By Andrew Higgins and Christopher Cooper
THE WALL STREET JOURNAL**

TIRANA, Albania, Nov. 20 -- Ahmed Osman Saleh stepped off a minibus here in the Albanian capital in July 1998 and caught what would be his last glimpse of daylight for three days. As he paid the driver, Albanian security agents slipped a white cloth bag over Saleh's head, bound his limbs with plastic shackles and tossed him into the rear of a hatchback vehicle. Supervising the operation from a nearby car were agents from the U.S. Central Intelligence Agency.

SALEH'S ALBANIAN captors sped over rutted roads to an abandoned air base 35 miles north of Tirana. There, recalled an Albanian security agent who participated, guards dumped the bearded self-confessed terrorist on the floor of a windowless bathroom.

After two days of interrogation by CIA agents and sporadic beatings by Albanian guards, Saleh was put aboard a CIA-chartered plane and flown to Cairo, according to the Albanian agent and a confession Egyptian

elicited from Saleh in September 1998. "I remained blindfolded until I got off the plane," Saleh said in his confession, a document written in Arabic longhand that he signed at the bottom.

There were more beatings and torture at the hands of Egyptian authorities. And 18 months after he was grabbed outside the Garden of Games, a Tirana children's park, Saleh was hanged in an Egyptian prison yard.

BY THE SCRIPT

His capture was one of five scripted and overseen by American agents as part of a covert 1998 operation to deport members of the Egyptian Jihad organization to Cairo from the Balkans. At the time, Egyptian Jihad was merging with Osama bin Laden's al-Qaida network. U.S. authorities considered the Tirana cell among the most dangerous terror outfits in Europe. The CIA has refused to acknowledge the 1998 operation. But privately, U.S. officials have described it as one of the most successful counterterrorism efforts in the annals of the intelligence agency.

Today, as the Bush administration loosens its interpretation of the rules on foreign assassinations and other restraints imposed on the CIA in the 1970s, America's clandestine role in Albania illuminates some of the tactical and moral questions that lie ahead in the global war on terrorism. Taking this fight to the enemy will mean teaming up with foreign security services that engage in political repression and pay little heed to human rights. By authorizing special military trials for some terrorists caught abroad, President Bush has signaled that the protections of American-style justice won't apply to all.

Although executed swiftly, the CIA's operation in Albania was far from clean. At least two men targeted by the Americans eluded capture. Another was shot dead during a gunfight with Albanian security forces. One Albanian participant in the violent arrests recalled that an apparently innocent elderly man was grabbed at Tirana's airport and then bound and blindfolded.

The old man was interrogated for several days by the CIA before being dumped on a downtown street. In statements to their lawyer in Egypt, the five men who were deported there said they suffered the sort of elaborate torture that has been a hallmark of a decade-long Egyptian counterterrorist campaign.

Bill Harlow, a spokesman for the CIA, said any suggestion that "the CIA either participated in or condoned torture" in any of its operations is "wrong." He declined to comment further.

Albania is nominally Muslim but largely secular and pro-American. It has served as a laboratory for counterterrorism tactics shunned in Western Europe, for example, where governments are wary of giving the CIA too much leeway and balk at sending suspects to countries that employ the death penalty. Fatos Klosi, head of Albania's intelligence service, acknowledged that some of his agency's actions, undertaken at the CIA's behest, were "not so justified legally." But he defended them as necessary. "They convinced us not to be soft with terrorists," said Klosi, who oversaw the 1998 operation.

The Tirana group broken up by the CIA was years in the making. Its members, who ultimately numbered more than 20, started drifting in and out of Albania in the early 1990s. They eventually coalesced into what appears to have been a classic "sleeper" cell: a self-sufficient group ensconced in its surroundings, awaiting a call from its leadership to begin terrorist activities.

In addition to Saleh, a self-described terrorist with a 1993 Cairo car bombing to his credit, cell members included an accomplished forger and a budding propagandist. Most had spent time in Afghanistan or Pakistan, learning how to handle weapons and explosives. Egyptian Jihad's leader was Ayman Zawahri, a Cairo surgeon-turned-mujahideen warrior who became bin Laden's right-hand man after the Jihad group merged with al-Qaida in 1998. The interrogation of the five Tirana cell members by Egyptian authorities in the summer and fall of 1998, and the military trial that followed in Egypt the next year, produced some 20,000 pages of confession transcripts and other documents. The confessions apparently were coerced, which could cast doubt on the credibility of some self-incriminating statements. But the defendants' descriptions of their activities generally are consistent with those of other sources and provide a rare detailed account of the activities of a Muslim terrorist cell.

FERTILE GROUND

Islamic militants and CIA agents began arriving in Albania at about the same time when the country's doctrinaire Communist regime collapsed in 1992. Both groups of outsiders saw fertile ground for expansion. Arriving early was Mohamed Zawahri, the younger brother of Ayman Zawahri. The younger Zawahri worked as

engineer for the Islamic Relief Organization, one of more than a dozen charities based in Saudi Arabia and other Islamic states that opened offices in Tirana. Mohamed Zawahri helped other Egyptian Jihad members find jobs with charities that were building mosques, orphanages and clinics there.

The CIA, meanwhile, found shelter in the new U.S. Embassy, which opened after the Communists' fall. CIA agents provided the Albanian intelligence service, known by its initials, SHIK, with equipment to record telephone calls, as well as lessons on surveillance techniques, according to current and former SHIK operatives.

The CIA, which aimed to track Muslim extremists in the region, found an eager partner in Sali Berisha, a cardiologist elected Albania's president in 1992. "Total cooperation," is how Berisha described his relationship with the American intelligence agency. "They worked in Albania as if they were in New York or Washington," he added.

Gaining permission for wiretaps was a snap, requiring little of the legal red tape common in the U.S. Berisha estimated that almost two-thirds of the hundreds of telephone conversations recorded in Albania during his five-year tenure as president were taped at the CIA's behest.

While the CIA organized, so did Egyptian Jihad. In January 1993, Mohamed Zawahri recruited Mohamed Hassan Tita, an architect and Jihad member, to work at the Islamic Relief Organization. Funded by Saudi Arabia, the group had offices in a former Communist Party academy, alongside Western charity groups.

Within hours of stepping off the plane from Egypt, Tita was told by Zawahri that he would have a special duty: collecting dues from the charity's Jihad employees at a rate of 20 percent of their salary. "I think that all Jihad members employed at the organization were employed through Mohamed Zawahri," Tita said in his 1998 confession. By the mid-1990s, the Egyptian Jihad cell in Tirana had swelled to 16 people, according to the Tita confession. His collections were running about \$1,100 a month.

Meanwhile, the CIA monitored the mixture of Muslim charity and militancy in the Albanian capital. SHIK agents who worked with the Americans said the CIA scrutinized the travel, phone calls and contacts of various charity workers with suspected links to extremist groups from Egypt, Algeria and other countries.

Every few days, a CIA officer from the American Embassy collected audio tapes of phone conversations that SHIK operatives recorded on American-supplied equipment in a secret eavesdropping center next to Tirana's central post office. Since nearly all the conversations were in Arabic, the tapes went back to the U.S. for translation, SHIK agents said. For much of the 1990s, the CIA and SHIK contented themselves with observing the suspected terrorists. The strategy, said ex-President Berisha, was "not to cleanse [Albania of] these people, but to study them."

U.S. diplomats and spies did worry that Jihad members or other Muslim extremists might attack the American Embassy in Tirana, SHIK officials said. On one occasion in 1993, the Americans were alarmed when a suspected Islamic militant drove repeatedly around the embassy. In another incident, phone intercepts picked up an apparent order from overseas instructing a Muslim-charity worker to case the embassy. An attack never came. In 1994, the CIA sent an agent to Tirana to oversee the training of a new SHIK unit dedicated to surveillance of suspected terrorists, according to Albanian security officials. The American was a Vietnam veteran and spoke Arabic. Operating out of a former military academy in Tirana, the agent, who has since died in an unrelated car accident, according to his former Albanian pupils, taught recruits how to follow and monitor targets. The SHIK contingent, said then-President Berisha, was "trained by the CIA, chaired by the CIA and run by the CIA." Some Albanian agents to this day save surveillance photographs they said they took under CIA tutelage. As American intelligence activity increased in the mid-1990s, Egyptian Jihad expanded its network in Albania. In February 1996, Tita, the dues collector, offered a job to Saleh, the man later grabbed near Tirana's Garden of Games. Wanted by Egyptian authorities in connection with a botched 1993 attempt to assassinate former Egyptian Prime Minister Atef Sedki, Saleh came to Albania for the nominal purpose of teaching the Quran to school children and running a Muslim orphanage.

Tita's most important hire was Shawki Salama Attiya, a forger and instructor at al-Qaida camps originally set up in the 1980s to train anti-Soviet fighters in Afghanistan. The son of a Cairo carpenter, Attiya arrived at the camps in 1990, too late to fight the Soviets, who had left in 1989. But that didn't diminish his enthusiasm. "We used to train on attacking [mock] tourist buses," he said later in his confession. Instructors "always told us to imagine the people in these buses were Israeli tourists."

LEARNING FORGERY

1994, Attiya had relocated his family to Sudan, then home to bin Laden and al-Qaida. He apprenticed himself to a forgery expert, learning how to doctor passports, a talent much in demand among Muslim militants. "I specialized in removing stamps and visas from passports and putting new ones on," he said in his 1998 confession. Most of what he said in the confession was corroborated by his wife, Jihan Hassan Ahmed, who gave a statement to Egyptian police in 1998 but wasn't tortured or charged. After awarding himself a diploma of his own making from the prestigious al-Azar University in Cairo, Attiya arrived in Albania in August 1995, with a fake passport and a new name, Magad Mustafa, he said in his confession. His job at the Islamic Heritage orphanage paid \$700 a month.

The main force drawing Egyptian Jihad operatives to Albania at the time was the availability of paying jobs with the Muslim charities. The subject of Jihad finances surfaced during a meeting in Sana, Yemen, in December 1995. Ayman Zawahri, the Jihad leader, discussed a successful bombing that year of the Egyptian Embassy in Pakistan. Then, he delivered discouraging news: Jihad was nearly broke. "These are bad times," he said, according to the confession of Ahmed Ibrahim al-Naggar, a Jihad member who attended the Yemen gathering.

A month after the conclave, Egyptian Jihad outfitted Naggar with a plane ticket, laptop computer and \$500. He followed Attiya, Saleh and Tita to Tirana. A trained pharmacist from a Cairo slum, he got a job with al-Haramain, a Saudi charity operating out of a three-story villa in the center of Albania's dilapidated capital.

In April 1996, eight Jihad operatives gathered in a Tirana house for a fast-breaking feast at the end of Ramadan, the Muslim holy month. A visiting Jihad leader appointed Attiya the chief of the Tirana cell and "emphasized the need for Jihad leaders to stick together," Tita recalled in his 1998 confession.

The threat to Americans posed by al-Qaida was becoming clearer at that time. In June 1996, the Khobar Towers U.S. Marines barracks in Saudi Arabia were bombed in an attack attributed to the bin Laden group. In Albania, the CIA struggled to maintain its carefully nurtured relationship with SHIK, as Berisha's regime wobbled. Elections in May 1996 were marred by violence and voting irregularities. Nonetheless, in October 1996, six SHIK agents traveled to Langley, Va., for a weeklong CIA course in surveillance offered at a Marriott Hotel near the agency's headquarters, according to Albanians familiar with the visit.

Conditions in Albania deteriorated into anarchy in early 1997, following the collapse of a large investment-pyramid scheme. Protesters stormed a government armory, emptied prisons and attacked SHIK offices.

Amid the turmoil, Attiya kept up a lively forgery business. And Naggar began training as a propagandist, cultivating contacts with the media center that Egyptian Jihad ran openly in London. In May 1997, Naggar saw his first article published: a feature on the life of Muhammed in "Call of Jihad" magazine.

NEW URGENCY

President Berisha called an election in June 1997, lost and resigned. The new government quickly revived surveillance operations with the CIA, which had waned during the unrest. There was new urgency on the American side. U.S. military planners, alarmed by mounting strife in neighboring Kosovo and considering American intervention, wanted Albania purged of any extremists who could threaten U.S. forces.

In 1998, as SHIK expanded its eavesdropping with yet more American equipment, Attiya and Naggar began making frequent calls to Ayman Zawahri, the Egyptian Jihad leader, who by then had joined bin Laden in Afghanistan, Attiya said in his confession. The Tirana cell received word of the merger of the two organizations during a phone call from Jihad's media committee in London, Naggar said in his confession. Jihad, which had primarily targeted the secular Egyptian government, would now join a broader assault on Americans, Naggar recalled.

"There is a direct benefit from the merging of the groups under bin Laden, financial strength being the most important," Naggar said. "Joining with bin Laden is the only solution to keeping the Jihad organization abroad alive." With war in Kosovo looming and Jihad resurgent, the U.S. shifted from monitoring the Tirana cell to crushing it. In the spring of 1998, the CIA asked Albania to help round up a half-dozen extremists operating locally, according to current and former SHIK operatives. Egypt also was recruited to help with the project, Egyptian court records show.

The Albanians were skeptical that the Muslim charity workers posed a serious threat. But SHIK's head, Klosi, recalled that he was convinced after visiting CIA headquarters in Langley in the spring of 1998. About a dozen U.S. agents arrived in Albania to plan the arrests, according to their Albanian counterparts. CIA and SHIK operatives spent three months devising the operation, often meeting in a conference room next to Klosi's

June 25, 1998, the Egyptian government issued a prearranged arrest warrant for Attiya, the forger, and demanded his deportation. Most such requests to Western countries had been ignored in the past, said Hisham Saraya, Egypt's attorney general at the time. This one was not.

That day, while driving in his 1986 Audi in Tirana, Attiya found himself being trailed by an Albanian police car and another vehicle, he later recalled in his confession. He was stopped and arrested. The same day, Albanian security officers raided his home and found more than 50 plates and stamps used to produce fake visas and other bogus documents, according to court records from his 1999 trial.

Several days later, he was taken, handcuffed and blindfolded, to the abandoned air base, north of Tirana. "There, a private plane was waiting for me," he said in his confession. Once in Cairo, he was blindfolded again and driven to Egypt's state security offices on July 2, 1998. "Since then, the interrogations have not stopped," he said.

Attiya later told his lawyer, Hafez Abu-Saada, that while being questioned, he was subjected to electrical shocks to his genitals, suspended by his limbs, dragged on his face, and made to stand for hours in a cell, with filthy water up to his knees. Abu-Saada, who represented all five members of the Tirana cell, subsequently recorded their complaints in a published report.

Also deported from Tirana was Naggar. He was nabbed in July 1998 by SHIK on a road outside of town. He, too, was blindfolded and spirited home on a CIA plane. In complaints in his confession and to his defense lawyer, Abu-Saada, Naggar said his Egyptian interrogators regularly applied electrical shocks to his nipples and penis.

Naggar's brother, Mohamed, said in an interview that he and his relatives also were and continue to be harassed and tortured by Egyptian police. He said he had suffered broken ribs and fractured cheekbones. "They changed my features," Mohamed Naggar said, touching his face.

About two weeks after Attiya and Naggar were deported to Egypt, Albanian security agents took Tita, the dues-collector, from his Tirana apartment. They covered his head and put him on a plane. "After I was arrested, [Egyptian interrogators] hung me from my wrists and applied electricity to parts of my feet and back," he said in his confession.

As the CIA operation drew to a close, an Arab newspaper in London published a letter on August 5, 1998, signed by the International Islamic Front for Jihad. The letter vowed revenge for the counterterrorism drive in Albania, promising to retaliate against Americans in a "language they will understand." Two days later, U.S. embassies in Kenya and Tanzania were blown up, killing 224 people. U.S. investigators have attributed the embassy bombings to al-Qaida and now believe the attacks were planned far in advance. At the time, American officials were rattled enough about the possible connection to the Tirana arrests that they closed the U.S. Embassy there, moving the staff to a more-secure compound across town.

The embassy bombings didn't stop the CIA from going after Saleh in Tirana. In August, Albanian security agents grabbed him outside the children's park. During two months of detention in Egypt, he was suspended from the ceiling of his cell and given electrical shocks, he told his lawyer, Abu-Saada. Also rounded up was Essam Abdel-Tawwab, an Egyptian Jihad member who had lived for a time in Tirana before moving to Sofia, Bulgaria. He, too, later told Abu-Saada he was tortured. Egyptian prosecutors acknowledged in court documents that they observed a "recovered wound" on Tawwab's body.

MASS TRIAL

The Jihad members brought back from the Balkans were tried by the Egyptian military in early 1999. The prosecution of cell members expanded into one of the country's largest-ever mass trials of alleged Islamic terrorists. In all, 107 people were tried in the so-called Returnees-from-Albania Case. Many were rounded up locally and had no direct connection to Albania. There are no appeals from such trials.

About 60 of the defendants were tried in absentia, including Ayman and Mohamed Zawahri, who were sentenced to death. Like his al-Qaida comrade, bin Laden, Ayman Zawahri is thought by U.S. officials to be on the run in Afghanistan. Mohamed Zawahri is assumed to be there, as well. Naggar and Saleh were hanged in February 2000 in connection with charges from earlier terror cases. Attiya was sentenced to life imprisonment. Tita and Tawwab each received 10-year prison terms.

...ian presidential spokesman Nabil Osman said of such mass prosecutions: "Justice is swift there, and it provides a better deterrent. The alternative is to have cases of terrorism in this country dangling between heaven and earth for years."

Osman brushed off torture claims by members of the Tirana cell, without commenting directly on their validity. Egypt permits alleged torture victims to seek remedies in civil court, he said. Members of the Tirana cell, however, have been held incommunicado with no way to file suit. "Forget about human rights for a while," Osman said. "You have to safeguard the security of the majority."

(In accordance with Title 17 U.S.C. Section 107, this material is distributed without profit to those who have expressed a prior interest in receiving the included information for research and educational purposes.)

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van holst en steijnen

From: Despotovic, Ruza <despot@wish.net>
To: Hans Hupkes <hans.hupkes@tomaatnet.nl>; Nico & Neeltje Steijnen <n.h.van.holst@freeler.nl>
Sent: woensdag 7 november 2001 13:54
Subject: Fw: [www.ANTIC.org] SAVEZNI USTAVNI SUD DONEO ODLUKU NA OSNOVU KOJE MILOSEVIC MORA BITI OSLOBODJEN!

----- Original Message -----

From: Vladimir Krsljanin
To: <mailto:Undisclosed-Recipient:@smtp.sps.org.yu>
Sent: Wednesday, November 07, 2001 1:18 AM
Subject: [www.ANTIC.org] SAVEZNI USTAVNI SUD DONEO ODLUKU NA OSNOVU KOJE MILOSEVIC MORA BITI OSLOBODJEN!

URGENT: BELGRADE, November 6, 2001

**Yugoslav Constitutional Court: DECREE
 UNCONSTITUTIONAL AND ILLEGAL! (final decision)**

**Savezni ustavni sud: UREDBA PROTIVUSTAVNA I
 NEZAKONITA! (konacna odluka)**

Decree of the Federal Government on extradition of Yugoslav citizens to the so-called Hague Tribunal (ICTY), has been today finally declared unconstitutional and illegal by the Federal Constitutional Court. The same Court originally suspended the Decree on St. Vitus Day (June 28) in the morning and prohibited any action by anyone which could be performed on the basis of the Decree. Same day, abduction of President Milosevic and his delivery to the Hague without any legal procedure was done by Prime Minister of Serbia Zoran Djindjic and ICTY/NATO officials. Today's decision of the Federal Constitutional Court implies Djindjic/ ICTY/ NATO action criminal.

Uredbu Savezne Vlade o izrucenju jugoslovenskih drzavljana tzv. Haskom tribunalu danas je Savezni ustavni sud definitivno proglasio protivustavnom i nezakonitom. Savezni ustavni sud na Vidovdan ujutru ovu uredbu suspendovao i zabranio bilo kakve aktivnosti koja bi se na toj uredbi mogla zasnivati. Istog dana, otmicu predsednika Milosevica i njegovu isporuku Hagu bez ikakve pravne procedure izvršili su premijer Srbije Zoran Djindjic i sluzbena lica Haskog tribunala, odnosno NATO. Iz danasnje odluke Saveznog ustavnog suda proizilazi da je ono sto su ucinili Djindjic, "tribunal" i NATO - zlocin.

Iz jugoslovenskih medija:

From Yugoslav media:

DECREE ON COOPERATION WITH THE HAGUE UNCONSTITUTIONAL, ILLEGAL

BELGRADE (Tanjug) - Yugoslav Constitutional Court declared Tuesday the decree on cooperation with the International Criminal Tribunal as unconstitutional and illegal.

The Yugoslav Information Secretariat said that the Yugoslav Constitutional Court made the decision that the decree was not in agreement with the constitution of Yugoslavia and the law on criminal proceedings, by a majority of votes.

SAVEZNI USTAVNI SUD - UREDBA O SARADNJI SA HAGOM JE NEUSTAVNA

BEOGRAD (Tanjug) - Savezni ustavni sud proglasio je u utorak da je Uredba o postupku saradnje sa Međunarodnim krivičnim tribunalom neustavna i nezakonita.

Kako je saopštio Savezni sekretarijat za informisanje, Savezni ustavni sud doneo je takvu odluku vecinom glasova.

Savezni ustavni sud je, posle više dostavljenih inicijativa, neposredno po izrucenju bivšeg predsednika SRJ Slobodana Miloševica Haškom tribunalu, pokrenuo proceduru za ocenu ustavnosti Uredbe, a odluka doneta u utorak je rezultat tog postupka.

Ocena sudija Ustavnog suda SR Jugoslavije

Neustavna Uredba o saradnji s Hagom

(Glas Javnosti)

BEOGRAD (Beta) - Sudije Ustavnog suda SR Jugoslavije ocenile su juce vecinom glasova da Uredba jugoslovenske vlade o saradnji s Haškim tribunalom nije saglasna s Ustavom SRJ.

Na sednici, na kojoj su sudije glasale o uredbi, vecinom glasova ocenjeno je da ta uredba nije saglasna s Ustavom SRJ i Zakonom o krivičnom postupku. U saopštenju, koje je potpisao vršilac dužnosti predsednika Saveznog ustavnog suda Milan Vešovic, nije navedeno koliko je sudija glasalo za, a koliko protiv te odluke. Uredbu o saradnji s Haškim sudom Savezni ustavni sud privremeno je suspendovao 28. juna, na dan izrucenja bivšeg predsednika SRJ Slobodana Miloševica Haškom sudu. On je izrucen na osnovu odluke Vlade Srbije.

Pred Saveznim ustavnim sudom 23. oktobra ove godine održana je javna rasprava o ustavnosti Uredbe Savezne vlade o saradnji s Haškim tribunalom.

U toj raspravi, podnosioci i predlagaci inicijative, odnosno advokati bivšeg predsednika SRJ Slobodana Miloševica, predstavnici SPS-a i JUL-a, Patriotskog saveza Jugoslavije i grupe profesora Pravnog fakulteta u Beogradu, ocenili su Uredbu kao neustavnu.

Savezni ustavni sud

Neustavna Uredba o saradnji sa Hagom

(Danas)

Beograd - Uredba jugoslovenske vlade o saradnji sa Haskim tribunalom nije saglasna sa Ustavom SRJ i Zakonom o krivicnom postupku, ocenile su vecinom glasova juce sudije Saveznog ustavnog suda. U saopstenju koje je potpisao vrsilac duznosti predsednika Saveznog ustavnog suda Milan Vesovic, nije navedeno koliko je sudija glasalo za, a koliko protiv te odluke. Uredbu o saradnji sa Haskim sudom Savezni ustavni sud privremeno je suspendovao 28. juna, na dan izrucenja bivseg predsednika SRJ Slobodana Milosevica haskom sudu. On je izrucen na osnovu odluke Vlade Srbije. Pred Saveznim ustavnim sudom 23. oktobra ove godine odrzana je javna rasprava o ustavnosti Uredbe Savezne vlade o saradnji sa Haskim tribunalom. Pomocnik saveznog ministra pravde Nebojsa Sarkic u ime Savezne vlade, ponovio je stav Vlade da Uredba nije u suprotnosti sa Ustavom, jer je SRJ, kao clanica UN, obavezna da saradjuje sa Haskim tribunalom, te da je Uredba zasnovana na clanu 16 Ustava SRJ koji propisuje da je pravna snaga medjunarodnih ugovora iznad saveznih zakona.

R. D.

To join or help this struggle, visit:

<http://www.sps.org.yu/> (official SPS website)

<http://www.belgrade-forum.org/> (forum for the world of equals)

<http://www.icdsm.org/> (the international committee to defend Slobodan Milosevic)

<http://www.jutarnje.co.yu/> ('morning news' the only Serbian newspaper advocating liberation)

WHAT HAPPENS TO TERRORISM WHEN IT DOESN'T HIT AMERICA?

Series of UN Security Council Resolutions in 1998 on situation in Serbian province of Kosovo treated issue of terrorism, it's consequences and it's foreign support. Despite the strong words, there was **NO ACTION** against it. Instead, these resolutions contained much stronger criticism and even treats against legal authorities of Serbia and Yugoslavia, that conducted legal struggle against terrorism.

Today it is obvious - all that was only a planned creation of atmosphere for the illegal and criminal 1999 NATO aggression against Yugoslavia - conducted in the **ALLIANCE** with the terrorist organization KLA - a part of the international terrorist network:

"Fatos Klosi, the head of Shik, the Albanian intelligence service, said last week that Bin Laden had visited Albania himself. His was one of several fundamentalist groups that had sent units to fight in Kosovo, the neighbouring Muslim province of Serbia, Klosi said. "Egyptians, Saudi Arabians, Algerians, Tunisians, Sudanese and Kuwaitis - they come from several different organisations." Klosi said he believed terrorists had already infiltrated other parts of Europe from bases in Albania through a traffic in illegal migrants, who have been smuggled by speedboat across the Mediterranean to Italy in huge numbers." *The Sunday Times*, November 29, 1998: *BIN LADEN OPENS EUROPEAN TERROR BASE IN ALBANIA* by Chris Stephen, Tirana

And than it also becomes obvious why there is no mentioning of the word 'terrorism' in the famous UN Security Council Resolution 1244 (1999) which subsequented the end of NATO aggression. It only mentions 'disarmament of KLA and other groups', that never took place because somebody needed to prolong terror in Kosovo and to add some terrorism to other Serbian southern areas and of course to Macedonia that hoped all the time it is a NATO ally.

So, again, unless it is abolished or substantially changed: **NATO HAS NO ALLIES - IT ONLY HAS FUTURE VICTIMS.**

It is now sad and funny at the same time to see three times repeated demand (in 1998 Resolutions) of Security Council to Kosovo Albanian leaders to condemn (at least) terrorism publicly. No matter that they acted all the time 'under Chapter VII of the UN Charter', glorious UN ambassadors never noted in their documents incomppliance of Albanian leaders to that demand. But, as a matter of curiosity, it was done by the NATO Secretary General in his letter to the UN colleague (together with the notification of all Serbian "sins") on March 23, 1999, just a day before the largest criminal act started.

So, lets take a look to the quotes from the official Security Council documents. Perhaps they still produce some obligation. But anyhow, they are **A LESSON.**

RESOLUTION 1160 (1998)

Adopted by the Security Council at its 3868th meeting
on 31 March 1998

The Security Council, (...)

Condemning the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo, as well as all acts of terrorism by the Kosovo Liberation Army or any other group or individual and all external support for terrorist activity in Kosovo, including finance, arms and training, (...)

Acting under Chapter VII of the Charter of the United Nations, (...)

2. Calls also upon the Kosovar Albanian leadership to condemn all terrorist action, and emphasizes that all elements in the Kosovar Albanian community should pursue their goals by peaceful means only;

3. Underlines that the way to defeat violence and terrorism in Kosovo is for the authorities in Belgrade to offer the Kosovar Albanian community a genuine political process; (...)

8. Decides that all States shall, for the purposes of fostering peace and stability in Kosovo, prevent the sale or supply to the Federal Republic of Yugoslavia, including Kosovo, by their nationals or from their territories or using their flag vessels and aircraft, of arms and related matériel of all types, such as weapons and ammunition, military vehicles and equipment and spare parts for the aforementioned, and shall prevent arming and training for terrorist activities there; (...)

RESOLUTION 1199 (1998)

Adopted by the Security Council at its 3930th meeting on 23 September 1998

The Security Council, (...)

Recalling its resolution 1160 (1998) of 31 March 1998, (...)

Condemning all acts of violence by any party, as well as terrorism in pursuit of political goals by any group or individual, and all external support for such activities in Kosovo, including the supply of arms and training for terrorist activities in Kosovo and expressing concern at the reports of continuing violations of the prohibitions imposed by resolution 1160 (1998), (...)

Acting under Chapter VII of the Charter of the United Nations, (...)

6. Insists that the Kosovo Albanian leadership condemn all terrorist action, and emphasizes that all elements in the Kosovo Albanian community should pursue their goals by peaceful means only; (...)

11. Requests States to pursue all means consistent with their domestic legislation and relevant international law to prevent funds collected on their territory being used to contravene resolution 1160 (1998); (...)

RESOLUTION 1203 (1998)

Adopted by the Security Council at its 3937th meeting,
on 24 October 1998

The Security Council, (...)

Recalling its resolutions 1160 (1998) of 31 March 1998 and 1199 (1998) of 23 September 1998, and the importance of the peaceful resolution of the problem of Kosovo, Federal Republic of Yugoslavia, (...)

Condemning all acts of violence by any party, as well as terrorism in pursuit of political goals by any group or individual, and all external support for such activities in Kosovo, including the supply of arms and training for terrorist activities in Kosovo, and expressing concern at the reports of continuing violations of the prohibitions imposed by resolution 1160 (1998), (...)

Acting under Chapter VII of the Charter of the United Nations, (...)

4. Demands also that the Kosovo Albanian leadership and all other elements of the Kosovo Albanian community comply fully and swiftly with resolutions 1160 (1998) and 1199 (1998) and cooperate fully with the OSCE Verification Mission in Kosovo; (...)

10. Insists that the Kosovo Albanian leadership condemn all terrorist actions, demands that such actions cease immediately and emphasizes that all elements in the Kosovo Albanian community should pursue their goals by peaceful means only; (...)

Letter dated 23 March 1999 from the Secretary-General
of the North Atlantic Treaty Organization addressed
to the Secretary-General

I am writing to provide you with a further report on compliance by the parties to the conflict in Kosovo with Security Council resolutions 1199 (1998) of 23 September 1998 and 1203 (1998) of 24 October 1998 and by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) with commitments provided to NATO on 25 October 1998. (...)

Enclosure

North Atlantic Treaty Organization compliance report for Kosovo
16 January-22 March 1999

Table 1*

United Nations Security Council resolution 1199 (1998)

Resolution tenet
(...)
10. Kosovo Albanian leadership:
Condemn all terrorist activity.
(...)

Related activity
(...)
There has been no public declaration by either political or
military leadership to denounce alleged UCK acts of
terrorism in the reporting period.

Despotovic, Ruza

Van: Despotovic, Ruza [despot@wish.net]
Verzonden: zondag 11 november 2001 23:18
Aan: Richard van Houten; Ruza Despotovic
Onderwerp: Fw: [www.ANTIC.org] RE: Postavljena Stojana Cerovica za ambasadora Jugoslavije u Vasingtonu

----- Original Message -----

From: Miroslav Antic <miroslav@antic.org>
To: 'YUGO' <Yugoland@yahoo.com>; 'BALKAN' <balkannews@egroups.com>;
'News' <news@siem.net>; 'SIM' <sim@antic.org>; 'SIM Egroups'
<SrpskaInformativnaMreza@egroups.com>; <sorabia@yahoo.com>;
<STOP-NSP@topica.com>
Cc: 'KPJ' <KPJ@topica.com>; ljudska_prava <ljudska_prava@yahoo.com>;
<sin@antic.org>; 'BALKAN' <BalkanNews@yahoo.com>; 'SNN'
<news@antic.org>
Sent: Sunday, November 11, 2001 3:50 PM
Subject: [www.ANTIC.org] RE: Postavljena Stojana Cerovica za ambasadora Jugoslavije u Vasingtonu

>
>
> From: Bob Djurdjevic
> Sent: 11. novembar 2001 9:43
> To: Miroslav Antic
> Subject: Re: Postavljena Stojana Cerovica za ambasadora Jugoslavije u
> Vasingtonu
>
>
>
> FROM WESTERN AUSTRALIA (privremen boravak)
>
> Hvala na ovom Srdjinom clanku. Evo vam i peticija koju sam potpisao uz
> sledeci komentar koji je direktan citat iz mojih belezaka o Cerovicu
> koji
> su takodje objavljeni u TIM Biltenu od Nov. 28, 1996:
>
> Bob Djurdjevic
> -----
>
> Name
> KOMENTAR
> 55.
> Bob Djurdjevic
>
> Ja sam licno prisustvovao jednom sramnom nastupu G-dina Cerovica na
> konferenciji o Bosni (Dejtonu) na
> Yale Univerzitetu 15 novembra 1996, kada je izjavio:
>
> Cerovic, the editor of Belgrade's magazine "VREME," which has been
> editorially very close to the
> State Department's views throughout the Yugoslav crisis, offered
> possibly the most stunning "solution" to the
> Balkan crisis of this two-day conference. Since the U.S. is the most
> powerful country in the world, he reasoned, "I
> think that it would be best if we let Washington make all the tough
> decisions" (rather than have the local
> leaders hassle it out). (Ed. In other words, Cerovic was suggesting that
> Washington should become the imperial
> capital of the (New) World (Order). Talk about kissing up to one's
> master by arguing for his increased
> powers, and for a deeper slavery for himself and plebes! It was one the
> most disgusting statements made at the

ference. A vassal was trying to get ahead by offering greater
servitude." (direktan citat mojih belezaka)

> ---

>

> Bob Dj.

> -----

>

>

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Het Rwanda Tribunaal

door Larissa van den Herik

In 1994 vond in Rwanda genocide plaats. De wortels van deze genocide gaan terug tot in de koloniale geschiedenis van Rwanda. De machtsproliferatie van de kolonisator België verscherpte in sterke mate de scheiding tussen twee bevolkingsgroepen, de Hutu's en de Tutsi's. In 1993, net voor de onafhankelijkheid, vond een bloedige omwenteling plaats, waarbij de Hutu's de macht grepen. Veel Tutsi's vluchtten naar buurlanden. Kinderen van deze vluchtelingen vielen in 1990 vanuit Uganda Rwanda binnen, om met geweld een recht op terugkeer af te dwingen. Het Arusha Vredesplan maakte in augustus 1993 een voorlopig einde aan de oorlog tussen de Rwandese (Hutu) overheid en de Tutsi-rebellen (RPF). Deze brak echter weer in alle hevigheid uit met het begin van de genocide en duurde voort tot juli 1994, toen de RPF de macht overnam.

Het macabere voorspel dat leidde tot de oprichting van het Tribunaal barstte los op 6 april 1994. Op die dag vlogen de presidenten van Rwanda en Burundi terug van een regionale conferentie in Arusha, Tanzania. Onder (nog altijd) onopgehelderde omstandigheden werd hun vliegtuig neergeschoten. Dit bleek het startschot voor intens gruwelijke gebeurtenissen in het kleine land van de duizend heuvels, zoals Rwanda wel genoemd wordt. In drie maanden voltrok zich een

genocide, waarin naar schatting bijna een miljoen Rwandezes werden afgeslacht. Dit betrof niet name Tutsi's, maar ook gematigde Hutu's werden slachtoffer van het geweld. De internationale gemeenschap was nagenoeg onwetend, zoals later benadrukt werd in het rapport van een panel van de OAU (Organization of African Unity) getiteld Rwanda: The Preventable Genocide. Het was duidelijk dat deze uiterst beschamende inactiviteit van met name de Verenigde Naties doorbroken moest worden. De genocide kon niet onbeantwoord blijven. Het antwoord werd: het Internationale Straftribunaal voor Rwanda.

Oprichting van een VN-Tribunaal voor Rwanda

De eerste stap naar de oprichting van het Tribunaal was het verzoek van de Veiligheidsraad aan de Secretaris-Generaal om een Commissie van Experts in te stellen (Resolutie 935, 1 juli 1994). Dit verzoek volgde op een reeks resoluties van de Veiligheidsraad die het geweld tegen de burgerbevolking sterk werd veroordeeld. De Commissie kreeg tot taak te onderzoeken of grove schendingen van internationaal humanitair recht, waaronder genocide, hadden plaats- gevonden in Rwanda. In een (interim) rapport van 1 oktober 1994 constateerde de Commissie dat een genocide op de Tutsi's zich had voltrokken. Het constateerde ook dat andere schendingen van internationaal humanitair recht begaan waren door beide partijen in het conflict. De Commissie benadrukte dat deze misdrijven berecht dienden te worden. Mede onder verwijzing naar het rapport van de Commissie van Experts, kwalificeerde de Veiligheidsraad de situatie in Rwanda als een bedreiging voor de internationale vrede en veiligheid. De Raad

stelde dat vervolging van de verantwoordelijke individuen bij zou dragen aan het herstel van de vrede, alsmede aan het proces van nationale verzoening en het beëindigen van een cultuur van straffeloosheid. Dit leidde uiteindelijk tot de oprichting van het Internationale Straftribunaal voor Rwanda (Resolutie 955, 8 november 1994), naar het model van het Joegoslavië-Tribunaal.

De Veiligheidsraad creëerde het Tribunaal middels een bindend besluit onder Hoofdstuk VII van het VN-Handvest. Voordelen van het feit dat de Veiligheidsraad onder Hoofdstuk VII opereerde zijn de verzekering dat Rwanda verplicht is mee te werken aan het Tribunaal (althoewel dit in de praktijk anders kan lopen, zoals hieronder duidelijk zal worden), de verplichting voor overige staten tot overlevering van verdachten (zozeer plicht tot medewerking met het Tribunaal is uitdrukkelijk vermeld in Resolutie 955), en het feit dat een snelle en daadkrachtige oprichting zonder eindeloze verdragsonderhandelingen. Vermeldenswaardig is nog dat Rwanda, dat toevallig gekozen lid van de Veiligheidsraad was ten tijde van de behandeling van de Resolutie, uiteindelijk tegen de oprichting van het Tribunaal stemde. Dit terwijl Rwanda aanvankelijk had verzocht om internationale bijstand bij de berechting van de verantwoordelijken van de genocide. In de Veiligheidsraad voerde Rwanda een aantal argumenten aan, waaronder het feit dat de doodstraf niet binnen het arsenaal van straffen van het Tribunaal valt, terwijl deze straf binnen het nationale Rwandese strafrechtssysteem wel opgelegd wordt. Dit leidt tot een uiterst scheve situatie, nu het Tribunaal de hoofdverantwoordelijken berecht, terwijl voor de nationale rechtbanken van Rwanda uitvoerders van een lager niveau worden voorgeleid. Een ander argument dat Rwanda aanvoerde om zijn verwerping van de Resolutie kracht bij te zetten was de zetel van het Tribunaal. Tegen de wens van Rwanda in werd uit veiligheids- en technische overwegingen besloten het Tribunaal niet in Rwanda te vestigen. Het Tribunaal opereert nu in Arusha, Tanzania.

Aanvankelijk opteerde de Commissie van Experts in haar rapport voor de uitbreiding van de rechtsmacht van het Joegoslavië-Tribunaal. Het bezwaar bleef dat dit leidde naar de oprichting van een permanent internationaal strafhof, behalve buiten het bereik van de bevoegdheden van de Veiligheidsraad valt. Derhalve werd een apart tweede ad hoc Tribunaal opgericht. Om de rechtsmacht te waarborgen, werd besloten dat de twee tribunaals enkele organen zouden delen, namelijk de Aanklager en de Kamer voor het Hoger Beroep. Daarentegen kreeg het Rwanda-Tribunaal eigen Kamers van Eerste Aanleg en een eigen griffier.

Jurisdictie

De territoriale jurisdictie van het Tribunaal omvat het hele jaar 1994, althoewel de genocide in de drie maanden van april tot juli plaatsvond. De twee redenen hiervoor waren om ook de organisatie en voorbereidingen voorafgaand aan de genocide onder de jurisdictie van het Tribunaal te brengen, alsmede verdere misdrijven begaan in 1994 nadat de nieuwe overheid in juli was geïnstalleerd. Echter, deze tijdsbepaling betekent in feite een enorme beperking van de rechtsmacht van het Tribunaal. Oorlogsmisdaden begaan in de oorlog die woedde vanaf 1990 zijn uitgesloten. Bovendien heeft het nieuwe Tutsi regime na 1994 een *carte blanche*, in die zin dat het niets heeft te vrezen van het Tribunaal. Dit is des te opmerkelijker nu een dergelijke einddatum niet is genoemd ten aanzien van het Joegoslavië-Tribunaal, waardoor Milosevic ook kon worden aangeklaagd voor de misdaden die in Kosovo tot en met 1999 werden begaan, hetgeen ook gebeurd is.

De territoriale jurisdictie strekt zich niet alleen uit over het grondgebied van Rwanda, maar ook over Rwandese burgers in buurlanden, zodat gruwelijkheden begaan in de vluchtingkampen ook berecht kunnen worden door het Tribunaal (art. 1 Statuut). Echter de enorme oorlog die nu al jaren woedt in het hart van Afrika, in de Democratische

Roosbliek Congo, valt zowel qua temporele als persoonlijke jurisdictie buiten het bereik van het Tribunaal.

De materiele jurisdictie omvat drie categorieën. Artikel 2 van het Statuut noemt het misdrijf genocide. De definitie van dit misdrijf is direct overgenomen van het Genocidaverdrag (1948), en is gelijk aan de definitie van het Statuut van het Joegoslavië Tribunaal. Dit Tribunaal heeft tot op heden slechts één veroordeling wegens genocide uitgesproken in de Krstić-zaak, terwijl genocide de centrale aanklacht is in alle zaken voor het Rwanda Tribunaal. In artikel 3 zijn misdrijven tegen de menselijkheid opgenomen. De omschrijving wijkt af van die van het Joegoslavië Tribunaal. Enerzijds wordt geen link met een gewapend conflict vereist, anderzijds wordt de aanvullende eis gesteld dat de onmenselijke daden op discriminatoire gronden zijn begaan. Artikel 4 over oorlogsmisdaden wordt wel de grootste innovatie van het Statuut genoemd, omdat het schendingen van humanitair recht in een intern conflict strafbaar stelt, zoals deze zijn opgenomen in artikel 3 van de Conventies van Genève (1949) en het Aanvullend Protocol II bij deze Conventies. Deze bepaling wordt soms gezien als vangnet indien genocide en misdaden tegen de menselijkheid niet bewezen kunnen worden. Echter dit artikel vereist wel, in tegenstelling tot de twee andere misdrijven, dat een verband met een gewapend conflict wordt aangetoond. In de praktijk is dit een struikelblok gebleken en is nog geen enkele verdachte voor oorlogsmisdaden veroordeeld.

Het misdrijf agressie, speerpunt van de Tribunalen van Neurenberg en Tokio, is niet terug te vinden in de Statuten van de ad hoc Tribunalen. Dit is begrijpelijk, nu de internationale gemeenschap grote moeite heeft om dit politieke fenomeen te definiëren, hetgeen ook blijkt uit de nog voortdurende onderhandelingen hierover in het kader van het Internationale Strafhof. Bovendien was het conflict in Rwanda een intern conflict zonder

externe agressor. Echter het onderscheid tussen internationale en interne conflicten vervaagt steeds meer in het internationale recht, en ook interne conflicten beginnen met een daad van 'agressie'. Indien een variant van agressie was opgenomen in het Statuut, zou het Rwanda Tribunaal in haar jurisprudentie wellicht een begin hebben kunnen maken met het definiëren van dit begrip. Daarnaast zou een onderzoek naar de oorsprong van het Rwandese conflict een completer beeld van de situatie hebben kunnen geven.

De jurisdictie van het Rwanda Tribunaal valt samen met die van de nationale rechtbanken, in tegenstelling tot het Internationale Strafhof, past het Rwanda Tribunaal voorrang boven nationale rechtbanken. De rechtbanken dienen zich te schikken naar het Tribunaal, en kunnen geen zaken behandelen die het Tribunaal reeds tot zich getrokken heeft.

Rechtspraak

In totaal heeft het Tribunaal tot op heden acht eindvonnissen in eerste aanleg geslagen, waarbij 11 personen veroordeeld zijn. Hieronder worden enkele opmerkelijke vonnissen en tussenvonnissen kort besproken.

De eerste uitspraak van het Tribunaal betrof een burgemeester, Akayesu (1998). Dit vonnis was in meerdere opzichten van groot belang voor de internationale strafrechtsorde. Het betrof de eerste veroordeling voor het misdrijf genocide in de geschiedenis. Bovendien stelde het Tribunaal dat ook verkrachting een genocidale daad kan zijn. Akayesu werd vrijgesproken voor de aanklachten inzake oorlogsmisdrijven, omdat de vereiste link met een gewapend conflict niet aangetoond was. Desondanks werd Akayesu tot levenslang veroordeeld.

Indrukwekkend is daarnaast het feit dat ook Kambanda, de premier tijdens de genocide, reeds veroordeeld is tot de zwaarste straf die

het Tribunaal kan opleggen, namelijk levenslange gevangenisstraf (4-9-1998). Kambanda heriep zijn aanvankelijke schuld-bekenten in hoger beroep, maar de Kamer voor het Hoger Beroep oordeelde dat dit niet mogelijk was (19-10-2000).

De zaak Barayagwiza nam zeer buitengewone wendingen in een aantal tussenverdicten. Barayagwiza was een van de oprichters van de beruchte radiozender 'Mille Collines' (RTL). Deze radiozender had voor en tijdens de genocide de anti-Tutsi sentimenten onophoudelijk aangewakkerd. In hoger beroep van een tussenverdict was aanvankelijk geoordeeld dat Barayagwiza gedurende drie verschillende perioden onrechtmatig in voorarrest was gehouden. De perioden waren te lang, en daarnaast was Barayagwiza niet tijdig geïnformeerd over de exacte aard en inhoud van de aanklacht tegen hem. Derhalve was de vrijlating van Barayagwiza bevolen, waarbij de aanklacht niet ontvankelijk was verklaard. Daarop kondigde Rwanda aan alle samenwerking met het Tribunaal op te schorten. Vervolgens herzag de Kamer van Hoger Beroep haar beslissing op grond van 'nieuwe feiten'. De aanklacht werd alsnog ontvankelijk verklaard en de zaak loopt nog.

George Ruggiu is de enige niet Rwandese aangeklaagde. Deze Belgische journalist werkte bij de eerder genoemde haatradio RTLM. In juni 2000 bekende Ruggiu schuld aan het direct en publiekelijk oproepen tot genocide en misdaden tegen de menselijkheid. Hij werd veroordeeld tot 12 jaar (1-6-2000).

Alfred Musema was directeur van een theefabriek ten tijde van de genocide. Hij werd tot levenslang veroordeeld voor genocide, op grond van verantwoordelijk voor de daden van zijn werknemers (27-1-2000). Dit is een ongekennde uitbreiding van het concept 'command responsibility', dat voorheen met name in militaire context werd gebruikt en slechts onder zeer strikte voorwaarden op burgers van toepassing was. De jurisprudentie van het Joegoslavië

Tribunaal leest een striktere interpretatie van deze vorm van verantwoordelijkheid zien. Het is dan ook de vraag of de Musema-uitspraak gehandhaafd zal blijven in het hoger beroep, met name omdat het de taak van de Kamer van het Hoger Beroep is om de eenheid in het recht te handhaven.

Van groot belang tot slot is de eerste vrijespraak van het Rwanda Tribunaal in de zaak van Ignace Bagilishema (7-6-2001). Het Tribunaal achtte de bewijzen van de Aanklager tegen hem onvoldoende. Alhoewel de Aanklager hoger beroep heeft ingediend, is Bagilishema onder een aantal voorwaarden op vrije voeten gesteld. Omdat geen enkel land bereid was hem te ontvangen of aan de voorwaarden kon voldoen, moest Bagilishema nog een tijd in de Arusha gevangenis blijven. Onder druk van het Tribunaal, kon Bagilishema uiteindelijk in Frankrijk terecht.

Voor het Tribunaal verschijnen dus hooggeplaatsten van verschillend statuut. Zowel politieke leiders als militaire leiders worden ter verantwoording geroepen, maar ook maatschappelijke 'leiders', bijvoorbeeld degenen die betrokken waren bij het radiostation RTL. Alhoewel het Tribunaal niet bevoegd is de doodstraf op te leggen, schroomt het niet de zwaarste straf, levenslang, toe te passen.

Een belangrijke vraag met betrekking tot de ad hoc Tribunaal betreft hun bestaansrecht: draagt de berechting van individuen daadwerkelijk bij tot het behoud van de internationale vrede? In de zaak Kanyabashi, ook een burgemeester, vocht de verdediging in een tussenmotie op verschillende gronden de jurisdictie van het Tribunaal aan (18-6-1997). Gesteld werd onder meer dat de Veiligheidsraad niet bevoegd was tot oprichting van een tribunaal als middel om de internationale vrede en veiligheid te bewaren. Het Tribunaal benadrukte met name de discretie van de Veiligheidsraad, verwierp alle gronden en waarborgde zo haar eigen voortbestaan. De discussie of een politiek

als de Veiligheidsraad een gerechtelijk
orgaan kan oprichten, en of de
radioair orgaan kan bevoegdheden kan
raad een dergelijk orgaan heeft, lijkt nu door
toekennen die het zelf niet heeft, de realiteit voorbij gesneld.

Het Proces van Neurenberg

door Carel H. Jansen

Het proces tegen de top van het nazi-regime in Neurenberg vormde het eerste bewijs dat de internationale gemeenschap bereid was met juridische middelen op te treden tegen een crimineel bewind. Eerdere pogingen daartoe, met name na de Eerste Wereldoorlog waren om allerlei redenen, waarop ik hier niet zal ingaan, op een mislukking uitgelopen. Voor 1945 was het gebruikelijk om misdaden die internationaal als zodanig erkend waren, zoals zeeroverval of later ook slavenhandel, te laten berechten door nationale rechtbanken. Maar in Neurenberg kwam er voor het eerst een internationaal gezelschap van rechters bijeen om een oordeel te vellen over de misdaden die door het Hitler-regime waren begaan. Misdaden, die het rechtsstellingsvermogen van menigene te boven gingen. Pas toen de geallieerden de concentratiekampen als Buchenwald, Auschwitz en heel veel andere hadden bevrijd, drong het basaf door wat er gebeurd was.

Toch was berechting van de plegers van al deze en vele andere misdaden niet zo vanzelfsprekend als wij nu misschien achteraf denken. Het aantal voorstanders om tot berechting van deze criminelen over te gaan was onder de mensen die het in de eerste plaats voor het zeggen hadden niet groot. De Sovjet-dictator Stalin pleitte in eerste instantie voor het standrechtelijk executeren van elke nazi-misdadiger waar men de hand op zou kunnen leggen. De Britse premier Churchill, de andere oorlogsleider, sprak daar

later in zijn Memoires zijn verontwaardiging over uit, maar was in feite zelf ook geen voorstander van een internationale juridische procedure. Ook Roosevelt was aanvankelijk voorstander van het snel uit de weg ruimen van de belangrijkste nazi's zonder hen eerst te berechten. Stalin keerde later op zijn mening terug en bleek toen opeens voorstander te zijn van berechting. Al deze mensen hadden wel hun eigen motieven.

De Britten hadden de mislukking van de berechting van oorlogsmisdadigers na de Eerste Wereldoorlog nog vers in het geheugen. Roosevelt maar ook andere westelijke geallieerden wilden de nazi's niet met een proces dreigen omdat zij bang waren dat die dan nog drierster zouden optreden tegen geallieerde krijgsgevangenen dan zij toch al deden. Bovendien zouden zij misschien tijdig een goed heenkomen zoeken tegen de tijd dat zij de nederlaag als onhermijdelijk onder ogen moesten zien. In Amerika werd het nieuws over de aan de gang zijnde holocaust door het Ministerie van Buitenlandse Zaken zo veel mogelijk onderdrukt omdat men de restricties op het toelaten van vluchtelingen wilde kunnen handhaven. Wat dat betreft is er dus geen nieuws onder de zon. Tegen een internationale rechtbank pleitte ook het feit dat de geallieerden allerminst schone handen hadden als het ging om het plegen van oorlogsmisdaden. De luchtbombardementen op de civiele bevolking van steden in Duitsland en Japan, culminerend in het platgooien van Dresden en het gebruik van kernbommen op Hiroshima en Nagasaki, waren misschien politiek nog wel verklaarbaar maar konden niet rekenen op goedkeuring op juridische gronden. Bovendien kon de Britten en Russen verweten worden dat zij zelf het Hitler-regime

gesteund hadden, de Britten met het sluiten van het Vlootverdrag in 1935, de Russen met het Molotov-Van Ribbentrop Pact in 1939, waarbij in een geheim protocol de Russen de vrije hand in Polen en de Baltische Staten gekregen hadden in ruil voor hun stilzwijgende goedkeuring van de Duitse bezetting van 'hun deel' van Polen. Verder hadden de West-Europese landen niets gedaan om alle schendingen van het Verdrag van Versailles door Hitler tegen te gaan.

Gedwongen door de door joodse organisaties en regeringen-in-ballingschap van Polen en Tsjecho-Slowakije, bondgenoten die men toch niet in de strijd kon missen, werd besloten dat toch iets gedaan moest worden aan de voor iedereen duidelijke misdaden die de nazis pleegden in Duitsland zelf maar zeker ook in de door hen bezette gebieden. Vervolgens gaf de Duitse Drie in Moskou op 30 oktober 1943 een verklaring uit waarin zij die misdaden aanpakten en toezegden dat de schendingen in de landen waar zij die misdaden hebben gepleegd, berecht zouden gaan worden. Van een internationale aanpak was toen dus nog geen sprake.

Daar kwam verandering met de totstandkoming van de International War Crimes Commission - een Brits-Amerikaanse aangelegenheid - die ook slechts onder genoemde druk tot stand kwam. Plannen daartoe lagen al in de zomer 1942 op tafel maar de Commissie kwam pas ruim een jaar later werkelijk tot stand. Deze Commissie kreeg tot taak te inventariseren wie voor berechting in aanmerking kwam, en op welke gronden verdachten terecht zouden moeten staan. Aanvankelijk ging het daarbij vooral om misdaden waar oorlogvoerenden volgens het bestaande internationale (gewoonte)recht zich van dienden te onthouden. In augustus 1944 sloot de Commissie het instellen van een internationaal tribunaal niet langer uit hoewel de geallieerde oorlogsleiders de voorkeur bleven geven aan berechting op nationaal niveau. De Russen waren daar toen al mee begonnen en verweten de Britten dat zij niet hetzelfde deden met bijvoorbeeld

Hitler's plaatsvervanger Rudolf Hess, die immers in mei 1941 naar Engeland was overgeleverd aan de Britten over te halen de strijd tegen Hitler-Duitsland te staken en die daar was geïnterneerd. De Russen hadden een eigen commissie voor de berechting van oorlogsmisdaden ingesteld, zoals ook Groot-Brittannië deed.

Een probleem was natuurlijk ook de Internationale Commissie direct op stuitte, was dat de juridische gronden voor de berechting uitermate zwak waren. Er waren wel verdragen gesloten die de oorlogvoering in meer menselijke banen trachten te leiden maar die waren uiteraard helemaal niet bekend op de verschrikkelijke misdaden die door de nazis waren gepleegd. Menig lid van de Commissie drong er op aan dat het niet alleen moest gaan om schending van het bestaande internationale recht maar ook om de schending van mensenrechten. Een andere stroming binnen de Commissie zag dat niet zitten en gaf er de voorkeur aan mensen die zich daaraan schuldig hadden gemaakt te berechten als gewone criminelen zonder de term 'politieke misdaden' te willen gebruiken. Herbert Pell, het Amerikaanse lid van de Commissie, die overigens op weinig medewerking van het thuisfront kon rekenen, verliet om die reden de Commissie. Een belangrijk punt waar de Commissie wel overeenstemming over wist te bereiken was dat staatshoofden niet van berechting uitgezonderd zouden worden, een novum op het gebied van de internationale betrekkingen waar het staatshoofd altijd immuniteit had genoten. Bovendien achtte men individuen die de misdaden hadden gepleegd daarvoor persoonlijk verantwoordelijk en werd het excuus dat zij slechts handelden op bevel van hun superieuren, of omdat zij gehoorzaam dienden te zijn aan de staat, verworpen.

Het waren de Amerikanen die in het najaar van 1944 opeens vaart zetten achter het idee om tot een internationale berechting van oorlogsmisdadigers te komen. In december 1944 verscheen een Memorandum van de



De voormalige leiders van het Derde Rijk in de beklaagdenbank.

recht kende men het begrip samenzwering in een criminele organisatie wel, maar de berechting van een organisatie als zodanig niet. Niettemin werd de vondst dankbaar aanvaard omdat men hierin een middel zag om de wrede daden die de Duitsers hadden begaan aan de kaak te stellen zonder dat deze altijd teruggevoerd hoefde te worden op het individu en op een relatie met het betreffende internationale

oorlogse lijn. De gepleegde misdaden konden beschouwd worden als onderdeel van een samenzwering om oorlogsmisdaden te begaan die in strijd zijn met het Kellogg-Briand Pact van 1928 – waarbij het voeren van oorlog als middel om politiek te bedrijven werd afgewezen – en de Haagse Conventies van 1907, waarin voorwaarden waren vastgelegd waaraan het voeren van een oorlog zou moeten voldoen. Na vaststelling van het misdadige karakter van de nazi-organisaties door een internationaal tribunaal kon, bij de berechting van de meeste mindere leden in de nazi-hiërarchie, volstaan worden met het leveren van het bewijs dat de betrokkene lid was geweest van één of meer van deze organisaties.

Waar Bernays niet mee kwam was het tot misdaad verklaren van het voeren van agressieve oorlog als zodanig. Toch zou dat later één van de belangrijkste uitkomsten van het Neurenbergse Tribunaal zijn. Het sloot daarbij met terugwerkende kracht aan bij wat inmiddels in het Handvest van de Verenigde Naties was vastgelegd. Dat was natuurlijk ook een zwak punt waar de verdediging voortdurend gebruik van trachtte te maken op grond van het rechtsbeginsel *nullum crimen sine lege, nulla poena sine lege* (geen misdaad die niet wettelijk is vastgelegd, geen straf als er geen wet bestaat). Er bestond toen Hitler de oorlog begon immers geen verdrag dat het voeren van oorlog uitdruk-

Amerikaanse regering onder de titel *Nazi War Criminals Punishment* of *Nazi War Criminals*. Nieuwdaarin was dat men niet alleen de individuen die zich aan misdaden hadden schuldig gemaakt wilde berechten, maar ook criminele organisaties als de SA, de SS, de Gestapo e.d. Behalve dat men de nazi's wilde berechten, wilde men het proces ook gebruiken om de wereld een lesje te leren. Duidelijk moest worden dat het onaanvaardbaar is dat staten misdaden begaan terwille van een vermeend belang. De wereld moest weten waar racisme en totalitarisme toe leidden. En het was nodig de Duitsers een schuldgevoel bij te brengen en het besef dat zij mede verantwoordelijk waren voor de misdaden die door hun regering waren begaan. Omdat het ondoenlijk was om ieder individu afzonderlijk te berechten, stelde de opsteller van het Memorandum, luitenant-kolonel Murray C. Bernays, voor dat de nazi-regering, de nazi-partij en staatsorganisaties als de SS, SA en Gestapo als organisaties zouden worden aangeklaagd door een internationaal hof vanwege hun samenzwering tot moorden, terrorisme en de vernietiging van vreedzame bevolkingsgroepen, in strijd met de wetten van de oorlog.

Dit voorstel vormde een nieuw fenomeen dat onbekend was in het internationaal recht en het rechtssysteem van de betrokken Europese staten. In het Anglo-Amerikaanse

kelijk verbod. Het Kellogg-Briand Pact kwam daar nog het dichtst bij, maar dekte de leiding niet geheel. Russen en Fransen verzetten zich dan ook tegen het criminaliseren van oorlogvoering omdat daar geen basis voor was in het internationaal recht. Toch was het punt van de oorlogvoering naast dat van de tijdens de oorlog begane 'overtredingen' van het humanitaire oorlogsrecht het enige punt waarbij het Tribunaal een post had om op te staan. Het kwam in het bestaan van het Tribunaal terecht als een aanklacht op grond van 'misdaden tegen de vrede'.

Veel minder kwamen de 'misdaden tegen de menselijkheid' uit de verf die ook tot de aanklacht behoorden en daar eigenlijk een belangrijk deel van hadden moeten uitmaken. Dat bleek op juridische gronden echter nauwelijks mogelijk. Het Tribunaal heeft zich daarom alleen beziggehouden met misdaden tegen de menselijkheid voorzover die in verband konden worden gebracht met de oorlogvoering. Confiscatie van joodse eigendommen in Duitsland vóór de oorlog werd dus alleen als misdaad tegen de menselijkheid aangemerkt als deze bedoeld was om de oorlog te financieren, maar niet als de opbrengst van die goederen bestemd was voor de financiering van de Olympische Spelen in Berlijn. Desondanks droeg de formulering van misdaden tegen de menselijkheid door het Tribunaal bij aan de gedachte dat het een staat niet zomaar vrij staat zijn eigen burgers te behandelen als hem goeddunkt.

Dergelijke misdaden stonden voortaan op de agenda van de wereldgemeenschap. Er werden normen geformuleerd die wellicht later uitgewerkt konden worden. Maar de berechting van de nazi-misdaden die bijvoorbeeld in de vele concentratiekampen waren begaan, was in het proces tegen de hoofdaangeklaagden in Neurenberg niet aan de orde. Het zou nog tot het totstandkomen van het Statuut van het Internationaal Strafhof in 1998 duren voordat misdaden tegen de menselijkheid behoorlijk gedefinieerd werden.

Hoe inclusief de redenen van het tribunaal zouden krijgen bleef. Tijdens de voorbereidende conferentie in Londen. Daar kwamen vragen aan de orde als:

- Welk standpunt zal de rechtbank innemen wanneer de Duitse verdediging aanvoert dat ook andere landen aanvalsoorlogen hebben uitgevoerd en oorlogsmisdaden hebben begaan?
 - Hoe kunnen lieden, die geen strafbare feiten volgens bestaande wetten hebben begaan, niettemin worden vervolgd of veroordeeld?
 - Zouden vertelbieden van de landen die aanspraak recht moeten spreken in de toekomst wellicht niet ook zelf volgens dezelfde vertelbieden ter verantwoording kunnen geroepen worden?
- Hier is het gesteld met de luchtaanvallen op woonwijken en weerloze burgerbevolking? Bij dit laatste punt zag men geen enkele uitweg en besloot men de luchtaanvallen van Duitse zijde met name op Engeland niet tijdens het proces ter sprake te brengen.

Robert H. Jackson, die door de Amerikaanse president Truman in het Tribunaal als hoofdaanklager was aangesteld, maakte zich zorgen over het feit dat het de overwinnaars waren die recht gingen spreken over de verliezers. De Duitse verdedigers lieten niet na om dat in dit proces maar ook in de latere processen tegen oorlogsmisdadigers aan te voeren. Wat het gebrek aan geldige wetgeving betrof zei de Britse afgevaardigde bij het proces Sir David Maxwell Fyfe: "Wij verklaren eenvoudigweg wat volkenrecht is, zodat er geen discussie zal ontstaan over de vraag of het al dan niet volkenrecht is". Jackson zei ten aanzien van de vraag of iemand persoonlijk verantwoordelijk kan worden gesteld voor misdaden die door zijn overheid zijn opgedragen: "Ik geef toe dat de volkenrechtelijke argumenten ter ondersteuning van ons standpunt dat zij inderdaad verantwoordelijk gehouden kunnen worden, onzeker en zwak zijn. Wij moeten eenvoudig verklaren dat de aangeklaagden persoonlijk verantwoordelijk

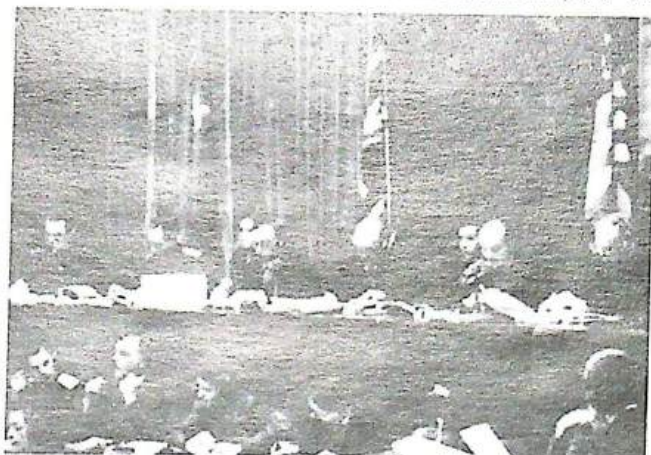
"zijn". En zo werd dat ook in het Statuut van het Tribunaal vastgelegd.

Het betrof op de "Befehlansstand" van de verdachte, de bewering dus dat hij er niet om heen had gekund te doen wat Hitler en zijn trawanten hemden opgedragen, werd door de rechters afgedaan, met de mededeling dat het allang tot het internationaal recht behoorde dat niet alleen staten maar ook individuen plichten en verantwoordelijkheden worden opgelegd. "Misdrijven tegen het volkenrecht worden door mensen bedreven" en niet door abstracte wezens. Alleen door het bestraffen van de individuen die dergelijke misdaden hebben begaan kunnen de regels van het internationaal recht afgedwongen worden.

"Hij die de oorlogswetten schendt kan geen immuniteit verkrijgen omdat hij optreedt in naam van het gezag van de staat als die staat door die daden voor zijn rekening te nemen, handelt buiten de bevoegdheden die haar krachten internationaal recht toekomt." Met deze uitspraak stelde het Tribunaal een norm die bij latere processen, bijvoorbeeld voor het Joegoslavië-Tribunaal, van groot belang zouden blijken te zijn.

moeite mee had om militairen die het handwerk uitvoerden als collectief schuldig te verklaren.

Het gevaar bestond dat met de veroordeling van de hoofdverdachten de rest zich van schuld kon vrijpleiten omdat zij immers niet terecht hadden hoeven staan. Om dat gevaar weg te nemen en wederom ter opvoeding van het Duitse volk werden door de Amerikanen in Neurenberg een serie vervolprocessen georganiseerd, waarin individuen zich moesten verantwoorden voor allerlei verschillende zaken. Hier kwamen pas de artsen aan de orde die allerlei misdadige experimenten op mensen hadden uitgevoerd, de bewaai van de concentratiekampen, de



In Neurenberg kwam voor het eerst een internationaal gezelschap van rechters bijeen.

Uiteindelijk werden twaalf van de 22 nazikopstukken die in Neurenberg terecht moesten staan, ter dood veroordeeld en kregen acht van hen gevangenisstraffen variërend van vijftien jaar tot levenslang. Drie personen werden van rechtsvervolgung ontslagen. Naast de personen werd ook een aantal nazi-organisaties tot 'misdadig' bestempeld, geheel volgens het voorstel van Bernays. De NSDAP, de Gestapo, de SD, SS en SA kregen dit stempel opgedrukt. De rijksregering van het Opperbevel van de Duitse Wehrmacht ontsprongen de dans. De eerste omdat in het rijk van Hitler op dat niveau eigenlijk niet aan politiek gedaan werd (de rijksregering kwam nauwelijks bijeen) en de tweede organisatie omdat men er toch

industriëlen die het nazibewind niet alleen gesteund hadden maar zelfs in het zadel hadden geholpen en de mensen die verantwoordelijk waren voor de moord op joden, zigeuners, krijgsgevangenen, psychisch gestoorden, of welke categorie mensen maar in het zieke brein van de nazileiders was opgekomen. Ook tegen de zogenaamde schrijftafel misdadigers, die van achter hun bureau maatregelen hadden genomen die de verschrikkelijkste gevolgen hadden, moesten terecht staan, zoals bijvoorbeeld de ambtenaren die werkzaam waren geweest bij het Ministerie van Buitenlandse Zaken en andere ministeries waar zij vervolgingen

tegen joden organiseerden of het bijeenbrengen van dwangarbeiders ten behoeve van de industrie. Eichmann was zo'n man die zich destijds veilig in Argentinië waande totdat hij door de Israëlische geheime dienst werd opgespoord en ontvoerd om in Israël terecht te staan. Ook moesten na de liden van de Generale Staf belang toe in staan om te voorkomen dat de enige zou ontstaan dat alle niet-veroordeelde kennelijk door hun geweten hadden. Aanpakten verdedden maar kwamen neer op misdaden tegen de vrede en tegen de menselijkheid. Alle vervolprocessen hadden verder allemaal gemeen dat de straffen teke- in de eerste tijd niet mals waren, maar dat die al spoedig onder druk van de politieke ernstigheden - het uitbreken van de Koude Oorlog - werden omgezet in veel lichtere straffen. In 1958 was de laatste veroordeelde weer op vrije voeten. Alleen zij die bijvoorbeeld in het Dachau-proces de pech hadden nog voor de kentering in de politiek ter dood veroordeeld te zijn, waren inmiddels geëxecuteerd en onherroepelijk voor de Duitse politiek verloren. Vele anderen keerden op belangrijke posten terug nadat in 1949 de Duitse Bondsrepubliek tot stand was gekomen. De Duitse publieke opinie verzette zich tegen de boetedoening die velen van hen was opgelegd en aangezien de Duitsers hard nodig waren als bondgenoten tegen het dreigende gevaar uit het Oosten, was het zaak daaraan toe te geven. De Duitsers werden daarbij gesteund door rechtse kringen in het Amerikaanse Congres en bijvoorbeeld een man als Churchill die de processen in Neurenberg op 28 oktober 1948 een 'deadly error' noemde.

Na Neurenberg had men even de illusie dat toch zoiets als een wereldrechtsoorde zou kunnen ontstaan, die het onmogelijk zou maken dat ergens ter wereld opnieuw een staatsmachinerie zou ontstaan die het plegen van gruweldaden als de gewoonste zaak ter wereld beschouwde. De Principes van Neurenberg werden in opdracht van de Algemene Vergadering vastgelegd door de International Law Commission en deze

Commissie kreeg ook de opdracht te werken aan de oprichting van een Permanent Internationaal Strafhof. Door het uiteengroeien van de vroegere geallieerde bondgenoten en het ontstaan van de Koude Oorlog liep dat allemaal op niets uit. Het enige concrete resultaat was het Genocideverdrag van 1948, waarbij het plegen van volkenmoord werd verboden. Dat Verdrag vertoonde echter direct al gebreken. Bij de definitie van groepen die door genocide getroffen zouden kunnen worden op grond van hun ras, religie, nationaliteit of etnische entiteit ontbreekt pijnlijk de politieke groepering, dit terwijl andersdenkenden maar al te vaak het slachtoffer worden van moorddadige acties. De 'politiek' als reden voor genocide was weggelaten na een voorstel daartoe van Egypte en Uruguay. Ook een algemene bepaling betrekking hebbende op alle mogelijke, maar niet nader aangeduide groepen ontbreekt, zodat bijvoorbeeld de vervolging van iedereen die voor intellectueel doorging door het misdadige regime van de Rode Khmer van Pol Pot in Cambodja buiten de reikwijdte van het Verdrag viel.

Een ander zwak punt is de vraag wie personen die zich volgens de Verdrag aan genocide hebben schuldig gemaakt, zal moeten berechten. Volgens het Verdrag zijn dat de staten waar zij die misdaden hebben begaan. Ook kan de berechting plaatsvinden "by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction." Zo'n tribunaal is er anno 2001 nog steeds niet als we de Tribunalen voor Joegoslavië en Rwanda even buiten beschouwing laten. Berechting aan staten overlaten waar de misdaden zijn begaan levert ook problemen op zoals men na de Eerste Wereldoorlog ruimschoots kon ervaren. Er is bijna nooit een beroep op het Genocideverdrag gedaan ondanks het feit dat het sinds 1948 herhaaldelijk is geschonden. Dat zegt iets over de bruikbaarheid van het Verdrag en de onwil van staten om dit soort zaken aan te pakken als daar niet een goede

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politieke reden voor is, zoals in het geval van Jozef Stalinski. De wereld schijnt weer ineen na 1945 op hoopre, is nog steeds ver te zoeken.

Carel H. Jansen is verblijvend Internationaal Betrekkingen aan de School voor Journalistiek te Utrecht.

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Het Proces van Tokio

door Carel H. Jansen

Op de laatste bijeenkomst van de Grote Vier was over de Tweede Wereldoorlog en de gevolgen ervan gesproken door de geallieerden die kon deerna (opnieuw) in twee onverenigbare kampen uit elkaar zouden vallen, werd definitief het besluit genomen om de mensen die verantwoordelijk waren voor de verschrikkingen van die oorlog strafrechtelijk te vervolgen, in Potsdam, waar die bijeenkomst tussen 17 juli en 2 augustus 1945 plaatsvond, kwamen overeen niet alleen de nazikopstukken te berechten, maar ook de Japanners die voor de oorlog in Azië verantwoordelijk werden gehouden, een oorlog die op dat moment trouwens nog aan de gang was. Dat tussen de berechting van de Duitsers en die van de Japanners een duidelijk verschil zou zijn, was echter van begin af aan duidelijk.

Hadden de Grote Vier en hun bondgenoten een gezamenlijke strijd tegen het nazi-regime gevoerd, in Azië was die strijd voornamelijk door de Amerikanen uitgevochten, met de Britten als belangrijkste bondgenoten. Zij waren het ook die de oorlog in Azië door het afwerpen van twee kernbommen tot een definitief einde brachten. De belangrijke positie die zij daardoor in Oost-Azië en het gebied van de Stille Oceaan innamen, wilden zij dan ook onder geen voorwaarde delen met anderen. De Amerikanen bezetten Japan en

stelden generaal Douglas MacArthur, de opperbevelhebber van de geallieerde legers in Azië, aan als de hoogste verantwoordelijke voor de gang van zaken in dat land en de zijde omgeving. Hij kreeg de opdracht voor de berechting van de Japanners te zorgen die daarvoor in aanmerking kwamen.

MacArthur was geen voorstander van een proces tegen Japanse oorlogsmisdadigers. Niet dat er geen vreselijke dingen tijdens de oorlog in Azië waren gebeurd. Krijgsgevangenen waren als slavenarbeiders gebruikt, gevangen gezette vrouwen gedwongen tot prostitutie en massaslachtingen waren vaak onderdeel van het Japanse krijgsbedrijf geweest zonder dat dit door de oorlogsomstandigheden te verklaren zou zijn. Toen de Japanners de Chinese stad Nanking in 1937 op de Kwomintang hadden veroverd, verkrachten ze dertigduizend vrouwen en kwamen volgens een lage schatting 40.000 mensen om het leven. De bezetting van de Filipijnen had aan bijna 150.000 burgers het leven gekost. Hetzelfde kan gezegd worden van Indonesië, waar niet alleen de Nederlandse kolonie een bitter lot moest ondergaan, maar ook nog eens ruim 200.000 Indonesiërs de dood vonden als dwangarbeider. Maar, zei MacArthur, dat alles was niet te vergelijken met wat de nazi's hadden uitgehaald. Die hadden beter moeten weten. Zij waren de verraders van de westerse cultuur, de Japanners deden niet anders dan wat in Azië sinds Dsjenghis Khan nu eenmaal gebruikelijk was. Daarbij kwam dat de gruweldaden niet systematisch waren opgezet door de Japanse machthebbers maar veelal overgelaten waren aan ondergeschikten die geen nazi-ideologie nodig hadden om als beesten te keer te gaan. Toen generaal Yamashita verantwoordelijk werd gehouden voor de wrede daden op de

Filippijnen terwijl hij, gestationeerd in Mansjoerije, daar duizenden mijlen van vandaan was, zei hij dat hij zijn ondergeschikten de opdracht had gegeven om de Filippijnen zorgvuldig te behandelen. Hij moest echter toegeven dat hij door de slechte verbindingen geen enkele greep had gehad op de werkelijke gang van zaken.

De belangrijkste oorlogsmisdadigers moesten in Tokio terecht staan in een proces dat tweeëneenhalf jaar in beslag nam. Het begon op 3 mei 1946, vijf maanden na het begin van het proces in Neurenberg, en zou op 12 november 1948 eindigen, ruim twee jaar later dan Neurenberg. Zeven mensen hoorden de doodstraf tegen zich uitspreken, de overige achttien kregen gevangenisstraffen variërend van levenslang tot zeven jaar. In 1958 kwam ook in Japan de laatste veroordeelde Japanner weer op vrije voeten, net als in Duitsland dus. Het statuut voor het Internationale Militaire Gerechtshof in Neurenberg diende als voorbeeld voor het Hof in Tokio. Ook hier werden de aangeklaagden beoordeeld op misdaden tegen de vrede, oorlogsmisdaden en misdaden tegen de menselijkheid. De samenzweringstheorie deed ook in Tokio opgeld, evenals het uitgangspunt dat de aangeklaagden persoonlijk verantwoordelijk werden geacht.

Een verschil was dat er in Neurenberg recht werd gesproken namens de vier grote mogendheden terwijl het Hof in Tokio bestond uit elf rechters afkomstig uit landen die onder het regime van de Japanners te lijden hadden gehad. De leiding was geheel in handen van de Amerikanen en MacArthur kreeg de bevoegdheid vonnissen zo nodig te herzien. Robert Harvey noemt in zijn boek *The Undeclared* het proces in Tokio een kostbare mislukking, twijfelachtig wat betreft de rechtsgrond en slechts uit op het zondebok maken van een paar mensen hoezeer zij hun straf ook verdiend hadden. MacArthur was

dezelfde mening toegedaan. De hoofdverantwoordelijke, de Japanse keizer, bleef geheel buiten schot omdat men die nog nodig dacht

te hebben om de bevolking te verzoenen met het bewind van generaal MacArthur die het land als een verlicht despoot regeerde en ombouwde tot iets wat op een westerse democratie kon lijken.

De rechtsgrond voor het proces was

inderdaad zwak, zoals wij ook in Neurenberg hebben kunnen zien. Prof. Mr B.V.A. Röling, die voor Nederland als rechter bij het proces optrad, vroeg zich later af of er vlak na zo'n bloedige oorlog wel van een eerlijk proces sprake zou kunnen zijn. Maar dan doelde hij toch vooral op de zogenoemde kangeroo courts, militaire rechtbanken bestaande uit Amerikaanse officieren die van het ene naar het andere eiland verhuisden om de daar aanwezige Japanners die van enigerlei misdaad verdacht werden, te berechten. Vaak kwamen die 'rechters' de rechtszaal binnen met het vonnis al op zak. Zoals een Amerikaans weekblad in die dagen schreef: "We'll give them a fair trial en then hang them all".

Over de gang van zaken in Tokio konden de Japanners niet anders dan tevreden zijn. Ze hebben er dikwijls hun bewondering over uitgesproken dat de overwinnaars zo zorgvuldig met hen omgingen. Een probleem daarbij was dat alles in het Japans vertaald moest worden en dat alle 779 processenverbaal ook in die taal in extenso moesten worden voorgelezen tijdens de 818 zittingen, waarop ook nog eens 419 getuigen werden gehoord. Dat de taal een probleem was bleek bijvoorbeeld uit wat mevrouw Roosevelt constateerde toen zij bezig was met het opstellen van de Universele Verklaring: Japanners hadden geen teken voor ons begrip 'vrijheid'.

De invloed van het proces in Tokio op de gang van zaken na de oorlog is mintem. Anders dan het Neurenbergse proces leidde dit niet tot debatten in de Algemene Vergadering en aan de 1218 bladzijden processtukken is tot op de dag van vandaag nog geen fractie van de aandacht besteed die de neerstag van het Neurenbergse proces kreeg. Veel van die stukken zijn zelfs nooit gepubliceerd terwijl er over Neurenberg boekenkasten vol zijn geschreven. Anders dan Neurenberg vormde het proces in Tokio geen precedent voor de 'nieuwe wereldorde'.

Carel H. Jansen is ondervondt Internationale Betrekkingen aan de School voor Jurisprudentie te Utrecht.

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De Kounkkyestad, MP

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Sanja Nikolic is de huidige 18-jarige
Scholier die (crash - honger) die
streeft op de Vancouver - brug, hoe ze gewond
werd helpen en de cheyenne te vinden
Over de brug kan men ga toe komen
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van holst en steijnen

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Sent: maandag 19 november 2001 12:36
Subject: Vergaderverslag 30 oktober 2001

Beste mensen,

Door drukke werkzaamheden is het onderstaande verslag enigszins vertraagd.
 Daarvoor mijn verontschuldigingen.

Met vriendelijke groeten,

Meindert

TRIBUNAAAL VOOR DE VREDE

Kort verslag van de vergadering d.d. 30 oktober 2001

Aanwezig: Nico Hogenhuis, Meindert, Tiny en Willemijn

1. Secretariaat

Met betrekking tot de behartiging van de belangen van Milosevic door Nico Steijnen zijn nog twee reacties binnengekomen op het secretariaat. Dit geringe aantal noopt niet tot een algemene reactie in ProcesNieuws.

De kosten (4.500 gulden) voor de nieuwe computer zullen minder zijn dan aanvankelijk begroot (8.000 gulden). Dit doordat van een gunstig aanbod gebruik kan worden gemaakt. In week 45 (5-9 november) zal de zaak worden geïnstalleerd.

De mogelijkheid wordt naar voren gebracht dat het secretariaat een nieuwe taak zou kunnen krijgen, te weten: het administratieve beheer van een civiel proces tegen de Staat terzake van de overtreding van het volkenrechtelijk geweldverbod. Daaraan kunnen ook individuele eisers meedoen, aangezien de Universele verklaring van de rechten van de mens in Nederland rechtstreekse werking heeft en die verklaring in art. 28 zegt dat eenieder recht heeft op een zodanige internationale orde, dat de rechten en vrijheden van de verklaring daarin ten volle kunnen worden verwezenlijkt. De mogelijkheid van dit nieuwe proces zal ook worden aangekaart bij het "Platform tegen de Nieuwe Oorlog".

2. Financiën

Er zijn zoveel bijdragen ontvangen dat de begroting van 2001 (105.000 gulden) volledig is gedekt. Degenen die 100 gulden (of meer) hebben bijgedragen, zullen weer een attentie ontvangen. De suggestie om een bundel opstellen aan hen toe te zenden (per stuk 16,50) wordt als te duur van de hand gewezen. Dit punt moet nader worden bezien.

De praktijk wijst inmiddels uit dat de acceptgiro's die ter herinnering worden toegezonden aan degenen die niet direct bij ontvangst van de eerste acceptgiro hun bijdrage overmaken, een minder groot deel van de inkomsten genereert dan voorgaande jaren.

Tiny en Jan van der Lee zullen in december de financiële jaarstukken opstellen.

3. Proces tegen de Staat

De uitspraak van de Hoge Raad is vooralsnog verschoven naar 21 december 2001 (althans dan staat de zaak weer op de rol).

4. ProcesNieuws

De deadline is 27 november (nader bericht: 4 december). Voor het overige wordt verwezen naar het schema dat Willemijn, samen met Hein, heeft opgesteld.

5. Rondvraag en volgende vergadering

Er zijn geen punten voor de rondvraag. De volgende vergadering is op 12 december 2001, aanvang 18.30 uur.

Alphen aan den Rijn, 19 november 2001
Meindert Stelling

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To: Bars of Serbia,
Yugoslavia, the Netherlands
and Great Britain

Dear Sirs,

The Trial Chamber of the International Criminal Tribunal for former Yugoslavia issued, in the case No.IT-99-37 against the accused Slobodan Milosevic, at the status conference held 30 August 2001, the order inviting the Registrar to designate counsels to appear before it as amicus curiae, pursuant to Article 74 of the Rules of Procedure and Evidence of the Tribunal. Further to the order, the following lawyers were designated to act in such a capacity: Mr. Branislav Tapuskovic, of FR of Yugoslavia, Mr. Michail-Mischa Vladimiroff of the Netherlands and Mr. Steven Kay, QC, of Great Britain.

We are of the view that the appointed personalities are top class lawyers, highly experienced who could provide a valuable assistance to the Tribunal in pursuit of its mandate provided Article 74 of its Rules of Procedure and Evidence were correctly applied.

However, although the order of the Trial Chamber, mentioned above, described the task of the persons to be designated to act in the capacity of amicus curiae "not to represent the accused but to assist in the proper determination of the case" with the view to "securing a fair trial", which is in keeping with the institute of amicus curiae, the elaboration of the stated task in the first three of totally four items is quite contrary to the meaning of this institute and constitutes, de facto forcing of counsels

upon the accused, ex officio, in an evasive but awkwardly disguised way, and annihilation of the concept of self-defense opted by the accused. Such a conduct constitutes a serious breach of his right to defense guaranteed under Article 14 of the International Covenant of Civil Rights and a series of other international documents and constitutional and legal provisions in the national legal systems of the civilized world.

The three items mentioned set out that "amicus curiae is to assist the Trial chamber by:

- 1) Making any submissions properly open to the accused by way of preliminary or other pre-trial motion;
- 2) Making any submissions or objections to evidence properly open to the accused during the trial proceedings and cross-examining witnesses as appropriate;
- 3) Drawing to the attention of the Trial Chamber any exculpatory or mitigating evidence..."

The above assignments, obviously enough, pertain not to those who are to assist the court, but fall within the realm of entitlements of the accused and his counsels, exclusively.

The Statute of the Hague Tribunal (Article 21) and the Rules of Procedure and Evidence (Articles 44 and 45) stipulated on one hand, the right of the accused to choose his counsel himself, meaning that he cannot be imposed a counsel whom he did not want, and on the other, they set out no possibility of designating ex officio counsel, providing a way to the accused to defend himself on his own, which Slobodan Milosevic opted for.

Designation of de facto counsel of the accused, as mentioned, and moreover the individuals he doesn't want, entrusted with the tasks, which belong to the accused and his counsels only, all under the mask of the institute of amicus curiae constitutes but a breach of both the stated provision of the Statute and the Rules of Procedure and Evidence, and Article 14, Par 3, items b), d) and e) alike of the International Covenant of Civil and Political rights. The right to defense, protected by the mentioned provisions of the International Covenant on Civil and Political Rights has been violated also by the fact that the designation of de facto counsel to the accused and with the assignments mentioned diluted his defense concept, based on repudiation of legality of the foundation of the Tribunal itself and denial of the accused to recognize, by his own conduct, so disputed legality. The accused is entitled to such repudiation, the more so as he invokes the UN Charter and suggested that the establishment of the Tribunal was in violation of the Charter.

Without contesting the benefits of a duly applied institute of amicus curiae we find it unacceptable, illegal, contrary to the nature of lawyers' function, ethics and Codes of respective Bars, and finally immoral, for anyone, and particularly for the members of the lawyers profession, to enter amicus curiae so distorted, as described, in misuse of that institute to deprive the accused of his right to defense. Therefore, we are asking the Bars of Serbia and Yugoslavia, the Netherlands and Great Britain to invite their respective above-mentioned members not to accept this part in the proceedings at stake in the manner exposed in the above quoted three items. We are inviting the appointed personalities themselves to refuse to participate in the proceedings in the way that violates the right of the accused to defense, without denying in any way the possibility of their participation in keeping with the nature of the institute amicus curiae. Finally, we are asking the mentioned Bars, in case their members choose to ignore this appeal and do take part in the violation of the rights of the accused in the proceedings at stake, to take respective measures under the regulations of each of the three states mentioned, and the internal rules of the three Bars mentioned, against the members of their Bar, who would in such a dramatic way, in blatant violation of the right of the accused in any

proceedings and particularly the right to defense, misuse their status and the rank of lawyers.

Yours truly,

The undersigned lecturers and associates of the Faculty of Law, University of Belgrade:

1 _____	11 _____
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9 _____	19 _____
10 _____	20 _____

Transcribed list of signatories of the Appeal of the Lecturers and Associates of the Faculty of Law in Belgrade to prevent the participation of the lawyers in violation of the right of Slobodan Milosevic to Defend himself in ICTY by Misuse of the Institute Amicus Curiae:

- 1 Prof Dr Mirjana Stefanovski, Associate Professor
- 2 Prof Dr Kosta Cavoski, Full Professor
- 3 Miodrag Jovanovic, M.A., Assistant
- 4 Dr Milan Skuljic, Assistant Professor
- 5 Prof Dr Mirko Vasiljevic, Full Professor
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- 15 Prof Dr Ratko Markovic, Full Professor
- 16 Prof Dr Zorak Stojanovic, Full Professor
- 17 Prof Dr Zagorka Jekic, Full Professor
- 18 Dr Aleksandar Jakisic, Assistant Professor
- 19 Dr Slobodan Panov, Assistant Professor
- 20 Balsa Kascelan, Assistant-Probationer

End of Translation

I, the undersigned Smiljana Kijurina, sworn court translator, appointed under the Decision of the Ministry of Justice of Serbia No.740-06-72/97-18 of 19.02.1997, certify with my signature and court seal that the above translation is done under my own hand and is true to its original submitted to me in the Serbian language.

Done in Belgrade, 10 October 2001

To join or help this struggle, visit:

<http://www.sps.org.yu/> (official SPS website)

<http://www.belgrade-forum.org/> (forum for the world of equals)

<http://www.icdsm.org/> (the international committee to defend Slobodan Milosevic)

<http://www.jutarnje.co.yu/> ('morning news' the only Serbian newspaper advocating liberation)

Attachment Converted: "<c:\\xs4all\\eudora\\attach\\Amicus Curiae od Smiljane.doc>"

van holst en steijnen

From: André Tremblay <agtremblay@videotron.ca>
To: Vladimir Krsljanin <vlada@sps.org.yu>; Prof M.N.Kuznecov <annakisa@mtu-net.ru>; Prof A.Bernardini <mailservicesnc@tiscalinet.it>; Jared Israel <jedmisrael@yahoo.com>; <JaredI@aol.com>; David Jacobs <david@ShellJacobs.com>; van holst en steijnen <n.h.van.holst@freeler.nl>; Nico Varkevisser <office@globalreflexion.org>; Christopher Black <anunato@hotmail.com>; Christopher Black <bar@direct.com>
Cc: Elmar Schmaehling <elmar_schmaehling@t-online.de>; Tetekin V.N. <tetekin@duma.gov.ru>; Elena Kuznetsova <elena_abpk@mtu-net.ru>; Bora Milosevic <sveiozar@co.ru>; Babis Angourakis <bang@am.kke.gr>
Sent: woensdag 28 november 2001 00:02
Subject: Re: Belgrade Professors' Letter to Bars' Chambers

Bonjour,

I totally agree with the letter.

A.T.

----- Message d'origine -----

De : Vladimir Krsljanin <vlada@sps.org.yu>

À : Prof M.N.Kuznecov <annakisa@mtu-net.ru>; Prof A.Bernardini <mailservicesnc@tiscalinet.it>; Jared Israel <jedmisrael@yahoo.com>; <JaredI@aol.com>; André Tremblay <agtremblay@videotron.ca>; David Jacobs <david@ShellJacobs.com>; van holst en steijnen <n.h.van.holst@freeler.nl>; Nico Varkevisser <office@globalreflexion.org>; Christopher Black <anunato@hotmail.com>; Christopher Black <bar@direct.com>

Cc : Elmar Schmaehling <elmar_schmaehling@t-online.de>; Tetekin V.N. <tetekin@duma.gov.ru>; Elena Kuznetsova <elena_abpk@mtu-net.ru>; Bora Milosevic <sveiozar@co.ru>; Babis Angourakis <bang@am.kke.gr>

Envoyé : 28 novembre, 2001 11:55

Objet : Belgrade Professors' Letter to Bars' Chambers

>
 > Certified Translation
 > From: Faculty of Law,
 > University of Belgrade Faculty Logo
 > Bulevar Revolucije, 67
 > 11000 Belgrade Tel.(381-11)
 > 32 41 501

> and:(381-11)

> 32 30 116

>
 > Fax:(381-11) 32 21299

> To: Bars of Serbia,
 > Yugoslavia, the Netherlands
 > and Great Britain

>

>

>

> Dear Sirs,

>

> The Trial Chamber of the International Criminal Tribunal for
 > former Yugoslavia issued, in the case No.IT-99-37 against the accused
 > Slobodan Milosevic, at the status conference held 30 August 2001, the
 > order

> inviting the Registrar to designate counsels to appear before it as amicus
 > curiae, pursuant to Article 74 of the Rules of Procedure and Evidence of
 > the

> Tribunal. Further to the order, the following lawyers were designated to
 > act

> in such a capacity: Mr. Branislav Tapuskovic, of F-R of Yugoslavia, Mr.

> Michael-Mischa Vladimiroff of the Netherlands and Mr. Steven Kay, QC, of

> Great Britain.

>

> We are of the view that the appointed personalities are top

lawyers, highly experienced who could provide a valuable assistance to the Tribunal in pursuit of its mandate provided Article 74 of its Rules of Procedure and Evidence were correctly applied.

However, although the order of the Trial Chamber, mentioned above, described the task of the persons to be designated to act in the capacity of amicus curiae "not to represent the accused but to assist in the proper determination of the case" with the view to "securing a fair trial", which is in keeping with the institute of amicus curiae, the elaboration of the stated task in the first three of totally four items is quite contrary to the meaning of this institute and constitutes, de facto, forcing of counsel upon the accused, ex officio, in an evasive but awkwardly disguised way, and annihilation of the concept of self-defense opted by the accused. Such a conduct constitutes a serious breach of his right to defense guaranteed under Article 14 of the International Covenant of Civil Rights and a series of other international documents and constitutional and legal provisions in the national legal systems of the civilized world.

The three items mentioned set out that "amicus curiae is to assist the Trial chamber by:

- 1) Making any submissions properly open to the accused by way of preliminary or other pre-trial motion;
- 2) Making any submissions or objections to evidence properly open to the accused during the trial proceedings and cross-examining witnesses as appropriate;
- 3) Drawing to the attention of the Trial Chamber any exculpatory or mitigating evidence..."

The above assignments, obviously enough, pertain not to those who are to assist the court, but fall within the realm of entitlements of the accused and his counsel, exclusively.

The Statute of the Hague Tribunal (Article 21) and the Rules of Procedure and Evidence (Articles 44 and 45) stipulated on one hand, the right of the accused to choose his counsel himself, meaning that he cannot be imposed a counsel whom he did not want, and on the other, they set out no possibility of designating ex officio counsel, providing free way to the accused to defend himself on his own, which Stobodan Ivanosevic opted for.

Designation of de facto counsel of the accused, as mentioned, and moreover the individuals he doesn't want, entrusted with the tasks, which belong to the accused and his counsel only, all under the mask of the institute of amicus curiae constitutes but a breach of both the stated provision of the Statute and the Rules of Procedure and Evidence, and Article 14, para 3, items b), d) and e) alike of the International Covenant of Civil and Political Rights. The right to defense, protected by the mentioned provisions of the International Covenant on Civil and Political Rights has been violated also by the fact that the designation of de facto counsel to the accused and with the assignments mentioned annulled his defense concept, based on repudiation of legality of the foundation of the Tribunal itself and denial of the accused to recognize, by his own conduct, so disputed legality. The accused is entitled to such repudiation, the

so as he invokes the UN Charter and suggested that the establishment of the Tribunal was in violation of the Charter.

Without contesting the benefits of a duly applied institute of amicus curiae we find it unacceptable, illegal, contrary to the nature of lawyers' function, ethics and Codes of respective Bars, and finally

moral,

for anyone, and particularly for the members of the lawyers profession, to
 > enter amicus curiae so distorted, as described, in misuse of that
 institute

> to deprive the accused of his right to defense. Therefore, we are asking
 the

> Bars of Serbia and Yugoslavia, the Netherlands and Great Britain to invite

> their respective above-mentioned members not to accept this part in the
 > proceedings at stake in the manner exposed in the above quoted three

items.

> We are inviting the appointed personalities themselves to refuse to

> participate in the proceedings in the way that violates the right of the

> accused to defense, without denying in any way the possibility of their

> participation in keeping with the nature of the institute amicus curiae.

> Finally, we are asking the mentioned Bars, in case their members choose to

> ignore this appeal and do take part in the violation of the rights of the

> accused in the proceedings at stake, to take respective measures under the

> regulations of each of the three states mentioned, and the internal rules

of

> the three Bars mentioned, against the members of their Bar, who would in

> such a dramatic way, in blatant violation of the right of the accused in

any

> proceedings and particularly the right to defense, misuse their status and

> the rank of lawyers.

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> Yours truly,

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> The undersigned lecturers and associates of the Faculty of Law, University

> of Belgrade:

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> himself in ICTY by Misuse of the Institute Amicus Curiae:

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- Dr Sasa Bovan, Assistant Professor
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- >
- > Done in Belgrade, 10 October 2001
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- > advocating liberation)
- >

EUROPÄISCHES FRIEDENSFORUM

EUROPEAN PEACE FORUM

Berlin, 11.11. 2001

GBM*Weitlingstr. 89*10317 Berlin

Sehr geehrter Herr Krsljanin,

Wir laden Sie sehr herzlich zu der erweiterten Beratung der Präsidenten des Europäischen Friedensforums für die Zeit vom 7. bis 9. Dezember nach Berlin ein.

Wir haben die Absicht, eine Verständigung über die neue geostrategische Situation, die durch den Krieg der USA und der NATO gegen Afghanistan eingetreten ist, über die aktuellen Aufgaben der Friedenskräfte in den europäischen Staaten und neue Bündnismöglichkeiten, über die Probleme einer neuen Friedensordnung auf dem Balkan und den Prozess gegen Milosevic vor dem ICTY in den Haag herbeizuführen.

Die Gesellschaft zum Schutz von Bürgerrecht und Menschenwürde e.V., in deren Räumen unsere Beratung stattfindet, hat ihren diesjährigen Menschenrechtspreis an Professor Velko Valkanoff verliehen. Diese Preisverleihung wird anlässlich des Tages der Menschenrechte am 8. Dezember um 16.00 Uhr stattfinden. Sie sind dazu herzlich eingeladen.

Tagesordnung

7. Dezember

14. 00 – 19.00

Die geostrategischen Ziele des Krieges gegen Afghanistan und die Gefährdung einer europäischen Friedensordnung. Kampf gegen Terror oder gegen die Charta der UN?

8. Dezember

10.00 Vorbereitung der nächsten **Tagung des Europäischen Friedensforums** im Frühsommer 2002 in Athen.

Evtl. Schwerpunkte:

- Möglichkeiten neuer Bündnisse und Einflussnahmen der Friedenskräfte in europäischen Ländern im Kampf gegen die Militarisierung der Außenpolitik der USA und der NATO. Lehren des Krieges gegen Afghanistan
- Friedensordnung auf dem Balkan
- Illegitimität des ICTY sowie Einsetzung von Expertengruppen zur Anklage gegen Milosevic und ihren Schwerpunkten
- Beratung über Statut, Mitgliedschaft und Finanzen des Europäischen Friedensforums.

16.00 Verleihung des Menschenrechtspreises anschl. Empfang

9. Dezember

10.00 Illegitimität des ICTY und Möglichkeiten der Arbeit zu den Punkten der
Anklage

Ende 14. Uhr Stadtrundfahrt

Wir bitten alle Eingeladenen um Beiträge zu den Schwerpunktthemen oder auch um ergänzende Beiträge. Einige Referenten werden von uns eingeladen. Wir möchten den Kreis der Beratung relativ klein halten (etwa 30 - 40 Personen), um eine ernsthafte inhaltliche Debatte über Sinn, Möglichkeiten und Aufgaben des Europäischen Friedensforums führen zu können.

Zu den Modalitäten der Tagung bitten wir um Verständnis, dass unsere finanziellen Mittel durch die Tribunalveranstaltungen und die Gründungsversammlung des Europäischen Friedensforums in diesem Jahr erschöpft sind. Wir bitten alle eingeladenen die Reisekosten selbst zu tragen. Für die Aufenthaltskosten können wir nur in bescheidenem Rahmen für die Gäste aus Ost- und Mitteleuropa aufkommen. Wir sind jedoch gern bei der Vermittlung von Unterkünften - evtl. auch kostenlosen Privatunterkünften - behilflich. Konferenzsprachen sind Englisch, Russisch und Deutsch. Ort der Beratung ist Berlin, Weitlingstr. 89, Nähe Bahnhof Lichtenberg. Wir bitten um Mitteilung über die Teilnahme, die Ankunftszeit und das evtl. Thema Ihres Beitrags.

Mit besten Grüßen


Elmar Schmähling
Sekretär


Prof. Wolfgang Richter
geschäftsführendes Mitglied des Präsidiums

Ellewautsdijk 16 oktober 2001

Hoi Nico en Neeltje,

ik schrijf met een zonnetje op de dijk en
genietend van herfstvakantie.

Prachtig weer; bos en strand al bezocht, maar
dat doen we nog eens deze week.

Hoegaart het met jullie. Hier alles de..

Met mij is het wisselend; nog steeds oor-hoofdpijn
vooral 's nachts. 30% WAO nog steeds, maar
ik kan het net redden. Hoewel er moet niet veel
verkeerd gaan.

Cees heeft groot nieuws. Hij stopt na dit
jaar en zoekt naar iets anders.

Op dit moment heeft hij kenbaar gemaakt
wel de kar van Groenlinks binnen Borssele
te willen trekken. Kijken of dat wad wordt.
Anders komen er vast nog wel leuke plannen.

Jk heb de afgelopen tijd weer wat knipsels
verzameld. Jk vond onze voorpagina van
vandaag over de schrootafclefing aanleiding
het spul maar direct aan je toe te sturen.
Jk heb zo iets van te doen maar. Maar
dat we straks naast de nucleaire vuilnisbelt
van Nederland (en blijft het daarbij?) wonen,
is wel duidelijk.
Ach, de zon zal wel blijven schijnen.

Verder volg ik de wereld gebeurtenissen, maar af en toe houd ik afstand.

De waanzin van het achter elkaar aan rennen en elkaar opfoeken van ik niet goed hebben. Denk aan je eigen gedachten denk ik dan. Wel weet ik dat het op school onder leerlingen bijhoort wat normaal en regelmatig onderwerp van gesprek is.

Mij valt op dat vooral de jongens zich toch onbehaaglijk voelen. Meiden reageren veel meer onderhoed en afstandelijk.

En dan gebeurde er afgelopen zaterdag weer een ongeval hier op de kruising, waarbij een auto met jong gezin onder aan de dijk op het land staat. Dan komen er 3 ziekenauto's die alle betrokken volwassenen weg brengen (mehltzel, choque) en lopen er 2 betuhtede kleuters rond tussen al dat gedoe.

Dat relativiseert alle wereldellende weer enorm. Nou, dat was het weer, geloof ik.

groeten ook van Cees

Ganny



Via mw. Hellen Freney voor
- dhr. Milosević, S.
- dhr. Rohde

13-12-2001

Postovani gospodine Miloseviću,

I pored Vase zelje da me primite u posetu, pa i moje zarke zelje da Vas posetim, ja sam nazalost malopre telefonskim pozivom dobila obavestenje da je moj pismeni zahtev, ulozen 23.11.2001., konacno odbijen.

Razlog su, kako rece gspodja Hellen Freney, poostrene mere, sto znaci da samo familija, advokati i savetnici mogu dobiti dozvolu da Vas posete. Ja na moju nesrecu nisam ni jedno od ovih. Na moj licni zahtev cu dobiti i pismeno obrazlozenje.

Meni, kao pravom i iskrenom patrioti je iskreno zao sto sam odbivena, jer sam se ipak radovala nasem susretu, ali ja ipak i dalje zivim u nadi da ce mi se sa malo vise razumevanja od strane Tribunala, tj.gospodina Rohde, dati odobrenje da Vas posetim, sto znaci da cu ja ponovo uloziti zahtev.

Moj motiv sada je, da u ovo vreme kada dolaze praznici je svakom zivom bicu drago da poseti nekoga ili da bude posecen, pa se nadam da ce i gospodin Rohde imati to u vidu prilikom razmatranja mog novog zahteva.

U nadi da ce moja zelja biti ostvarena, primite moj iskren pozdrav, uz zelje za dobro zdravlje, i sto skorije vidjenje.

Ruža Despotović
Rode Kruislaan 709
1111 NX Diemen - NL
Tel. 06 - 209 73 230

Cc: dhr. Rohde

13-12-2001

Geachte heer Rohde,

Wanneer de regels inderdaad verscherpt zijn inzake bezoek aan dhr . Milosević, S., ben ik van mening dat dit in strijd is met rechten van de mens, want elk lijdend mens dat bezoek onthouden wordt, lijdt daar onder.

Opnieuw dien ik een verzoek in voor een bezoek regeling met dhr Milosević, S., i.v.m. feestdagen. Als landgenoot voel ik me een vriendin van de President, daar wij van huis uit gewent waren de president goede feestdagen te wensen.

Met gevoelens van de meeste hoogachting,

Ruža Despotović
Rode Kruislaan 709
1111 NX Diemen - NL

Cc: dhr. Milosevic, S.-



United Nations
Nations Unies



International
Criminal Tribunal
for the Former
Yugoslavia

Registry

Tribunal Penal
International pour
l'ex-Yugoslavie

Greffe

October 16, 2001

Dear Mr. Black,

This letter is in regards to a recent interview with the accused S. Milošević, which was conducted by Martin Schwarz and published in "The Jungle World", a Berlin newspaper. It appears that this interview covers most, if not all, of the questions you personally asked Milošević in a recent telephone conversation dated October 3, 2001.

Originally, when you requested permission for the above-mentioned communication, both you and Milošević indicated the purpose to be for legal advising. However, based on the record of the conversation, it did not concern any legal advice.

This appears to be the accused's second violation of the Detention Rules. He has been previously warned that a further breach of the Detention Rules can result in a total withdrawal of his communication privileges. As for you, Mr. Black, this is also the second time you have violated the Rules of Detention. As a reminder, the first time, you removed documents from the detention facility without following the proper procedure.

As a result of this Detention Rule breach, your privilege to communicate with the detainee is hereby withdrawn. No further communication with the accused will be permitted until further notice. If you should have any questions or comments please do not hesitate to contact this office.

Yours Sincerely,

Christian Rohde
Legal Officer

Mr. Christopher Black
Attorney at Law
Per Facsimile

Cc: Mr. Slobodan Milošević
Mr. Tim McFadden, Commander UNDU

Churchillplein 1, 2517 JW The Hague, P.O. Box 12032, 2500 SW The Hague, Netherlands
Churchillplein 1, 2517 JW La Haye, B.P. 12032, 2501 La Haye, Pays-Bas
Tel.: +31-70-512 5801 Fax: +31-70-512 8637 Email: anoya.icty@un.org

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United Nations
Nations Unies



International
Criminal Tribunal
for the former
Yugoslavia

Registry

Tribunal Pénal
International pour
l'ex-Yugoslavie

Greffier

Permit No.: MILS0024

NOTIFICATION OF FREEDOM TO COMMUNICATE WITH FAMILY, FRIENDS AND OTHERS

*(Rule 63 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal
or Otherwise Detained on the Authority of the Tribunal)*

I hereby inform the Director General of the Host Prison and the Commanding Officer of the United Nations Detention Unit that

Slobodan MILOŠEVIĆ

Date of birth: **20-Aug-41**

Committed to prison on: **29-Jun-01**

shall be allowed to receive

a One-time visit from

Mr. Steijnen

Attorney representing the accused before Dutch Courts

on **22-Nov-01**.

Noting that "Live monitoring as deemed necessary by the Cmdr. in order to secure that communication relates to Dutch Court case"

It is entirely the responsibility of the visitor to apply for a new permit, should one be required, on the expiry of this permit.

Date: 22 November, 2001

Registrar / Deputy Registrar

Churchillplein 1, 2517 JW The Hague, P.O. Box 13888, 2501 EW The Hague, Netherlands
Churchillplein 1, 2517 JW La Haye, B.P. 13888, 2501 La Haye, Pays-Bas
Tel.: 0031 70 416 5000 Fax: 0031 70 416 8637

(c:\visit permits\issued permits\mils\mils0024.doc)

Het Joegoslavië Tribunaal

Enige beschouwingen van procedurele aard

door Göran Sluiter

Sinds de oprichting in 1993 heeft het Joegoslavië Tribunaal zich een belangrijke plaats binnen de internationale rechtsorde verworven. Goed beschouwd is het eigenlijk opmerkelijk dat het Tribunaal dit heeft weten te bereiken. In de eerste fase van zijn bestaan, diende het Tribunaal twijfels over de rechtmatigheid van de oprichting door de Veiligheidsraad weg te nemen. Daarnaast heeft het Tribunaal alles in het werk moeten stellen –en doet dat overigens nog steeds– om de steun van de meest belangrijke landen te verwerven. In de geschiedenis van het Tribunaal zijn er een aantal momenten geweest waarop de internationale gemeenschap het Tribunaal zou kunnen hebben laten vallen in ruil voor –korte termijn– vrede in de Balkan. De onderhandelingen in Dayton over vrede in Bosnië waren zo'n moment.

Het relatieve succes van het Tribunaal is niet alleen te danken aan de aanhoudende steun van de internationale gemeenschap, maar ook aan de verrichtingen van het Tribunaal zelf. Het vervolgingsbeleid van de aanklager en de gevoerde processen verdienen over het algemeen een voldoende. Recentelijk heeft het Europees Hof voor de Rechten van de Mens nog nadrukkelijk gesteld dat de rechtsgang voor het Tribunaal aan alle procedurele waarborgen voldoet¹.

Ondanks hetgeen bereikt is, is zelfgenoegzaamheid niet op zijn plaats. Het Tribunaal dient blijvend kritisch gevolgd te worden. Hoewel soms anders wordt beweerd, gebeurt dit zeker in Nederland in ruime mate. Sinds de oprichting van de Tribunalen, alsmede de oprichting van het permanent straftribunaal, wordt er veelvuldig gepubliceerd over "de Tribunalen" zelf en allerlei zaken die daarmee nauw verwant zijn. Erkend moet worden dat de nadruk vaak ligt op het materiële recht dat door het Tribunaal wordt toegepast, te weten het internationale humanitaire recht. Om deze reden ga ik in deze bijdrage in op enige procedurele aspecten van het functioneren van het Joegoslavië Tribunaal. Ik sluit daarbij nauw aan bij –enkele van– de vragen die zijn opgeworpen in de Milosevic zaak.

Status van het Tribunaal

Het Joegoslavië Tribunaal is in 1993 opgericht door de Veiligheidsraad, middels resoluties 808 en 827, als zijn eigen subsidiair orgaan. De oprichting roept reeds allerlei vragen op naar de rechtmatigheid van het handelen van de Veiligheidsraad, waar hieronder nader op wordt ingegaan. De eigenschap van subsidiair orgaan van de Veiligheidsraad, in de zin van artikel 29 van het VN Handvest, heeft een aantal belangrijke rechtsgevolgen. Het Tribunaal maakt hierdoor deel uit van de VN structuur en bezit derhalve in beginsel geen zelfstandige internationale rechtspersoonlijkheid. Het vermogen om verdragen te sluiten, een belangrijk element van de internationale rechtspersoonlijkheid, lijkt dus bij de VN te liggen en niet bij de Tribunalen. Het zetelverdrag is gesloten tussen Nederland en de VN en ook in geval van de verdragen met betrekking tot de tenuitvoerlegging van strafvonnissen is de VN verdragspartij en niet het Tribunaal. Toch moet

het Tribunaal wel enige graad van zelfstandige internationale rechtspersoonlijkheid worden toegedicht, evenals andere subsidiaire organen van de VN, zoals UNICEF, die bezitten. Het Joegoslavië Tribunaal heeft immers in 1994 zelfstandig een verdrag gesloten met de Verenigde Staten inzake de aanhouding en overlevering van door het Tribunaal aangeklaagde personen²¹. Hieruit mag, zij het wellicht een impliciete, graad van internationale rechtspersoonlijkheid worden afgeleid, welke het Tribunaal in staat stelt, indien nodig, op internationaal niveau adequaat te opereren.

Het rechtmatigheidsvraagstuk betreffende de oprichting van het Tribunaal staat als gevolg van de Milosevic zaak weer volop in de belangstelling. Het gaat hierbij om de vraag of de Veiligheidsraad onder het VN Handvest de bevoegdheid heeft een dergelijk instituut op te richten. Bij het beantwoorden van deze vraag moet in ogenschouw worden genomen dat de Raad een louter politiek orgaan is en het Tribunaal een rechtsprekende organisatie.

In de eerste zaak voor het Tribunaal, tegen

Dusko Tadic, is door de Kamer van Beroep van het Tribunaal uitgebreid ingegaan op deze vraag en in latere zaken is die uitspraak op alle punten bevestigd²². Deze jurisprudentie is veelvuldig besproken en werd eigenlijk tot de Milosevic zaak als 'afgedaan' beschouwd. Ik volsta hier dan ook met het vermelden dat de Kamer van Beroep middels een extensieve interpretatie van Artikel 41 van het VN Handvest tot de conclusie kwam dat de Veiligheidsraad de bevoegdheid heeft een internationaal straftribunaal op te richten indien hij zulks noodzakelijk acht voor de handhaving van de internationale vrede en veiligheid. Dat de Raad als politiek orgaan ook een juridisch orgaan mag oprichten leidde de Kamer af uit een belangwekkend precedent: de oprichting van een ad hoc straftribunaal door de Algemene Vergadering, eveneens een politiek orgaan. In het licht van de volhardende kritiek van Milosevic op het Tribunaal ontkomt men er niet aan nog eens kritisch naar Tadic te kijken. Een andere invalshoek daarbij is de statenpraktijk sinds de oprichting van het Tribunaal, welke inmiddels voldoende voor handen is. De vraag naar de rechtmatigheid van de

De zetel van het Joegoslavië Tribunaal in Den Haag.



oprichting van het Tribunaal is in de eerste plaats een vraag naar de interpretatie van het VN Handvest, in het bijzonder van de bevoegdheden van de Veiligheidsraad daaronder. Ingevolge Artikel 31 (3) (b) van het Weens Verdragenverdrag kan de praktijk van staten in de toepassing van verdragen een belangrijke rol spelen bij de interpretatie daarvan.

Deze praktijk, zo zal men moeten constateren, is overweldigend ten faveure van het Tribunaal als rechtmatig en legitieme instelling. Ik noem kortheidshalve alleen het vredesverdrag van Dayton van November 1995, waarin de meest betrokken staten rondt hun erkenning en steun voor het Tribunaal uitdrukken, alsmede de houding van staten in de Algemene Vergadering van de Verenigde Naties ten aanzien van, bijvoorbeeld, de verkiezing van rechters voor het Tribunaal. Wat betreft het laatste valt op dat niet alleen een groot aantal staten onderdanen kandidaat stelde voor verkiezing, maar dat nagenoeg de gehele internationale gemeenschap actief deelnam aan deze verkiezingen. Alleen Mexico hield zich consequent afzijdig om de reden dat het Tribunaal als onrechtmatige instelling moest worden beschouwd.

Door niet alleen naar de -oude- Tadic jurisprudentie te verwijzen, maar ook naar de daarop volgende statenpraktijk kan het Tribunaal op sterkere gronden het verweer van Milosevic afwijzen en hem ook confronteren met zijn eigen erkenning van het Tribunaal ten tijde van de ondertekening van de Vredesakkoorden van Dayton.

De hierboven beschreven volkenrechtelijke status van het Tribunaal zegt nog niets over de interne organisatie van deze instelling. Wanneer men het heeft over een 'tribunaal' zal in eerste instantie gedacht worden aan een uitsluitend rechtsprekende instantie. Dit is immers ook de betekenis die in een louter nationale context aan een 'tribunaal' wordt gehecht. Het Joegoslavië Tribunaal is in die zin geen tribunaal. Het kan worden beschouwd als een gecompliceerd juridisch

apparaat waarin de aanklagende en rechtsprekende functies worden gecombineerd. Het Tribunaal bestaat naast een rechtsprekend orgaan en de aanklager ook uit de griffier. Laatstgenoemde heeft een belangrijke management functie, maar heeft ook een aantal meer juridische bevoegdheden, die de taak van de griffie in de nationale rechtsorde overschrijden. Naast de Griffier heeft overigens ook de President van het Tribunaal belangrijke besturende bevoegdheden en vertegenwoordigt hij net als de Griffier het Tribunaal naar buiten toe.

Elk van de drie hoofdorganen, Kamers, Aanklager en Griffier, heeft eigen en van de andere organen autonome bevoegdheden onder het Statuut. Het Statuut schrijft geen hiërarchie tussen de organen voor, maar het is inmiddels algemeen aanvaard dat de rechters, vertegenwoordigd in de diverse Kamers, het hoogste orgaan van het Tribunaal vormen. Dit komt met name tot uiting in de controle van de rechters op de uitoefening van bevoegdheden door de andere organen. Zo is de Aanklager als het gaat om bijvoorbeeld bewijsverzameling nadrukkelijk onderworpen aan rechterlijk toezicht. Ook is aan de rechters de taak gedelegeerd om de weinige bepalingen van het Statuut aan te vullen met meer gedetailleerde Bewijs- en Procedure Regels.

Het Joegoslavië en Rwanda Tribunaal delen de Aanklager en de Kamer van Beroep. Deze constructie heeft onder andere als doel de rechtseenheid te bewaren. Tot voor kort bestond de Kamer van Beroep -om onbegrijpelijke redenen- louter uit rechters van het Joegoslavië Tribunaal. Het is moeilijk een dergelijke Kamer als gemeenschappelijke Kamer te beschouwen en roept verder de ongewenste gedachte op als zou het Rwanda Tribunaal onderworpen zijn aan het toezicht van het Joegoslavië Tribunaal. Inmiddels is aan deze situatie gelukkig een einde gekomen door twee rechters van het Rwanda Tribunaal te benoemen in de gemeenschappelijke Kamer van Beroep.

Rechtsvinding

Rechtsvinding door het Tribunaal is nog steeds één van de moeilijkste aspecten van het functioneren van dit instituut. Wij zien in diverse beslissingen van het Tribunaal dat het nog steeds worstelt met de vraag welk recht dient te worden toegepast en wat de status is van een bepaalde norm in verhouding tot andere toepasselijke normen.

Het Tribunaal is uiteraard in de eerste plaats gebonden aan de eigen primaire rechtsbronnen, in zijn geval het Statuut, de Procedure- en Bewijsregels en andere –minder belangrijke– specifieke regelgeving, zoals de detentie regels, de gedragscode voor raadspersonen en regels inzake toewijzing van advocaten. Voor de interpretatie van deze instrumenten past het Tribunaal –terecht– de interpretatieregels inzake verdragen toe, zoals die zijn gecodificeerd in Artikelen 31 en volgende van het Weens Verdragenverdrag. Hierbij valt overigens op dat het Tribunaal daarbij sterk object and purpose van het Statuut benadrukt als basis voor een extensieve interpretatie van de primaire rechtsbronnen.

Hoewel niet expliciet tot uitdrukking gebracht in het Statuut, zijn de Procedure- en Bewijsregels ondergeschikt aan het Statuut, en in geval van strijdige bepalingen gaat de laatste zeker voor. Zulke direct strijdige bepalingen vallen echter moeilijk te ontdekken, omdat het 'basale' Statuut alleen de hoofdlijnen regelt en de uitwerking daarvan nadrukkelijk heeft gedelegeerd aan de rechters.

Naast de Statuten en de Procedure- en Bewijsregels dient het Tribunaal, in de tweede plaats, het algemeen internationaal recht toe te passen. Uitgangspunt is dat het Tribunaal, als orgaan van een volkenrechtelijke organisatie, een creatie is van datzelfde volkenrecht en derhalve daaraan gebonden is. Belangrijke gedachte daarbij is dat de Staten zich niet aan hun volkenrechtelijke verplichtingen zouden moeten kunnen onttrekken middels het oprichten van allerlei internationale organisaties. In de eerste Tadic zaak betreffende beschermende maatregelen tegen getuigen nam het Tribunaal de

ongelukkige beslissing het algemene volkenrecht niet te omhelzen en breed toe te passen⁶. De Kamer schoof in die zaak belangrijke internationale mensenrechtenjurisprudentie als niet toepasselijk terzijde en stond toe dat sommige personen anoniem getuigden. De Kamer heeft hiermee grote schade aangericht, niet zo zeer voor de beschuldigde Tadic als wel voor de beeldvorming rondom het Tribunaal. Tot op de dag van vandaag wordt in vooral niet-juridisch gespecialiseerde media volgehouden dat het Tribunaal 'niet deugt', omdat het gebruik van anonieme getuigen zou zijn toegestaan⁷. Deze 'beeldvorming' is overigens volledig onjuist, omdat na Tadic geen enkele persoon meer anoniem heeft getuigd. Wat belangrijker is met het oog op de rechtsvinding, is dat het Tribunaal inmiddels het algemeen internationaal recht, indien relevant, volledig toepast. In de Blaskic subpoena zaak stelde de Kamer van Beroep zich op het juiste standpunt dat het internationaal gewoonterecht van toepassing is voor zover het Statuut daar niet van afwijkt⁸. In een andere zaak paste het Tribunaal het gewoonterecht toe in beperking op de eigen bevoegdheden getuigen op te roepen, door op basis van het gewoonterecht het Internationale Rode Kruis immuniteit van de rechtsgang van het Tribunaal te verlenen⁹.

Deze zaken beperken zich tot het internationale gewoonterecht, maar algemene rechtsbeginselen kunnen eveneens van toepassing worden geacht op het functioneren van het Tribunaal. Wat betreft internationale verdragen, is het Tribunaal in de eerste plaats gebonden aan de verdragen waarbij het partij is, zoals het zetelverdrag met Nederland, het verdrag ter overlevering van verdachte personen met de VS en verdragen die betrekking hebben op de tenuitvoerlegging van door het Tribunaal opgelegde strafvonnissen. Voor het overige zijn verdragen toepasselijk voor zover zij gewoonterecht of algemene rechtsbeginselen codificeren. In dit verband is van belang dat de Kamer van Beroep voor het Rwanda Tribunaal in de Barayagwiza zaak het gehele

⁶ VN-verdrag inzake Burgerrechten en Politieke Rechten (BuPo) tot gewoonterecht bestempelde¹⁰.

Dit brengt mij op toepassing van twee specifieke rechtsbronnen buiten het Statuut: het VN recht en de mensenrechten. Als subsidiair orgaan van de Veiligheidsraad is het Tribunaal gehouden het recht van de VN te respecteren. In materieel opzicht betekent dit dat het Tribunaal zich moet houden aan de beginselen en doeleinden van de VN, zoals Artikel 24 van het VN Handvest van de Veiligheidsraad vraagt. Wat dat precies inhoudt, is onduidelijk. Het is moeilijk uit deze beginselen en doeleinden concrete rechtsregels voor het Tribunaal af te leiden. Daarnaast zou men kunnen stellen dat de doelstelling van handhaving van internationale vrede en veiligheid, waarvoor het Tribunaal is opgericht, andere beginselen en uitgangspunten van de VN in de schaduw stelt.

Belangrijker is de manier waarop het VN recht het functioneren van het Tribunaal regeert in procedureel opzicht. Dit bepaalt onder andere dat het Tribunaal zich niet begeeft op het terrein van de exclusieve bevoegdheden van de hoofdorganen van de VN en andere organen geen verplichtingen kan opleggen. Dat laatste probleem doet zich voor als het Tribunaal militairen die ressorteren onder de VN Secretaris-Generaal als getuigen zou willen horen. Tot op heden is dit altijd opgelost door eerst de Secretaris-Generaal de immuniteit van deze personen te laten opheffen. De relatie met het Internationaal Gerechtshof (IGH) is problematischer. Het Tribunaal laat zich – uiteraard – niet uit over zaken aanhangig bij het IGH, maar heeft moeite het gezag van het IGH als belangrijkste internationaal rechtsprekend orgaan te erkennen. In de Tadic zaak ging bijvoorbeeld de kamer van Beroep over tot "herziening" van de uitspraak van het IGH in de Nicaragua zaak¹¹. In andere jurisprudentie acht het Tribunaal zich nadrukkelijk niet gebonden door beslissingen van het IGH¹². Het Tribunaal past hier terughoudendheid en

bescheidenheid, niet alleen omdat het broze systeem van het volkenrecht dat vereist, maar ook omdat het systeem van de VN hierop is gebaseerd¹³.

Het spreekt vanzelf dat het Tribunaal de internationaal beschermde mensenrechten moet respecteren¹⁴. Men kan dan ook in Artikel 21 van het Statuut een nagenoeg volledige kopie van Artikel 14 van het VN verdrag inzake Burgerrechten en Politieke Rechten (1966) aantreffen. Het Statuut laat het daarbij, maar het Tribunaal is uiteraard niet alleen gehouden aan de "fair trial" rechten. Het Tribunaal dient ook zorg te dragen dat het recht op "liberty and security of persons" wordt gerespecteerd in geval van een bevel tot aanhouding en overdracht. Daarnaast dient het Tribunaal zich te houden aan het recht op privacy als het een huiszoekingsbevel wil uitvoeren. Deze rechten maken geen onderdeel uit van het Statuut of de Procedure- en Bewijsregels. Hier spelen derhalve het BuPo-verdrag en het Europees Verdrag inzake de Rechten van de Mens (EVRM), alsmede de daarbij horende jurisprudentie, een belangrijke aanvullende rol. In de rechtspraktijk van het Tribunaal valt op dat het EVRM, en jurisprudentie van het Europees Hof, veelvuldiger worden toegepast dan het BuPo-verdrag, terwijl het Tribunaal strikt genomen niet aan het regionale EVRM gebonden is.

Met de toepassing van mensenrechtenverdragen door het Tribunaal doen zich twee belangrijke problemen voor.

In de eerste plaats is er het vraagstuk van de exacte reikwijdte van de mensenrechtenbepalingen. Van een groot aantal belangrijke mensenrechten, zoals het recht op privacy, mag worden afgeweken onder bepaalde voorwaarden. Deze voorwaarden lijken zich uitsluitend te richten op toepassing door staten in een maatschappelijke context. Hoe kan het Tribunaal nu bepalen of een huiszoeking in een bepaald geval 'noodzakelijk is in een democratische samenleving'? Uitgangspunt bij bepaling van de exacte reikwijdte van mensenrechten toegepast

door het Tribunaal dient naar mijn mening te zijn dat het hier gaat om minimumrechten. Ruimhartige toepassing is derhalve op zijn plaats, zeker als men het Tribunaal wil beschouwen als strafprocesrechtelijk "model" voor de gehele internationale gemeenschap.

Een vraag die voor het Tribunaal moeilijker te beantwoorden is, is wat het aan moet met mensenrechtenschendingen die zich buiten zijn jurisdictie, lees buiten de rechtszaal, voordoen. Moet het Tribunaal worden aangesproken voor mensenrechtenschendingen begaan door staten? Het ligt voor de hand en is ook redelijk dat het Tribunaal volledig de gevolgen moet dragen voor alle mensenrechtenschendingen begaan "op zijn verzoek". Zo is derhalve de Aanklager volledig aansprakelijk voor schending op recht op privacy indien zij door een staat een huiszoeking heeft laten verrichten zonder rechterlijke machtiging. Ook als het gaat om een normale rechtshulprelatie zou men de daden van Staten redelijkerwijs kunnen toerekenen aan de Tribunalen. Men kan hierbij denken aan bijvoorbeeld een te enthousiaste staat die een huiszoeking niet beperkt tot in het huiszoekingsbevel omschreven ruimte. In dergelijke situaties is het redelijk het Tribunaal direct verantwoordelijk te stellen en gehouden tot het nemen van passende maatregelen ter genoegdoening.

In de jurisprudentie zijn beide Tribunalen hier soms redelijk ver in gegaan. Bekendste zaak is ongetwijfeld de Barayagwiza zaak voor het Rwanda Tribunaal, waarin de Kamer van Beroep de verdachte eerst in vrijheid stelde en later strafvermindering in het vooruitzicht stelde, omdat de Aanklager verweten kon worden dat de verdachte te lang in Kameroen in voorarrest had gezeten¹⁹. Ook in zaken waarin de verdachte het slachtoffer is geweest van mensenrechtenschendingen zonder dat het Tribunaal daar ook maar enigszins betrokken bij is geweest, kan het Tribunaal genoopt worden tot het nemen van passende maatregelen. Het Tribunaal heeft immers de verplichting zorg te dragen dat de

verdachte een eerlijk proces krijgt, wat niet los gezien kan worden van hetgeen is voorgevallen voordat de verdachte is overgebracht naar Den Haag. Daarnaast moet het Tribunaal waken dat de integriteit, ofwel de legitimiteit, van de procedure niet wordt aangetast²⁰. In het laatste geval hoeft het niet eens te gaan om een (ernstige) schending van de rechten van de verdachte, maar kan men ook denken aan een serieuze schending van het volkenrecht, zoals kidnapping van de verdachte. Dit laatste voorbeeld, ontvoering van de verdachte, was het onderwerp van een belangrijke motie in de zaak Todorovic. Laatstgenoemde claimde te zijn ontvoerd op het grondgebied van de Federale Republiek Joegoslavië. De Aanklager was blijkbaar van mening dat de verdachte in dit opzicht een sterke zaak had, want zij gooide hier na een korte plea bargaining op een akkoordje. Helaas heeft het Tribunaal zich niet kunnen uitspreken over de belangrijke vraag van de gevolgen van schendingen van het internationale recht en/of de mensenrechten voor de rechtsgang voor het Tribunaal. Misschien dat dat in de Milosevic zaak wel gebeurt.

De zaak Milosevic

Bij bespreking van de Milosevic zaak beperk ik mij tot de procedureelrechtelijke aspecten en ga daarbij uit van de ontwikkelingen in deze zaak tot 1 november 2001. Het valt voor de kwaliteit van de rechtsgang en voor de bevredigende beantwoording van allerlei interessante vragen die deze zaak oproept, te betreuren dat Milosevic geen energieke en confronterende verdediging voert. Immers, de procedure voor het Tribunaal heeft een accusatoir karakter waarin de inbreng van beide partijen cruciaal is. Misschien dat de benoeming van de Amici Curiae als "schaduwadvocaten" in deze zaak de vele vragen vanuit verdedigingsperspectief toch op bevredigende wijze voor het voetlicht kan brengen²¹.

Belangrijk punt in de verdediging, zoals die door Milosevic zelf wordt gevoerd, is de al dan niet rechtmatige oprichting van het

Tribunaal. Boven ben ik reeds op deze vraag ingegaan. Een oordeel van het Internationaal Gerechtshof, zoals voorgesteld door de Amici Curiae, is absoluut niet nodig, omdat sinds de Tadic jurisprudentie de statenpraktijk duidelijk wijst in de richting van een rechtmatige oprichting.

Verder is aangevoerd, zowel door Milosevic zelf als door de Amici Curiae, dat het Tribunaal niet onafhankelijk en onpartijdig zou zijn. In een eerder commentaar op de Milosevic zaak heb ik in dat verband reeds gewezen op de - waarschijnlijk onbedoelde - dubieuze rol van de Veiligheidsraad inzake het Kosovo onderzoek door de Aanklager²². Ondanks plichtige toezeggingen dat het Tribunaal weliswaar door de Veiligheidsraad is opgericht maar dat de Raad, als politiek orgaan, zich verder niet met de rechtsgang zou bemoeien, heeft diezelfde Raad bij de Aanklager toch aangedrongen op het instellen van een onderzoek naar de schendingen van het oorlogsrecht in Kosovo²³. Dit is niet alleen strijdig met Artikel 16 van het Statuut, dat door de Veiligheidsraad zelf is vastgesteld, maar ook met het recht van de verdachte op een onafhankelijke en onpartijdige rechtsgang. Hoewel de Aanklager uiteraard niet om deze "instructie" heeft gevraagd, mag van haar toch worden verwacht dat zij aantoonde dat het onderzoek en de aanklacht onafhankelijk van de inmenging door de Veiligheidsraad tot stand zijn gekomen, al is het maar om de schijn van een politiek gemotiveerd onderzoek weg te nemen.

Een belangrijk punt van de "verdedigingslinie" van Milosevic betreft de omstandigheden omtrent zijn aanhouding en overlevering. Het valt te betreuren dat de verdediging, daaronder gemakshalve de Amici Curiae inbegrepen, dit punt onvoldoende juridisch hard hebben kunnen maken. Gesteld kan worden dat Milosevic is overgeleverd aan het Tribunaal in strijd met het nationale recht inzake samenwerking met het Tribunaal. Milosevic werd door de deelrepubliek Servië overgedragen aan het

Tribunaal terwijl zijn beroep tegen overdracht op basis van een nationale samenwerkingswet nog hangende was voor het Joegoslavische constitutionele hof. Op zich vormen schendingen van het nationale recht geen enkel beletsel voor de rechtmatige uitoefening van jurisdictie door een internationaal straftribunaal. Laatstgenoemde is immers uitsluitend gebonden aan het volkenrecht. Daarnaast is het praktisch ondoenlijk voor het Tribunaal zich uit te spreken over de rechtmatigheid van de verschillende nationale procedures die zijn toegepast in het kader van samenwerking met het Tribunaal.

Het nationale recht wordt daarentegen wel weer relevant indien volkenrechtelijke regels daar expliciet naar verwijzen. Zo bepaalt Artikel 5 van het EVRM dat niemand van zijn vrijheid zal worden beroofd dan overeenkomstig wettelijk voorgeschreven procedures. In het geval van het Joegoslavië Tribunaal gaat het daarbij naar mijn mening om een samenspel tussen het recht van het Tribunaal en het nationale recht. Er moet sprake zijn van een valide bevel tot aanhouding en overdracht, uitgevaardigd door een rechter van het Tribunaal, dat vervolgens wordt geïmplementeerd door de bevoegde nationale autoriteiten overeenkomstig nationale toepasselijke procedures. De zaak Barayagwiza voor het Rwanda Tribunaal, welke betrekking had op een verdachte die te lang in detentie was gehouden door Kameroen, toont aan dat een actieve rechtsbeschermende rol door nationale (rechterlijke) autoriteiten geen overbodige luxe is²⁴. Alleen in uitzonderingsgevallen mag men een verdachte de geëigende nationale procedures onthouden. Hiervan is sprake indien effectieve nationale procedures niet voorhanden zijn, zoals in delen van Bosnië, waar SFOR de implementatie van aanhoudingsbevelen door het Tribunaal heeft "overgenomen" van de nationale autoriteiten. Wat betreft de aanhouding en overlevering van Milosevic waren wel nationale procedures aanwezig om zijn overlevering te

effectueren, maar deze zijn niet gevolgd. Het is de vraag in hoeverre dit – onder deze omstandigheden – schending van artikel 5 EVRM of artikel 9 BuPo-verdrag zou opleveren. Het voert te ver om daar nu verder op in te gaan. Interessanter is wellicht de vraag of een eventuele schending gevolgen zou moeten hebben, bijvoorbeeld voor de uitoefening van rechtsmacht door het Tribunaal over de verdachte.

De vraag hoe te reageren op aanhoudingen in strijd met het volkenrecht, zoals de ontvoering van Eichmann door Israël in Argentinië of de ontvoering van Alvarez-Machain door de VS in Mexico, heeft in de literatuur reeds een diepe kloof geslagen tussen voor- en tegenstanders van het beginsel *male captus bene detentus*. Dit beginsel impliceert dat toch rechtmatig jurisdictie kan worden uitgeoefend over iemand die op onrechtmatige wijze is aangehouden. Tegenstanders vinden dergelijke processen 'besmet'; voorstanders wijzen daarentegen op het zwaarwegende belang van het doorgaan van het proces. Dat geldt te meer, menen sommigen, wanneer het gaat om verdachten van de meest ernstige misdrijven, zoals genocide en misdaden tegen de menselijkheid.

Het Tribunaal heeft zich (nog) niet over deze problematiek uitgesproken. Doch in de Barayagwiza zaak stelde de Kamer van Beroep zich op het onverschrokken standpunt dat elke schending van de rechten van verdachte genoegdoening behoeft¹⁹. Hieruit kan men afleiden dat het Tribunaal niet voorbij wenst te gaan aan schendingen van de rechten van de verdachte die zich in het kader van de internationale strafprocedure hebben voorgedaan. Hierbij moet worden benadrukt dat deze internationale strafprocedure zich niet mag en kan beperken tot de rechtszalen van het Tribunaal. Het grote verschil tussen de diverse nationale rechters en het Joegoslavië-Tribunaal op dit punt is dat laatstgenoemde het zich als volkenrechtelijke instelling niet kan veroorloven "betrokken" te raken bij schendingen van het volkenrecht.

Het Tribunaal is dan ook altijd zeer ruimhartig geweest in het toekennen van het recht aan verdachten argumenten van schending van nationale soevereiniteit aan te voeren, hoewel verdachten zelf niet rechtstreeks door deze schendingen worden getroffen²⁰.

Bovenstaande houdt evenwel nog niet in dat Milosevic, indien schending van artikel 5 EVRM of artikel 9 BuPo-verdrag zou worden vastgesteld, zijn vrijlating tegemoet kan zien. Er zijn op een dergelijke schending andere, meer passende reacties denkbaar. Gelet op de ernst van de verdenkingen tegen Milosevic is het beëindigen van de rechtsgang tegen hem zonder nader een disproportionele maatregel. In de zaak Barayagwiza besefte de Kamer van Beroep in tweede instantie ook dat vrijlating van de verdachte te ver ging. Men stelde hem strafvermindering in het vooruitzicht, al in geval van vrijspraak – financiële compensatie²¹. Soortgelijke vormen van genoegdoening lijken mij ook in andere zaken meer geëigend.

Tot slot

Het Tribunaal opereert in een onwennige en delicate verhouding met verschillende nationale rechtstelsels. Het Tribunaal heeft bij herhaling benadrukt dat het zich in een hiërarchische positie boven deze stelsels bevindt. Het kan zaken van nationale rechters afnemen alsmede nationale autoriteiten vergaande verplichtingen tot samenwerking opleggen. Bij deze positie hoort het dragen van verantwoordelijkheid over de gehele strafprocedure. In de toekomst, wellicht reeds in de Milosevic zaak, blijft het Tribunaal te maken krijgen met vraagstukken die zich in eerste instantie uitsluitend tot de nationale jurisdicties lijken te beperken. Maar, zoals ik middels enige beschouwingen rondom de Milosevic zaak heb proberen aan te tonen, het vraagstuk omtrent de rechtmatigheid van zijn overdracht naar Joegoslavisch recht hoeft niet louter een nationale aangelegenheid te zijn.

De interactie met nationale stelsels beperkt zich al lang niet meer tot de staten van het voormalig Joegoslavië en Rwanda. Verdachten en getuigen zijn reislustig. Zo heeft Nederland bijvoorbeeld onlangs – vrij onopgemerkt – voor het eerst besloten een verdachte over te leveren aan één van de Tribunaal, het Rwanda Tribunaal²². Ook beperkt het karakter van de vragen zoals die zich kunnen voordoen in nationale jurisdicties zich allang niet meer tot kwesties van aanhouding, overdracht en bewijslevering. Wat te denken van het bevel dat rechter Hunt in de Milosevic zaak heeft uitgevaardigd aan alle VN lidstaten om tegoeden van de verdachte op te sporen en daar vervolgens beslag op te leggen? Het Tribunaal draagt als gevolg van dit bevel verantwoording voor de inbreuk op rechten van derden die zich daarbij zouden kunnen voordoen. In de toekomst kan men zich verder voorbereiden op diverse problemen gerelateerd aan de tenuitvoerlegging van de gevangenisstraffen opgelegd door het Tribunaal. Het Tribunaal is samen met de staat van tenuitvoerlegging bijvoorbeeld verantwoordelijk voor de naleving van de rechten van de gedetineerde onder internationaal recht. Ook dient het Tribunaal, min of meer in samenspraak met nationale autoriteiten, vast te stellen of de veroordeelde in aanmerking komt voor vervroegde invrijheidstelling.

Het vinden van bevredigende antwoorden op de bovenstaande en andere vraagstukken die zich voordoen als gevolg van de fragmentatie van de strafprocedure over verschillende rechtstelsels blijft één van de voornaamste uitdagingen voor het Tribunaal.

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- 1) European Court of Human Rights, *Naletilic against Croatia*, Decision on admissibility, Application no. 51891/99, 18 October 1999.
- 2) *Agreement on Surrender of Persons*, 5 October 1994, U.S. – Yugoslavia Tribunal.
- 3) Zie Decision on the defence motion on jurisdiction, *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, T. Ch. 2, 18 June 1997, in *Klip/Sluiter ALC-II-13* en Decision on motion challenging jurisdiction – with reasons, *Prosecutor v. Krajisnik*, Case No. IT-00-39 & 40, T. Ch., 22 September 2000;
- 4) Decision on the Prosecutor's motion requesting protective measures for victims and witnesses, *Prosecutor v. Tadic*, Case No. IT-94-1-T, T.Ch. II, 10 August 1995, in *Klip/Sluiter, ALC-I-155*.
- 5) Zie bijvoorbeeld A. de Vries, 'Prickelend proces', in *Elsevier weekblad*, 27 oktober 2001, p. 66.
- 6) See Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, *Prosecutor v. Blaskic*, 29 October 1997, Case No. IT-95-14-AR108bis, A. Ch., paragraaf 41.
- 7) Decision on the Prosecution Motion under Rule 73 for a Ruling Concerning the Testimony of a Witness, *Prosecutor v. Simic and others*, Case No. IT-95-9-PT, Tr. Ch., 27 July 1999.
- 8) Decision, *Barayagwiza v. Prosecutor*, Case No. ICTR-97-19-AR72, A.Ch., 3 November 1999, para. 40.
- 9) Judgement, *Prosecutor v. Tadic*, Case No. IT-94-1-A, 15 July 1999, A.Ch.
- 10) Decision on interlocutory appeal by the accused Zoran Zigic against the decision of Trial Chamber I dated 5 December 2000, *Prosecutor v. Kvočka and others*, Case No. IT-98-30-A, 25 May 2001, A. Ch.
- 11) Zie ook commentaar van T. Gill op *Tadic Judgement* (supra noot 9), in A. Klip en G. Sluiter, *Annotated Leading Cases of International Criminal Tribunals – Volume III: The International Criminal Tribunal for the former Yugoslavia 1997 – 1999*, Intersentia – Antwerpen, 2001, pp. 868 – 876.
- 12) De expliciete regeling in het ICC Statuut op dit punt is bijzonder fraai. Ingevolge Artikel 21 lid 3 van het ICC Statuut moet alles wat het ICC doet overeenkomstig internationaal beschermde mensenrechten zijn.
- 13) Zie supra noot 8.
- 14) Zie in dit opzicht Regel 95 van de Procedure- en Bewijsregels, welke bepaalt dat bewijs moet worden uitgesloten indien toelating de integriteit van de procedure zou aantasten.
- 15) Hierbij dient vermeld dat de eerste motie van de *Amici Curiae* op dit punt weinig hoopgevend is; zie *Amici Curiae* brief on jurisdiction, *Prosecutor v. Milosevic*, Case No. IT-99-37-PT, 19 oktober 2001. Voor een kritische noot bij de benoeming van de *Amici Curiae* als "schaduwadvocaten", zie T. Prakken, *De verdediging van Slobodan M., NJB*, 14 september 2001, afl. 32, p. 1570.
- 16) Zie mijn commentaar, in *ALC*, supra noot 11, p. 44.
- 17) Zie VN VR Resolutie 1160 van 31 maart 1998, paragraaf 17.
- 18) Zie supra noot 8.
- 19) Decision (Prosecutor's request for review or reconsideration), *Prosecutor v. Barayagwiza*, Case No. ICTR-97-19-AR72, 31 March 2000, A. Ch.

- 20) Zie Decision on the Defence motion for interlocutory appeal on jurisdiction, Prosecutor v. Tadic, Case No. IT-94-1-AR72, A. Ch., 2 October 1995 en Decision on the Motion for Release by the Accused Slavko Dokmanovic, Prosecutor v. Mrksic/ Radic/ Stijivancanin/ Dokmanovic, Case No. IT-95-13a-PT, 22 October 1997.
- 21) Decision (Prosecutor's request for review or reconsideration), Prosecutor v. Barayagwiza, Case No. ICTR-97-19-AR72, 31 March 2000, A. Ch., paragraaf 75.
- 22) Uitspraak van de overleveringskamer van de Rb. Den Haag, betreffende Simon Bikindi, 16 oktober 2001, parketnummer CU 2001.RT.EX.01.

Bush wil per se geheime tribunalen, publiek steunt hem

WASHINGTON, 30 NOV. De Amerikaanse president Bush wil zeker geheime militaire tribunalen gebruiken bij de berechting van buitenlanders die van terrorisme worden verdacht. Dat zei de president gisteren tijdens een bijeenkomst van openbare aanklagers. Een meerderheid van het Amerikaanse volk is het met de president eens.

Bush tekende half november een decreet op grond waarvan verdachten van terrorisme door een geheim militair tribunaal kunnen worden berecht. Bij een dergelijk proces gelden verklaringen van getuigen die informatie uit de tweede hand hebben vernomen als bewijs. Bovendien kan iets als bewijs gelden „als het voor een redelijk denkend mens van enige waarde is”. Beroep tegen het vonnis van een tribunaal is niet mogelijk, en het proces vindt achter gesloten deuren plaats.

Bush verwierp gisteren de kritiek van leden van het Congres dat de tribunalen de grondwet en de burgerrechten van verdachten ondermijnen. „Niet-Amerikanen die massamoorden beramen en uitvoeren zijn meer dan criminele verdachten. Ze zijn illegale strijders die ons land en onze manier

van leven proberen te vernietigen. Als ik beslis dat het in het nationale veiligheidsbelang van onze grote natie is om diegenen die oorlog voeren tegen Amerika te berechten via militaire tribunalen, dan doen we dat”, aldus de president.

Hoe de militaire tribunalen moeten werken, is nog onduidelijk. Bush zei zelf te gaan beslissen wie er voor zo'n tribunaal moet verschijnen. De ministeries van Defensie en Justitie werken de plannen verder uit.

De meeste Amerikanen steunen de maatregelen van Bush, zo blijkt uit een onderzoek van *The Washington Post* en *ABC News*. Zes van de tien Amerikanen zijn het met de president eens dat van terrorisme verdachte buitenlanders niet door een gewone rechtbank moeten worden berecht, maar door een geheim militair tribunaal. Uit een steekproef van onderzoeksbureau Gallup blijkt dat 62 procent van de Amerikanen het eens is met een oorlog tegen terrorisme. Driekwart van de Amerikanen steunen een eventuele aanval op Irak. Slechts 31 procent wil dat de strijd zich alleen concentreert op de daders van de aanslagen van 11 september. (AP, Reuters)

Chirac en Blair: strijd niet uitbreiden

Door onze correspondent

LONDEN, 30 NOV. Het Verenigd Koninkrijk en Frankrijk willen niet dat de Afghaanse campagne zich uitbreidt naar Irak. Dat hebben premier Blair en president Chirac gezegd tijdens hun jaarlijkse top, gisteren in Londen.

Chirac zei dat er „onweerlegbaar bewijs” nodig is om actie tegen Irak te rechtvaardigen. Zo niet, kan valt de internationale coalitie egen terrorisme uiteen, voorspel-

zou hebben, en mogelijk ook op Irak. De Britse minister van Defensie, Geoff Hoon, zei een dag eerder nog dat militaire operaties buiten Afghanistan denkbaar zijn, maar hij noemde geen landen bij naam. „Mogelijk zijn aanvallen nodig in staten die zelf te zwak zijn om actie te ondernemen tegen terroristen op hun grondgebied”, aldus Hoon woensdag in het Lagerhuis.

In een slotverklaring zeiden beide landen ook het eens te zijn over

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- Mohamed Beljaoui, Pres. of Int. Court of Justice: "Nouvel ordre mondiale et contrôle de la légalité des actes du Conseil de Sécurité," Bruxelles, 1999: onde de 2 ~~rest~~ juridisch rest controle resoluties vanuit lig de resoluties tot vestiging in het ICTJ: - resoluties 608/93 en 827/93.
- advisory opinion on 21 jan. '97: 'legal consequence of the prolonged presence of South Africa in Namibia despite Security Council Resolution 276/1970'. The ICJ confirmed that the states are not duty bound to accept and implement the Security Council decisions that are not in accordance with the Charter, and would, by the way, be clear by itself even if it were not written anywhere.

van holst en steijnen

From: Jovan Grbic <ssicc@planet.nl>
To: <STOP-NSP@topica.com>; <dceca@yubc.net>; <michel.collon@skynet.be>;
 <my636847@asianhistory.myweb.nl>; <camp@antiimperialista.com>; <chuck@hulshoff.nl>;
 <yuambanl@bart.nl>; <news@siem.rechnik.com>; <n.h.van.holst@freeler.nl>
Sent: dinsdag 11 september 2001 03:21
Subject: AMICI CURIAE

Subject: AMICI CURIAE
Date sent: Mon, 10 Sep 2001 23:08:55 MET

Subject: BELGRADE LAW PROFESSORS' VERDICT
Date sent: Mon, 10 Sep 2001 18:04:31 +0200

In their aggression against the law and justice, NATO&Soros clerks in the so-called "International Criminal Tribunal for Former Yugoslavia" based in the Hague, decided to ignore, as essentially unpleasant for their dirty work, the initiative of leading law experts and law professors of Belgrade University to appear in the court room as real AMICI CURIAE (in its real meaning - as FRIENDS OF JUSTICE) and expose monstrous character of this institution, for long time successfully hidden from public.

Instead, they have appointed three attorneys (from Holland, England and Yugoslavia), proven as real FRIENDS OF (WHITE) HOUSE, to serve as quasidefense for president Milosevic. That way their attempted trial of president Milosevic would become the greatest political FARCE ever seen. Belgrade professors already condemned in press conference such illegal and absurd decision of both "Tribunal" and those three attorneys. Accepting such a role they should lose their licenses, Belgrade professors stated.

For the sake of justice, the full text of the initiative of Belgrade law professors, is hereby given.

TO 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

To the Trial Chambers in all the cases before the Tribunal

PROPOSAL FOR APPEARANCE BEFORE TRIAL CHAMBERS BY VIRTUE OF RULE 74 ON
 PROCEDURE AND EVIDENCE (AMICUS CURIAE)

The Professors and Assistant Lecturers of the Faculty of Law of the University of Belgrade have been following with great attention the work 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, as the institution that, by a number of elements, is new and specific and all

the more interesting therefore from the purely theoretical standpoint and then also as an organ whose work will strongly affect the current and future situation in the space of our country and the situation throughout the region. A large group of teachers and associates of our

institution has already in the country itself taken initiatives in order to ensure respect for the constitutionality and legality in the field of prosecution of persons charged with violations of international humanitarian law and especially in the field of respect for the legal norms concerning fundamental human rights. It is our firm belief that the prosecution of perpetrators of criminal offences

which have violated international humanitarian law is one of the imperatives and prerequisites for the normalisation of relations and for restoring stability in the space of the former Yugoslavia just as it is the case in all regions of the world where such offences were and are still being committed and are regrettably a regular corollary of virtually all wars and conflicts. However, we also firmly believe that one cannot create law out of non-law and that therefore when prosecuting and trying in court even such serious offences as those that the Tribunal has been dealing with, the rules of international law must be strictly respected and particularly those among them that protect fundamental human rights and freedoms that are of a universal nature and that as *jus cogens*, within the framework of international law, have a hierarchically superior position vis-a-vis the majority of

other rules. This action-taking in accordance with the law is everywhere a necessity that cannot be called into question. However, in the case of the conflicts that took place in the past ten years or so in the former SFRY, respect for law is all the more essential as these were conflicts that left tragic consequences on virtually all peoples in these parts, conflicts that represent at the same time both

the expression and the integral part of the tragic fate of these peoples, whose troublesome past left behind a number of disputes and unresolved situations over which they quarrelled and waged wars also throughout their history and over which they continue to quarrel even today.

Bearing in mind both the mentioned necessity of strictly respecting law, both generally and specifically regarding the issues related to the conflict in the former Yugoslavia, and the huge real importance that the Tribunal and its works have for our country and the region, for our fate and the fate of future generations in these parts, we consider it important and from the standpoint of our human and our professional conscience necessary to approach the Tribunal and request

that our representatives be allowed by the Trial Chambers in the above

mentioned proceedings to appear in accordance with Rule 74 on procedure and evidence before the Trial Chambers conducting these proceedings and present for each of these proceedings their specific objections based on the general objections that we shall make in this correspondence, which concern respect of international law in the Tribunal's work and in particular the norms protecting human rights and fundamental freedoms.

We were prompted to take this step also by the statement by Judge May during the first appearance of former President Slobodan Milosevic before the Tribunal, to the effect that the international law would be

applied to the accused in future. This would have to mean also that in the course of proceedings the Tribunal would respect all of his human rights, both those prescribed by the International Covenant on Civil and Political Rights and others. This statement, of course, also applies to all other indicted persons.

We wish to point out that we decided to approach the Tribunal in this way even though we share the view of a large number of top-ranking international legal experts world-wide that the International Tribunal

for prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 was established in the manner contrary to the UN Charter in support of which we shall also present our arguments

but as the Tribunal does exist in fact as it functions and keeps in custody several dozens of indicted persons, both Serbs and Croats and Muslims, which from our viewpoint and from the viewpoint of law is

all
 the same, our professional and human responsibility and conscience
 make it incumbent upon us in this way, too, to try to contribute to
 the respect of international law with regard to all these indicted
 persons, no matter which national grouping they belong to because
 they
 are all equal before the law.

We are, likewise, of the opinion that in the interest of law, justice
 and peace, it would be useful in our region for the Tribunal's
 relevant Trial Chambers to approach the Faculties of Law in Sarajevo,
 Zagreb and other university centre in the space of the former SFRY,
 whose scholars, whose competence we had the opportunity to personally
 witness during many years of close co-operation, also could make an
 important contribution to ensuring consistent and impartial law
 enforcement with respect to all the indicted for violations of
 international humanitarian law. For our part, we have been prompted
 to

approach the Tribunal in this manner also by the fact that unlike the
 state authorities from other states formed in the space of the former
 SFRY that care for the status and rights of their citizens being held
 on trial at the Tribunal, as well as for the dignity of their own
 state and peoples living in it, our state authorities do not perform
 their duty with respect to their citizens and their country but, as a
 rule, are doing precisely the opposite. Nevertheless, we wish by our
 remarks and suggestions to promote justice and respect for law, also
 relative to the citizens of other states from the region, believing
 it

to be our duty to adopt a strictly professional attitude on this
 plane
 as well and treat all equally.

In the text below, we shall present (I) our view of the legal
 validity of the acts establishing the Tribunal, but would not discuss
 that topic further, since the Tribunal actually exists and tries
 people and that in these proceedings in every case international law
 should be observed; as well as (II) our general observations
 regarding
 the set-up and the works of the Tribunal, which our representatives
 would present in more specific terms on each individual case if the
 relevant Trial Chambers would grant permission for appearance in the
 proceedings in the amicus curiae capacity.

a.. ABSENCE OF LEGAL GROUNDS FOR ESTABLISHING THE HAGUE TRIBUNAL IN THE SECURITY COUNCIL ACTS

The Criminal Tribunal for the Former Yugoslavia was established by UN
 Security Council resolutions 808/93 and 827/93 and, as explicitly
 stated in these acts, in accordance with Chapter VII of the UN
 Charter.

However, the legal grounds of the acts establishing the Tribunal, can
 be challenged, i.e. it can be noted with full certainty that the said
 Security Council resolutions were adopted in contravention of the UN
 Charter. The Tribunal's establishment is legally problematic, i.e.
 contrary to the valid rules of international law and primarily the UN
 Charter, on several grounds.

To start with, the Security Council is the UN executive organ
 responsible for taking care of peace and security world-wide and as
 such it may not establish judicial organs. It has the right to
 establish its subsidiary organs (Article 29 of the Charter
 stipulates:

"The Security Council may establish such subsidiary organs as it
 deems
 necessary for the performance of its functions"), but as it itself

has no right to perform any judicial function, it cannot transfer to its subsidiary organ any powers that it does not hold (and within the powers it has, it may not transfer to its subsidiary organs the decision-making right, because this is the Security Council's exclusive right that is exercised according to a strictly prescribed procedure). This interpretation is also confirmed by Article 28 of the

Rules of Procedure of the Security Council adopted on 24 June 1946 based on Article 30 of the Charter (that is still, even after 55 years, called "Provisional Rules of Procedure"). This Article of the Rules of Procedure reads as follows: "The Security Council may appoint

a commission, a committee or a rapporteur for a specific question". A year after the adoption of the Charter, the Security Council, where the representatives of the key UN founding members played a dominant role, notably important figures such as Ernest Bevin, Georges Bidault, Joseph Paul-Boncour, Edward R. Stettinius Jr., Andrei Y. Vyshinsky, Andrei A. Gromyko, etc. that may virtually be considered the Charter's authentic interpreters, thus interpreted in the mentioned way which subsidiary organs the Security Council might have.

In addition, the Security Council's competence under Article 24 of the UN Charter is the following:

"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 purposes and principles of the United Nations."

As part of the thus defined function, the Security Council's key task is to take care of respect for the principle set forth in Article 2, item 4 of the Charter, according to which: "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." In case this principle is violated, i.e. that there is "a threat to peace, violation of peace or aggression" (Article 39 of the Charter), the Security Council may decide on the implementation of measures (diplomatic, economic-financial and military), that must be based on Chapter 7 of the UN Charter and whose aim it is to maintain or restore peace and security in the world. In international law,

i.e. the part of it concerning war and peace, there is a traditional division into the rules concerning the right to war (jus ad bellum) and the rules regulating the rules of warfare, therefore, those that are applied when the war has already broken out in order for the war as an otherwise inhumane phenomenon, to be made as humane as possible,

i.e. to alleviate the horrors (this is about the so-called right in war - jus in bello). With its above mentioned role of taking care of peace and security in the world, i.e. of respecting the ban on the threat of force and the use of force, the Security Council is an organ

that looks after the implementation of the rule jus ad bellum. International criminal law, for its part, has as its aim, primarily to

prevent and punish criminal behaviour during war conflicts, i.e. it aims at humanising warfare, i.e. primarily falls under the framework of "the law in war"-

"jus in bello". Of the criminal offences within the framework of

international law, it is only the so-called "crimes against peace" fall within the framework of "jus ad bellum", i.e. it is only by these criminal offences that the rules within the framework "jus ad bellum" are violated, while all other criminal offences fall within the framework of "jus in bello". The Statute of The Hague Tribunal stipulates that this Tribunal shall try virtually all offences within the framework of international criminal law except crimes against peace, i.e. all the offences with the exception of those directed against peace and security in the world. Therefore, of all international criminal offences, The Hague Tribunal does not deal only with those offences that violate the values for whose preservation the Security Council is responsible (but, the Security Council does not ensure the preservation of those values through any judicial but through its executive function). Consequently, the Criminal Tribunal for the former Yugoslavia, through its judicial function, does not prevent precisely the offences that violate the values for whose protection the Security Council is responsible, meaning that the aims that it has to attain and the aims of the Security Council whose subsidiary organ it is, are not the same.

It follows that the Security Council was not authorised to establish the Tribunal neither from the standpoint of the nature of its function nor from the standpoint of the aims that it aspires to fulfil.

In addition to the above mentioned, the International Criminal Tribunal for the former Yugoslavia, is a Tribunal only for crimes committed in a particular space, i.e. in the territory of several states formed following their secession from the former Yugoslavia. In addition to this Tribunal, such a tribunal exists only for Rwanda. On the other hand, the criminal offences of the same nature were committed and are being committed in war-torn areas the world over. It is not only that selective justice cannot be considered true justice, but this selectively established justice also contravenes the principle of sovereign equality of states proclaimed in Article 2, item 1 of the UN Charter.

In support of the above arguments, we shall recall the indubitable authority of Professor Mohammed Bedjaoui, President of the International Court of Justice. 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 legalite des actes du Conseil de Securite*", Bruxelles, 1994), he included in the eight Security Council resolutions that he considered legally most disputable and that would, as such, be the first to be subjected to control, also the two mentioned resolutions on the establishment of the ad hoc Tribunal for the former Yugoslavia - resolutions 808/93 and 827/93.

The only legally valid way in which an international war crimes tribunal may be established is the one resorted to in Rome in 1998, when the Statute was adopted of the Permanent International Criminal Court of a general jurisdiction. Regrettably, this Statute has not yet come into force due to the insufficient number of instruments of ratification.

Since the Security Council is a political organ and since its decisions are of a political nature and given that in international law it is considered legitimate and permissible for the states to oppose the implementation of political decisions taken by

international organisations, including the UN, that are unlawful, it may be possible to conclude that the mentioned Security Council resolutions whereby the Tribunal was established do not create legally valid obligations from the standpoint of international law and law in general. With respect to the UN Security Council, this conclusion stems from Article 25 of the UN Charter, which reads as follows: "The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." In its advisory opinion of 21 June 1971 (in the case of the legal consequence of the protracted presence of South Africa in Namibia despite Security Council resolution 276/1970), the International Court of Justice confirmed that the states are not duty-

bound to accept and implement the Security Council decisions that are not in accordance with the Charter, which would, by the way, be clear by itself even if it were not written anywhere.

Nevertheless, as we have already noted, despite the mentioned objections related to the legal grounds of the Tribunal's establishment, we have decided to request that our representatives be allowed to appear before the Trial Chambers in all the mentioned cases in accordance with Rule 74 on Procedure and Evidence. We proceed from the fact that the Tribunal exists and functions and from our wish for international law to be respected in all the mentioned proceedings.

b.. THE SET-UP AND WORK OF THE HAGUE TRIBUNAL IS CONTRARY TO INTERNATIONAL LAW PRIMARILY IN THE FIELD OF HUMAN RIGHTS

What poses a particular problem when the Hague Tribunal is concerned is the fact that both its set-up and the method of work are, to a considerable extent, contrary to a number of rules in international law, particularly those in the field of human rights and fundamental freedoms. Especially important among these rights are those stipulated in the International Covenant on Civil and Political Rights, adopted and open for signature by UN General Assembly resolution 2200A (XXI) of 16 December 1966, that took effect on 23 March 1976, as one of the central documents adopted internationally. The Tribunal's rules are often contrary also to the general legal principles as recognized by the civilized nations and particularly the general principles of criminal, substantive and procedural law having universal value (legality of sanctions, two-instance court proceedings, division of legislative and judicial functions, etc.). It is also noteworthy that the Hague Tribunal works also in contravention of a number of provisions of the European Convention on Human Rights and Fundamental Freedoms, as well as the practice of the European Court of Human Rights.

Finally, a number of Rules of Procedure and Evidence as well as a number of practical procedures before the Tribunal run counter to the rules of the indicted person prescribed in Article 21 of the Tribunal's Statute that correspond to the rules stipulated in Article 14 of the International Covenant on Civil and Political Rights, so that our remarks concerning respect for Article 14 of the Covenant as a rule also apply to respect for Article 21 of the Statute.

TEGENSTÄNDIGKEIT ENER REGELS

Mentioned below are just some of the most important violations of international law that appear in the Tribunal's set-up plan and in its works.

a.. Legislative and judicial functions are mixed

The Tribunal appears both as a legislative and as a judicial body. The judges write the Rules of Procedure and Evidence themselves and are authorised to amend them (Article 15 of the Statute titled "Rules of Procedure and Evidence" stipulates: "The judges of the International Tribunal shall adopt the Rules of Procedure and Evidence for work pending trial, for the conduct of court proceedings and appellate proceedings, for the acceptance of evidence, for the protection of victims and witnesses, as well as for other relevant issues". They, therefore, both make law and apply it.

The Rules of Procedure and Evidence are frequently amended. In eight years of the Tribunal's existence, it developed eighteen amendments to the Rules. Such frequent amendments of the Rules lead to legal insecurity.

The legal insecurity and inadequacy of the Rules of Procedure and Evidence is also augmented by the fact that right from day one they represented a mixture of different systems and that their interpretation often largely depends on the judge that is applying them and particularly on the legal system and tradition in the framework of which he was trained. Such a nature of the rules and their too frequent amendments make it impossible to establish a stable court practice. As a result, neither the defence nor the prosecutors nor the judges themselves are able to fully follow and master this practice.

What additionally undermines legal security is also the fact that the English and the French versions of the Rules do not always coincide as well as the fact that with respect to some issues, there is a discrepancy between the Rules and the Statute (which is an act superior to the Rules) so that the judges, at their own discretion, have the possibility to opt for solutions that are more convenient to them at the given moment. The discrepancies of the mentioned types that will be presented in this paper are only a part of these discrepancies.

The absence of separation of the legislative function from the judicial function also gives the judges the possibility and the authorisation to interpret these Rules depending on circumstances and without any control. The defence has no means or possibility to challenge the interpretation of these rules by the Tribunal even if that interpretation is evidently incorrect. It does not have either 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 as we shall see from some examples in the text below.

b.. The prosecutor's and the judge's functions are mixed

According to its Statute, the Tribunal was established as 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". This is how it was

defined also in the Rules of Procedure and Evidence.

Consequently, judging by the text of the Statute, the Tribunal's task is prosecution. This is clearly not a normal function of a court that should try the accused (the French version of the Statute, true, is more correct than the English version because it stipulates that the Tribunal shall "try in court" (juger) - "Le Tribunal international penal pour juger les personnes presumes responsables de violations graves du droit international humanitaire commises en ex-Yougoslavie depuis 1991" - however, in the text of the Rules of Procedure and Evidence, the word "juger", meaning 'try in court', has been replaced by the word "poursuivre", meaning "prosecute").

Both versions (the English and the French) of the Rules of Procedure and Evidence take the English version of the definition from the Statute. Describing the institution under discussion as the "International Tribunal (Court) for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991".

The mentioned inappropriate determination of the Tribunal's function is not solely limited to linguistic imprecision. It finds its practical implementation also in the fact that the Tribunal (i.e. the Trial Chambers and the Prosecutor's Office) represents a single organisational unit with a joint Secretariat. Such institutional unity of the Prosecutor's Office and the Court is unacceptable and inconceivable in any modern judicial system.

Further materialisation in the mentioned definitions of the proclaimed "prosecuting" role of the Tribunal is also effected through its actions that are characterised by violations of a number of rights of the indicted persons and prevention of providing adequate defence which will be discussed later on.

What is also indicative in the mentioned definitions is the fact that the Tribunal was established to prosecute "persons responsible.". Defining things in this way runs counter to the modern legal and social achievements, namely, in contemporary world, any normal judicial system is characterised by the fact that courts try "indicted

persons" who are presumed innocent until proven guilty (Article 14, paragraph 2 of the International Covenant of Civil and Political Rights stipulates: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."; a similar provision is also contained in Article 21 paragraph 3 of the Tribunal's Statute, but this provision runs counter

to the manner in which the Tribunal has been defined and the way it functions). The mentioned French versions of the Statute and the Rules

go even a step further to deny this fundamental premise of modern justice and they indicate that the Tribunal shall try in court or prosecute "persons presumed responsible." ("les personnes presumes responsables.").

This establishment of the "presumption of guilt" does not remain solely verbal but also has its practical implementation, to be discussed later on.

c.. Violation of the two-instance proceedings principle

Article 14, paragraph 5, of the International Covenant on Civil and

presumption innocence

political Rights, prescribes the right to two-instance proceedings in the following way: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." The mentioned provision evidently presumes a distinction between a lower and higher judicial instance, a thing considered normal and commonplace in all modern legal systems.

At the Hague Tribunal, the same judges are members of both first-instance (the term "first-instance" is used in the French version of the text, while the appropriate term from the English version is "Trial") and Appellate Chambers. Namely, Rule 27 on Procedure and Evidence reads:

"Rule 27

Rotation

1.. Permanent Judges shall rotate on a regular basis between the Trial Chambers and the Appeals Chamber. Rotation shall take into account the efficient disposal of cases.

2.. 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-heard cases.

3.. The President may at any time temporarily assign a member of a Trial Chamber or of the Appeals Chamber to another Chamber."

A judge, therefore, may be in a first-instance Chamber in one case and a member of the Appeals Chamber in another. Therefore, the decision of every judge acting as a member of a first-instance Chamber are subject to control by other judges who are in that case members of the second-instance Chamber, whereas in other cases that very same judge takes part in second- instance proceedings in the control of the work of these other judges that now appear as members of second-instance Chambers. This is how the system of mutual cross- control functions, impeding clear two-instance nature in trials and may result in deviations primarily towards a benevolent attitude and confirmation of first-instance decisions made by other judges when acting in second-instance proceedings, so that they can be expected to reciprocate this benevolence when their roles are reversed.

This double position of judges undermines considerably their independence and impartiality.

This organisation also gives the judge the possibility to take part in decision-making as a second-instance judge and at the same time to apply the stands from such decisions as the court practice established in second- instance proceedings in cases that he tries as a judge in first-instance proceedings.

The paradoxical 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 judge 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 second-instance level.

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 does not take place under any rules laid down in advance, but according to the decision of the President, who is authorised at any moment to temporarily assign a judge to another Chamber.

a.. The rules on detention and the practice when ordering detention - breach of the right to liberty

Before the Tribunal, detention is a rule and temporary release an exception (Rule 64 stipulates that "upon being transferred to the seat of the Tribunal, the accused shall be detained.", whereas Rule 65, paragraph (A): "once detained, an accused may not be released except upon an order of a Chamber").

This contravenes international law and particularly the International Covenant on Civil and Political Rights. In its Article 9, this Covenant proclaims the right to liberty as one of the basic human rights. Article 9, paragraph 3, inter alia, stipulates: "It shall not be the general rule that persons awaiting trial shall be detained in custody."

Stays not legal
int. rights
ICCPR only

The judges of the Hague Tribunal are not duty-bound to elaborate on their arrest warrants and detention decisions. This contravenes Article 9, paragraph 2 of the International Covenant on Civil and Political Rights, which reads: "Anyone who is arrested shall be informed, at the time of arrest of the reasons for his arrest and shall be promptly informed of any charges against him". This situation also contravenes principle 11/2 of the UN General Assembly resolution 173 (XLIII) of 8 December 1988, titled "A set of principles for protecting all persons placed in any form of custody or detention", according to which: "The person placed in detention and possibly his Defence Counsel shall be communicated without delay and in full the arrest warrant and the reasons explaining it".

Stays not Convention
only

Detention pending trial before The Hague Tribunal is of an indefinite duration. In practice, detention pending trial lasts very long and, bearing in mind the length of the trial itself, this problem becomes even more pronounced and more unacceptable. This long detention contravenes the first sentence of Article 9, paragraph 3 of the International Covenant on Civil and Political Rights. It reads as follows: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release".

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OON Stays not Convention

Too long a detention pending trial is not consistent with the court

practice of the European Court for Human Rights that applies the European Convention on Human Rights and Fundamental Freedoms where detention is limited to up to two years (in the FRY law it is up to six months). In the case of Momir Talic, the two-year period of detention is just about to expire and the trial has not even begun.

At The Hague Tribunal, there is no right to compensation of damage in case of unlawful detention either. This contravenes Article 9, paragraph 5 of the International Covenant on Civil and Political Rights, which reads: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

book Convention = How ECHR?

b.. Legality of sanctions

Article 15 of the International Covenant on Civil and Political Rights prescribes:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law at the time when it was committed. Nor shall a heavier be imposed than the one that was applicable at the time when the criminal offence was committed.

Presumptio
presumptio puniendi

2. Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which at the time when it was committed was criminal according to the general principles of law recognised by the community of nations."

This is about the rule of criminal and international law that usually finds expression in the sentence: "Nulum crimen sine lege, nula poena sine lege", and also comes under the corps of the universally accepted basic human rights.

When it comes to the legality of determining the criminal offences which are tried before The Hague Tribunal, this legality cannot be called into question even when it is about the offences committed before the Tribunal's Statute was adopted. For, they were stipulated as such by different international instruments (Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions on International Humanitarian Law), as well as by national Criminal Codes. However, no international norm envisaged sanctions for violation of international humanitarian law before the Tribunal's Statute adopted in May 1993. Penalties are prescribed for the crimes from this group stipulated by the Criminal Law of SFR Yugoslavia and all the states formed in that space. Namely, for each offence a separate minimum and maximum penalty may be imposed within the scope of the general minimum and maximum penalty applicable in the respective legal systems.

stajanje u zloglasu!

However, the Tribunal's Statute stipulates penalties very vaguely. This is inappropriate for modern criminal law. Article 24 of the Tribunal's Statute prescribes:

"The first-instance Chamber shall pass only prison sentences. When determining the terms of imposing a prison penalty, the first-instance Chamber shall be guided by the general practice of passing

prison sentences applied by the courts in the former Yugoslavia."

The former Yugoslavia's Criminal Code stipulated as the heaviest penalty the term of imprisonment of up to 15 years and exceptionally a 20-year term but only as a substitute for the death penalty.

However, the Tribunal's Rule of Procedure and Evidence also contravenes even the thus formulated Article 24 of the Statute. Namely, Rule 101 stipulates the possibility of passing a life sentence: "The persons found guilty by the Tribunal may be given a term of imprisonment that may go up to life sentence". In addition, it is noteworthy that the Rules of Procedure and Evidence, as a document containing procedural rules should not even regulate the term of imprisonment because this is an issue governed by criminal substantive law.

Stay no rule Regels

This evident discrepancy between the Rules and the Statute as the superior of the two cannot be denied by the claim that the quoted Article 24 of the Statute recalls the conditions of serving prison sentences in the former Yugoslavia. Namely, it is clear that that provision concerns the duration of prison sentences in the former SFRY as this was the only thing that could be determined by the courts. The same cannot be said of the conditions of imprisonment that the courts do not deal with. The French version of the Statute is even more explicit on the matter. Namely, instead of the expression "general practice regarding prison sentences in the courts of the former Yugoslavia", this version uses the words "la grille generale des peines d'emprisonnement appliquee par les Tribunaux de l'ex-Yougoslavie" ("General frameworks for determining prison sentences applied by the courts in the former Yugoslavia"). The term "grille" denotes the frameworks, i.e. the permitted range for determining the length of prison sentences. This interpretation of ours is also confirmed by the UN Secretary General's report of 3 May 1993, which clearly states that: "when determining the duration of prison sentence, the first-instance Chamber shall be guided by the general frameworks for determining prison sentences applied in the courts of the former Yugoslavia".

Finally, it should be pointed out that in its practice so far the Tribunal passed prison sentences largely exceeding the maximum prison sentence that could be passed in the former SFRY.

c.. Absence of reasons for exclusion of criminal responsibility

Neither the Statute nor the Rules envisage any reason for the exclusion of criminal responsibility. However, modern criminal law, i.e. the general principles of criminal and international law, generally recognise and accept the existence of reasons for the exclusion of criminal responsibility (such as necessary self-defence, extreme need, coercion, etc.).

In its practice, too, the Tribunal does not take into account the existence of such circumstances. For example, in the case of Drazen Erdemovic, the Tribunal refused to treat coercion as a basis for the exclusion of responsibility but simply as an extenuating circumstance when deciding how heavy a penalty to impose. (According to Erdemovic's claim, which the Tribunal accepted as justifiable, he had actually been threatened with death unless he committed the crimes of murder for which the Tribunal later tried him).

d.. Violation of the right to defence by treating elements relevant for defence as confidential

In its work, the Tribunal has the possibility to issue sealed indictments (Rule 53 on Procedure and Evidence, titled "Non-disclosure of Indictment", paragraph (A) stipulates: "(A) In exceptional circumstances, a Judge or a Trial Chamber may, in the interests of justice, order the non-disclosure to the public of any documents or information until further order."). One cannot challenge the right of the prosecuting organs to prosecute suspects without disclosing that they are after them. However, it is not legally acceptable and sustainable that a given person is aware that proceedings have been initiated against him and, in particular, that the indictment has been issued against him without making it possible for him to learn why he is being prosecuted and by keeping that fact confidential. Thus, for instance, in the case against Zeljko Raznatovic Arkan, the Tribunal announced that Arkan had been indicted without letting the public or the accused learn about the contents of the indictment.

We also wish to point out that the quoted provision (which, as such, is itself inappropriate for modern law) stipulates the keeping of indictments confidential (even vis-à-vis the accused), as well as other documents and information as an exception while, in practice, this is increasingly becoming a rule.

The prosecutor forwards too late to the Defence Counsel the data on the identity of the witnesses and the victims, as well as these witnesses' allegations, i.e. the claims regarding the victims against the accused, so that the Defence Counsel does not have enough time to collect data and evidence to possibly refute all these allegations and claims. The Tribunal tries to justify this practice by reasons of security of the witnesses and the alleged victims. However, an institution that has at its disposal all the means available to the Tribunal quite certainly will not find it a problem to simultaneously provide security to witnesses and alleged victims and give the accused and his Defence Counsels enough time to prepare the defence.

An extreme scenario based on this approach is the possibility, permitted under Rule 75 on Procedure and Evidence, to keep the identity of a witness or a victim a total secret until the very end and for the witness to be heard by means of various technical devices (picture or sound distorting devices or closed-circuit television; by giving a witness a pseudonym, etc.). These methods make it impossible to establish a given person's identity. Such action makes it impossible for the Counsel to prepare the defence and by its nature opens up the possibility for manipulation rather than contributing to protecting a given person. Namely, when a witness is heard on an actual event that has really taken place, the accused can conclude based on the actual contents of the witness hearing which particular person is speaking, so that keeping identity a secret does not make much sense. However, it gives exceptional advantage to false witnesses and victims, who may make statements without any risk to themselves about something that never happened. Namely, their identity is kept a secret and the accused cannot conclude who they are based on the contents of their statement as they testify about something that never happened.

The above mentioned methods are used in particular to violate Article 14 on the International Covenant on Civil and Political Rights that protects the right of the accused in the proceedings and whose

DEFENSE

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paragraph 3, inter alia, stipulates that:

"3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

1.. to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

2.. to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

..The above mentioned methods also violate the similar provisions of Article 21, paragraph 4, items a) and b) of the Tribunal's Statute.

a.. Disproportionate difference between the terms of work of the Prosecutor's Office and the Defence

The Prosecutor's Office has disproportionately more favourable terms of work than the terms and means available to the Defence. Not only is

this unfair but also, inter alia, violates the right to defence, particularly in the part concerning the above quoted Article 14, paragraph 3, item b) of the International Covenant on Civil and Political Rights (as well as Article 21, paragraph 4, item b) of the Tribunal's Statute).

Namely, the Prosecutor's Office has offices in several towns in the territory of Yugoslavia, has a large number of investigators and an unlimited capacity of access to all cases before the Tribunal. The Defence Counsels do not have any of this, i.e. have it but to a much more moderate extent. Thus, for instance, in some of the cases (particularly those against the highest officials of the Republika Srpska that are on trial - Momcilo Krajisnik and Biljana Plavsic), the problem arose of actual feasibility for the Defence Counsels to read all the documents submitted by the Prosecutor's Office that have so many pages that the usual group of several Counsels would need several years of full-time work to read only once the contents of the submitted documents.

The costs of litigation before the Tribunal are so high that no accused can afford to pay them. The Tribunal pays Defence Counsels ex officio and the amounts of their fees are exceptionally high, particularly if viewed from the Yugoslav perspective and measured by our yardsticks. However, in real terms, even these amounts are inadequate to meet the overall needs for a quality defence compared to the formidable means and possibilities available to the Prosecutor's Office. In addition, by employing this method of paying the Attorneys, which is a rule rather than an exception, which would be normal, the Tribunal's Secretariat keeps the Defence under control and undermines its independence.

b.. Violation of the principle "audiatur et altera pars" in some cases

Rule 94 on Procedure and Evidence, paragraph (A) stipulates that: (A) A Trial Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof". This rule, otherwise widely accepted in procedural legislation, becomes problematic before The Hague Tribunal because allegations made by the mass media are often

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considered as generally accepted facts related to the Yugoslav crisis and have, as a result of frequent repetition, acquired the character of notorious facts. In a situation when the judges, as a rule, do not have enough preliminary knowledge about the overall context of the events underlying the ongoing proceedings, which will be discussed later on, the mentioned procedural possibility poses a big treat to the accused placing him at a great disadvantage.

Paragraph (B) of the same rule prescribes: "(B) At the request of a party or proprio motu, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to matters at issue in the current proceedings". Notwithstanding the fact that it is

obliged to previously hear the parties, meaning to also give the possibility to the accused to plead, the Trial Chamber may take as proved, even if the accused challenges them, the facts established in the course of some other proceedings before the Tribunal since the quoted provision only envisages the obligation to hear the parties but

not the obligation to supply proof again if the accused (or possibly the Prosecutor) claims that these facts have not been correctly established. Although the facts already proved in another case are at issue here, perhaps the facts proved in these other proceedings are not important for the accused to the extent that he would challenge the Prosecutor's allegations thereon; namely, they do not significantly affect the verdict in that case and therefore the accused may not wish to enter into a debate thereon. However, in the case where later on these very same facts are taken as established and

proved, they may be of major importance to the accused and the accused

will not be given the possibility for presenting new evidence. Given that in different cases the accused are different and that the Prosecutor's Office is the same in all of them, and given that the Prosecutor's Office decides when it will issue a particular indictment, it has the possibility to adjust the sequence of indictments submitted, so that the same disputable issue in particular

earlier proceedings will appear as an issue of no particular importance to the accused. In some later proceedings, however, the same issue may be of crucial importance to the contents of the verdict

and the position of the accused and may make the accused in the later-on initiated proceedings face a situation where he will not be able to challenge the Prosecutor's allegation that will decide his fate.

In the mentioned way, the anyway inequitable position of the Defence vis-à-vis that Prosecutor is additionally aggravated and the right of the accused to effectively challenge the Prosecutor's allegations and succeed in having evidence supplied in his favour is seriously undermined. And this right is also stipulated and protected by Article

14 of the International Covenant on Civil and Political Rights (as well as by Article 21 of the Tribunal's Statute).

c.. Inadequate qualification of the Tribunal's judges to try people due to lack of knowledge of the historic, political and civilisation context in which the events of relevance to the trial took place

In the Tribunal's work so far, the ignorance is in evidence among judges and the officials of the Prosecutor's Office (Chief Prosecutor,

Deputy Prosecutor and other personnel in the Prosecutor's Office) of the social and historic milieu in which the events under trial took place and in which the protagonists of those events, including the

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accused, lived and came from. These officials have come from different parts of the world and, as a rule, do not even speak the languages spoken in the former SFRY. Their knowledge of the history, political situation, customs, habits, and other civilisation features of the region, is more than inadequate and often based almost exclusively on the knowledge gained through the media. To illustrate this by an example, at the trial of the Celebici case, when one of the judges asked who the Ustashi mentioned in the proceedings were, the Prosecutor did not know how to answer.

This situation leads to the judges, whose half-knowledge and ignorance are otherwise based on information gained through the media, falling prey in the course of proceedings to further manipulations and accepting claims also based on media and other propaganda campaigns. All this leads to the accumulation of untruths and half-truths that are increasingly difficult to challenge. Even the Prosecutor's Office's stands are sometimes drastically unfavourable for the accused not out of malice but due to inadequate knowledge or a distorted perception of particular issues that people at the Prosecutor's Office have.

Having in mind the perception of the Yugoslav crisis world-wide, its causes, historical background and development, this state of affairs clearly produces negative effects primarily and to the largest extent against the accused on the Serb side.

d.. Disrespect of the assumption of innocence/ establishment of the assumption of guilt

We have seen that The Hague Tribunal has been defined as the organ for "the prosecution of persons responsible" (i.e. according to the French version "persons presumed responsible") and that its set-up, where the institutional inseparability of the court Chambers and the Prosecutor's Office prejudices the the necessary impartiality of trials required by modern law, and particularly respect for the presumption of innocence stipulated in Article 14, paragraph 2, of the International Covenant on Civil and Political Rights, which reads: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." (the presumption of innocence is even stipulated in Article 21, paragraph 3, of the Tribunal's Statute, although the Tribunal has been defined, set up and is functioning in contravention of that presumption).

Disrespect for the presumption of innocence/ establishment of the presumption of guilt has in practice been particularly pronounced through the presentation of the indictments of the general context in which the events on trial took place and particularly in the indictments against high-ranking military or political leaders. These presentations of the general context often make up quite a large part of the total text of the indictments. Through this general context, a political situation is described where whole peoples are charged with particular behaviours, with the "political guilt" of the Serb people coming to full expression (hegemonic aspirations, terror against minorities, ethnic cleansing, aspirations towards creating a Greater Serbia, etc). This, by the way, contravenes the principle of individual responsibility that has been generally accepted in modern criminal law. It also contravenes the *raison d'être* of any criminal court, including The Hague Tribunal, that was, as is often mentioned in the debates in its favour, established precisely in order to remove

*p. Presumption
in violation*

collective responsibility from a people for the crimes committed by individuals. Based on the established claims within a general context, individual responsibility is then derived. Namely, the thus established general context further allows the Prosecutor - at least according to his own view of things and as can be unequivocally concluded from his behaviour - to provide very scant information on what specifically the defendants did, when, where and against whom they committed the crimes they are charged with, etc. As a result, the accused face a situation where they have to defend themselves both against the general context allegations and against inaccurate concrete allegations, in fact to defend themselves against whatever one can conclude based on such indictments that the Prosecutor has charged them with.

The broadly defined and perceived concept of so-called "command responsibility" also contributes to undermining the assumption of innocence and the request for individual and subjective responsibility. Here, the relationship between the accused and the event for which he is on trial can be so distant and indirect that neither according to his formal powers nor according to his real influence he could have contributed to either the direct commission of the given crime or could have prevented it in any way, nor could he even have learned about it. A typical example is the case of Momcilo Krajisnik who, as President of the Assembly of Republika Srpska, could not have either formally or factually influenced the events and crimes that he is blamed for.

In a situation when an individual's responsibility is largely based on a broad political and even historic context and in a situation when neither the judges nor the employees of the Prosecutor's Office have any sufficient knowledge about that context, as already mentioned, it is hardly possible to establish facts correctly and apply law in an appropriate manner. There are even certain absurd situations, as in the Tadic case, for instance, when the Prosecutor arguing in favour of the claim on the continued tendency among Serbs towards the "ethnic cleansing" of other peoples also proposed a study of a certain "expert witness" whose identity had been kept confidential (expert witness P) and proved the mentioned tendency by referring to a paper by historian Vasa Cubrilovic presented on 7 March 1937 to the Serbian Cultural Club. Cubrilovic was in favour of Yugoslavia concluding a treaty on the exchange of population with Turkey and possibly with Albania, just as already done by other Balkan countries following the Balkan wars, and the practice commonplace at the time, which only we had not resorted to. Cubrilovic presented the mentioned proposal in a private capacity, as a scholar, and, as is well known, this proposal was never accepted by the authorities.

In determining the above mentioned general political-historical-legal context, it is noteworthy that there is a discrepancy between the claims made by the Prosecutor's Office and the contents of the decisions made by the Tribunal and presentations by some of the judges, who are incidentally eminent legal experts, in their research papers. Thus there is in the indictments the claim that the former Yugoslav republics decided to 'leave' Serb-dominated Yugoslavia. This is regarded as acceptable whereas the political reactions of the Serbian people are treated as criminal acts (the establishment of the municipal communities permitted under the Constitution, or of the representative bodies through which they could articulate their

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interests, etc.). That Serbian people does not wish to be dominated by other nations in the separated republics and wishes either to preserve the SFRY or to remain even in the truncated Yugoslav state or even to have its own canton in the seceded republic. At the same time, one of the most eminent judges of the Tribunal and its former President Professor Antonio Cassese in his book *Self-Determination of Peoples*, A Legal Re-Appraisal (Cambridge, Cambridge University Press, 1995) noted that secession (external self-determination) by the former Yugoslav republics contravened both international law and the Yugoslav constitutional system. This drastic difference in the assessment of events is of crucial importance when determining the above mentioned context because in the given example the reactions of the Serb people represented the defence of their own rights against the unconstitutional secession that was contrary to international law. The claims by the Prosecutor and the statements by the Tribunal were contrary to certain generally known facts - thus it is generally known world wide that in Yugoslavia which according to claims was dominated by the Serbs from 1945 to 1980 virtually absolute power was wielded by Josip Broz Tito who was half-Croat and half-Slovene as well as that after that there was a practically con-federal system in place that did not allow the predominance of any of the republics (those better versed and the Prosecutor's Office and the Tribunal should be among them, know that the percentage of Serbs in the SFRY was lower than the percentage of Muslims in Bosnia-Herzegovina, that in the period from the Second World War up to the outbreak of the war in the early 1990s only one Serb served as Federal Prime Minister, notably Petar Stambolic in the 1960s, that in the JNA the command over the most important sectors like air force, air defences, the Navy, etc. was almost as a rule given to Croats and Slovenes and that the percentage of Serbs in the JNA command staff was lower than the percentage of the Serbs in the total population, etc.).

e.. Violations of human rights protected by International Law during the arrest and the transfer of the accused to the Tribunal

The Rule 58 of Procedure and Evidence of the Tribunal stipulates: "The obligations laid down in Article 29 of the Statute shall prevail over any legal impediment to the surrender or 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."

We shall not at the moment tackle in detail the question whether an act of a hierarchically inferior legal power, which is supposed to deal only with the procedure and evidence before the Tribunal (since the legislative competence conferred to the judges by the Statute of the Tribunal is limited to those questions only), can determine the relations between a superior act and some other acts of a different nature. But we could observe that the above quoted article does not include the obligation of respect of the human rights guaranteed by the International law during the arrest and the transfer of the accused to the Tribunal (this obligation cannot in any way be derogated since those rights belong to the *jus cogens*).

In many cases the accused were arrested, either by the state authorities or by some informal groups, outside the procedures prescribed by national laws and they were transferred to the Tribunal also without applications of such procedures. Those accused were also

deprived of the right to the protection by a court. This was the case for example with Mr. Milomir Stakic, Mr. Momir Talic, Mr. Dragan Nikolic, Mr. Slobodan Milosevic, Mr. Steve Todorovic, Mr. Momcilo Krajisnik, the twins Mr. Miroslav and Milan Vuckovic etc.

The above mentioned conducts are contrary in the first place to the provisions of the Article 9 paragraphs 1 and 4 of the International Covenant on Civil and Political Rights which reads as follows:

"Article 9

1. Everyone has the right to the liberty and the security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

The above mentioned conducts are also in contravention of similar provisions of other international documents as well as of general principles of criminal procedure as recognized by civilized nations.

Since the persons in question were arrested and transferred to the Tribunal in an unlawful way, they are entitled to a restitutio in integrum.

f. Breach of the provisions of the Tribunal's Statute and the Rules of Procedure and Evidence in atypical conditions of trying Slobodan Milosevic

Finally, in the case against Slobodan Milosevic that is taking place in an atypical manner, as a result of his refusal to recognise the Tribunal, when the accused appeared before the Tribunal for the first time, the indictment should have been read out to him in accordance with Article 20 of the Statute and Rule 62 of Procedure and Evidence. This was not done because the Tribunal interpreted the accused's reply to the question of whether he wished to be read out the indictment that was: "That is your problem" as the accused's refusal to have it read out to him. The Tribunal was under the obligation to read out the indictment nevertheless in accordance with the mentioned Articles and the defendant's reply, which was neither negative nor positive but boiled down to a refusal to give a reply, should by no means have been interpreted as negative and, contrary to the defendant's interest, make the Tribunal decide not to read it out because this was a question relating to the defendant's procedural right where the interpretations must always go in the direction which favours the accused more.

Given the mentioned omission it can be considered that the proceedings against Slobodan Milosevic was not initiated in a legally proper manner.

* * *

Bearing in mind all of the above examples and our wish to contribute to all the trials before the Tribunal taking place in accordance with international law and that human rights and fundamental freedoms of the accused be respected and that the perpetrators of violations of international humanitarian law are tried and judged in a legally

proper manner based on facts, we propose that the relevant Trial Chambers should approve to us, the members of the following group, to appear, each of us as a representative of the whole group, before them and present the stands on issues regarding respect for international law in the given proceedings:

Professor Kosta Cavoski, L.L.D.

Professor Zagorka Jekic, L.L.D.

Professor Ljubisa Lazarevic

Professor Ratko Markovic, L.L.D.

Professor Zoran Stojanovic, L.L.D.

Professor Djordje Lazin, L.L.D.

Professor Mirjana Stefanovski, L.L.D.

Assistant Professor Aleksandar Jaksic, L.L.D.

Assistant Professor Milan Skulic, L.L.D.

Assistant Professor Branko M. Rakic, L.L.D.

Assistant Professor Sasa Bovan, L.L.D.

Assistant Aleksandar Gajic

Assistant Bojan Milisavljevic

To join or help this struggle, visit:

<http://www.sps.org.yu/> (official SPS website)

<http://www.belgrade-forum.org/> (forum for the world of equals)

<http://www.icdsm.org/> (the international committee to defend Slobodan Milosevic)

Press Release . Communiqué de presse
(Exclusively for the use of the media. Not an official document)

PRESIDENT

PRESIDENT

The Hague, 27 November 2001
JD/P.I.S./640-e

Please find below the full text of President Jorda's address to the UN General Assembly on 26 November 2001 in New York.

ADDRESS BY HIS EXCELLENCY, JUDGE CLAUDE JORDA,

PRESIDENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, TO THE UN GENERAL ASSEMBLY

Mr. President, Excellencies, Ladies and Gentlemen,

It is a great honour for me to address your distinguished Assembly once again, as I present the eighth annual report of the International Criminal Tribunal.

I first wish to express my deep gratitude for the support you have always afforded our institution.

Two years have already elapsed since the judges demonstrated their confidence in me by electing me President of the International Tribunal. I am deeply honoured by their decision to display their confidence in me once again and I will endeavour to show myself worthy. As such, I am in a position to pursue the reform work initiated during my previous mandate.

I would like to share with you my satisfaction with the situation of the International Tribunal. It has changed for the better in the last two years. Many arrests have been carried out, a large number of judgements have been rendered and several new trials have opened. In addition, the reform process which we undertook in January 2000 has continued to expand and is starting to produce initial results.

Nonetheless, I remain concerned by two difficulties which I believe constitute obstacles to the establishment of a deep-rooted and lasting peace in the Balkans and which cannot be resolved without your active co-operation. 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. The second difficulty lies in the need to adapt the fulfilment of the International Tribunal's mission to the recent political upheavals both in the former Yugoslavia, in particular with the arrest of Slobodan Milosevic, and on the international scene, in view of the tragic events of 11 September 2001, which made the fight against terrorism a new priority for the international community.

By way of introduction, I will provide you with a brief overview of the current situation of the International Tribunal. Second, I will discuss the reforms which we undertook in order to try the accused currently in detention within a reasonable timeframe and then go on to assess the status of co-operation between the International Tribunal and the Balkan States. Lastly, I will present the International Tribunal's prospects for the years ahead and the principal directions I would wish to take in order to bring the mission you conferred on us to the swiftest possible conclusion.

1 - The Tribunal is now operating at full capacity.

The number of people who have been arrested or who have voluntarily surrendered has increased considerably over the past year. Fifty accused are now in detention in The Hague. As a result there has been a significant increase in the activity of the Chambers. Over the last 12 months, the Trial Chambers have pronounced six judgements on the merits affecting seventeen of the accused and issued a great many decisions in proceedings which are, as you know, long and complex. They analysed the testimony of several hundred witnesses and reviewed several thousand documents. To cite you but one example: in the Dario Kordic case, which lasted 20 months, the judges pronounced some one hundred decisions during the proceedings in addition to the final judgement.

In the Appeals Chamber, the judges issued some thirty interlocutory decisions and three judgements on the merits concerning seven of the accused. Its case-law has undergone major developments and has been consolidated on some of the fundamental points of international criminal procedure and humanitarian law.

The Registrar of the International Tribunal meanwhile has performed his judicial management duties and made the best possible use of the funds you generously allocated to the Tribunal, without which it could not fulfil its mission.

2 – The ever-improving international co-operation in arresting the accused and gathering evidence still has some way to go.

This development is partly the result of the enhanced co-operation of all the member States, which have participated to a greater degree in arresting the accused and gathering evidence. This affords me great satisfaction since, need I remind you, the International Tribunal does not have its own police force to implement its decisions and must, as such, rely on the unfailing support of all the States which you represent.

In this respect, some of the political changes which the Balkans have recently witnessed are encouraging. 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. Likewise, the advent of a democratic force in the Republic of Croatia almost two years ago has led to enhanced co-operation between that State and the International Tribunal.

It nonetheless remains that this new resolve to extend co-operation, which is still too inconsistent, has yet to be proven with regard to all the accused. In the same vein, it must also be broadened in respect of the enforcement of sentences since, under the Statute, the member States must receive the convicted persons. I will return to this in a moment.

3 – The expanding reform process is starting to produce initial results.

This year will undeniably have been marked by the implementation of the reforms initiated two years ago by the judges of the Tribunal with your assistance in order to accomplish the mandate we received from the community of nations with even more expeditiousness.

The reforms include both external aspects, requiring further material and human resources from the United Nations, and internal aspects, calling for an in-depth rethink of the structures and operating methods of the International Tribunal. In this regard, allow me to remind you of the three principal objectives sought by the reforms. First, they must expedite the pre-trial phase. Next, they seek to increase the International Tribunal's trial capacity by providing it with a pool of *ad litem* judges to be called upon to hear specific cases. And lastly, they are intended to make the procedures more responsive to the International Tribunal's over-riding need for expeditiousness, in particular, by bolstering the judges' powers during the proceedings (for instance, they may fix the number of witnesses called to testify and determine how long the parties have to present their cases).

The reforms came into force pursuant, in particular, to Security Council resolution 1329. On 30 November 2000, the Security Council approved the creation of a pool of *ad litem* judges and amended the Statute of the International Tribunal to this end.

Furthermore, so that the different organs of the International Tribunal – the Chambers, the Office of the Prosecutor and the Registry – co-ordinate more closely in setting the judicial priorities and so that resources are better managed, a Co-ordination Council and a Management Committee were created in January 2001.

Other reforms designed mainly to improve the operation of the two International Tribunals' Appeals Chambers are currently being implemented. In broad terms, this means providing the Chambers with all the tools they need to cope with the considerable increase in their workload and to ensure that the case-law of the two International Tribunals is more consistent.

The International Tribunal should soon also have a genuine defence organ. Ensuring that the trials are balanced has been one of the everyday concerns of the judges since the Tribunal was established. Beyond counsel actually being in court, which is already a reality, such balance requires that there be a defence counsel organisation guaranteeing their independence and professional ethics. The bar should come into being in 2002 once the necessary consultation has been completed, in particular with defence counsel.

With the gradual adoption of these reforms, the International Tribunal's judicial activity has increased. The first six *ad litem* judges called to serve at the International Tribunal in early September 2001 began to hear three new trials straight off. Thus, for the first time in its history, the International Tribunal is conducting four trials at once. Furthermore, as of January 2002, three more *ad litem* judges will serve at the International Tribunal, bringing the total number of *ad litem* judges to nine. Accordingly and as I already announced to you last year, the Trial Chambers will be holding six simultaneous trials on a daily basis, which will make it possible for the International Tribunal to double its trial capacity and complete first instance proceedings in the year 2007, with the proviso, of course, that all the accused are arrested forthwith.

4 – Arresting all the accused and reorienting the International Tribunal's judicial priorities should be tied in with the reform process.

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 even though its authorities claim that they wish to co-operate with the International Tribunal.

Yet, it is these individuals, who held high military or political office, that must first and foremost answer for their acts before the International Tribunal which was set up *inter alia* as the guarantor of peace and security in the Balkans. Should they not all be arrested in the near future, it will be impossible to achieve the mission of the International Tribunal within the intended timeframe.

Furthermore, this hope must not mask the fact that there have been significant political changes both in the Balkans and on the international scene, political changes which lead us to reflect together on the future priorities to assign to the International Tribunal.

The States of the former Yugoslavia, now more inclined towards democratic openness than before, are claiming ever more insistently the legitimate right to try the criminals in their territory themselves. At the same time, they are even proposing to establish truth and reconciliation commissions.

Along with the changes in the Balkans, the fight against terrorism - now upmost in the minds of the international community - must more than ever prompt us into bringing our mission to a swift close. This is especially so given that voices challenging the legitimacy and credibility of the Tribunal called to try crimes, some dating back over 10 years, are now beginning to make themselves heard amongst public opinion.

In addition, with the establishment of the future International Criminal Court, the States will certainly mobilise themselves further to ensure that we finish our mission as rapidly as possible so that they do not have to bear the enormous financial costs which the simultaneous operation of three international criminal courts represents.

The upheavals must prompt us to rethink in concert what judicial priorities to assign to the International Tribunal for the years to come. Admittedly, we can still introduce other reforms in order to accelerate the trials further and I will actively devote myself to doing so during the current mandate. However, it must be noted that every aspect of the proceedings, from the pre-trial management to the appeals judgement, has already been substantially improved and can no longer be appreciably amended without calling into question the principal features of the international criminal trial established under the Statute.

From this angle, I wish to reiterate the concerns of all the judges from both International Tribunals who, in the presence of the representative of the United Nations Secretary-General, met in Dublin this September and discussed the results and prospects of their mission after eight years of activity. They undertook a critical review of the legal rules available to them for fulfilling their mission and debated whether the Tribunal should not focus even more on prosecuting those crimes which constitute the most serious breaches of international public law and order, that is mostly, the crimes committed by the major military leaders and high-ranking officials. In this respect, I wish to pay special tribute to the selective prosecutorial policy of Mrs. Del Ponte, Prosecutor at the International Tribunal, who shares our core concerns in this matter and who will undoubtedly so inform the Security Council in the near future.

We also believed it appropriate to reflect on new ways to encourage the "relocation" of some cases - that is, to have the courts of the States of the former Yugoslavia conduct the trials. In addition to lightening the International Tribunal's workload, the referral of some cases to the domestic courts should make the trials more transparent to the local population and make a more effective contribution towards reconciling the peoples of the Balkans. Yet, there can be no doubt that should we choose to go further down this avenue, we will be responsible for ensuring that these courts have the resources required so that they may accomplish their mission of justice with absolute independence and impartiality and with due regard for the principles governing international humanitarian law and the protection of human rights. For this reason, it will be our duty to ensure that, with the gradual relocation of cases of lesser importance for the International Tribunal, war criminals do not enjoy impunity, and that trials are not trials only in name. Let us never forget the voice of the victims, who have so far placed their trust in our Tribunal.

It will therefore fall to the international community to participate more actively and promptly in reconstructing the judicial systems of the countries created out of the former Yugoslavia. Any "relocation" process can only occur within a judicial system rebuilt on democratic foundations, which presupposes, among other things, the development of training programs for local judges, as well as perhaps also the sending of judges and international observers.

From this same perspective and on behalf of the International Tribunal, I supported the establishment of a truth and reconciliation commission in Bosnia-Herzegovina. In my view, it is a mechanism complementary to the International Tribunal's action and, moreover, one that is essential for the reconstruction of the country's national identity.

I will conclude this presentation by noting that, at the outset of its third mandate, the International Tribunal simply has to reflect more thoroughly on the meaning and scope of the mission it received from you.

All of the judges and I have reflected on this, and I can assure you that we are now more determined than ever to use all means - insofar as our procedural and organisational resources allow - to meet the expectations of the international community and to bring the end of our mission within sight. It should, however, be realised that the judges do not hold all the keys for doing so. Some, such as arrests and evidence, are in the hands of the States, others are held by the Office of the Prosecutor, and yet others belong to the international organisations.

Even so, I wish you to know that we are ever mindful of the fact that, in fulfilling the mission you conferred on us, the voice of the victims and reconciliation between peoples must guide our reflection as they must guide your decisions. For while it is true that there can be no peace without justice, I will make my own the words of a philosopher who said that a society cannot live in anger with itself forever, and add that it is towards this goal that the International Tribunal is striving. To understand the past in

order to better prepare the future.

I thank you for your attention.

Press Release . Communiqué de presse
(Exclusively for the use of the media. Not an official document)

OFFICE OF THE PROSECUTOR

BUREAU DU PROCUREUR

The Hague, 27 November 2001
GR/P.I.S./642-e

Please find below the full text of Carla Del Ponte's address to the UN Security Council on Tuesday 27 November 2001 in New York.

**ADDRESS BY THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA, CARLA DEL PONTE, TO THE UN SECURITY COUNCIL**

Thank you, Madam President,

I am grateful to have this opportunity to appear before the Council to update you on the work of the Prosecutor's Office in the two international Tribunals. It is my assessment that both the ICTY and the ICTR are poised to enter the most important phases of their existence, and are each about to begin their major criminal trials.

Much crucial work is still before us in both the ICTY and the ICTR, but we are also now in a position to begin to see how the Tribunals may complete their mandates. We are starting to consider what has been called our "exit strategy". I know that the Council is particularly keen to have an understanding of what my future prosecution policy will be, and how much work the Tribunals will have to do before they can complete their respective mandates.

Although there are substantial differences in the nature and complexity of the conflicts in the two continents - in the scale of the killings and the timescale of the events - it goes almost without saying that my focus in both situations is on the leaders. Any lower level cases that are going through the system can either be explained in terms of the history of the Tribunals' development, or they concern notorious individuals whose conduct stands out despite the fact that they had no formal position in any hierarchy. Instead, today I would like to explain two aspects of our policy. These aspects apply equally to Rwanda and to the former Yugoslavia.

First, we have not investigated all crimes. We have concentrated on the areas in which the worst massacres occurred. So there have not been in-depth investigations of every municipality or *opstina* in Bosnia or every *commune* in Rwanda. But we have established that both the genocide in Rwanda and the ethnic cleansing in Bosnia were highly organised criminal enterprises - centrally organised at the highest level, and pursued with enthusiasm at the regional and local levels.

Even at these command levels we are not dealing with a small handful of individuals, whatever impression the general public may have about how many architects there were. From the many thousands of significant targets, we have selected under 200 in each Tribunal, and we do not expect to prosecute even all of those. Many, many important crimes have therefore been left to be dealt with by national jurisdictions. To appreciate the scale of the undertaking, we have only to look at the internal Rwandan justice system, where we see in the traditional *gacaca* process that 11, 000 local jurisdictions, involving 260,000 local judges, will be dealing over a three-year period with 120,000 perpetrators of the genocide - in which between 800,000 and one million people died in the space of four months.

Second, one should not fall into the trap of polarising accused into big fish and small fish. A number of the accused under investigation in the ICTY and the ICTR played a very nasty role somewhere in between these two extremes - as key organisers and motivators at the district or local level. They had strong links to the central power base and were fully aware of the overall criminal enterprise, but they also fervently put the plan into action in their areas and had blood on their own hands. In the former Yugoslavia some of these individuals still occupy official functions and their activities are an obstacle to the peace process. In Rwanda the genocide exploded quickly in the areas where such people fuelled its flames, whereas in other regions, without these willing perpetrators the numbers of killings were lower and the massacres were less extensive. For the local people, the victims and the survivors, it was these people who brought their world to an end, not the remote governmental architects of the overall policy of genocide. Unless these local leaders are brought to justice in both Rwanda and the former Yugoslavia, the ordinary population will not come to terms with the past, and the process of reconciliation and building a stable peace will suffer accordingly. That is why these cases justify my attention and that is why the choice of cases to pursue is not at all simple. The crimes were highly organised, directed and implemented at a number of levels, each of which depended on the other.

We have previously given figures for remaining investigations - 36 for ICTY (involving a total of 150 accused) and 136 for ICTR (involving a total number of 136 accused, since each investigation there concerns a single target). The Council, however, should not think that these figures present the picture of a Prosecutor out looking for business, and ranging broadly over all possible suspects whatever their involvement. On the contrary, the figures represent, as I have said, only a fraction of the potential number of crimes or suspects, all of which involve mass murders, multiple killings, or other crimes at the very highest end of the scale of national or international crimes. In fact we turn most cases away.

If there is any public concern about the number of investigations, it is a concern about resources, because it cannot be a concern in terms of justice. There may be people who are saying after the events of 11 September that the world has moved on and the issue of the day is now terrorism, not past conflicts. We cannot take that view of international justice. There is now all the more reason for the international community to harden its resolve to pursue those responsible for genocide and crimes against humanity. It is neither credible nor honourable to give support to the war against terrorism while not doing everything possible to bring to justice those responsible for genocide in Rwanda, for Srebrenica and other massacres. As with the fight against terrorism, we delude ourselves if we think there is a quick and low-cost solution that does the job properly. The Tribunals must have sufficient means to do their job, and all the projections we make about outstanding workload are made on the assumption that the two Tribunals will be given the resources that we have sought in our budget submissions for the next two years.

Madam President, I know that earlier this month the Council held informal consultations to discuss the question of *ad litem* judges for the ICTR. Tribunal representatives were present to listen to the views being expressed, and certain concerns were relayed to me about prosecution policy. First, let me say that I strongly support the appointment of *ad litem* judges - for two reasons. We must increase our capacity to hold the trials of accused who have already been in custody for long periods. And we must also be able to process new cases within a reasonable time. These are separate compelling justifications for increasing the number of available Trial Chambers.

I understand that the Council is broadly sympathetic to the request for *ad litem* judges, but I also understand that you need more information from me about my prosecution policy.

Let me therefore give you specific details of my prosecution policy in the ICTR. Fifty-three accused are in custody: some cases have been dealt with; 17 accused are currently on trial, 25 are in custody awaiting trial, and over 20 are still at large, including major figures who have found refuge in countries outside Rwanda, and who are beyond the reach of any national jurisdiction.

Our investigations concentrate not on geographical areas of Rwanda, but on prominent figures in the command structures of the Government, the military, and in other walks of life such as the media, the clergy, the intelligentsia and the business world. The only prospect of bringing these people to justice lies with the International Tribunal, and we have demonstrated our ability to track them down. Our specialist tracking teams work often in the most difficult conditions to locate their targets, but it can be done, and it is being done. This year nine accused have been arrested so far.

As things stand, bringing existing detainees to trial in the courtrooms will take us well into 2005 or even beyond. In addition, I indicated at the beginning of this year that I intend to complete a further 136 new investigations, to bring our investigative mandate to completion by the end of 2004. That programme, which involves a maximum of 30 new indictments per year, appears to have caused some alarm, and I hope it is not being misunderstood.

The figure of 136 represented the very outside estimate of our future workload. The figure is the number of investigations, not the number of trials. Many factors will affect whether or not an investigation results in an actual prosecution. In a significant number of cases the accused are confirmed to be dead. Not all investigations succeed in gathering sufficient evidence. Not all accused can be traced or arrested, and the number of trials will be lower than the number of arrests because the accused can often be tried jointly. (In one current trial six accused are being tried together.) Working down from the outside number, our original estimate was that the 136 investigations might therefore result at best in 45 new trials, and perhaps even fewer.

What does that mean in additional years of work for the ICTR? Assuming, after the major prosecutions are past, that subsequent trials can be much more streamlined in terms of their proof, we are looking probably at another four years of trial workload for the Tribunal after the existing business has been processed. That is what we can expect from our investigations programme. Four years on to the end of 2004 would bring us to the end of 2008.

This year we are largely on course to meet our investigative targets. Nineteen cases are reaching the indictment stage now, and 21 other investigations are ongoing. It is true that some of these are suspects who were involved at the local level, but if I can give you just a single example - one of these targets is believed to be implicated in the killings of between 20 - 30 thousand people. That demonstrates the scale of the crimes we are continuing to address in Rwanda, even in our new cases.

For these ongoing investigations we will depend upon the close cooperation of States, including Rwanda itself. One new area that we are addressing concerns allegations of crimes committed during 1994 by members of the RPF forces. The success of those enquiries will be especially affected by the degree of support we have from the Rwandan Government. The extent of their collaboration remains to be seen. We also intend to move away from our policy of sealed indictments in favour of greater use of circulating arrest warrants openly through the INTERPOL red notice procedure and taking advantage of reward programmes for information leading to arrests. We are particularly interested in the situation in the Congo, and have begun to explore with the authorities in Kinshasa whether we can trace suspects there. It is essential that we do so.

Madam President, I believe in these circumstances my investigative strategy is fully justified by the facts. I am satisfied that cases are being carefully and properly selected for prosecution in the international forum. In addition, individual cases are constantly reviewed as to their viability, and are suspended or discontinued if need be. There is no reason of principle based on the public interest in the pursuit of justice that would justify a radical departure from the existing policy.

But I hope we shall not come to that point. *Ad litem* judges are required to deal swiftly with existing business, irrespective of the future court programme. If the capacity of the Tribunal were to be increased for this reason, there would certainly be a substantial shortening of the Tribunal's life. I agree with the estimate that existing trials could probably be completed by the end of 2004, and that the remaining trials could be dealt with by the end of 2008.

In the Office of the Prosecutor we are prepared to aim towards such a date, even if that means adjusting the content and presentation of the later trials accordingly. I am determined to address the quality and focus of our prosecutions. I have already set about changing the whole approach of my staff so that the emphasis at all times is on making the best use of resources. We must ensure that all activity, both in investigations and prosecutions, is specifically directed towards meeting the evidential and legal needs of the Chambers. I am resolved to present cases with much greater precision and focus than in the past, and to explore all available avenues to speed up the proceedings without losing the essential fairness of the trial process. If we do that, in my estimation the close of 2008 might be a realistic date for the end strategy for the trials in the ICTR.

Madam President, if I might now turn to specific issues for the ICTY, I can inform the Council that in The Hague we are also planning strategically for the future. Our programme of outstanding investigations publicly revealed in 1999 is under constant review. Four investigations relating to Kosovo and Macedonia have been added to the original list of 36 bringing the total to 40. A review of the status of these investigations has been carried out in recent weeks. Four have been successfully completed. A further four have been incorporated into other on-going cases. Six have been discontinued, and a further 10 have been identified as potentially suitable for prosecution at the national level. These 10 have been suspended pending a review in a year's time. The 16 remaining investigations are active and are now being resourced according to their priority. Together, the active and suspended cases involve 108 potential accused and an estimated 34 new indictments, approximately half of which might appropriately be dealt with by national courts. The deadline is still to complete the outstanding investigations by 2004.

There is an interesting possibility for an ICTY exit strategy, namely, as I have just suggested, that some cases might be referred to courts in the former Yugoslavia for prosecution. The Tribunal's Rule 11 *bis* already envisages the referral of cases, but it has not yet been used, and it is doubtful whether a suitable judicial process exists at the national level. Adequate measures have yet to be taken for the protection of witnesses. As the majority of the cases are from Bosnia and Herzegovina, I have therefore suggested in Sarajevo the idea of designing a special court in Bosnia and Herzegovina that would have an international component - or developing an existing State court to perform this special task. That court would deal with cases referred to it by the ICTY either during or after the completion of our mandate, and it might also deal with other sensitive war crimes cases which are presently submitted to my office for review under the "Rules of the Road" scheme following the Rome Agreement of 18 February 1996.

The idea of a national forum involving the participation of international prosecutors and judges to deal with war crimes cases has so far been well received by the Office of the High Representative, UNMIBH, the Presidency in Bosnia and Herzegovina, and by certain States. Much work would have to be done, including by this Council, to establish the required prosecutorial and judicial mechanism. My office stands ready to assist the development process in any way possible, since I am aware of the international community's desire to see both Tribunals finish their work in a timely fashion. If we began to design a special court in Bosnia and Herzegovina now, it might well be up and running by 2004, and able to begin taking accused in the kind of cases we have identified for our own investigations as being suitable candidates for national prosecution.

I would not, however, be ready to hand over prosecution of my cases to national courts as they now operate. War crimes cases are still politically sensitive in the region, and the international community must promote equitable national jurisdictions and legal institutions. The United Nations must have an important role to play in this regard.

I must speak also about State cooperation with the Tribunal, which remains problematic. It takes a great deal of time and effort to achieve cooperation and we do not yet enjoy full cooperation across the board in the former Yugoslavia. Some time ago the Council was seized of non-cooperation by Yugoslavia and then by Croatia. Last year I was able to report that the situation with Croatia had improved, but that full cooperation was not yet forthcoming. At present I can reiterate that in some areas we managed to make advances together with the Croatian Government, but there are still areas where progress is very slow (especially with production of documents). I am constantly in a constructive dialogue with Zagreb. I expressed my disappointment about the non-apprehension of General Gotovina and was assured that the Government remained committed to arresting him and transferring him to The Hague. However it appears that General Gotovina has been allowed to escape arrest, and I wish to bring that unsatisfactory situation to the attention of the Council. I also call on Croatia to overcome any remaining obstacles and stand firm on the path of full cooperation.

With the Federal Republic of Yugoslavia the picture is very complex and often discouraging. Working with Prime Minister Dindjic and the Serbian authorities at the Republic level, we have experienced good results in terms of arrests and access to evidence. The transfer of Slobodan Milosevic to the Tribunal was a groundbreaking event and a courageous step by the Serbian Government. But co-operation at the Federal level appears to be blocked for reasons of domestic politics. Despite their declarations, the Federal institutions obstruct the work of my Office. State cooperation does not begin and end with the surrender of accused. We need access to documents, archives and witnesses. At the Federal level, access to these important sources of evidence is being denied to us on the pretext that no domestic legislation authorises it. And while the Yugoslav Federal authorities continue to claim that an internal law must be enacted for the FRY to be able to cooperate with the Tribunal, I see no effort on their part to ensure adoption of such legislation, on the contrary.

Moreover, I regret to inform the Council that Ratko Mladic is residing in the FRY under the official protection of the Yugoslav Army. As an officer of the Yugoslav Army, General Mladic is said to enjoy military immunity, and he is being shielded from both national and international justice. To give another glaring example, the Council will recall the efforts we have made for years now to obtain the transfer of the three accused indicted for crimes in Vukovar. In November 1998, the Council adopted resolution 1207 stressing that no State may invoke provisions of its domestic law as a justification for its failure to cooperate, and calling for the arrest and transfer of the three Vukovar accused. Nevertheless, the Army continues to harbour them with the approval of the Federal Government. Instead of compliance with the specific demands of the Security Council, these indictees are allowed to defy the Tribunal publicly by making presentations of their books. The list of wanted persons sheltered in the FRY has grown longer, and instead of clear, unambiguous support to the Government of Serbia, instead of taking a clear stand on cooperation with Tribunal, the Federal authorities are doing everything possible to stop even limited cooperation by the Republic authorities, who

have been most helpful.

I have not had occasion to address the Council since the arrest and transfer of Slobodan Milosevic. I would like to express my gratitude to members of the Council and to all other States without whose insistence and support the transfer of Milosevic would not have happened. Last week a third indictment was confirmed against Milosevic - covering crimes in Bosnia and Herzegovina, including genocide. The support of States is essential for the work of both Tribunals and I would also like to record my gratitude to those countries who assisted in the recent tracking and arresting of several accused for the ICTR in Arusha.

Turning to Bosnia and Herzegovina, the most problematic issue is still cooperation with Republika Srpska. A law on cooperation was recently passed, and we are now very keen to see the concrete results of its implementation. As for the authorities of the Federation of Bosnia and Herzegovina, they have confirmed their full commitment to cooperation once again by the swift transfer to The Hague of four indicted senior Bosniak military staff.

The argument all too often put forward by Belgrade and Banja Luka, and - to a lesser extent - by Zagreb, that cooperation with the ICTY is threatening the political stability of the country is one which should not be taken at face value. Is it an easy endeavour for the Federation of Bosnia and Herzegovina to transfer a former Chief of Staff of the Army or Generals who are still widely regarded as war heroes? Although the authorities in Sarajevo do stress the political difficulties that may arise from their co-operation with ICTY, they do not invoke them as excuses for not cooperating.

Madam President, last week I visited Skopje in order to inform the authorities of the Former Yugoslav Republic of Macedonia about two new investigations opened by my Office in regard to the alleged war crimes by the NLA and Government forces. The Council will be well aware of the situation in that country. Despite the fact that all parties involved in the recent conflicts here agreed that the existence of the Tribunal has already had a very positive deterrent effect, I have to admit that I am deeply worried. Until now I have experienced no problems with activities of my Office in this country. I have had full cooperation from the Government so far, and I was assured by the President and the Prime Minister that I could count on their full cooperation in regard to any of my investigations. But the real test will come when investigations are pursued and if indictments are confirmed.

In conclusion I therefore appeal to the Council for its continuing support for the work of my Office, and especially ask the Council to insist upon the arrest of Radovan Karadzic and Ratko Mladic, whose continuing liberty is an affront to the authority of this Council, and mocks the entire process of international criminal justice. If we are seriously resolved to enforce the rule of law against those who commit acts of genocide, or crimes against humanity or terrorism, and if we want long-term stability in the Balkans, we simply cannot allow Radovan Karadzic or Ratko Mladic to escape justice, and we cannot talk in any meaningful way about the completion of the mandate of the International Criminal Tribunal unless they are brought to trial with the others in The Hague.

Madam President, those are the key issues I wished to bring to the attention of the Council. Finding long term and comprehensive solutions for criminal justice in the former Yugoslavia and Rwanda does not lie within the mandate or power of the International Tribunals themselves. As Prosecutor appointed by the Security Council I will fulfil whatever mandate is given to me in the pursuit of international peace and security.

I will be happy to answer questions and provide further details. Thank you.

Please note that this is not a verbatim transcript of the Press Briefing. It is merely a summary

ICTY Weekly Press Briefing**Date: 21.11.01****Time: 11.00 a.m.****REGISTRY AND CHAMBERS****Jim Landale, Spokesman for Registry and Chambers, made the following statement:**

First, I would like to announce that the President of the Tribunal, will be addressing the General Assembly in New York on 26 November and then the Security Council the following day. We will endeavour to provide you with the texts of those addresses once they have been delivered in New York.

Next, a reminder that tomorrow, Thursday 22 November 2001, the six new permanent Judges of the Tribunal will make their solemn declarations at 5.30 p.m. in Courtroom I. The new Judges, elected by the General Assembly on 14 March 2001, are:

Mr. Theodor **Merón** from the United States of America
Mr. Mohamed Amin El Abbassi **Elmahdi** from Egypt
Mr. Carmel A. **Agius** from Malta
Mr. Alphonsus Martinus Maria **Orie** from the Netherlands
Mr. Wolfgang **Schomburg** from Germany, and
Mr. O-gon **Kwon** from the Republic of Korea

On the same day, the Tribunal will host a Diplomatic Information Briefing, at which representatives from The Hague's diplomatic community will be given an overview of the work of the Tribunal and the challenges that lie ahead. They will be addressed by the President of the Tribunal, Judge Claude Jorda, the Prosecutor, Carla Del Ponte, and the Registrar, Mr. Hans Holthuis.

The following day, Friday 23 November 2001, during an extraordinary plenary session, the permanent Judges will elect the President and Vice President of the Tribunal and the new President will announce the composition of the Chambers.

We have received copies of the Defence brief in the Tadic case in French. Copies are available for you after this.

Finally, I want to announce the publication by the Outreach Programme of the latest volume of all the public indictments in BCS; a collection of all of the current case information sheets in BCS; and the Judges report of 13 September 2000 on compensation for victims.

Florence Hartmann, Spokeswoman for the Office of the Prosecutor, made the following statement:

The Prosecutor was in Skopje yesterday. In the statement she made there she announced that two investigations had been opened by the OTP on crimes committed in Macedonia during the armed conflict. The first investigation was related to crimes allegedly committed by Macedonian forces against protected persons, meaning civilians. The other investigation involved a number of crimes allegedly committed by the NLA. During yesterday's meetings with officials in Skopje, the OTP received clear commitment that the Macedonian authorities would cooperate fully on these two investigations and on all requests made by the OTP regarding information about crimes committed in Macedonia.

QUESTIONS:

Asked whether Pasko Ljubicic had arrived in The Hague, Landale replied that he had not yet arrived at the Detention Unit. He added that he would inform the media as soon as he had arrived there.

Asked for a comment on a statement allegedly made by Mr. Milosevic's lawyer in Belgrade that Milosevic had not asked for the two lawyers to be assigned to him as legal advisors, Landale replied that these two lawyers had been appointed to aid in Mr. Milosevic's defence, if he wanted legal advice, just like any other accused. Milosevic would be entitled to meet them, as the order stipulated, in a privileged setting. Mr. Milosevic did in fact request to see them on 26 October 2001, he concluded.

Asked why these two specific lawyers had been assigned, Landale replied that in discussions between Mr. Milosevic, the Registry and the Trial Chamber it had been decided that those two lawyers would be chosen. He added that he could not comment on what Mr. Tomanovic had said in Belgrade concerning any possible change of heart. The Tribunal had not heard about this officially.

Asked what 'in discussion with the Registry' meant, Landale replied that he did not know the details of the discussion. The idea was put to Mr. Milosevic that this was what would be happening and he was asked whether he had any ideas who would be suitable. The end result was that these two lawyers were chosen.

Asked whether Mr. Milosevic objected to these two names, Landale replied that he had not objected to these two names at the time.

Asked when this discussion between Registry and Mr. Milosevic happened, Landale replied that he did not know a precise date and whether it was a single discussion at a precise time. It might have been a correspondence that had taken place over a number of days.

Asked to confirm that it was 26 October that Mr. Milosevic had asked to see them, Landale confirmed that it was. He added that this was all indicated in the order.

Asked whether Mr. Milosevic had informed the Registrar that he rejected this idea, Landale replied that he had not as far as he knew. He added that he would check again but that he could not comment specifically on comments coming out of Belgrade. He reiterated that the Registry had not heard any specific objection at this time.

Asked whether Milosevic had asked to see them in the role of legal advisors, members of the International Committee for the Defence of Slobodan Milosevic, or as friends, Landale replied that he did not know what category he had placed them in, in terms of visits, whether as friends, supporters or legal advisors. All he knew was that Mr. Milosevic has requested a visit from them.

Asked whether Milosevic had requested a privileged visit on that occasion, Landale replied that Mr. Milosevic had always maintained that he preferred that kind of visit but he did not know whether that had been specified for these two individuals or not. Milosevic had always requested visits in a privileged setting, he concluded.

Asked if Milosevic refused to have them whether the order would be revoked, Landale replied that it would not be. He added that this was not being imposed upon him. It was giving him an option of legal advice in a legal setting from legal experts which was what every other accused could expect as well. The Tribunal would not force him to meet with them but he had the option to do so.

Asked if he could request someone else, Landale replied that he could not. He added that the Judges had settled on these two and these were the two he had the option of seeing. He went on to clarify that this order only concerned defence and this case at this Tribunal. Milosevic would be able, if he wanted, to see other lawyers who were working on cases that fell outside of this Tribunal or other legal matters that did not relate to indictments he faced at this Tribunal. That was not going to be prevented but these two were to help his defence at this Tribunal.

Asked whether there were any changes in Milosevic's conditions of detention, Landale replied that he would check.

Asked whether the President would discuss issues relating to the Vukovar case before the General Assembly, given that it was the tenth anniversary of the fall of Vukovar, the sixth anniversary of the Vukovar indictment being filed, the fifth anniversary of the filing of the arrest warrants against the accused in the case, and given the fact that the President had already on at least two occasions reported the FRY to the Security Council concerning the case, Landale replied that he would not discuss what was included in the President's speech at this time. Once the President had made his speech copies would be given to the media. The Tribunal's position on this was very clear. It was outrageous and totally unacceptable that these three individuals were still at large. The Tribunal had always maintained this position, he added.

Asked whether the Prosecutor would discuss the fact that General Gotovina was no longer in Croatia with the Security Council, Hartmann replied that she would not disclose the contents of the address before Monday. On the issue of Gotovina, the obligation of the Tribunal, with the assistance and cooperation of member states, was to locate fugitives and to bring them to The Hague. If Gotovina had left Croatia, the OTP would seek the support of Croatia and other member states to find out where he was, she concluded.

Case Information Sheet

29 October 2001

Milosevic et al. Case (IT-99-37-1)**The Indictment "Kosovo"****Factual allegations:**

The second amended indictment, confirmed on 29 October 2001, alleges that each of the accused participated in a joint criminal enterprise between October 1998 and 20 June 1999. The purpose of the enterprise was inter alia the expulsion of a substantial portion of the Kosovo Albanian population from the territory of the province of Kosovo in an effort to ensure continued Serbian control over the province. To fulfil the purpose, each of the accused, acting individually or in concert with each other and with others known and unknown, significantly contributed to the enterprise using de jure and de facto powers available to him.

The indictment describes a series of well-planned and coordinated action which the forces of the FRY and Serbia, acting at the direction, with the encouragement, or with the support of the co-accused and others known and unknown, employed to achieve this objective.

Approximately 800,000 Kosovo Albanian civilians were expelled from the Province by forced deportation, and subsequent looting and destruction of, their homes, or by the shelling of villages. Surviving residents were sent to the borders of neighbouring countries. En route many were killed, abused and had their possessions and identification papers stolen. Furthermore, specific massacres took place in places such as Djakovica/Gjakovë, Gnjilane/Gjilan, Kosovska Mitrovica/Mitrovicë, Orahovac/Rahovec, Pec/Pejë, Pristina/Prishtinë, Prizren, Srbica/Skenderaj, Suva Reka/Suharekë, Uroševac/Ferizaj, Racak, Bela Crkva, Velika Krusa / Krushe e Madhe, Mali Krusa / Krushe e Vogel, Dakovic/Gjakovë, Crkolez/Padaliste, Izbica, Vucitrn/Vushtrri and Dubrava/Dubrave Prison complex.

The accused are charged by virtue of their positions, as follows:

Slobodan Milosevic as President of the FRY, Supreme Commander of the VJ, President of the Supreme Defence Council and pursuant to his *de facto* authority;

Milan Milutinovic as President of Serbia, member of the Supreme Defence Council and pursuant to his *de facto* authority;

Dragoljub Ojdanic as Chief of Staff of the VJ;

Nikola Sainovic as Deputy Prime Minister of the FRY;

Vlajko Stojiljkovic as Minister of Internal Affairs of Serbia.

Charges:

The indictment charges **Slobodan Milosevic**, **Milan Milutinovic**, **Dragoljub Ojdanic** and **Vlajko Stojiljkovic** on the basis of individual criminal responsibility (Article 7(1) of the Statute) and superior criminal responsibility (Article 7(3) thereof) with:

- Violations of the laws or customs of war (Article 3 of the Statute - murder; persecutions on political, racial or religious grounds),
- Crimes against humanity (Article 5 of the Statute - deportation; murder; persecutions on political, racial or religious grounds)

Nikola Sainovic is charged on the basis of individual criminal responsibility (Article 7(1) of the Statute) for these crimes.

The Proceedings

At the status conference on 30 August 2001, the Trial Chamber stated that the trial is expected to commence in January or February 2002.

Amicus curiae:

On 30 August 2001, the Trial Chamber issued an order inviting the Registrar to designate counsel to appear before it as amicus curiae considering that it is "desirable and in the interests of securing a fair trial", that an amicus curiae be appointed as permitted by Rule 74 of the Rules of Procedure and Evidence, "not to represent the accused but to assist in the proper determination of the case". The amicus curiae is to assist the Trial Chamber by:

- 1) making any submissions properly open to the accused by way of preliminary or other pre-trial motion;
- 2) making any submissions or objections to evidence properly open to the accused during the trial proceedings and cross-examining witnesses as appropriate;
- 3) drawing to the attention of the Trial Chamber any exculpatory or mitigating evidence; and
- 4) acting in any other way which designated counsel considers appropriate in order to secure a fair trial.

The Accused**Slobodan MILOSEVIC,**

born on 20 August 1941 in Pozarevac, Serbia,
Federal Republic of Yugoslavia ("FRY")

Arrested: 1 April 2001 in Belgrade by local
authorities

Transferred to ICTY: 29 June 2001

Initial Appearance: 3 July 2001 and 29
October, pleas of "not guilty" entered for all
counts

Milan MILUTINOVIC,

born 19 December 1942 in Belgrade, Serbia,
FRY Remains at large

Nikola SAINOVIC,

born 7 December 1948 in Bor, Serbia, FRY
Remains at large

Dragoljub OJDANIC,

born 1 June 1941 in Ravni, Serbia, FRY
Remains at large

Vlajko STOJILJKOVIC,

born in 1937 in Mala Krzna, Serbia, FRY
Remains at large

On 6 September 2001, the Registrar of the Tribunal, Mr. Hans Holthuis, appointed Mr. Steven Kay QC, Mr. Branislav Tapuskovic and Prof. Michail Wladimiroff to act as amicus curiae

Trial Chamber III:

Judge Richard May, United Kingdom (Presiding)

Judge Patrick Robinson, Jamaica

Judge Mohammed El Habib Fassi Fihri, Morocco

For case information on the "Croatia indictment" please see Milosevic case IT-01-50)

(

Geachte heer Rohde,

23-11-2001 14:09

Aansluitend op telefoon gesprek met mijn collega, vermeld ik hier het volgende:

- Ik ben mw. Despotović, R.
Rode Kruislaan 709
1111 NX Diemen
Tel.nr.: 06-20973230
- Rede voor bezoek aan dhr Slobodan Milosević is dat dhr Steijnen mij gisteren heeft laten weten dat dhr Slobodan Milosević mij graag wil ontvangen.
- Relatie met dhr Slobodan Milosević: geen . Ben zijn landgenote en heb hem altijd gewaardeerd als mijn president.
- Mijn voorkeur gaat uit naar een weekend vanwege mijn werkzaamheden in een ziekenhuis.
- In afwachting op een schriftelijke bevestiging,
groet ik U

Despotović, R.



Milosevic

7 = BEN

BORN ON 20 August 1947 in
POZAREVAC, SERBIA,
FRY.

Parlement Kroatië stemt in met Joegoslavië tribunaal

Door onze correspondent

ZAGREB, 16 JULI. De Kroatische regering blijft samenwerken met het Joegoslavië-tribunaal. Het parlement van Kroatië, de Sabor, gaf gisteren na een vijftien uur durend debat zijn vertrouwen aan de regering-Račan.

Premier Ivica Račan van de Sociaal Democratische Partij (SDP) stelde vorige week de vertrouwenskwesie nadat de regering uiteen dreigde te vallen over de uitlevering van twee generaals aan het VN-tribunaal in Den Haag. De generaals worden verdacht van oorlogsmisdaden. Vier ministers van de Kroatische Sociaal Liberale Partij (HSL) legden uit protest tegen de voorgenomen uitlevering hun functie neer.

Gisteren stemden echter 93 van de 151 parlementsleden voor sa-

menwerking met het tribunaal. Zo kreeg premier Račan een ruime meerderheid. Ook een groot aantal afgevaardigden van de HSL stemde voor. Dat was mogelijk na een splitsing in de partij, afgelopen donderdag, die partijleider Dražen Budiša deed aftreden.

Ivica Račan toonde zich na afloop van het debat een „tevreden“ mens. Hij plaatste wel kanttekeningen bij de samenwerking met het tribunaal. „Samenwerking betekent niet dat wij de aanklachten steunen. Maar het stelt ons in staat onze waarheid te verwoorden.“ Onder de Kroatische bevolking bestaat grote weerzin tegen het Joegoslavië-tribunaal.

De regering beloofde na te denken over „andere vormen“ van samenwerking met het tribunaal. Račan verklaarde ook een brief te

hebben gestuurd aan hoofdaanklager Carla del Ponte van het tribunaal, waarin hij protesteert tegen „sommige elementen“ van de VN-instantie.

De regering zal zich ook buigen over een nationaal referendum over de samenwerking en de uitlevering. Dit was een eis van de Kroatische Democratische Gemeenschap (HDZ), de nationalistische partij van wijlen president Franjo Tudjman. De HDZ stemde gisteren tegen samenwerking met het tribunaal. Enkele nationalistische parlementsleden verlieten uit protest de zaal.

Deze zaken behoeven veel aandacht van de regering, zei Račan na afloop. De herschikking van het kabinet moet daarom wachten tot half september, aldus de premier.

KROATIË

‘Dit is niet Kroatië’s idee van gerechtigheid’

[• Vervolg van pagina 1] „Ik sluit niet uit dat oorlogsmisdaden zijn gepleegd. Niemand kan dat uitsluiten“, zegt oorlogsveteraan Marjan Kunšić. De oud-strijders weten nog altijd een groot deel van de bevolking te mobiliseren. „Maar“, vervolgt Kunšić, „zijn de generaals verantwoordelijk voor de gedragingen van hun soldaten?“

De oorlogsveteranen vinden van niet. Ook politiek analist Slavica Leticica zet vraagtekens bij de zogenoemde gedeelde verantwoordelijkheid. „Die moet op z’n minst ter discussie worden gesteld.“ Gaven de generaals de orders tot misdaden, dan moeten ze gestraft worden, zegt Leticica. Maar gaven de generaals wel dergelijke opdrachten? In Kroatië twijfelt men daaraan.

Uit het rapport: Twee zusters, Andja en Draginja Dragaš, ziek en oud,

zijn levend verbrand. Damir Zorić verbrandde hen, samen met hun huis. Nu loopt een rechtszaak tegen hem in Sibenik. Monitoren hebben vastgesteld dat (...) Zorić niet is opgedragen het huis te verbranden. Het lijkt erop dat hij niet wist dat de vrouwen in het huis waren.

Toch worden de generaals nu aangepakt. De veteranen richten hun pijlen daarom op het tribunaal in Den Haag. Het tribunaal zou de onrust in de jonge staat aanwakken. Maar oorlogsveteraan Kunšić vertelt niet dat zijn organisatie verantwoordelijk is voor de grootste onrust, met voortdurende steunbetuigingen aan hun oorlogshelden en stemmingmakerij in de media.

Opnieuw vinden de veteranen een medestander in analist Leticica. „Het tribunaal moet duidelijk maken op welke grond militairen

worden vervolgd. Die geheimdoenerij. Duizenden ex-militairen zijn bang straks voor het tribunaal te staan.“

Waarom kunnen de generaals niet in eigen land berecht worden, vragen veel Kroaten zich af. Puhovski van het Helsinki Comité weet het antwoord. Hij wijst erop dat Kroatische rechtbanken tot nu toe 462 mensen hebben veroordeeld wegens oorlogsmisdaden: 461 zijn afkomstig uit het (overwegend door Serviërs bemande) Joegoslavische leger of behoorden tot de Servische rebellen. Slechts één veroordeelde was een Kroaat. Hij bedoelt: de Kroaten kunnen hun eigen verleden eenvoudig niet beoordelen.

Uit het rapport: Een Kroatische soldaat liet Jovanka Mizrak staan en zitten. Ze voldeed niet makkelijk aan dat bevel. Hij schoot Jovanka

dood. Twee andere vrouwen, naast Jovanka, bevroren. Daarna namen ze alles uit onze huizen mee, zegt een van hen.

De regering brengt de bevolking niet op andere gedachten. Het besluit van de regering-Račan om twee eigen generaals uit te leveren is gedaan onder internationale druk en uit angst voor isolatie. „Dit is niet Kroatië’s idee van gerechtigheid, maar het Westen heeft het geld“, aldus Puhovski.

De Kroatische medewerking heeft dus veel met geld te maken, net als in Servië waar drie miljard gulden werd beloofd in ruil voor de uitlevering van Slobodan Milošević. Maar in Servië komt de discussie over het oorlogsverleden op gang en is er een waarheidscommissie ingesteld.

In Kroatië daarentegen schrijven de media niet over oorlogsmis-

daden, maar over corruptieschandalen onder wijlen president Franjo Tudjman. En een waarheidscommissie is niet aan de orde.

Uit het rapport: Ik zag twee mannen in uniform en een aantal mensen zat geknielt voor hen, aldus een ooggetuige. De mensen werden in de achterkant van hun hoofd geschoten. Er stond een bestelwagen op de weg. Later zag ik deze bestelwagen. In de wagen lagen lichamen, als houtblokken op elkaar gestapeld.

Zijn Servische burgers met opzet gedood door Kroatische soldaten? Veteraan Kunšić draait ongemakkelijk op zijn stoel. „Dat waren geen burgers“, zegt hij dan. „Ze hielpen de militairen en paramilitairen.“ Die Serviërs hebben hun verdiende loon gekregen, wil hij maar zeggen.

us etwist rechtmatigheid van Tribunaal

15 JULI 2001
Wanneer Slobodan Milošević op 30 augustus weer voor het Joegoslavië-Tribunaal verschijnt, moet hij de rechters om hun geloofsbrieven vragen. Dit zegt prof. dr. Michail Koeznetsov van de universiteit Moskou.

Koeznetsov heeft gistermiddag in de VN-gevangenis in Scheveningen met Milošević gesproken. „Vraag de rechters wie ze heeft benoemd“, heeft Koeznetsov Milošević geadviseerd, maar hij weet niet of die zijn advies zal opvolgen.

Koeznetsov vindt, evenals Milošević, dat de Veiligheidsraad in 1993 niet het recht had het tribunaal op te richten. Volgens zijn interpretatie van het VN-handvest zou alleen de Algemene Vergadering van de VN daartoe mogen overgaan. Daarom moet Milošević volgens de hoogleraar naar Joegoslavië worden teruggebracht, van waar hij is ‘ontvoerd’.

Koeznetsov wil met een betoog op 20 augustus de VN-lidstaten ertoe overhalen de geldkraan voor het tribunaal dicht te draaien. (ANP)

Kroatische generaal niet langer verdacht

15 JULI 2001
DEN HAAG Het Joegoslavië-Tribunaal in Den Haag beschouwt de Kroatische chefstaf generaal Petar Stipetić niet langer als een verdachte van oorlogsmisdaden. Dat heeft een woordvoester van hoofdaanklaagster Del Ponte laten weten. Medewerkers van het tribunaal hadden eind maart enkele gesprekken in de Kroatische hoofdstad Zagreb met Stipetić. De woordvoester zei gisteren dat naar aanleiding van deze onderzoe-ningen het tribunaal geen reden ziet voor vervolging. (RTR/ANP)

Del Ponte ook boos op Kroatië

ZAGREB - Na eerder deze week te zijn uitgevaren tegen de Bosnische Serviërs, spuide hoofdaanklaagster Carla Del Ponte van het Joegoslavië-Tribunaal gisteren haar gram over Kroatië.

7-7-2001
Volgens Del Ponte weigert Kroatië mee te werken aan de arrestatie van oorlogsmisdadigers. Zij zei dit na een gesprek met premier Ivica Račan.

Volgens Del Ponte heeft het Tri-

bunaal een maand geleden aan de Kroatische autoriteiten twee verzegelde aanklachten en arrestatiebevelen overhandigd, maar weigert de regering in Zagreb ze uit te voeren.

Volgens de Kroatische pers zouden de dagvaardingen gericht zijn tegen generaal Rahim Ademi en generaal buiten dienst Ante Gotovina. Zij zouden beiden betrokken zijn geweest bij de oorlog van 1991 tot 1995 tegen lokale Servische rebellen.

Regering Kroatië overleeft

ZAGREB - De Kroatische regering heeft gisteren een verhit debat met het parlement overleefd over samenwerking met het Joegoslavië-Tribunaal.

12-7-2001
Na een vijftien uur durend debat spraken 93 van de 151 par-

menstleden hun vertrouwen uit in de regering-Račan. Die had daarom gevraagd na de toezegging dat Zagreb mee zal werken aan de uitlevering van twee van oorlogsmisdaden verdachte Kroaten aan het Haagse Tribunaal.

andag 2 juli 2001

Djindjic: Joegoslavië in diepe politieke crisis

16 JULI 2001
BELGRADO/BERLIJN — De Joegoslavische federatie is door de uitlevering van Slobodan Milošević aan het Joegoslavië-Tribunaal in Den Haag in een diepe politieke crisis gestort. Dat heeft de Servische premier Zoran Djindjic gezegd. Volgens Djindjic moeten snel stappen worden gezet om de verhouding tussen Servië en Montenegro weer goed te krijgen. Djindjic sluit een breuk niet uit, als Montenegro het nieuwe Servische beleid blijft afwijzen.

Een mogelijke oplossing voor de crisis is volgens Djindjic dat met oog op „een verminderde functie van de federatie“ de grondwet wordt veranderd en dat nieuwe verkiezingen worden gehouden. En andere mogelijkheden is een referendum in Montenegro over de afgang of de federatie intact moet blijven.

Volgens de premier is Servië bij failliet en kan de situatie ‘zeer kritiek’ worden als de vrijdag toegezegde buitenlandse hulp niet snel wordt uitbetaald. „Na tien jaar isolatie zijn wij praktisch ankerloos. Als wij de bevolking niet el laten zien dat de zaken beter an, kan de politieke situatie erg kritiek worden“, zei Djindjic in een

gesprek met de Duitse zakenkrant Handelsblatt. Als beloning voor de uitlevering zegden buitenlandse donoren Joegoslavië €1,52 miljard (f 3,35 miljard) aan hulp bij de wederopbouw toe.

De crisis openbaarde zich vrijdag toen de Joegoslavische premier Zoran Zizic - een Montenegrijn - en alle Montenegrijnse ministers uit protest tegen de overdracht van Milošević aan het Joegoslavië-Tribunaal aftraden. Hoewel aanvankelijk werd aangehouden dat er vervroegde verkiezingen zouden worden uitgeschreven, zei Zizic zaterdag dat hij en zijn Socialistische Volkspartij bereid zijn een gewijzigde Joegoslavische regering te steunen en dat nieuwe verkiezingen niet per se noodzakelijk zijn.

De Joegoslavische president Vojislav Kostunica gaat vandaag met verschillende partijen in conclaaf over de mogelijke oplossingen voor de crisis. Kostunica, tegenstander van Milošević uitlevering, was volgens het staatspersbureau Tanjug pas op de hoogte gebracht van de uitlevering nadat die had plaatsgevonden. De Servische premier Djindjic verklaarde echter dat Joegoslavië geen keus had,

omdat het land anders opnieuw in een internationaal isolement terecht zou komen en hoognodige buitenlandse hulp zou mislopen. Het conflict tussen Djindjic en Kostunica zou kunnen leiden tot het uiteenvallen van de DOS-coalitie.

Ook nu Milošević in een cel in Den Haag zit om te worden berecht wegens onder meer misdaden tegen de menselijkheid, blijft hij het Joegoslavië-Tribunaal afwijzen. Het is geen rechtbank, maar een politiek circus, liet de voormalige Joegoslavische leider weten. „Servische broeders, vaarwel“, zei de voormalige president, op het moment dat hij aan boord van een Servische politieheliokopter stapte en een laatste blik op de Servische bodem wierp.

De ex-president wordt vandaag voor het eerst voorgeleid. Hij krijgt de kans om zich schuldig of niet-schuldig te verklaren op vier formele punten van de aanklacht. De president van het Joegoslavië-Tribunaal, Claude Jorda, heeft gezegd dat het proces tegen Milošević over acht à tien maanden kan beginnen. De rechtszaak zal volgens Jorda zeker een jaar duren. (AP)

Zonder wet tribunaal ‘Joegoslavië dreigt uiteen te spatten’

BELGRADO, 16 JUNI. Joegoslavië „spat uiteen“ als het wetsontwerp over de samenwerking met het Joegoslavië-tribunaal niet door het parlement wordt aangenomen. Dat zei gisteren de Joegoslavische vice-premier Miroslav Labuš.

Het Joegoslavische federale parlement zal zich de komende dagen bezighouden met het wetsontwerp, dat donderdag is goedgekeurd door de Joegoslavische regering. Labuš zei gisteren dat als het parlement het wetsontwerp afwijst, er „noch een federale regering, noch een federale staat overblijven.“ „Het land zal uiteen spatten“, aldus de vice-premier, die tevens minister van Buitenlandse Economische Relaties is.

Bij de stemming binnen de ministersploeg stemden de negen Servische ministers, allen lid van de Democratische Oppositie van Servië DOS, vóór, en stemden de ministers van de Montenegrijnse Socialistische Volkspartij SNP tegen. De SNP heeft de afgevoerde weken ondanks zeer zware druk van de DOS, de federale president Kostunica en de internationale gemeenschap geweigerd haar inzet tegen het wetsontwerp op te geven. Het voorziet onder andere in de mogelijkheid, Joegoslavische staatsburgers als ex-president Milošević uit te leveren aan het Joegoslavië-tribunaal in Den Haag.

De SNP heeft met Milošević samengewerkt tot diens val in oktober vorig jaar. Haar verzet tegen het wetsontwerp steelt op de vrees dat Montenegrië in het algemeen en leden of leiders van de

SNP in het bijzonder aan het VN-tribunaal kunnen worden uitgewezen. De SNP wil verdachten van oorlogsmisdaden in eigen land berechten.

Als het wetsontwerp niet door het parlement wordt aangenomen, wachten Joegoslavië zware sancties: de Amerikaanse regering heeft samenwerking met het tribunaal als voorwaarde gesteld voor economische hulp. Een afwijzing zou betekenen dat de VS wegblijven van de grote donorconferentie van 29 juni, als - naar wordt gehoopt - 1,2 miljard aan hulp gelden voor Joegoslavië wordt opgehaald. Andere donoren haken dan mogelijk eveneens af. Als de donorconferentie mislukt, zal de Joegoslavische economie naar verwachting verder in het slop raken, komt van de wederopbouw van het land niets terecht en vreest Belgrado sociale onrust.

In het federale parlement beschikt DOS niet over de vereiste meerderheid om het wetsontwerp aangenomen te krijgen: ze heeft 58 van de 138 zetels. De DOS is aangewezen op de 28 zetels van de Montenegriërs. De socialisten - de partij van de gedetineerde ex-president Milošević - zal met haar 44 stemmen zeker tegen stemmen, net als de Radicale Partij, die over vijf zetels beschikt. (AP, Reuters)

In de fuik van goede bedoelingen

Nederland en de oorlog op de Balkan

In Den Haag heerste begin jaren negentig onverschilligheid over de crisis op de Balkan. Vijf jaar later volgde Srebrenica, het grootste Nederlandse militaire drama sinds de Politionele Acties. Reconstructie van het Joegoslavië-beleid van een land op pocketformaat.

Norbert Both: From Indifference to Entrapment. The Netherlands and the Yugoslav Crisis, 1990-1995. Amsterdam University Press, 267 blz. f 45,-

J.M. Bik



Uitreiking van VN-herinneringsmedailles aan het Dutchbat 3-bataljon, Assen 14 september 1995 Foto Sake Elzinga

Tien jaar geleden hadden westelijke diplomaten en hun ministers het druk tot zeer druk. De Duitse eenwording werd een feit, in Oost-Europa was de ene na de andere omwenteling te zien, de implosie van de Sovjet-Unie kwam eraan en de Golfoorlog zou ook niet lang meer op zich laten wachten. Voor Nederland, dat door het derde (centrum-linkse) kabinet-Lubbers werd geregeerd, kwam daar nog iets bij. In de tweede helft van 1991 zou het als voorzitter van de Europese Gemeenschap via de Verdragen van Maastricht een zware klus krijgen waar al veel aandacht op was gericht.

Zodoende was er voor zoiets als een dreigende crisis in Joegoslavië niet veel belangstelling, de ervaren minister van buitenlandse zaken Van den Broek (1982-1993) zou dat later toegeven. Meer nog: bezorgde telegrammen van de ambassadeur in Belgrado werden in 1990 doorgaans met enige wrevelen gelezen en afgedaan als 'overdreven'. Hetzelfde gebeurde met waarschuwingen van de liefst driekoppige directie Midden- en Oost-Europa (inclusief de Sovjet-Unie), die na enige tijd moest vrezet voor een geïsoleerde positie op Buitenlandse Zaken. Ons bord is vol genoeg, daar hoeft niet nog eens een Joegoslavië-crisis bij, was de stemming in Den Haag. Dat was in andere EG-hoofdsteden en in Washington niet anders. Joegoslavië mag niet uiteenvallen en het verloop der gebeurtenissen moest dat – linksom of rechtsom – maar met zich meebrengen. Trefwoord: onverschilligheid.

Dat woord komt dan ook terug in de titel van *From Indifference to Entrapment* van de Nederlandse politicoloog Norbert Both, dat deze week is verschenen. Both was vóór 1998 onderzoeksassistent van de Europese Joegoslavië-onderhandelaar David Owen en is sindsdien werkzaam op Buitenland-

se Zaken. Het boek, de bewerking van een proefschrift waarop Both in mei in Sheffield promoveerde, voert de lezer mee langs de heuvels en dalen van vijf jaar Nederlandse Joegoslavië-politiek. Dus van die onverschilligheid uit 1990 naar de Bosnische fuik waar Nederland zich mei 1993 nogal van harte voor aanmeldde, om er zichzelf in juli 1995 gruwelijk-ontnuchterd in terug te vinden. Namelijk in het door de VN stelling tot 'veilig gebied' verklaarde Srebrenica, een gebied dat weliswaar geen vrede kende, maar waar Dutchbat niettemin als 'vredeshandhaver' met lichte bewapening was heengestuurd onder applaus van kabinet, Tweede Kamer en media. Een gebied waar Dutchbat in feite gegijzeld werd door het Bosnisch-Servische leger, terwijl het destijds – zonder noemenswaardige tegenspraak uit Nederland – door de moslim-bevolking werd gezien als garantie voor haar veiligheid; wat Both als een hoofdzonde ziet in het Nederlandse Joegoslavië-dossier.

Boths studie is ruim gedocumenteerd, hij heeft gesproken met praktisch alle hoofdrolspelers, wat mooie anekdoten oplevert. Hij heeft nationale en internationale publicaties nagelopen en de archieven van Buitenlandse Zaken en het privé-archief van oud-minister van Defensie Ter Beek geraadpleegd. Maar interessant is de studie bovenal doordat Both zicht geeft op beperkingen en tegenslagen waar-

mee een 'middelgroot land van pocketformaat' zelfs te maken kan krijgen als het naar eigen uitgangspunten een geslaagd buitenlands beleid voert en een tijdje een behoorlijke internationale invloed heeft.

Consensus in EG

Dat geldt vooral de periode van het Nederlandse EG-voorzitterschap, de tweede helft van 1991. De Joegoslavië-crisis staat dan overal op de agenda en de EG is zeer verdeeld over de vraag of Kroatië en Slovenië als afgesplitste en zelfstandige staten aanvaard en erkend moeten worden, zoals vooral Duitsland wil, of dat Joegoslavië op een of andere manier binnen de bestaande grenzen moet voortbestaan, zoals de meeste EG-landen en Washington dan nog zeggen voor te staan. Nederland wil er een goed voorzitterschap van maken en daarbij trouw blijven aan wat het als zijn eigen belang ziet: de consensus in de EG bewaren of herstellen en de VS via de Navo een hoofdrol voor de Europese veiligheid laten spelen. Van den Broek onderzoekt al op 2 juli in Washington of de VS ook in de Joegoslavië-crisis zo'n hoofdrol willen spelen, maar vangt bot. Vervolgens zet hij alles op het bijhouden van de EG, die pas Europese Unie wordt na het verdrag van Maastricht. Anders gezegd: hij weet Duitsland, ondanks alle kritiek uit dat land en ondanks alle

spanningen met zijn collega Genscher, te bewegen de erkenning van Kroatië en Slovenië nog even uit te stellen. Van den Broek doet dat hoewel hij, met zijn medewerkers, al niet meer gelooft in het voortbestaan van Joegoslavië in de bestaande vorm.

Dat doet zijn partijgenoot Lubbers kennelijk ook niet meer. Die is – mooie anecdote – eind november van dat jaar bij een geheim overleg in Brussel van christen-democratische Europese regeringsleiders (met kanselier Kohl en de collega-premiers Andreotti, Martens, Santer en Mitsotakis). Daar wordt alvast afgesproken dat Kroatië en Slovenië nog voor Kerstmis zullen worden erkend. Van den Broek hoort daarvan niet van Lubbers, maar een paar dagen later van de Nederlandse ambassadeur in Bonn. Lubbers heeft tegenover de auteur ontkend dat er in dat topberaad al zo'n vergaande afspraak was gemaakt. Op gezag van een niet met naam genoemde Nederlandse minister uit die dagen heet het dat ook de toendertijd 'matige persoonlijke relaties' tussen Lubbers en Van den Broek hier een rol kunnen hebben gespeeld.

Buitenlandse Zaken heeft dan, zoals Both aantoon, in het dossier-Joegoslavië de *even-handedness* jegens de diverse partijen eigenlijk reeds vervangen door *selectiveness*, een stellingname 'tegen' Servië. Door handig

manoeuvreren weet Van den Broek Duitsland een paar maanden aan de lijn te houden terwijl de andere EG-landen gaandeweg in de richting van de Duitse positie opschuiven. Een glansstuk is daarbij dat hij in oktober 1991 de eventuele erkenning van Kroatië en Slovenië door de EG afhankelijk maakt van de vraag of er binnen een termijn van twee maanden tussen de partijen in Joegoslavië een staatkundige regeling wordt getroffen. Op die manier houdt hij niet alleen de EG bijeen, maar zorgt er ook voor dat de erkenning van Kroatië en Slovenië in december een Europese operatie onder Nederlandse leiding wordt. Jim Baker, de toenmalige Amerikaanse minister van Buitenlandse Zaken, spreekt in zijn memoires met bewondering over wat Van den Broek dat halve jaar deed als EG-voorzitter en noemt hem 'een staatsman'.

Morele verontwaardiging

Dat is mooi, dat hoor je in Nederland niet vaak. Maar Both wijst erop dat men in Den Haag en andere EG-hoofdsteden niettemin, ondanks Amerikaanse waarschuwingen, niet goed had nagedacht over wat de erkenning van Kroatië en Slovenië zou kunnen gaan betekenen voor het Servische optreden in Bosnië. En dat zouden we weten.

De EG-landen, waar de politieke wil ontbreekt om militair te interveni-

eren, hebben hun laatste troefkaart jegens Servië dan verspeeld met de erkenning van Kroatië en Slovenië. De VS houden zich nog op afstand, Servische legers hebben met bloedbaden in Vukovar en Dubrovnik de morele verantwoording in de EG-landen opgejaagd, vooral in Nederland, dat dan weer een gewoon 'klein' land in Europa is. Te klein om echt mee te tellen in het intergouvernementele verkeer van de groteren, Frankrijk, Groot-Brittannië, Duitsland, Italië, de VS en Rusland, die wat later de Contactgroep voor Joegoslavië vormen.

Nederland, de kampioen van de Europese homogeniteit, is daarvoor niet gevraagd. Van den Broek is dan opgevolgd door de mensenrechtenkampioen Kooijmans. Het land heeft zich dan gaandeweg teruggetrokken op het vertrouwde, maar enigszins afgelegen perron van de morele verontwaardiging. Daar viert regering, Tweede Kamer, de publieke opinie en de media de internationale rechtsorde en daar bespreken ze, zoals Both schetst, met het gevoel van een zekere ethische superioriteit de machtspolitiek van de groten. Waar 'kwaad' (Servië) en 'goed' (de rest) zich in ex-Joegoslavië bevinden staat op dat perron vast, zoals daar vaststaat dat er tegen het kwaad militair moet worden geïntervenieerd. De morele spiegel van het debat op dat perron bereikt een hoogte die een politiek dilemma oproept. Namelijk: moet een land dat zich retorisch in zo'n ethische kwaliteit vertoont, niet vanzelfsprekend ook bereid zijn om zonnig militaire middelen beschikbaar te stellen? Ja dus, want die retoriek om praktische redenen terugschroeven is wel heel moeilijk en je staat dan ook een beetje voor gek.

Intussen zijn in Nederland ook overigens de bordjes enigszins verhangen, wat Both nauwgezet in kaart brengt. Aanvankelijk vormden Buitenlandse Zaken en de Tweede Kamer een soort informele alliantie ten gunste van Nederlandse militaire medebemoediging met het drama-Joegoslavië, en lag Defensie dwars op grond van militaire criteria (tot diep in 1992), maar nadien verandert het beeld. Op Defensie willen de generaals behalve een betere plaats in het debat nog iets meer: groen licht van de Tweede Kamer voor de kostbare aanschaf van helikopters van de luchtmobiele brigade, bedoeld voor crisisbeheersing. Dat lukt, dankzij een compromis van een nieuwe coalitie van Tweede Kamer en Defensie, en de weg naar Srebrenica komt mei 1993 vrij. Nederland zit politiek in de val, en zal dat twee jaar later ook militair raken. Zodat de ambitie van Defensie om meer waardering en geloofwaardigheid te verwerven uitdraait op de grootste na-oorlogse misère. Amerikaanse bedenkingen tegen het VN-concept van 'veilige gebieden' in Bosnië konden dat niet verhinderen. Vandaag doet menig een alsof hij destijds elders woonde. In de meeste gevallen is dat niet zo.

Alsof de Verenigde Staten zelf over Milosevic oordelen! Joegoslavië Tribunaal gefinancierd door multinationals

14-6-2007

Door Michel Collon

Het Joegoslavië Tribunaal in Den Haag (JT) klaagt Milosevic aan, maar niet Sharon, Pinochet, of de Turkse generaals. Omdat het zijn geld krijgt van de VS en van Amerikaanse miljardairs, weigert het Hof de misdaden van de NAVO te onderzoeken. In zijn werking overtreedt het zelf tal van juridische principes.

Volgens artikel 16 van de statuten van het Joegoslavië Tribunaal werkt de openbare aanklager onafhankelijk, zonder instructies van enige regering. En artikel 32 zegt dat de uitgaven van het Hof gefinancierd moeten worden met VN-geld. Wat is de realiteit?

De voorzitter van het Hof, mevrouw Gabrielle Kirk McDonald zegt: "We kregen fikse steun van de betrokken regeringen en minister Albright heeft echt hard gewerkt om het tribunaal tot stand te brengen. Als we over haar spreken, noemen we haar dikwijls de moeder van het Internationaal Gerechtshof." Een lieve moeder, die op TV verklaarde dat het "de moeite loonde" 500.000 Iraakse kinderen te laten sterven!

Toen JT-procureur Louise Arbouret de aanklacht tegen Milosevic opmaakte, bracht zij eerst

Clinton op de hoogte. In 1996 ontmoette ze de secretaris-generaal van de NAVO en de opperbevelhebber voor Europa "om de voorwaarden voor samenwerking te bespreken", alvorens een "memorandum van verstandhouding" te ondertekenen.

Zeg mij wie jou betaalt...

In de periode 1994-1995 kreeg het JT van de VS-regering ruim 1,5 miljoen gulden en voor meer dan 5 miljoen gulden aan computers. Het kreeg ook 337.500 gulden van de multimiljardair George Soros, die de grootste separatistische krant in Kosovo financieerde.

Andere schenkers: de mediagigant Time-Warner (wat de mediastilte over de schaduwkanten van het JT verklaart) en het Vredesinstituut, nog opgericht door ex-president Reagan.

Veel juristen van het JT komen uit de Coalitie voor Internationale Gerechtigheid, opgericht en gefinancierd door George Soros. In mei 2000 dankte voorzitter McDonald de VS-regering omdat die "zo gul 1.125 miljoen gulden heeft geschonken. De morele opdracht om een einde te maken aan alle geweld wordt ook erkend door de bedrijfssector.

Het verheugt me dat een grote onderneming ons onlangs voor 6,75 miljoen gulden computers bezorgde." (1)



Het Joegoslavië Tribunaal van Den Haag wil wel Milosevic vervolgen maar niet de NAVO-generaals die doelbewust burgerdoelwitten zoals bussen, treinen en woonblokken bombardeerden. Is dat onpartijdig? Foto betreft een demonstratie in Belgrado voor vrijlating van Milosevic.

...en ik vertel hoe jij rechtspreekt!

Met zulke sponsors is het logisch dat het JT alleen vijanden van de VS vervolgt. En dat de Kroatische en de Bosnische moslimleiders onbestraft bleven, hoewel ze tussen '91 en '95 etnische zuiveringen organiseerden. Idem voor de chefs van het UCK en voor de NAVO-leiders, die een onwettige oorlog begonnen, doelbewust Joegoslavische burgerlijke infrastructuur vernietigden en daarbij verboden wapens gebruikten (zoals fragmentatiebommen, granaten met verarmd uranium).

De ware motieven voor de jacht op Milosevic: het Servische volk beschuldigen en verdoezelen dat het de Amerikanen en de Duitsers zijn die de oorlogen in Joegoslavië hebben uitgelokt en aangevuurd, en elk staats-hoofd van de Derde Wereld, dat

zich tegen de globalisering durft te verzetten, intimideren en de misdadige oorlog van de NAVO goedpraten nu de alibi's en de medialeugens steeds minder geloofd worden.

(1) Uiteenzetting voor de Raad voor Internationale Betrekkingen, New York, 12 mei 2000. Andere bronnen: An impartial tribunal, really?, studie van de Canadese jurist Christopher Black. The illegal basis of the War Crimes Tribunal, van de Joegoslavische jurist Kosta Cavoski www.emperors-clothes.com/articles/cavoski.

10 rechtsprincipes die het Hof schendt

Het Joegoslavië Tribunaal (JT) treedt fundamentele rechtsprincipes met voeten.

1. Het JT werd in 1993 opgericht

door de Veiligheidsraad van de VN - 15 leden, gedomineerd door grootmachten, met veto voor de VS - op aandringen van de Amerikaanse minister Albright. De normale weg om dit Hof op te richten zou volgens de toenmalige VN-secretaris geweest zijn te werken met "een internationaal verdrag, over-eengekomen en goedgekeurd door de staten, dat hen tegelijk ten volle respecteert in hun soevereiniteit."

Maar de VS slaagden erin een totaal willekeurige interpretatie door te duwen van hoofdstuk VII van het VN-Charter, dat de Veiligheidsraad bevoegdheid geeft "maatregelen" te nemen om de internationale vrede te herstellen. De oprichting van dit Hof valt daar duidelijk niet onder. Het JT heeft dus geen wettelijke basis.

Lees verder op pagina 10

Al maanden bevindt de Kroatische regering zich in een neervallende spiraal van interne conflicten en dalende populariteit.

Kroatische regering verliest snel aanhang

maar omdat er geen alternatief is, 45 procent is tegen de regering. De aanhang van Radovan Karadzic, democratische SDP is in enkele maanden teruggelopen van 26 naar 19 procent - weinig méér dan de vijftien procent waarover de HDZ, de partij van wijlen Tudjman, zou beschikken als er nu verkiezingen zouden worden gehouden. In februari was de HDZ-aanhang tien procent. De verloren gang van de populariteit is ten dele Radovan Karadzic te danken: hij toont weinig visie, is langzaam en besluiteloos en staat zelden overtuigend achter eenmaal genomen besluiten.

Het is zijn geluk dat de HDZ geen vuist kan maken. De partij van wijlen Tudjman vormt geen echte bedreiging aangezien geen van de gewestelijke partijen met haar wil samenwerken en de eigen aanhang nooit groot genoeg is voor een meerderheid.

Door onze redacteur PETER MICHELESEN ROTTERDAM, 31 AUG. De problemen van de coalitie van premier Ivica Račan begonnen in april, toen de Democratische Partij van Istria (IDS) uit de coalitie stapte, boos omdat de partners haar wens - de erkenning van het Italiaans als tweede officiële taal op het schiereiland - niet wilde honoreren. In juli stapte een tweede coalitie-partner op, de sociaal-liberale HSLS, wegens het besluit van de regering, mee te werken met het Joegoslavië-tribunaal en Kroaten uit te leveren. De stap van de boze HSLS-leider Dražen Budiša werkte weliswaar als een boemerang - de partij bleek diep verdeeld over het thema uitlevering en het besluit kostte Budiša zijn partijleiderschap - maar elegant was de ruzie niet.

Overbodig was de ruzie wel: als Račan de wet had toegepast en het Joegoslavië-tribunaal gewoon ter-wille was geweest, was er niets gebeurd. In plaats daarvan legde hij de zaak voor aan de regering, die prompt aan het ruzien sloeg.

De uitlevering van verdachte Kroatische oorlogsmisdadigers heeft Račan sindsdien parten gespeeld. De publieke opinie is in meerderheid tegen de uitlevering van Kroaten, die immers 'niets anders' hebben gedaan dan de onafhankelijkheid van de natie tegen de Servische agressor verdedigen. De Kroatische president Stipe Mesić, zag zich onlangs zelfs gedwongen de pous een brief te schrijven, omdat die door het Kroatische episcopaat niet correct zou worden ingelicht over de gang van zaken in Kroatië. In regeringskring wordt bitter geklaagd over de "steeds agressievere innemingen" van de Kroatische bisschoppen in de politiek. Bisschoppen beschuldigen in juli de regering openlijk van "de verkoop van 's lands soevereiniteit voor een handvol dollars".

Deze maand werden op één dag 3800 politiemannen ontslagen, bijna een kwart van de politiemacht. De stap leidde tot enorme woede. Agenten bezetten kazernes en blokkeerden wegen en hun vakbond eiste het ontslag van de minister van Binnenlandse Zaken. De onrust is nog verergerd door andere bezuinigingsmaatregelen, zoals een verlaging van kinderbijslag, invalidenpensioenen en de uitkering aan invalide veteranen en de afschaffing van het betaalde moederschapverlof.

Ook het uitblijven van succes in de bestrijding van de corruptie door de regering geen goed. Volgens een recente peiling vindt 83 procent van de Kroaten hun land corrupt. Van de populariteit van de regering is door dit alles inmiddels niet zoveel meer over. Nog maar 43 procent van het electoraat steunt de regering, yden ongewijfeld alleen

Aanklager Carla Del Ponte 12 juli 2002 vergroot de Balkan-chaos

Kort na het bezoek van openbare aanklager Carla Del Ponte van het Joegoslavië-tribunaal aan de hoofdstad van Kroatië is de regering daar gestruikeld. De eisen die de aanklager in Zagreb op tafel had gelegd, hebben onoverbrugbare tegenstellingen veroorzaakt. De gevallen regering probeerde na de dood van president Tudjman van Kroatië in 1999 – met vallen en opstaan – een democratie te maken. Dat is uitermate moeilijk in een land dat nog zo sterk beheerst wordt door de ellende van de burgeroorlog. Aan het verwerken van de geschiedenis van de Tweede Wereldoorlog zijn zij nog niet eens toegekomen. Kortom, de politieke verhoudingen zijn erg fragiel.

Wat wij in de afgelopen week zagen is dat Del Ponte – mede onder Amerikaanse druk – ongeremd met haar vervolgingsbeleid binnenstormt, en daarbij geen enkel oog heeft voor de politieke schade die zij daarmee aanricht. Haar bijdrage aan de opbouw van enigermate stabiele verhoudingen in streken die kort geleden nog door burgeroorlog uiteengereten zijn, is in dit geval zeer negatief. Zo kunnen Del Ponte's acties ertoe leiden dat het nationalisme en de ressentimenten tegen het Westen in landen als Kroatië alleen maar feller worden. Maar dit soort overwegingen spelen voor de aanklager geen enkele rol.

In democratische rechtssystemen wordt een openbare aanklager aangestuurd – zij het op afstand – door een minister van Justitie. Voor het Joegoslavië-tribunaal in Den Haag geldt dat niet. Wie heeft de politieke verantwoordelijkheid voor Del Ponte's vervolgingsbeleid? Er is geen minister van Justitie die daarvoor verantwoording aflegt. Del Ponte heeft geen politieke 'baas' en opereert geheel zoals het haar goeddunkt krachtens haar opdracht. Ook de rechters bemoeien zich niet met

Met haar ongeremde vervolgingsdrift naar oorlogsmisdadigers doet openbare aanklager Carla Del Ponte van het Joegoslavië-tribunaal meer kwaad dan goed op de Balkan, meent Maarten Brands. De westerse regeringen moeten voorkomen dat haar vervolgingsbeleid slechts leidt tot een nog grotere chaos in het gebied.

haar vervolgingsbeleid waarvan zij en zij alleen het monopolie heeft.

Natuurlijk dienen rechters onafhankelijk te zijn. Een politisering van de rechtspraak wordt hier ook niet bepleit. Maar een vervolgingsbeleid is nu eenmaal ook altijd een politieke zaak en dient plaats te vinden in een politieke context. De politieke controle van dat beleid

van democratie opbouwen in deze brandbare omgeving – zou veruit te prefereren zijn. Na een verwoestende burgeroorlog moet dat proces zo weinig mogelijk worden verstoord. Alles moet gedaan worden om verdere desintegratie, ontwrichting, polarisatie en afsplitsing dan wel versplintering te voorkomen. Daarbij mogen geen West-

Een proces van stabilisering zou veruit te prefereren zijn

dient evenwichtig te zijn: tussen vervolging enerzijds en andere vaak ook heel morele belangen anderzijds.

Dat politieke evenwicht ontbreekt hier geheel. Het gaat niet specifiek om een kwaal van deze ene aanklager; haar voorgangers deden het niet veel anders. Gebrek aan evenwicht in de rechtsbedeling is nu eenmaal een structuurfout van dit tribunaal.

Wanneer het optreden van de aanklager uit Den Haag ertoe leidt dat democratisch gekozen regeringen ten val komen, zoals in Kroatië dezer dagen, dan blijkt overduidelijk het conflict tussen het vervolgingsbeleid uit Den Haag en de moeizame opbouw van een democratie in een land dat onlangs door een burgeroorlog geteisterd werd.

Een proces van stabilisering – als het even kan een eigen systeem

Europese maatstaven worden opgedrongen. En bij de vervolging van oorlogsmisdadigers dient rekening gehouden te worden met de beperkingen die voortvloeien uit het programma om te komen tot stabilisering en wederopbouw.

Wat in elk geval niet mag gebeuren is dat een wilde speurhond – ongeremd door enige politieke tending – haar lange lijst van gezochte oorlogsmisdadigers afwerkt, ongeacht de rampzalige politieke consequenties van haar vervolgingsbeleid. De westerse regeringsleiders hadden hier een tegenwicht kunnen vormen, maar zij hebben het tegendeel gedaan, namelijk de aanklager aangevuurd.

De regimes in de deelstaten van het vroegere Joegoslavië staan uitermate zwak en zijn gevoelig voor elke politieke druk van het Westen. Een gouden handdruk kan nu

bijna elke regering daar verleiden tot een kniebuiging voor het rijke Westen, ook al leidt dat in hun landen tot politieke instabiliteit.

Geven regeringen in Den Haag, Washington of Berlijn zich wel rekenschap van de vraag wat nu het zwaarst zou moeten wegen: vervolging of stabiliseren van staten die na de burgeroorlog uiterst zwak staan?

Een coördinatie van eigen politieke doelstellingen is toch wel het minste wat van de EU en Washington zou mogen worden verwacht. Ongewenst zijn onderling tegenstrijdige doeleinden die de schade nog vergroten. Het afwegen van twee onderling moeilijk verenigbare, beide morele doelstellingen – enerzijds het vervolgen van oorlogsmisdadigers die in eigen land vaak voor oorlogshelden worden gehouden en anderzijds het stabiliseren van een ontwrichte maatschappij: is dat niet het werk van de politiek?

Eén ding is zeker: dat afwegen of het nalaten daarvan kan niet aan Del Ponte worden overgelaten. Zij heeft het niet gedaan en kan het ook niet. Het is ook niet haar opdracht. Deze afweging moet worden overgelaten aan politieke instanties. De VN vervult deze rol nu niet. En voorzover er sprake is van politieke druk op de aanklager, versterkt die tot nu toe alleen maar haar vervolgingsdrift. Het Westen gebruikt het tribunaal steeds meer als doekje voor het bloeden voor het eigen politieke falen in de Balkan. Maar die onmacht mag er toch niet toe leiden dat men van ellende met een beroep op gerechtigheid ook nog eens de politieke chaos helpt vergroten?

Dr. M. C. Brands is wetenschappelijk directeur van het Duitsland Instituut van de Universiteit van Amsterdam.

Kosovo: de waarheid

DOOR THATCHER BANCROFT-HITCHIN

Aug 2000

Kosovo, het symbool van Albanese extremisme in de Balkan, verborgt een schandelijk verhaal waar de top van de NAVO bang voor is en dat zij dus wanhopig probeert te verhuilen. De website *Pandora* openbaart de naakte waarheid over deze schandelijke geschiedenis van terrorisme, criminele verbondenheid en protectionisme, bedoeld om de baantjes en de machtsbasis van diegenen die aan de top staan van deze overbodig geworden, nutteloze en bejaarde militaire organisatie veilig te stellen.

Albanese criminelen die eerst tot het UCK (Kosovo Bevrijdingsleger) en later tot het KPC (Kosovo Beschermingskorps) behoorden, werden niet bestraft, omdat er door de NAVO- strijdkrachten met bewijzen werd geknoeid of omdat er op hoog politiek niveau aan de touwtjes werd getrokken om te zorgen dat gearresteerde personen weer op vrije voeten kwamen.

Busanslag

De bomanslag op een bus met Servische burgers op 16 februari van dit jaar was een goed voorbeeld van het soort incidenten dat wettelijk, zo niet dagelijks, in Kosovo plaatsvindt, en waar de internationale gemeenschap zo goed als geen weet van heeft. Servische burgers waren met een bus, die werd gescort door bewapende voertuigen van de NAVO, onderweg naar een religieus feest in Kosovo, terwijl een groep van drie Albanese terroristen in een hinderlaag lag te wachten. Op het moment dat de bus passeerde, sloegen ze de draden aan en de bus met inzittenden werd 45 meter de lucht in geblazen. Het resultaat was elf doden, waaronder een twee jaar oud jongetje, en achten gewonden.

Hoewel er vier mensen werden opgepakt, was de samenwerking van

Normale zaak

de NAVO met de internationale politiemacht in Kosovo opvallend afwezig. Transcripts van mobiele telefoongesprekken, afgeleerd in Monaco, zijn niet aangekomen, en ook DNA-fragmenten die in Duitsland worden getest, zijn niet teruggezonden. Het internationale onderzoeksteam is van achttien fallime rechercheurs teruggebracht tot twee paritimers. Een van de bendeleiders, Florin Ejupi, wist te ontsnappen uit een gevangenis op de Amerikaanse legerbasis Bondsteel, waarbij hij tien minuten nodig had om zich een weg door twee hekken heen te snijden. Ejupi was reeds twee keer eerder gearresteerd in de tijd dat hij in Duitsland woonde. Twee van de vier gearresteerde mannen werkten op het hoofdkwartier van het KPC in Pristina. Binnen een paar uur na de bomanslag hadden NAVO-troepen de krater al gecleurd, waarbij ze belangrijk bewijsmateriaal verborgen en vernietigden.



UCK-leiders vieren de overwinning met NAVO bevelhebbers en VN bestuurder Kouchner

getuigen ondervroegen, waarna zij de uitkomsten geheimhielden.

De Zweedse Christen Karphammer, een voormalige VN-rechter, verklaarde dat hij kennis heeft van een aantal gevallen waarin NAVO-functie-onarissen de vervolging van voormalige UCK-leden blokkeerden of tegenverken. Dat houdt in dat sommige leden van het UCK immuniteit bezaten. De onderzoeken werden op hoog niveau stopgezet en de rechtelijke macht werd niet toegestaan om zelfstandig een onderzoek uit te voeren.

Een ander geval van openlijke benoecenis met de rechtsgang was de zaak van Sami Lushaku, een regionale commandant van de KPC, die het hoofd van een man met een pistool had ingeslagen. Op het moment dat de politie klaarstond om hem op te pakken, kwam er een bericht van hoge NAVO- en VN-functie-onarissen, waardoor de arrestatie werd tegengehouden. Een Amerikaanse diplomaat, Jock Covey, hield op twee andere momenten de arrestatie van Lushaku tegen.

Dit zijn slechts enkele van de vele gevallen van criminaliteit, waaronder prostitutie, drugs- en alcoholsmokkel, moord, geweld, afpersing en verkrachting, die plaatsvinden onder de ogen van de NAVO-troepen, waarbij de provincie vrijwel geheel ernstig is gezuiverd van niet-Albanesen.

Criminelen

De incidenten blijven overigens niet beperkt tot Kosovo. Onlangs ontvoerde een groep Albanese enkele Macedonische werkers, die zij sloegen en martelden op zo'n afschuwelijke manier dat zij niet hadden misstaan in de annalen van een medisch proefschrift over gestoorde criminelen.

In een geheim NAVO-rapport, dat vorig jaar werd gepubliceerd, wordt

bewerd dat veel leden van de KPC, in sommige gevallen hooggeplaatste officieren, banden hebben met criminele organisaties. Ze zullen moorden om hun machtsposities te behouden en dat is een van de redenen dat de NAVO zich er buiten wil houden. De NAVO is bang dat de Albanese zich tegen hun troepen in de Balkan zullen keren.

Maar het is niet de enige reden waarom de NAVO ervoor zorgt dat de Albanese ongestraft kunnen moorden. De Verenigde Staten zijn de grootste sponsor van de KPC. Het ministerie van Buitenlandse Zaken en het Pentagon doneerde dertien miljoen dollar aan het KPC in de afgelopen twee jaar en de CIA en de Britse SAS-troepen trainden en bevoorraden het UCK.

De Britse eskadronleider Roy Brown verklaarde dat onderzoeken naar criminele activiteiten werden belemmerd door de beperkingen, die waren opgelegd uit overwegingen van nationale veiligheid van de 39 naties die hebben bijgedragen aan KFOR.

Volgens James Bissett, voormalig Canadees ambassadeur in Joegoslavië, had de NAVO-campagne in Kosovo het tweevoudige doel om ten eerste Milosevic te doen vallen, maar ten tweede - en veel belangrijker - om het oudterwete en in toenemende mate overbodige militaire instituut NAVO een nieuwe bestaansreden te geven. Dit verklaart het uitrusten en trainen van de Albanese, het creëren van chaos in de regio en het scheppen van het hele concept van een Groot-Albanie, dat in de Tweede Wereldoorlog door de nazis werd gebruikt om het gebied te destabiliseren terwijl de Axis-troepen liezen.

Dit verklaart ook waarom de VN-resolutie 1244 voor de ontwapening van de Albanese zo openlijk genegeerd werd door de NAVO. Het zou ook een verklaring kunnen zijn voor het feit dat de verzegelde aanklacht



Hacin Thaci kust Madeleine Albright

SINOS Vrijing Lic 45 Aan.

LANDS MAC FADDEN:

LAWYERS POINT.

GENOCIDE - NON LOCUS: Milosovic
is undoubtedly guilty of the world but
in Dayton, but he is too good to let
leave → had to be punished
under.

Wijny Gachse delegaties, Tugoslaw

DAYTON
WAS
INTERESTING
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IN EUROPE
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delegates. LITHUANIA (Anklier) → EUROPEAN
PARLIAMENT → refused.

→ public statement

Greek TRADE UNIONS delegation: refused

→ public statement
in Athens.

Terrorism - issue: → UCI - BIN LADEN
CONNECTED
→ EL-HILA
SAUDI-ARABIA → WORLD BUREAU FOR MIND
→ ABULRAHMAN YUSUF

van holst en steijnen

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To: <nadacanak@yahoo.com>; <R_Nikolic@Zonnet.nl>; <p_vitko@hotmail.com>;
 <Nebojsa.Joveljic@BHPBilliton.com>; <yuambanl@bart.nl>; <n.h.van.holst@freeler.nl>
Sent: maandag 17 december 2001 10:22
Subject: Mudazhedini, Bosna, Bin Laden

The Ottawa Citizen // Saturday Oserver// Dec. 15, 2001
 Page B3

Bin Laden's Balkan Connections

Dateline: Skopje, Macedonia

By Scott Taylor

With the swift collapse of the Taliban regime, the U.S.-led military campaign in Afghanistan has been reduced to an Osama bin Laden manhunt cum mop-up of the Al-Qaeda network. As U.S. jets pound the cave entrances around Tora Bora, Special Forces teams are closing in on the last redoubts of Taliban fanatics. Following the quick success in Afghanistan, President George Bush has already warned Americans to prepare for a "wider war" aimed at punishing those nations which "harbour terrorism." Although there was no proven link between Iraq and the anthrax scare, in recent speeches Bush has repeatedly singled out Saddam Hussein as "an enemy of the U.S." Similar ominous threats have been levelled at the governments of Sudan, Libya, Syria and the leaders of Palestinian extremist groups.

While it is believed that Saudi-born Osama bin Laden remains surrounded in Afghanistan, U.S. Intelligence agencies cannot be sure of his exact whereabouts. What is known is that his extensive Al-Qaeda terrorist organisation still has operating cells around the world.

As the U.S. dragnet is cast ever wider, it can only be a matter of time before the counter-terrorist effort revisits the Balkans. Over the past decade, Mujahadeen fighters - and in particular, bin Laden's followers - have practised their brutal brand of terror in Croatia, Bosnia, Kosovo and are currently believed to be participating in Macedonia's civil unrest.

On 20 November, while the Taliban was still offering organised resistance and extremists from around the world were volunteering to join their ranks, Pakistani police apprehended five of these Muslim "fighters" carrying Macedonian passports at the Afghan border.

For Macedonian Intelligence officials, these arrests were only further proof that Mujahadeen formed the veteran core of the ethnic Albanian guerrilla army known as the UCK. Since March of this year, the UCK have mounted a very successful military offensive against Macedonian security forces. By the time that a shaky peace plan was brokered in September, the UCK controlled nearly 30 per cent of Macedonian territory. Originally inexperienced and ill-equipped to fight a guerrilla war, the Macedonian security forces have maintained since the outbreak of hostilities that up to 120 Mujahadeen were active in the UCK ranks.

Nikola, a senior director with Macedonian Intelligence, confirmed that following the 11 September terrorist attacks, his agency has "supplied a substantive dossier to the CIA," outlining bin Laden's Balkan activities. The information forwarded to the CIA included eyewitness accounts offered by Macedonian civilians who had been held hostage by Mujahadeen, along with incriminating photographs and videos, which

security forces captured from the UCK-Albanian guerrillas.

Macedonian Minister of Interior Ljubo Boskovski is anxious for his police forces to return into the areas presently controlled by the Albanian guerrillas in order to uncover additional evidence. Since 13 November, Macedonian security forces have been conducting an exhumation at a mass grave outside the ethnic Albanian village of Trebos. To date, the police have unearthed the bodies of six Macedonians, from a total of 21 civilians who have disappeared following UCK attacks. Intelligence officer Nikola believes it was Mujahadeen fighters who perpetrated the Trebos massacre "because of the manner in which the bodies were cut up and scattered."

Nikola also suspects that Mujahadeen fanatics perpetrated a brutal ambush against security forces last April. In this incident, eight policemen were shot outside the village of Vejce, their bodies viciously dismembered to provide the victors with grisly trophies. The

Macedonian authorities are not the only ones to affix the blame for the Vejce ambush on the Mujahadeen.

During the summer offensive around Tetovo, Albanian guerrillas eagerly

admitted they had gained combat experience in previous conflicts. Twenty-three-year old Commander "Jimmy" claimed he was a veteran of Chechnya and Kosovo, while "Snake" Arifag bragged of service in Bosnia

and displayed a scar he received during the fighting in Croatia. Both of these Albanians acknowledged the involvement of Arab/Afghan "volunteers" in training members of the UCK. As for the Vejce incident, Commander Jimmy said such an atrocity could "only have been committed by the Foreigners [Mujahadeen serving in the UCK] because Albanians do not cut up bodies."

Once the UCK insurrection began in March, the Macedonian government hastily acquired a fleet of six Ukrainian helicopter gunships to provide their troops with tactical air support. "Shortly after that, our pilots reported being tracked by sophisticated [U.S.-made] Stinger

[anti-aircraft] missiles," said Nikola. "It is the information [of Macedonian Intelligence] that the UCK received these Stingers from their Mujahadeen connections in Afghanistan."

American advisors and covert military aid have also contributed to the

UCK's combat effectiveness, but since 11 September the Macedonians have noted a shift in U.S. foreign policy. "The CIA have been much more receptive to our reports about the Al-Qaeda," said Nikola.

"Particularly after they discovered that one of the suicide hijackers had been active in both Kosovo and Macedonia."

Given their common goal of neutralising Albanian terrorists, Macedonian police have been working closely with their Yugoslavian counterparts. More importantly, as part of the U.S.-led global initiative to combat terror, the Federal Republic of Yugoslavia has been reinstated to the ranks of Interpol - after a ten-year banishment. As a result, Intelligence Officers from the Yugoslavian Army have been able to supply their international colleagues with a wealth of information outlining Mujahadeen activity in Bosnia and Kosovo. Yugoslav Intelligence believes that at least 50 of the 150 Mujahadeen that fought in Kosovo are still active members of the UCK.

Even without this Yugoslav co-operation, Interpol was already tracking

the Al-Qaeda's Balkan activities. On 23 October this year, Interpol released a preliminary report outlining bin Laden's personal links to the Albanian Mafia. In this report, Interpol alleges that a senior Al-Qaeda lieutenant had been the commander of an elite UCK unit in Kosovo during the fighting in 1999.

While U.S. President Bill Clinton's regime was the driving force to

garner NATO support for the UCK, numerous media reports clearly show that the CIA were well aware of bin Laden's Albanian links prior to NATO's commitment in Kosovo.

On 17 January 1999 the international press was filled with news of an alleged massacre of 45 Albanian Kosovars in the village of Racak. Clinton seized upon this particular incident (later disproved, by UN pathologists, to have been an Albanian hoax) to proclaim that the West could no longer overlook "Serbian atrocities." With Clinton's statement, NATO was irrevocably launched on the path towards its confrontation with Yugoslavia.

Although lost in the U.S. media hype, Greek media outlets that same day were detailing the Taliban's widespread entry into Albania at the invitation of ex-President Sali Berisa and former head of Intelligence Bashkim Gazidede. According to The Tribune, an Athens daily newspaper, Albanian security official Fatos Klozi confirmed that "bin Laden was one of those who had organised and sent groups to fight in Kosovo. There were Egyptians, Saudis, Algerians, Tunisians, Sudanese and Kuwaitis from different organisations among the [UCK] mercenaries."

Ten days later, on 27 January 1999, the Arab-language news service Al Hayat reported that an Albanian commander in Kosovo, code-named "Monia," was directly connected to Osama bin Laden. The Al Hayat piece also proudly proclaimed that "at least 100 Muslim Mujahadeen" were serving with Monia's force in Kosovo.

The Washington Post reported in August 1998 that the CIA were not only aware of bin Laden's association with the Albanian regime, but that U.S. operatives had been "prominent" in the arrest of four Al-Qaeda agents in Tirana. At that time, U.S. State Department officials even speculated that the bombings of their embassies in Kenya and Tanzania might have been bin Laden's revenge for the Tirana arrests.

The Al-Qaeda suspects detained by the CIA in Albania had been operating the Islamic Revival Foundation, "a charitable organisation that official sources say provided a useful cover for the [suspects] efforts on behalf of bin Laden," reported the Post.

In February 1998, the U.S. State Department had removed the UCK from their list of terrorist organisations. However later that same year, the CIA and their Albanian SHIK intelligence counterparts co-operated to successfully shut down a Mujahadeen Jihad cell operating in conjunction with the Albanians inside Kosovo.

Some of the most revealing links surfaced in December 1998 when Al-Qaeda agent Claude Sheik Abdel-Kader was arrested in Tirana for the murder of his Albanian translator. During his trial, Abdel-Kader confessed to being a senior commander in bin Laden's network, and claimed he had recruited a force of some 300 Mujahadeen to fight in Kosovo. European media covering the trial reported Abdul-Kader's revelation that Osama bin Laden - although a wanted terrorist - travelled freely to Tirana in 1994 and 1998 to meet with senior Albanian officials. Abdel-Kader also confessed that when the Albanian regime of Sali Berisa collapsed into anarchy in 1997, state armouries and government offices were looted. Many of the 10,000 heavy weapons and 100,000 passports that went missing conveniently fell into the hands of the Al-Qaeda.

Osama bin Laden - stripped of his Saudi citizenship in 1994 - is alleged to have retained the Bosnian passport he was issued in Vienna in 1993. The granting of official travel documents to bin Laden was first reported 24 September 1999 by Dani, a Bosnian Muslim weekly newspaper. The rationale behind bestowing citizenship on a wanted terrorist was that Bosnian President Alija Izetbegovic had been thankful for the Mujahadeen's contribution in his quest for a Balkan

"fundamentalist Islamic Republic."

It was also reported by Dani that Al-Qaeda terrorist Mehrez Aoudouni had been arrested in Istanbul while carrying a Bosnian passport. Like bin Laden, his citizenship had been granted "because he was a member of the Bosnia-Herzegovina Army."

Canadian soldiers serving with the United Nations Protection Force (UNPROFOR) were among the first to report the presence of Mujahadeen in the ranks of the Bosnian Muslims as early as 1992.

The Asian Wall Street Journal reported that, in 1993, bin Laden had appointed Al Zawahiri, the Al-Qaeda's second-in-command, to direct all his operations in the Balkans.

While no exact numbers exist, it is estimated that between 1500 and 3500 Arab volunteers participated in the Bosnian civil war. Their main area of operation was in the region of Zenica, with most Mujahadeen serving in the 7th Brigade of General Sakib Mahmuljin's 3rd Corps, nicknamed "the Guerrillas." Identified by red and green "Rambo" bandannas emblazoned with the crest "our road is Jihad," this unit earned a reputation for criminal brutality.

On 27 June 1993, the Sunday Times reported that even Bosnian Muslim officers had reservations about the Mujahadeen volunteers. Colonel Stjepan Siber, then-Deputy Commander of the Bosnia-Herzegovina Army, admitted to the Times that "It was a mistake to let [the Mujahadeen] in here. They commit most of the atrocities and work against the interests of the Muslim people. They have been killing, looting and stealing."

According to reports, it was the Mujahadeen who were serving with General Nasir Oric in the Muslim enclave of Srebrenica who committed some of the most barbaric atrocities of the war. Beheadings of Serbian civilians were commonplace, and in some villages the Mujahadeen would dynamite homes with the inhabitants trapped inside.

No attempt was made to hide such atrocities. In fact, General Oric would often address media at the site of the massacres. On one such occasion, while standing in front of Mujahadeen brandishing human head trophies, Oric pointed to a flaming ruin and proudly said to reporters, "We blew those Serbs to the moon."

Alija Izetbegovic was also proud to display the fighting prowess of his Mujahadeen volunteers. Following a successful attack against Serbian positions around Vozuce on 10 September 1995, the Bosnian President held a televised medal presentation parade. The Mujahadeen had provided the vanguard of the assault force, and were awarded 11 decorations for valour, including the Golden Crescent, Bosnia's highest honour.

Yugoslav Intelligence estimates that over 1500 Bosnian citizenships were granted to Mujahadeen/Al-Qaeda fighters following the Dayton Peace Accord in 1995. Most of those soldiers are believed to have settled in the Zenica region.

According to Miroslav Lazanski, author of the new book Osama bin Laden Against America, Al-Qaeda still maintain two operational bases in Bosnia. One of these contains only the best fighters and was commanded by an Algerian, Abu Al Mali.

Following the 11 September attacks, FBI and CIA agents uncovered evidence that two of the suicide hijackers had originated from this Bosnian camp. Abu Mali was subsequently arrested while travelling in Istanbul on a Bosnian passport.

It is evident from recent events that the U.S. military is also well aware of the continued Mujahadeen presence in the Balkans. General Myers visited NATO troops stationed in Bosnia in late November to warn them against a possible Al-Qaeda retaliation attack. In addition, on 4 December, the White House added two Albanian terrorist groups operating in Macedonia and Kosovo to their list of outlawed organisations.

President George Bush's campaign against bin Laden's terrorists would appear to have come full circle to confront the Clinton administration's dubious Balkan legacy.

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Send your comments to:

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van holst en steijnen

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Subject: THE PICTURE THAT FOOLED THE WORLD!

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THE PICTURE THAT FOOLED THE WORLD!

[Posted 17 December 2001]

Proof Positive that Our Government Has Used False Video Evidence to Justify War.

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What is striking about the world's response to the bin Laden tape is how little confidence people have in the U.S. government.

Many suspect that we have been misled about 9-11 and the Afghan War.

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On August 6th 1992, British TV showed supposed pictures of a Serbian death camp in Bosnia. Immediately, George Bush Sr. called an emergency press conference at a Colorado air base.

According to Public Television's Robert McNeil:

===START QUOTATION===

"The first visual evidence of Serb-run prison camps in Bosnia was seen today and as it was, the U.S. moved to crack down on Serbian aggression in the former republic of Yugoslavia by granting full diplomatic recognition to Bosnia, Croatia, and Slovenia. British Television pictures showed two Bosnian camps where atrocities are alleged to have taken place... President Bush called on the United Nations Security Council for quick passage of a resolution authorizing the use of all necessary means, including military force, to make sure relief supplies can be delivered. The President said he was outraged and horrified by the violence and said Serbia should be isolated by the international community."

('The MacNeil/Lehrer NewsHour,' 6 August 1992)

===END QUOTATION===

The Emperor's Clothes movie 'JUDGMENT' proves that the pictures which were broadcast to justify Mr. Bush Sr.'s sweeping attacks were doctored.

LYING TO THE PEOPLE TO JUSTIFY WAR

Here's what happened: A film crew from ITN, the British news station, shot footage in a Bosnian refugee center. Pictures from this footage were then cleverly edited to make it appear that ITN had filmed a death camp. In 'JUDGMENT' we show exactly how it was done.

Some of the most widely distributed photos featured a shirtless, emaciated man. He was seemingly imprisoned behind barbed wire. 'JUDGMENT' proves this was a lie.

By luck, a Serbian Television crew accompanied the ITN film crew, shooting virtually identical footage and occasionally filming the British crew as well. Using this film, 'JUDGMENT' demonstrates, step by step, how a humanitarian refugee center was 'transformed' into a death camp. All sleight of hand.

On TV that night, Robert McNeil said:

"The British reporters who spoke with them [that is, the Muslims] said most were too afraid to talk. Those who did quietly acknowledged that prisoners had been beaten and killed by Serb guards."

That's another lie. As you will see, watching 'JUDGMENT,' the Serbian and ITN crews filmed quite a few interviews. People gabbed quite freely. The ITN people tried to manipulate the Muslims into saying they were abused. But none of the Muslims took the bait. One man commented that he wished they could dump the politicians and return to living together with the Serbs, like brothers, the way they had before.

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and at
<http://globalresistance.com>

van holst en steijnen

From: Despotovic, Ruza <despot@wish.net>
To: Hans Hupkes <hans.hupkes@tomaatnet.nl>; Nico & Neeltje Steijnen <n.h.van.holst@freeler.nl>; Globalreflexion <office@globalreflexion.org>; Ruza Despotovic <ruza@ggzba.nl>; Richard van Houten <richardenbeba@wxs.nl>
Sent: zondag 23 december 2001 11:53
Subject: Fw: In Solidarity - Freedom for Mr Milosevic/scrap The Hague Tribunal ...

----- Original Message -----

From: jane kelly <janckelly3@hotmail.com>
To: <committee@peaceinbalkans.freemove.co.uk>; <right-left@savanne.ch>; <volp@tandc.com>; <wmendall@gn.apc.org>; <m-beaur@france.com>; <liberez-milosevic@be.tf>; <liberez-milosevic@fr.st>; <liberez-milosevic@ca.te>; <ccase@best.com>; <contacts@list.com>; <syria@un.int>; <china@un.int>; <rusun@un.int>; <saudiarabia@un.int>; <iran@un.int>; <zeljko@cunet.yu>; <mellissa@EUnet.yu>; <lukashenkosolidarityinfonet@yahoo.fr>; <info@pcn-nep.com>; <penagitprop@yahoo.fr>; <icddsminfonet@yahoo.fr>; <liberezmilosevic@frec.fr>; <mailbox@rizospastis.gr>; <penservicedepresse@yahoo.fr>; <appeal@sps.org.yu>; <pdevos@itg.be>; <wpb@wpb.be>; <g3w@ngonet.be>; <despot@wishmail.nl>
Sent: Sunday, December 23, 2001 5:30 PM
Subject: In Solidarity - Freedom for Mr Milosevic/scrap The Hague Tribunal ...

> To: Mr Vladimir Krsljanin and all members of the Belgrade Forum.
 > From: Jane and John Kelly - Republic of Ireland -
 > E-mail: janckelly3@hotmail.com
 >
 > Copy also to following : office@belgrade-forum.org, jugocoord@libero.it,
 > jugoinfo@demeus.it, kongress@sps.org.yu, michel.collon@skynet.be,
 > downwithcapitalism@yahoo.com, undisclosed-Recipient@mandy.eunet.fi,
 > sipila@kominf.pp.fi, kominform@lists.EUnet.fi, mstainsby@toa.co,
 > leninist-international-admin@lists.econ.utah.edu, kominf@kominf.pp.fi,
 > camp@antiimperialista.com, cana.london@ic24.nett,
 > i-johnson@lincone.net, wpi@indigo.ie, tlf@transnational.org,
 > actgen@iacenter.org, info@pcn-nep.com,
 > crashlist@lists.wvpublish.com, r.romain@brutec.be, info@solidnet.org,
 > mailto:info@solidnet.org,
 > mailto:cp@int.kke.gr, lisstparade-subscribe@domeus.it,
 > actionsf@actionsf.org, iac@actionsf.org, lucmichelbxl@yahoo.fr,
 > action@srpska-mreza.com, hs.ulkomaat@sanoma.fi, toimitus@stt.fi,
 > rozoff@yahoo.com, morsta@gco2.poptel.org.uk, justice@casynet.co.uk,
 > ep-of-britain@meri.poptel.org.uk,
 > committee@peaceinbalkans.freemove.co.uk,
 > right-left@savanne.ch, volp@tandc.com, wmendall@gn.apc.org,
 > m-beaur@france.com, liberez-milosevic@be.tf, liberez-milosevic@fr.st,
 > liberez-milosevic@ca.te, ccase@best.com, contacts@list.com, syria@un.int,
 > china@un.int, rusun@un.int, saudiarabia@un.int, iran@un.int,
 > zeljko@cunet.yu, mellissa@EUnet.yu, lukashenkosolidarityinfonet@yahoo.fr,
 > info@pcn-nep.com, penagitprop@yahoo.fr, icddsminfonet@yahoo.fr,
 > liberezmilosevic@frec.fr, mailbox@rizospastis.gr,
 > penservicedepresse@yahoo.fr, appeal@sps.org.yu, pdevos@itg.be, wpb@wpb.be,
 > g3w@ngonet.be, despot@wishmail.nl
 >

> 23.12.2001

> Dear Mr Krsljanin

> This is by way of thanking you very sincerely for addressing to us such
 > vital information related to the disgraceful and totally unjust and
 > illogical scapegoating of Mr Milosevic and the peoples of Serbia for doing
 > nothing more nor less than defending their country against foreign
 > invaders.

> As Franz Kafka said "In our time not the murderer but the victim will be
 > considered guilty".

- >
- > We recently held a public meeting here in Mullingar in the midlands region
- > of the Republic of Ireland highlighting the plight of the people of Iraq
- > enduring on the long term the remorseless and cruel campaign against them by
- > the West resulting in such great deprivation and loss of life and illness of
- > every disposition amongst the most vulnerable members of the community.
- >
- > Speakers at the meeting were Richard Becker the Western Region Co Director
- > of the International Action Centre in San Francisco. Richard has been
- > actively involved in the anti-war and anti-sanctions movements in the USA
- > for over 25 years. In 2000 he was co-producer of the video "Blockade: The
- > Silent War Against Iraq" documenting the catastrophic effects of the UN
- > sanctions on Iraq. Richard co-authored "The Children Are Dying", a book
- > published by the IAC in 1996 documenting the effects of sanctions on the
- > Iraqi people, and was also a contributing author of the book "Challenge To
- > Genocide: Let Iraq Live (1999) documenting the movement against US war
- > and sanctions in Iraq. Becker was co-producer of the award-winning video
- > "Genocide by Sanctions" (1998).
- >
- > Richard Becker is also co-author of the IAC book "NATO in The Balkans"
- > (1998) and was a founder of the Emergency Mobilization to Stop the War
- > (1999). Richard spoke at many teach-ins, forums and other events on the
- > 1999 US/NATO war in Yugoslavia. Richard Becker visited Yugoslavia twice
- > during the NATO bombing and is a co-producer of the video, NATO Targets.
- >
- > Richard Becker is now lead organiser of the A.N.S.W.E.R. coalition in the
- > United States which was formed to oppose the bombing of Afghanistan.
- >
- > Tom Nagy, Professor of Expert Systems at George Washington University in
- > Washington DC. Professor Nagy is an anti-sanctions activist in the USA.
- > Over the last two years, Prof Nagy discovered documents of the United
- > States Defense Intelligence Agency proving beyond a doubt that, contrary to
- > the Geneva Convention, the U.S. government intentionally used sanctions
- > against Iraq to degrade the country's water supply after the Gulf War.
- >
- > Felicity Arbuthnot is a journalist who has worked tirelessly for the past
- > 11 years to highlight the plight of the Iraqi people with respect to the
- > indiscriminate use of depleted uranium during the Gulf War and the
- > devastating effects this type of warfare is having on the Iraqi population.
- > Felicity has visited Iraq 23 times. She has worked extensively with
- > journalist, John Pilger and recently on his documentary on Iraq, "Squeezed
- > to Death".
- >
- > The guest speakers also addressed meetings at Trinity College Dublin
- > and at University College Cork. The meetings were organised by the
- > Campaign To End Iraq Sanctions - Ireland. It was a great privilege to have
- > the opportunity to learn so much from the speakers and we are most grateful
- > to them for travelling to Ireland to share their knowledge with people here.
- >
- > The singular hypocrisy to the West bringing charges of genocide against Mr
- > Slobodan Milosevic whilst maintaining death dealing sanctions against the
- > people of Iraq is indicative of an abandonment of logic and international
- > law in this era of unprecedented imperialist endeavour by the combined
- > forces of the West.
- >
- > Again we thank you for the invaluable information and be assured that we use
- > it to best advantage.
- >
- > Sorry we have been so tardy in giving response to your communications. We
- > do not have an Internet/home computer facility of our own or any of the

more

> of less now everyday technological facilities having to rely on the expert
> and friendly services of staff of our local cyber cafe.

>

> Our warmest best wishes for the season and the New Year which we hope
to

> be, against all the odds you might say, a peaceful one characterised for
a

> change by some degree of rationality.

>

> June and John Kelly

>

> We thank sincerely also other people who send us information on the

> Hague so-called Tribunal - We will be writing to them individually

> in the New Year.

>

>

>

>

>

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>

>

Geachte heer Rohde,

23-11-2001 14:09

Aansluitend op telefoon gesprek met mijn collega, vermeld ik hier het volgende:

- Ik ben mw. Despotović, R.
Rode Kruislaan 709
1111 NX Diemen
Tel.nr.: 06-20973230
- Rede voor bezoek aan dhr Slobodan Milosević is dat dhr Steijnen mij gisteren heeft laten weten dat dhr Slobodan Milosević mij graag wil ontvangen.
- Relatie met dhr Slobodan Milosević: Geen. Ben zijn landgenote en heb hem altijd gewaardeerd als mijn president.
- Mijn voorkeur gaat uit naar een weekend vanwege mijn werkzaamheden in een ziekenhuis.
- In afwachting op een schriftelijke bevestiging,
groet ik U

Despotović, R.

To: Mr. Ramsey Clark
CNN. Wahington.

Our answer of his question Friday last 23/11/01.

No, Mr. Milosevic did not committed genocide!

He only tried to defend his souverain country against the devilish demonising practises of fascists Genscher, Kohl, Kinkel, the White House Administration, Pentagon. The role of P.R. Ruder Finn Agency D.C. Washington, the most criminal in world's journalism, has been far below his own dignity: immoral!

Already short after WWII 'the Cold War' exist by a complot between America, England and France to isolate Russia. From that time on CIA, FBI and BND together with Eagleberger, Zimmernann and many others were very active and preparing some dirty goal against the Balkan, especially Serbia. At Budapest they organised meetings to arm ILLEGAL Croatia when Milosevic should win the elections. He did.

Papa Bush declared: 'official Washington turned against the Serbs and Serbia.'

The CIA: 'now our scenario is becoming reality about the desintegration of SFRY and the CIVIL war in Yugoslavia' Papa Bush wrote 'the Foreign Operation Law' who was approved by the Senators. 5 Novembre 1990 one year after the fall of the wall in Berlin.

According to this Law Yugoslavia became bankrupt as it blows up the whole economy in this country. Soon after Croatia and Slovenia were recognised. Serbia became isolated BUT, fight for their RIGHTS!! With justice!

So now my question:

Who are responsible for the big bloodshed in the Balkan? I myself think it the biggest HOLOCAUST after WWII.

People who co-operate with fascist Tudjman and islam-fundamentalist Izetbegovic (during WWII SSer.) are also FASCISTS or much more worse. You all have to bring to court beeing held responsible for this HOLOCAUST !

Papa Bush words: 'Might comes out of the gun' I think 'your IMMORALITY.'

The whole world suffers from your terrorisme, your lies, intriges and corruption. Tell your people the truth and the very truth! Educate them in a better way than indoctrinate them!

CNN phone: 1.404.5256888

CNN webs.: CNN.COM Q&A

CNN mail : Q&A@CNN.COM

Rosa succes, zullen wij het uit naam doen van de Permanente Commissie met al onze namen eronder?

Despotovic, Ruza

Van: Despotovic, Ruza [despot@wish.net]
Verzonden: woensdag 21 november 2001 23:26
Aan: Ruza Despotovic; Nico & Neeltje Steijnen
Onderwerp: SloM

The URL for this article is <http://www.icdsm.org/more/horse.htm>
Send this article to a friend! <mailto:ENTER%20FRIEND'S%20EMAIL%20ADDRESS%20HERE?
subject=Here's an interesting article from [http://www.icdsm.org/more/horse.htm](http://www.icdsm.org!&body=I just read the following article which I thought you would find most interesting. Here's the address:

NATO's Tribunal: Straight From the Horse's Mouth

by Jared Israel [30 June 2001]

Want to know more about the Hague Tribunal on Yugoslavia? Is it the harbinger of an age where humanitarian justice triumphs over nations? Or is it the hitman of Imperial policy?

Below is a list of articles on the Tribunal with brief descriptions. You may skip right to this list <<http://www.icdsm.org/more/horse.htm#q>>. Or first consider the following direct evidence. It is straight from the horse's mouth.

"She will because we will allow her to. "

Did you think the Tribunal was free to indict anyone without respect to rank or nationality?

Exhibit A: Press Conference held by Jamie Shea, NATO spokesman, during the aggression against Yugoslavia.

"QUESTION: Jamie, I wonder if you could comment on a speech made by Justice Arbour of the International Criminal Tribunal last week, a copy of which I left with your very fine secretary so that you would have reference to it. Judge Arbour in her speech said that as a result of the NATO initiatives being initiated on 24 March the countries of NATO have "voluntarily submitted themselves to the jurisdiction of her court whose mandate applies to the theatre of the chosen military operation and whose reach is unqualified by nationality and whose investigations are triggered at the sole discretion of the prosecutor who has primacy over national courts." Does NATO recognise Judge Arbour's jurisdiction over their activities?

"JAMIE SHEA: First of all, my understanding of the UN resolution that established the Court is that it applies to the former Yugoslavia, it is for war crimes committed on the territory of the former Yugoslavia.

"Secondly, I think we have to distinguish between the theoretical and the practical. I believe that when Justice Arbour starts her investigation, she will because we will allow her to. It's not Milosevic that has allowed Justice Arbour her visa to go to Kosovo to carry out her investigations. If her court, as we want, is to be allowed access, it will be because of NATO so NATO is the friend of the Tribunal, NATO are the people who have been detaining indicted war criminals for the Tribunal in Bosnia. We have done it, 14 arrests so far by SFOR, and we will continue to do it.

NATO countries are those that have provided the finance to set up the Tribunal, we are amongst the majority financiers, and of course to build a second chamber so that prosecutions can be speeded up so let me assure that we and the Tribunal are all one on this, we want to see war criminals brought to justice and I am certain that when Justice Arbour goes to Kosovo and looks at the facts she will be indicting people of Yugoslav nationality and I don't anticipate any others at this stage ."

[Transcript of May 17, 1999 NATO press conference by Jamie Shea & Major General W. Jertz in Brussels Transcribed by M2 PRESSWIRE (c) 1999]

Washington Created It; NATO Makes It Possible

Did you think critics are indulging in hyperbole when they say Madeline Albright is "Mother of the Tribunal"?

EXHIBIT B: Excerpts from speech by Gabrielle Kirk McDonald, President of the Hague Tribunal, at her award ceremony at the American Supreme Court on April 5, 1999.

"I am also pleased to be here tonight as a guest of the Coalition for International Justice, which was founded in 1995 with assistance from CEELI and the Open Society Institute. The Coalition has been a great source of support to the Tribunal. CIJ jumped in early and has stayed involved ever since. From running a workshop to assist the defense counsel in the very first trial, through seminars for the judges...

"Without the co-operation of the states and entities in the former Yugoslavia and the international community as a whole, the Tribunal had no way of bringing even a single accused to trial.

"Nevertheless, we persevered and did what we could to build the institution. We benefited from the strong support of concerned governments and dedicated individuals such as Secretary Albright. As the permanent representative to the United Nations, she had worked with unceasing resolve to establish the Tribunal. Indeed, we often refer to her as the "mother of the Tribunal". And I am proud of what we have accomplished. After those first years of struggling to simply establish the court, we have now really gotten on with the substance of our mandate."
(From <http://www.pict-pcti.org/news/archive/April/ICTY.04.05.html>)

Emperor's Clothes Note: The Open Society Institute, which Ms. McDonald found so helpful, is George Soros' outfit. Soros acts as a kind of high-profit wing of the CIA. On the one hand, he is a ruthless currency-pirate (that is polite), implicated in savaging the Thai economy, which launched the great Asian crash. On the other hand, his foundation sets up and funds front groups throughout the former Socialist countries and elsewhere as beachheads for U.S. penetration.

In his testimony at the July, 1999 hearing on overthrowing democracy in Yugoslavia, <<http://emperors-clothes.com/engl.htm#z>> Special Yugoslav Envoy Gelbard spoke of the Open Society Foundation as a great help in carrying out Imperial penetration. CELLI appears to be part of a group of governmental and semi-governmental organizations which work together to develop Fifth Column organizations in countries targeted by the U.S. Empire. One of the main coordinators of this apparatus is a CIA-spinoff, the National Endowment for Democracy, about which see ' US Arrogance And Yugoslav Elections <<http://emperors-clothes.com/engl.htm#z>>' at <<http://emperors-clothes.com/articles/szamuely/neda2.htm>> and ' Eviscerating Democracy <<http://emperors-clothes.com/articles/szamuely/neda2.htm>>' at <<http://emperors-clothes.com/articles/szamuely/neda2.htm>>

Washington Finances It

Did you think this "United Nations" War Crimes Tribunal was funded by the United Nations?

Exhibit C: The Tribunal Thanks Washington for Donating the Money to Do Washington's Propaganda Work

"Press Release · Communiqué de presse

(Exclusively for the use of the media. Not an official document)

The Hague, 19 April 1999

JL/PIU/397-E

"THE UNITED STATES PLEDGE USD 500,000 TO

"TRIBUNAL'S OUTREACH PROJECT

"PRESIDENT McDONALD GRATEFUL FOR GENEROUS CONTRIBUTION

"On behalf of the International Criminal Tribunal for the former Yugoslavia, the President of the Tribunal, Judge Gabrielle Kirk McDonald, has expressed her deep appreciation to the U.S. Government for its pledge of USD 500,000 for the Tribunal's Outreach project. Harold Koh, the US Assistant Secretary of State for Democracy, Human Rights and Labour, announced the donation at a press briefing at the Tribunal on Friday 16 April 1999.

"This generous contribution, which makes up over a third of the total Outreach budget, will, as Assistant Secretary of State Harold Koh noted *'allow the Tribunal to carry its message of impartial justice not only to governments and legal practitioners in the former Yugoslavia, but, most of all, to the families of victims.'*

"The President urges other countries and organisations to support this vital project, which is aimed at bridging the communications gap between the Tribunal and the people of the former Yugoslavia and helping in the international community's overall reconciliation effort." (Emphasis added. From the official ICTY website <<http://www.un.org/icty/basic.htm>>)

Some Useful Articles on the International Criminal Tribunal for the Former Yugoslavia

* In 'Illegal Tribunal - Illegal Indictment' Dr. Hans Koechler, the distinguished philosopher and social-legal analyst associated with the United Nations examines the Tribunal and does not like what he finds. Can be read at <<http://emperors-clothes.com/docs/prog2.htm>>

* In 'An Impartial Tribunal? Really? <<http://emperors-clothes.com/analysis/Impartial.htm>>', Attorney Chris Black examines the Tribunal's history and methods of operations. Can be read at <<http://emperors-clothes.com/analysis/Impartial.htm>>

* Dr. Kosta Cavoski, a distinguished Yugoslav legal scholar, has written a mind-boggling four-part series.

- In 'The War Crimes Tribunal vs. Gen. Djordje Djukic <[3](http://emperors-</div><div data-bbox=)

clothes.com/articles/cavoski/c-1.htm>' at <<http://emperors-clothes.com/articles/cavoski/c-1.htm>> and 'The Mistreatment of Col. Aleksa Krsmanovic <<http://emperors-clothes.com/articles/cavoski/c-2.htm>>' at <<http://emperors-clothes.com/articles/cavoski/c-2.htm>> Professor Cavoski deals with the torture and physical destruction of Serbian 'defendants'.

- In 'Illegal Origins' <<http://emperors-clothes.com/articles/cavoski/c-3.htm>> at <<http://emperors-clothes.com/articles/cavoski/c-3.htm>> Professor Cavoski analyzes the Tribunal's legal rationale, or lack of same.
- In 'Learning from the Inquisition <<http://emperors-clothes.com/articles/cavoski/c-4.htm>>' at <<http://emperors-clothes.com/articles/cavoski/c-4.htm>> Professor Cavoski describes the practices of the Tribunal, which thoroughly violate what we would consider natural legal guarantees.

www.icdsm.org <<http://www.icdsm.org/>>

Despotovic, Ruza

Van: Despotovic, Ruza [despot@wish.net]
Verzonden: woensdag 21 november 2001 23:16
Aan: Richard van Houten; Ruza Despotovic
Onderwerp: Fw: WHAT HAPPENS TO TERRORISM WHEN IT DOESN'T HIT AMERICA?

Urgentie: Hoog

----- Original Message -----

From: Vladimir Krsljanin <mailto:vlada@sps.org.yu>
To: Belgrade Forum <mailto:office@belgrade-forum.org>
Sent: Wednesday, November 21, 2001 10:18 PM
Subject: WHAT HAPPENS TO TERRORISM WHEN IT DOESN'T HIT AMERICA?

WHAT HAPPENS TO TERRORISM WHEN IT DOESN'T HIT AMERICA?

Series of UN Security Council Resolutions in 1998 on situation in Serbian province of Kosovo treated issue of terrorism, it's consequences and it's foreign support. Despite the strong words, there was NO ACTION against it. Instead, these resolutions contained much stronger criticism and even treats against legal authorities of Serbia and Yugoslavia, that conducted legal struggle against terrorism.

Today it is obvious - all that was only a planned creation of atmosphere for the illegal and criminal 1999 NATO aggression against Yugoslavia - conducted in the ALLIANCE with the terrorist organization KLA - a part of the international terrorist network:

"Fatos Klosi, the head of Shik, the Albanian intelligence service, said last week that Bin Laden had visited Albania himself. His was one of several fundamentalist groups that had sent units to fight in Kosovo, the neighbouring Muslim province of Serbia, Klosi said. "Egyptians, Saudi Arabians, Algerians, Tunisians, Sudanese and Kuwaitis - they come from several different organisations." Klosi said he believed terrorists had already infiltrated other parts of Europe from bases in Albania through a traffic in illegal migrants, who have been smuggled by speedboat across the Mediterranean to Italy in huge numbers." *The Sunday Times*, November 29, 1998: **BIN LADEN OPENS EUROPEAN TERROR BASE IN ALBANIA** by Chris Stephen, Tirana

And than it also becomes obvious why there is no mentioning of the word 'terrorism' in the famous UN Security Council Resolution 1244 (1999) which subsequented the end of NATO aggression. It only mentions 'disarmament of KLA and other groups', that never took place because somebody needed to

prolong terror in Kosovo and to add some terrorism to other Serbian southern areas and of course to Macedonia that hoped all the time it is a NATO ally.

So, again, unless it is abolished or substantially changed: NATO HAS NO ALLIES - IT ONLY HAS FUTURE VICTIMS.

It is now sad and funny at the same time to see three times repeated demand (in 1998 Resolutions) of Security Council to Kosovo Albanian leaders to condemn (at least) terrorism publicly. No matter that they acted all the time 'under Chapter VII of the UN Charter', glorious UN ambassadors never noted in their documents in compliance of Albanian leaders to that demand. But, as a matter of curiosity, it was done by the NATO Secretary General in his letter to the UN colleague (together with the notification of all Serbian "sins") on March 23, 1999, just a day before the largest criminal act started.

So, let's take a look to the quotes from the official Security Council documents. Perhaps they still produce some obligation. But anyhow, they are A LESSON.

RESOLUTION 1160 (1998)

on 31 March 1998 Adopted by the Security Council at its 3868th meeting,

The Security Council, (...)

Condemning the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo, as well as all acts of terrorism by the Kosovo Liberation Army or any other group or individual and all external support for terrorist activity in Kosovo, including finance, arms and training, (...)

Acting under Chapter VII of the Charter of the United Nations, (...)

2. Calls also upon the Kosovar Albanian leadership to condemn all terrorist action, and emphasizes that all elements in the Kosovar Albanian community should pursue their goals by peaceful means only;

3. Underlines that the way to defeat violence and terrorism in Kosovo is for the authorities in Belgrade to

offer the Kosovar Albanian community a genuine political process; (...)

8. Decides that all States shall, for the purposes of fostering peace and stability in Kosovo, prevent the sale or supply to the Federal Republic of Yugoslavia, including Kosovo, by their nationals or from their territories or using their flag vessels and aircraft, of arms and related matériel of all types, such as weapons and ammunition, military vehicles and equipment and spare parts for the aforementioned, and shall prevent arming and training for terrorist activities there; (...)

RESOLUTION 1199 (1998)

Adopted by the Security Council at its 3930th meeting on 23 September 1998

-
The Security Council, (...)

Recalling its resolution 1160 (1998) of 31 March 1998, (...)

Condemning all acts of violence by any party, as well as terrorism in pursuit of political goals by any group or individual, and all external support for such activities in Kosovo, including the supply of arms and training for terrorist activities in Kosovo and expressing concern at the reports of continuing violations of the prohibitions imposed by resolution 1160 (1998), (...)

Acting under Chapter VII of the Charter of the United Nations, (...)

6. Insists that the Kosovo Albanian leadership condemn all terrorist action, and emphasizes that all elements in the Kosovo Albanian community should pursue their goals by peaceful means only; (...)

11. Requests States to pursue all means consistent with their domestic legislation and relevant international law to prevent funds collected on their territory being used to contravene resolution 1160 (1998); (...)

RESOLUTION 1203 (1998)

Adopted by the Security Council at its 3937th meeting,

on 24 October 1998

-
The Security Council, (...)

Recalling its resolutions 1160 (1998) of 31 March 1998 and 1199 (1998) of 23 September 1998, and the importance of the peaceful resolution of the problem of Kosovo, Federal Republic of Yugoslavia, (...)

Condemning all acts of violence by any party, as well as terrorism in pursuit of political goals by any group or individual, and all external support for such activities in Kosovo, including the supply of arms and training for terrorist activities in Kosovo, and expressing concern at the reports of continuing violations of the prohibitions imposed by resolution 1160 (1998), (...)

Acting under Chapter VII of the Charter of the United Nations, (...)

4. Demands also that the Kosovo Albanian leadership and all other elements of the Kosovo Albanian community comply fully and swiftly with resolutions 1160 (1998) and 1199 (1998) and cooperate fully with the OSCE Verification Mission in Kosovo; (...)

10. Insists that the Kosovo Albanian leadership condemn all terrorist actions, demands that such actions cease immediately and emphasizes that all elements in the Kosovo Albanian community should pursue their goals by peaceful means only; (...)



clip_image002.gif

Letter dated 23 March 1999 from the Secretary-General
of the North Atlantic Treaty Organization addressed

to the Secretary-General

I am writing to provide you with a further report on compliance by the parties to the conflict in Kosovo with Security Council resolutions 1199 (1998) of 23 September 1998 and 1203 (1998) of 24 October 1998 and by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) with commitments provided to NATO on 25 October 1998. (...)

Enclosure

North Atlantic Treaty Organization compliance report for Kosovo

16 January-22 March 1999

Table 1*

United Nations Security Council resolution 1199 (1998)

Resolution tenet

Related activity

(...)

(...)

10. Kosovo Albanian leadership:

Condemn all terrorist activity.

There has been no public declaration by either political or military leadership to denounce alleged UCK acts of terrorism in the reporting period.

(...)

To join or help this struggle, visit:

<http://www.sps.org.yu/> (official SPS website)

<http://www.belgrade-forum.org/> (forum for the world of equals)

<http://www.icdsm.org/> (the international committee to defend Slobodan Milosevic)

<http://www.jutarnje.co.yu/> ('morning news' the only Serbian newspaper advocating liberation)

van holst en steijnen

From: Despotovic, Ruza <ruzad@ggzba.nl>
To: 'van holst en steijnen' <n.h.van.holst@freeler.nl>
Cc: Ruza Despotovic (E-mail) <despot@wish.net>
Sent: vrijdag 14 december 2001 05:35
Subject: RE: Bezoek aanvraag

Hallo Nico,
 ik heb nog geen schriftelijke antwoord gekregen, daar heb ik gisteren wel om gevraagd toen ze mij belde rond 11.30 uur met mededeling dat de regels zijn verscherpt ik kan geen toestemming kan krijgen om bezoek te brengen aan dhr SloM, ik ben geen familie of advocaat of adviseur of vriendin, werd tegen mij gezegd door mv.. Hellen Frenny.
 Nog mals ik heb wel om een schriftelijke bevestiging gevraagd en die zal ik nog krijgen.

Dit e-mail adres is van Dhr Lamsdeel ass. van dhr Rohde, voor de bezoek aanvraag: iena@pc-scheveningen.nl
 ook tel.nr. heb ik: 070-5128692 Fax: 070-5128637 Ik mocht ook een brief zenden aan dhr SloM op dit faxnummer, hoe vind je die? Ik heb het gedaan ook, dat heb je al gezien.

Ja, Nico, dit was het voor nu, verder moeten wij afwachten hoe of wat....
 ???

-----Oorspronkelijk bericht-----

Van: van holst en steijnen [<mailto:n.h.van.holst@freeler.nl>]

Verzonden: vrijdag 14 december 2001 20:52

Aan: Despotovic, Ruza

Onderwerp: Re: Bezoek aanvraag

Hoi Roza,
 Goeie brief! Ik begrijp dat je antwoord hebt gehad van Rohde op je eerste verzoek. Kan je me een kopie sturen? Dan kan ik die weigering weer gebruiken voor het proces als een nieuw voorbeeld van mensenrechten-schending. Bedankt!

Hartelijke groeten, Nico

p.s.: wat is iena@pc-scheveningen.nl voor een adres?

van holst en steijnen

From: Jovan Grbic <ssicc@planet.nl>
To: van holst en steijnen <n.h.van.holst@freeler.nl>; <106057.1021@compuserve.com>;
 <chuck@hulshoff.nl>; <michel.collon@skynet.be>; <Lukbrusselaers@cs.com>;
 <camp@antiimperialista.com>
Sent: zondag 9 december 2001 16:38
Subject: Declaration and practice of Human Rights

"EVERYONE IS ENTITLED..."

Declaration and practice of Human Rights

by Bob Petrovich

How United Nations respect UN declarations? Kosovo, province under UN jurisdiction, provides ample evidence. December 10, Human Rights Day, awards an opportunity for long overdue review.

Universal Declaration of Human Rights
<http://www.un.org/Overview/rights.html>

Article 3: "EVERYONE HAS THE RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSON."

"From the foreword of the OSCE report: "The human rights violations . . . for the period June-October 1999 include executions, abductions, torture, cruel, inhuman and degrading treatment, arbitrary arrests and attempts to restrict freedom of expression. House burnings, blockades restricting freedom of movement, discriminatory treatment in schools, hospitals, humanitarian aid distribution and other public services based on ethnic background, and forced evictions from housing recall some of the worst practices of Kosovo's recent past." The OSCE report is an exhaustive catalog of ethnically motivated evil in its various banal forms. A day-by-day chronology of all human rights "events" that occurred between June 12 and Oct. 31 runs to 135 pages of single-space type, covering murders (more than 150), shootings, house-burnings, beatings and various other acts of revenge-seeking and terror.

Michael Kelly, Kosovo's Killers The Washington Post, December 8, 1999;
 Page A33

"An Amnesty International report issued last month concluded that, after six months of peacekeeping efforts in Kosovo, "human-rights abuses and serious crimes continue to be committed at an alarming rate, particularly against members of minority communities, with virtual immunity." The report declared that KFOR soldiers and U.N. police officers have been "unable to prevent violent attacks, including human-rights abuses, often motivated by a desire for retribution, against non-Albanians."

Michael Kelly: Kosovo is anything but a safe, secure environment, The Seattle Times, March 24, 2000

<http://www.balkanpeace.org/hed/archive/march00/hed17.shtml>

OSCE Assessment of the Situation of Ethnic Minorities in Kosovo July 1999- Oct 2001

<http://www.osce.org/kosovo/documents/reports/minorities/>

Number of terrorist attacks in UN governed Kosovo since June 1999: 5.089 (4.776 against Serbs, 114 against Albanians, 199 against others)

Murdered people in UN governed Kosovo since June 1999: 1.041 (910 Serbs, 78 Albanians, 53 others)

Wounded people in UN governed Kosovo since June 1999: 1.008 (945 Serbs, 20 Albanians, 43 others)

Abducted people in UN governed Kosovo: more than 1000 (104 confirmed murdered, 54 released from KLA captivity)

<http://www.2net.co.yu/apis/spisak_kidnapovanih_sa_opisom.pdf>

Article 4 "NO ONE SHALL BE HELD IN SLAVERY OR SERVITUDE; SLAVERY AND THE SLAVE TRADE SHALL BE PROHIBITED IN ALL THEIR FORMS."

"These women have been reduced to slavery," said Col. Vincenzo Coppola, commander of a special unit of the Italian carabinieri, or national police, in Kosovo that has rescued 23 women on raids of brothels in Pristina, the provincial capital, and Prizren.

Peter Finn, Sex Slavery Flourishes In Kosovo, Washington Post, Monday, April 24, 2000; Page A1

<<http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A1973-2000Apr23>>

other reports:

<<http://www.google.com/search?q=sex+slavery+kosovo>>

<<http://www.google.com/search?q=forced+prostitution+kosovo&hl=en>>

Articles 6, 7, 8, 9, 10, 11: "ALL ARE EQUAL BEFORE THE LAW AND ARE ENTITLED WITHOUT ANY DISCRIMINATION TO EQUAL PROTECTION OF THE LAW..."

"In its review, LSMS identified two trends in the legal system: i. Kosovo Serbs may be treated in a more severe way than Kosovo Albanians; ii. Kosovo Albanians who are detained for the same or similar crimes as Kosovo Serbs are often released when the victim was Kosovo Serb."

from OSCE, The treatment of minorities by the judicial system

<<http://www.osce.org/kosovo/documents/reports/justice/report5.pdf>>

Other OSCE reports related to UN judiciary in Kosovo:

<http://www.osce.org/kosovo/documents/reports/justice/>

"Kosovo's ethnic minorities are the victims of a biased and flawed judicial system concerned with revenge rather than justice, says Steven Powles, one of three delegates who visited the region on behalf of the Bar Human Rights Committee"

UN denies Serbs justice, The Times, Tuesday, March 7, 2000

<http://www.barhumanrights.org.uk/pdfs/times.pdf>>

"We are all uncomfortable ... that fairness in the case might suffer from its ethnic background," said Rolf Welberts, who heads the human rights and rule of law monitoring unit for the

Organization for Security and Cooperation in Europe in Pristina

"This

is not unique to the Momcilovic case," he said. The worry is that "the

judges are either biased or under pressure to decide in favor of their own ethnicity or against someone from another background."

Officials of international organizations operating in Kosovo said there are at least six other such cases of Serbs being held on highly dubious charges for serious crimes in the American-run sector of southeast Kosovo.

Roy Gutman, Bias Seen In Judicial System In Kosovo, UN refuses to appoint

judges above the fray

Newsday, Saturday, April 1, 2000

<http://www.balkanpeace.org/hed/archive/april00/hed31.shtml>

Article 13: "EVERYONE HAS THE RIGHT TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY."

"A year after Britain's disastrous involvement in Kosovo, tragedy

vics

with incompetence as the West connives in persecuting the Serbs "It's

better now, British officers tell me. There is increasingly little

anti-Serb

violence in their sector, or in most of Kosovo. There are fewer

Serbs

being

protected by our soldiers. One reason for this is that there are so

very few Serbs left to attack. In Pristina there are only an

estimated

800 Serbs

out of a population of 40,000 at the end of the war. As many as

200,000 Serbs have left Kosovo, along with other persecuted

minorities

such as gypsies and Bosnians."

Stephen Glover, How We're Aiding The Ethnic Cleansers, The Daily Mail,

February 26, 2000

<<http://www.balkanpeace.org/monitor/koskss/kss05.html>>

There are more Serbs and gypsies who have been killed and forced from their homes by Albanians since the Kosovo war than there were Albanians killed and forced from their homes by Serbs before it.

Christopher Lord, Bad Moves In The Balkans

Monday, April 9, 2001

<http://speakout.com/activism/opinions/5756-1.html>

"Put it another way, the United States and NATO, though it was the opposite

of their declared intentions, have succeeded in cleansing Kosovo of one ethnic group in favor of the other."

David Binder, The ironic justice of Kosovo-Seeking to stop ethnic cleansing, NATO finds it has accomplished it MSNBC, Friday, March 17, 2000 <http://www.balkanpeace.org/monitor/koskss/kss23.html>

Article 17: "NO ONE SHALL BE ARBITRARILY DEPRIVED OF HIS PROPERTY."

"The key problem is the lack of clarity, both in the law and in the actions of UNMIK Police and KFOR, regarding the determination of property rights, which has led directly to a large number of illegal occupations of homes and illegal constructions across the province. Without a resolution of the property issue, the situation of internally displaced persons (IDPs) and

refugees is aggravated since their homes are often occupied or destroyed."

OSCE report, The Impending Property Crisis in Kosovo
<http://www.osce.org/kosovo/documents/reports/property/property_report_s_eptember_2000.pdf>

[n.b. More than 50,000 houses were destroyed under UN supervision since June 1999 More than 400 public and more than 1000 private-owned businesses were looted]

Article 18: "EVERYONE HAS THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION"

The cause of human rights which motivated the international intervention in this region will be weakened indeed if those which now have authority are unable to ensure the survival of minority communities and the protection of their religious and material patrimony.

World Council of Churches
<http://www.wcc-coe.org/wcc/news/press/99/37pu.html>

Destroyed or Damaged Serbian Orthodox Churches and Monasteries in Kosovo and Metohija (June 13, 1999 - April 28, 2000)
<http://www.incommunion.org/churches.htm>

More than than 100 Christian churches and monasteries has been destroyed in Kosovo under UN supervision since June 1999. Additional 30 churches has been destroyed in neighboring Macedonia by extremists operating from UN protectorate of Kosovo.

<http://www.thescotsman.co.uk/world.cfm?id=86867>
THE leader of Macedonia's rebel army was a senior figure in Kosovo's United Nations-funded civil defence force, it has been revealed. Before launching war in Macedonia, Gezim Ostremi was paid by the UN to help set up the Kosovo Protection Corps (KPC), being appointed its chief-of-staff. President George Bush has now banned Ostremi from entry to the United States, and accused five key members of the KPC of aiding the rebels.

Article 19: " EVERYONE HAS THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION"

"Upon arrival at Pristina airport, UNMIK police separated the Serbian journalists from the group, told them they had no permit to enter the

ty and informed that that filming was forbidden and anyone trying to film would have his camera confiscated and film destroyed. UNMIK spokesperson Susan Manuel confirmed that UNMIK was unable to provide security for the group of journalists."

Timothy Bancroft Hinchley, UN PERSONNEL BAN SERBS FROM KOSOVO

Article 20, 21: "EVERYONE HAS THE RIGHT TO TAKE PART IN THE GOVERNMENT OF HIS COUNTRY, DIRECTLY OR THROUGH FREELY CHOSEN REPRESENTATIVES"

Report on the Provincial Elections, 17 November 2001

BRITISH HELSINKI HUMAN RIGHTS GROUP, November 17, 2001
http://www.bhhrg.org/faking_democracy_and_progress_in1.htm

Article 25: "MOTHERHOOD AND CHILDHOOD ARE ENTITLED TO SPECIAL CARE AND ASSISTANCE...."

Grenade Attack on Serbian Children As Kosovo Minorities Suffer

"PRISTINA, Yugoslavia - Peacekeepers and UN police were Saturday hunting for a gang who threw at least two grenades at a group of Kosovo Serbian children playing basketball, a KFOR spokesman said. The attack, which KFOR said left nine youngsters in need of hospital treatment, appears to be the latest in a campaign of hate which a leading humanitarian agency says is making life hell for Kosovo's minorities."

August 19, 2000 Agence France Presse
<http://www.commondreams.org/headlines/081900-01.htm>

Article 28: "EVERYONE IS ENTITLED TO A SOCIAL AND INTERNATIONAL ORDER IN WHICH THE RIGHTS AND FREEDOMS SET FORTH IN THIS DECLARATION CAN BE FULLY REALIZED"

For Serbs, Goranis, Roma, Bosniaks, Turks, Croats and other ethnic groups in UN governed Kosovo "All human rights for all" sounds like "Work brings freedom".

###

van holst en steijnen

From: Christopher Black <bar@idirect.com>
To: Vladimir Krsljanin <vlada@sps.org.yu>; Jared Israel <jedmisrael@yahoo.com>; Global Reflexion <office@globalreflexion.org>; mailservicesnc <mailservicesnc@tiscalinet.it>; Elmar Schmaling <elmar_schmaehling@online.de>; Mikhail Kuznetzov <elena_abpk@mtu-net.ru>; Mick Collins <cirqueminime@club-internet.fr>; Louis Dalmas <Lodalmas@europost.org>; van holst en steijnen <n.h.van.holst@freeler.nl>
Cc: Blaauw, de Piet <piet.deblaauw@ncrv.nl>; Menno de Galan <Menno.de.Galan@nps.nl>; Eric Margolis <margolis@foreigncorrespondent.com>; EFECanada <EFECanada@sympatico.ca>; <Owen.Bowcott@guardian.co.uk>; <Seumas.Milne@guardian.co.uk>; Keith Richburg <Richburg@compuserve.com>; Heather Dahl <HDahl@newshour.org>; Metro Morning <metromorning@toronto.cbc.ca>; dragan milovanovic <d-milovanovic@neiu.edu>; Daniel Dostanic <dostanic@sympatico.ca>
Sent: donderdag 29 november 2001 18:24
Subject: Fw: HARPER'S MAGAZINE:Planning Croatia's Final Solution

This is important re Milosevic's defence.

----- Original Message -----

From: "minja m." <minja@vlada.ca>

To: <undisclosed-recipients:>

Sent: Monday, November 26, 2001 9:39 PM

Subject: HARPER'S MAGAZINE:Planning Croatia's Final Solution

>
 >
 > www.harpers.com
 >
 > HARPER'S MAGAZINE, December 2001, pp. 20-22 READINGS
 >
 > Planning Croatia's Final Solution
 >
 >> From minutes of the September 12 and September 19, 1993, meetings of
 > the
 > Council for Defense and National Security of the Republic of Croatia.
 > That
 > year, Croat forces murdered up to 400 Serb civilians in the town of
 > Gaspic;
 > in 1995 almost 600,000 Serbs were driven from the Krajina region. This
 > transcript is the first proof that President Franjo Tudjman planned and
 > directed ethnic cleansing and other war crimes. The minutes were
 > obtained by
 > Chris Hedges of the New York Times. Tudjman died in December 1999.
 >
 > SEPTEMBER 12, 1993
 >
 > PRESIDENT FRANJO TUDJMAN: Gentlemen, it seems that during the last few
 > days
 > we have had a great military success with the Gaspic operation. At the
 > moment when the whole world is recommending - those from the friendly
 > countries as well as the others - that we pursue extreme caution and
 > political flexibility, we nevertheless let ourselves be drawn, both by
 > the
 > Serbs' provocations as well as by our own decision, into a situation
 > that,
 > momentarily, no matter how we interpret it, we have commenced an attack,
 >
 > which they have survived, and, given our own preparations, that cannot
 > be
 > hidden. Croatia can be held to a charge that it is preparing a war with
 > the
 > Serbs in Croatia.
 >
 > I must admit, that this is my responsibility, as I have permitted the
 > Gaspic
 > operation. When General Bobetko came to me with the proposal I took into
 >

- > account the Serb provocations - small provocations; for example, their
- > entrance into the Velebit Range, where they killed some three special
- > policemen, cutting off an ear of one, then the placing of mines at
- > Pakrac,
- > thereby creating a certain political climate both in the public and the
- > parliament - so I accepted the proposal that we are going into this
- > operation, although I was not informed, as I later found out, about all
- > the
- > elements. For example, I knew that Divoselo is Serb, but I did not know
- > that
- > all of these villages, which we conquered, were Serb.
- >
- > In that way, too, considering that we were carrying on the negotiations
- > about a cease-fire, we brought ourselves into a situation that we can
- > justify only with difficulty, that at a moment when we were discussing a
- >
- > cease-fire we turned to a war operation. The members of the
- > international
- > community followed what is happening and why it is happening. And then
- > we
- > gave them a little bit of different material. Do not think that what
- > General
- > Bobetko is proposing, that we prepare two attacks, that they do not
- > observe
- > this and they do not have the exact information. And then, in addition,
- > in
- > our statements we brought ourselves into a very unfortunate situation.
- > General Bobetko, I told you that after this operation it should be
- > explained
- > that they attacked first - that is, in the Velebit - and that they did
- > what
- > they did, etc. I said that one has to go before the TV cameras and show
- > the
- > captured tanks.
- >
- > GEN. JANKO BOBETKO: That will be this evening.
- >
- > PRESIDENT: Therefore, we have to attempt to put our actions in harmony
- > with
- > international policy in order to regain sovereignty over the whole
- > territory
- > with international support and in a peaceful way. Of course, I am not an
- >
- > illusionist to think that we shall succeed in this, but then we should
- > not
- > make our tasks more difficult. We have to get ready.
- >
- > PRIME MINISTER NIKICA VALENTIC: Mr. President, I have to say a word.
- > President, with the Serbs in Croatia we shall not solve the problem. The
- >
- > only question is when is the time to solve it in another way.
- >
- > PRESIDENT: Yes, I know that.
- >
- > VALENTIC: Therefore, and this is something of which I want to convince
- > you,
- > as a man who spent his whole life down there [in the Gospic area], the
- > Serbs
- > do not accept any political solution. I think that all we need to do is
- > to
- > prepare better and hit them from several sides. Thank you.
- >
- > PRESIDENT: Prime Minister Valentic, with the Serbs in Croatia, those who
- > are
- > now leading Knin and Baranja, no. But that is just a small group, and
- > they
- > still depend on Belgrade. And the problem is, will the international
- > community force Belgrade to stop supplying them?
- >
- > The moment when Serbia is forced to do this, then we are going to solve
- > the
- > question of Serbs in Croatia. Then that miserable group of some 10 to 20

- > percent will leave Croatia and then we shall solve that.
- >
- > And it is clear that we shall not be able to solve it. But should we
- > begin
- > only with that premise, then that means war, which the world will not
- > permit. That is not the only focal point, only the question of national
- > minorities in Croatia. Such problems exist throughout the world, in the
- > Soviet Union, Africa, the Middle East, etc. The international community
- > is
- > oriented toward the resolution of these questions in a peaceful way -
- > for
- > example, as the relations between the Arabs and Israel are being
- > resolved -
- > and that directs us to follow that path, not by war; whereas in our
- > country
- > there is a growing understanding that Croatia must resolve the problem
- > by
- > war, contrary to international norms, meaning by ethnically cleansing
- > the
- > Serbs from Croatia. That is happening in practice because we cannot hide
- >
- > that they have the information that in Slavonia, western Slavonia, some
- > thirty Serb villages disappeared from the face of the earth, and that
- > now
- > these three, four Serb villages were eradicated. This creates a certain
- > picture of Croatia on which we cannot build our political status or
- > economic
- > relations with the world. Understand that.
- >
- > VALENTIC: That is not the issue, President, but this awaits us in a
- > year
- > again. It is only the question of timing. This awaits us.
- >
- > PRESIDENT: Yes, if it awaits us then it means that we have to prepare
- > also
- > politically, that we have to prepare ourselves better militarily, and
- > then
- > we also have to prepare so that after our future operation they will no
- > longer be able to hit Zagreb.
- >
- > VALENTIC: President, as you know, there are many mixed marriages in
- > Gospic;
- > several civilians and old ladies are in Senj, where there is a certain
- > concentration camp, and that is where we should take those that we
- > captured
- > at Citluk and Pocitelj. We should place them there in an acceptable way
- > and
- > then show them off and say a few things. Because I know this for sure -
- > because they asked me to intervene, a granddaughter of one of these is
- > married to my cousin - that in Senj there is a concentration area where
- > you
- > have these refugees from Citluk, Divoselo, and Pocitelj. Then we show
- > them
- > that we do it in this fashion.
- >
- > PRESIDENT: That would be very good, very good.
- >
- > VALENTIC: And then when we display them, we pretty them up, wash them,
- > etc.
- >
- > SEPTEMBER 19, 1993
- >
- > PRESIDENT: Gentlemen, I open this meeting of the Council for Defense
- > and
- > National Security with the agenda: the development of the situation
- > concerning Bosnia and Herzegovina and Croat-Serb relations. In addition,
- >
- > these UNPROFOR people [U.N. peacekeepers] and others tell us that we did
- > not
- > have to leave the cleanest clearance behind us after we retreated.
- >

- > MATE GRANIC [Foreign Minister]: That is the last news, the main news of
- > the
- > last twenty-four hours on the SKY News and CNN.
- >
- > BOBETKO: We turned over fifty-two, so it was said, usable Serb bodies,
- > and
- > the rest were removed. There are some fifty, sixty, in the forest,
- > because
- > it is more difficult to collect them in the forest. But it could happen
- > that
- > they [UNPROFOR] entered a little bit too fast. However, that was
- > cleansed,
- > absolutely. They cannot find anything over there, at least I think so.
- >
- > PRESIDENT: Gentlemen, to conclude, I have another obligation. Three
- > things:
- > no military actions from our side now and no provocations; prepare to
- > swallow, because now things are being solved in the United Nations and
- > it is
- > important to know whether the Croats are for a peaceful solution or not.
- >
- > Therefore, continue the conversations with Serbs on all levels. That is
- > one
- > thing. Second, Mate [Granic], in Bosnia and Herzegovina under all
- > circumstances carry through the agreements [with the Bosnians],
- > particularly
- > everything that we did there - concentration camps, etc., etc.
- > -----
- > [John R. MacArthur, President and Publisher of Harper's Magazine, is the
- >
- > author of "Censorship and Propaganda" in the Gulf War, New York: Hill
- > and
- > Wang, 1992.]
- > -----
- >
- > Note: During this period of Tudjman's meetings of Sept 12 and 19, 1993,
- > Croatian forces attacked Canadian peacekeepers in a UN-protected area,
- > the
- > Medak Pocket. Medak is south of Gospić and near Pocičelj, mentioned in
- > the
- > transcript of the meetings.
- >
- > This battle is described in the following sources:
- >
- > The Ottawa Citizen, Canada, Monday, October 7, 1996, pp. 6-7
- > "Canada's Secret Battle"
- > By DAVID PUGLIESE, CITIZEN Defence Writer
- > -----
- > After the Ottawa Citizen broke the story, other newspapers in Canada
- > printed
- > the full story or a shorter version. The following excerpt is from the
- > Toronto Star summary of the battle:
- >
- > The Toronto Star, Tuesday, October 15, 1996, p. A1,13
- > "Honor for our troops in Canada's secret battle"
- >
- > OTTAWA (CP) - In 1993, Canadian soldiers fought their biggest battle
- > since
- > the Korean War. The action pitted Canadian personnel and French troops
- > under
- > Canadian command against the war-hardened Croatian army in a tiny corner
- > of
- > the former Yugoslavia. When the shooting stopped, there were four
- > Canadian
- > and seven French soldiers wounded. Croatian media put their army's
- > casualties at 27 dead or wounded. But until now few Canadians outside of
- > the
- > military knew of the engagement or the performance of their troops. It is
- >
- > Canada's secret battle....
- >
- > On Sept. 9, 1993, the Croatian army had attacked near the town of Medak

- > in
- > the Krajina, an area controlled by Serbs in eastern Croatia. More than
- > 2,500
- > Croatian troops, backed by tanks, had advanced into a
- > 35-square-kilometre
- > area known as the Medak Pocket. After several days of heavy fighting
- > with
- > the Serbs, the Croats had agreed to a UN-brokered ceasefire that
- > required
- > them to pull back to their original lines.
- >
- > Calvin and French Gen. Jean Cot., head of the U.N. mission, had agreed
- > that
- > the Patricias would establish a buffer zone between Serb and Croatian
- > armies. Cot told Calvin the UN had a credibility problem and needed a
- > successful mission in Yugoslavia. No more would UN troops pull back each
- >
- > time the Croats or Serbs attacked. It was now time to enforce the peace.
- >
- > Calvin and his men had already endured a 24-hour Croatian artillery and
- > mortar barrage, and some Canadians were still shaken. In Medak, where
- > Canadians manned an observation post, 525 bombs had landed, and four of
- > Calvin's soldiers had been wounded.
- >
- > About noon on Sept. 15, 250 Canadian troops and 500 French soldiers
- > under
- > Calvin's command started to move in between the Serb and Croat front
- > lines.
- > They were supported by another 375 Canadian soldiers, including
- > engineers,
- > medics and anti-tank teams. More than half the Canadians were
- > reservists.
- > The Serbs watched as the UN troops advanced but did nothing. The Croats
- > opened fire.
- >
- > Sgt. Rod Dearing's men of 8 Platoon, Charlie Company, were digging in
- > around
- > the village of Sitlik when the Croats attacked.
- >
- > "The whole place just lit up," said Dearing, a native of Armstrong, B.C.
- >
- > "They started firing at us with everything - 20-millimetre cannon,
- > mortars,
- > machine guns, everything. It was crazy." The Canadians scrambled into
- > their
- > trenches and returned fire. During a second attack, the platoon spotted
- > the
- > Croats. Flashes from their machineguns could be seen from a hedgerow and
- >
- > trees 150 metres away. After a fierce firefight, the shooting on the
- > Croatian side died down.
- >
- > Dearing and his troops weren't the only Canadians fighting back. Twenty
- > separate gun battles would be fought that day and night with the Croats.
- >
- > At 9 a.m. the following morning [Sept. 16], French troops who were in
- > the
- > rear started moving forward. Backed by armored vehicles, they moved up
- > past
- > the Canadians and toward the Croatian positions. By then the Croats were
- >
- > falling back. Later that morning, the Canadians heard small-arms fire
- > and
- > explosions, and saw smoke rising from Serb villages behind the Croatian
- > lines. The Croats were killing Serb civilians.
- >
- > An armored platoon started toward the burning villages but was stopped
- > for
- > 90 minutes by a heavily armed Croatian unit which apparently wanted to
- > delay
- > the Canadians, to enable their ethnic cleansing units to finish their
- > killing and looting. "That was the hardest thing - to sit there and

> watch
 > that and be essentially helpless to do anything," recalled Calvin, who
 > had
 > moved up to the barricade.
 >
 > Calvin didn't have the firepower to match the Croats, but he did have
 > another weapon: A European television crew and several Serb journalists
 > were
 > with the column. Calvin gave an impromptu news conference in the middle
 > of
 > the road, telling reporters the Croats were killing civilians just on
 > the
 > other side of the barricade. The Croatian commander, worried about his
 > country's image, opened the roadblock and let the Canadians pass.
 >
 > When they finally reached the villages, the Canadians found 16 bodies of
 >
 > civilian victims. Every single building in the Medak Pocket, 312 houses
 > and
 > barns, had been destroyed. More than 130 large farm animals had been
 > slaughtered. Scattered on the ground were hundreds of pairs of surgical
 > gloves. It appeared that more people had been murdered and the Croats
 > wore
 > the gloves when piling bodies into trucks for removal from the area.
 > Days
 > later, the Croats turned over 50 bodies.
 > -----
 > Another source is Tested Mettle, by Scott Taylor and Brian Nolan
 > (Ottawa:
 > Esprit de Corps Books, 1998), Chapter Eight, "Medak Pocket."
 >
 > Cedric Thornberry, Deputy Head of UNPROFOR in the former Yugoslavia
 > from
 > 1992 to 1994, also described the Croatian war crimes in the Medak Pocket
 > in
 > "Saving the War Crimes Tribunal," Foreign Policy, Fall 1996.
 > -----
 >
 >
 >

van holst en steijnen

From: Christopher Black <bar@idirect.com>
To: Vladimir Krsljanin <vlada@sps.org.yu>; Jared Israel <jedmisrael@yahoo.com>; TARGETS <redactie@targets.org>; van holst en steijnen <n.h.van.holst@freeler.nl>; David Jacobs <david@shelljacobs.com>
Sent: zondag 11 november 2001 22:36
Subject: Fw: Article

I hope someone can translate this article from Jungle World about our problems with the ICTY.

Chris

----- Original Message -----

From: "Martin Schwarz" <centraleurope@europe.com>

To: <bar@idirect.com>

Sent: Sunday, November 11, 2001 5:50 AM

Subject: Article

> Hi, Christopher,
 >
 > enclosed I send you the report I wrote about your troubles with the tribunal. It's in German, but may be, you'll find someone to translate it.
 >
 > Best regards from Vienna,
 > Martin
 >
 > Hütchenspiel mit Milosevic
 >
 > Mit allen möglichen Tricks versucht das Den Haag Tribunal, Slobodan Milosevic den Rechtsbeistand zu verweigern. von martin schwarz, wien
 > Die Mühlen der Justiz mahlen langsam. Ganz gewiss aber gilt das nicht für das Kriegsverbrechertribunal in Den Haag. Seit Monaten ist die Bürokratie der Institution vorzugsweise damit beschäftigt, ihren prominentesten Häftling, Slobodan Milosevic, weniger juristisch als vielmehr durch alltägliche Tricks zu zermürben.
 >
 > Das jüngste Beispiel in einer langen Reihe von eigentlich unnötigen Schikanen: Dem wohl prominentesten Rechtsberater von Milosevic, Christopher Black, wurde jede weitere Kommunikation mit dem Häftling untersagt, weil er sich angeblich über die Regeln des Gerichtes hinweggesetzt hatte. Und das ging so: Mitte Oktober veröffentlichte Jungle World ein Interview mit Slobodan Milosevic (43/01). Die Fragen der Redaktion wurden von Christopher Black an Milosevic weitergeleitet, und der beantwortete sie in einem Telefonat mit dem kanadischen Anwalt.
 >
 > Als Jungle World das Interview veröffentlichte, erhielt Christopher Black ein Schreiben von Christian Rohde, einem Beamten des Tribunals. »Als Resultat Ihrer Vergehen gegen die Haftordnung wird Ihre Berechtigung, mit dem Häftling zu kommunizieren, zurückgezogen. Keine weitere Kommunikation mit dem Beschuldigten wird gestattet - bis auf Widerruf«, schreibt Rohde. Und gibt indirekt zu, dass das Tribunal das macht, was Gerichte, die auf rechtsstaatlicher Basis arbeiten, eigentlich nicht nötig haben: Telefonate und Gespräche zwischen Anwälten und Häftlingen abhören. »Es scheint, dass dieses Interview die meisten, wenn nicht alle Fragen behandelt, die Sie in einem Telefonat mit Milosevic am 3. Oktober erörtert haben.«
 >
 > Seit Milosevics Inhaftierung Ende Juni dieses Jahres lässt die Bürokratie des Tribunals keine vertraulichen Gespräche zwischen Anwälten und dem Häftling zu. »Sie haben immer wieder neue Ausreden. Manchmal darf man ihn sehen, wird aber dabei gefilmt. Manchmal darf man nur mit ihm telefonieren, wird aber dabei abgehört. Und manchmal darf man keins von beidem. Ich frage mich: Wovor haben die eigentlich Angst? Dass ich mit ihm den Ausbruch aus dem Gefängnis bespreche?« meint Christopher Black gegenüber Jungle World.
 >
 > Das Tribunal selbst nimmt den Standpunkt ein, dass vertrauliche Gespräche zwischen Anwälten und Häftlingen nur dann möglich seien, wenn der Beschuldigte einen Anwalt zu seinem Verteidiger ernennt. Was Milosevic bisher nicht getan hat. »Jede Strategie für eine Verteidigung wird aber

durch dieses Mithören verunmöglicht. Sobald wir über eine mögliche Taktik geredet haben, wusste auch schon Carla Del Ponte Bescheid«, klagt Black.

> Mit den strikten Regeln zur Abhörung nimmt es aber das Tribunal auch nicht immer so genau - und verletzt damit selbst das eigene Regelwerk: Als der ehemalige US-Justizminister und nunmehrige Milosevic-Rechtsberater Ramsey Clark den jugoslawischen Ex-Staatschef im Spätsommer dieses Jahres in Den Haag besuchte, wurden die Mikrophone abgeschaltet. Wie sich der Clark-Bonus mit dem offenbar sehr dehnbaren Rechtsverständnis des Tribunals verträgt, wurde nie erklärt.

> Auf solche Unstimmigkeiten bezieht sich nun auch Christopher Black in seiner schriftlichen Antwort auf die Merkwürdigkeiten beim Umgang mit Anwälten und Häftlingen. »Ich muss zur Kenntnis nehmen, dass die willkürliche und unprofessionelle Art, mit der Sie Ihre Entscheidungen treffen, für viele Menschen ein Spiegel Ihrer Vorgangsweise bei der Festnahme und Inhaftierung von Slobodan Milosevic ist«, schreibt Black in einem Brief an Rohde.

> Aber nicht nur der Kanadier Black hat Schwierigkeiten mit der Vorgehensweise des Tribunals. So beklagt etwa der niederländische Anwalt Nico Steijnen, dass mehrere seiner Briefe an Milosevic einfach nicht zugestellt worden waren. »Sie können ja meinetwegen zensurieren, aber Schreiben, in denen es um die Verteidigung geht, einfach gar nicht zuzustellen, ist ein starkes Stück«, so Christopher Black.

> Die Willkür des Tribunals in Zusammenhang mit dem Milosevic-Interview von Jungle World könnte nun auch rechtliche Konsequenzen haben. Christopher Black möchte jetzt den Fall vor dem Europäischen Gerichtshof für Menschenrechte in Straßburg verhandelt wissen. Schon in seinem Schreiben an Christian Rohde hat er angekündigt, sich rechtliche Schritte vorzubehalten. Denn die Begründung von Rohde, Black hätte mit dem Interview die Regeln des Tribunals gebrochen, ist wenig überzeugend.

> Um jede weitere Kommunikation zwischen einem Anwalt und Milosevic zu unterbinden, muss mehr passieren, als Slobodan Milosevic Platz für einige historische Anmerkungen einzuräumen. Nach den Regeln des Tribunals müsste zwischen Black und Milosevic schon besprochen worden sein, wie eine Feile in die Zelle geschmuggelt oder das Verfahren verhindert werden könnte.

> Nichts davon war der Fall. Was der Häftling über die Umtriebe Ussama bin Ladens vor einigen Jahren erzählt hat, steht in keinem Zusammenhang mit den Milosevic zur Last gelegten Kriegsverbrechen. Das müsste auch die Chefanklägerin einsehen, es sei denn, dass Carla Del Ponte mittlerweile selbst nicht mehr so viel Vertrauen in die Arbeit ihrer Ermittler auf dem Balkan setzt. Inzwischen sind nicht einmal Helfer des Gerichtes mehr überzeugt von einem juristischen Erfolg Del Pontes. »Ich befürchte, dass diese Anklage unter streng juristischen Gesichtspunkten nicht ausreichen würde, ihn zu verurteilen«, meint gegenüber Jungle World eine Expertin, die wesentlich an der Aufarbeitung möglicher Massaker im Kosovo beteiligt war und namentlich nicht genannt werden möchte.

> Weil Del Ponte es aber vorzieht, weniger durch kriminalistischen Spürsinn als durch bloße verfahrenstechnische Schikanen wie etwa die Isolation des Angeklagten von seinen Anwälten zu glänzen, denken die Anwälte des Tribunals inzwischen an eine Kehrtwendung in der Strategie: »Es spricht viel dafür, dass wir Slobodan Milosevic vorschlagen werden, doch offiziell Anwälte zu benennen und das Mandat zu seiner Verteidigung zu erteilen«, so Christopher Black.

> Dann könnten Gespräche in der Zelle nicht mehr abgehört werden. Bisher hatte Milosevic derartiges abgelehnt, um den Eindruck zu vermeiden, er würde das Tribunal damit anerkennen. Doch das muss nicht sein. Die Anwälte könnten auch weiterhin Material über die wackelige rechtliche Grundlage der Existenz des Tribunals vorlegen und dies sicher professioneller machen als Slobodan Milosevic, dem der Vorsitzende Richter Richard May ohnehin regelmäßig nach wenigen Minuten das Wort entzieht.

> Inzwischen kämpfen die Milosevic-Helfer auch an anderer Front gegen die Den Haager Institution. Christopher Black verschickt Briefe an Regierungen, in denen er sie ersucht, in den UN-Gremien das Budget für das Tribunal für das Jahr 2002 nicht mehr zu bewilligen. »Würde das gelingen, müssen die

ohnehin den Laden zusperren«, so Black.

>

> Zudem trägt auch der Konflikt um Ussama bin Laden einiges dazu bei, den Geldgebern in der Uno zu suggerieren, dass die Welt derzeit andere Probleme hat als die Arbeit eines fragwürdigen Gerichtes. Und wenn die Klage vor dem Europäischen Gerichtshof für Menschenrechte akzeptiert wird, würde ohnehin deutlich, dass die Rechtsprechung des Haager Tribunals keine Legitimität besitzt.

>

> Carla Del Ponte wird sich also anstrengen müssen, um den Eindruck zu vermeiden, einen Prozess nur wegen fragwürdiger Verfahrenstricks gewonnen zu haben. Das würde auch jenen keinen guten Dienst erweisen, die unter Milosevic gelitten haben.

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van holst en steijnen

From: Despotovic, Ruza <despot@wish.net>
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 Richard van Houten <richardenbeba@wxs.nl>
Sent: vrijdag 30 november 2001 16:45
Attach: id=1312622.dat
Subject: Pierre Henri Bunel - FR

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DEUX ARTICLES POUR YUGOSLAVIE

Auteur: Pierre Henri Bunel*

01. DECEMBAR 2001. 01. DECEMBAR 2001.

1. Les Européens se sont trompés d'ennemi**

Après les attentats du 11 septembre, les Américains se sont lancés dans une nouvelle guerre de conquête pour le contrôle d'une région stratégique pour leurs intérêts pétroliers. Après avoir soutenu les positions de membre des plus extrémistes de l'Organisation de la conférence islamique, ils ont été victimes de ceux qu'ils pensaient être leurs alliés.

Et pourtant, ils en avaient déjà fait l'expérience pendant la campagne de l'IFOR en Bosnie-Herzégovine, comme je l'écris dans mon livre "Crimes de guerre à l'Otan".

Depuis le 11 septembre 2001, on "découvre" ce que tous les spécialistes du renseignement des pays européens savaient très bien : la plupart des ONG islamiques opérant dans le monde en général et dans les Balkans en particulier disposent d'une branche connectée au monde terroriste.

Dans un autre ouvrage que je viens de publier en France, "Menaces islamistes" je raconte comment l'Organisation de la conférence islamique avait peu à peu pris le contrôle du mouvement des non-alignés dont les pays fondateurs avaient été la Yougoslavie et l'Indonésie. Ayant pris le contrôle de ce mouvement si important pour les relations internationales, les éléments les plus nefastes de l'OCI ont tenté de prendre aussi le contrôle de l'ONU.

L'offensive généralisée du terrorisme ne date pas du 11 septembre 2001. Ce jour-là, la violence et les crimes que nous, Européens, connaissons depuis des décennies à des degrés divers est entrée dans le cocon égoïste du peuple américain.

Les "occidentaux" devaient bien ouvrir les yeux.

Mais il ne faut pas jeter la pierre à tous les Américains. Il faut surtout accuser les vrais coupables : des financiers apatrides qui ont colonisé les leviers politiques des grands pays, y compris des États-Unis. Je connais nombre d'Américains qui ne sont pas en accord

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avec les politiques interieures et etrangere de leurs administrations successives. Un exemple : lors des emeutes anti-mondialisation de Seattle, la police americaine a arrete 600 manifestants, essentiellement des agriculteurs... americains !

Jeter l'anatheme sur tous les Americains serait donc aussi injuste que les accusations que porte la propagande contre tous les Serbes. Au contraire, la reunion des efforts des hommes de bonne volonte doit pouvoir nous permettre de nous debarrasser de la lepre de l'argent sale.

Les criminels de l'UCK sont rarement des Yougoslaves de culture albanaise.

Après la sanglante aventure du printemps 1999, l'autosatisfaction de nos politiciens du "repli" de Milosevic devant la "communaute internationale" a cede la place aux soucis quotidiens de la vie au Kosovo. Les Francais Implantés a Mitrovica ont du essuyer la reprobation des Americains et des Allemands qui leur reprochaient d'etre trop Clements envers les Serbes. La remarquable action des contingents francais qui se succedaient ne trouvait pas grace a leurs yeux. Jusqu'au moment ou, dans des conditions qui restent encore a elucider, des Americains et des Allemands ont eux-memes ete pris a partie dans cette ville symbole et ont pu mesurer que la haine des Albano-Kosovars separatistes n'a rien a envier a celle qu'on attribue trop souvent aux Serbes.

Les Yougoslaves de culture albanaise qui vivaient au Kosovo sont en fait assez rares parmi les aventuriers qui ont rejoint l'UCK. La majorite des membres des bandes de Agem Ceku, a l'instar de leur chef, vient de l'exterieur de la province yougoslave. Mais les « cols blancs » de la politique internationale qui jouaient aux dames a Paris ou a Bruxelles – pour jouer aux echecs il faut etre plus intelligent – ne se sont pas attaches a ce detail. Il avait suffit de quelques images soigneusement "bidonnees" presentees aux journaux televises des differentes chaines pour faire croire aux "opinions publiques" que tous les Albanais du Kosovo etaient de pauvres misereux meritant toute notre sollicitude.

La verite est tout autre. Nombre de ces acharnes de "l'epuration ethnique", dirigees contre tout ce qui n'est pas independantiste au Kosovo, viennent en fait d'Albanie, d'Europe ou meme des Etats-Unis, et non de la province yougoslave du Kosovo. Une chaine de la television francaise diffusa un documentaire sur l'action de M. Kouchner au Kosovo en tant que representant special du secretaire general des Nations Unies. On l'y voyait notamment se demener pour faire face a l'irredentisme des factions, et en particulier des Albanais qui se presentaient comme des Yougoslaves de culture albanaise. Les hommes de Hacim Thaci et Agem Ceku, finirent par accepter de se laisser desarmer, mais pour constituer des depots d'armes secrets dont la KFOR decouvrit et saisit certains. Les mafias se developperent, sans qu'aucun des intervenants exterieurs ne voulut vraiment venir a bout. Comme d'habitude, des interets occultes, sur lesquels on commence a avoir quelque visibilite, s'opposaient a l'action efficace qu'auraient souhaite conduire les acteurs du terrain.

L'administration americaine soutient l'UCK

Les Etats-Unis, quant a eux, se sont impliquees aux cotes de l'UCK comme ils l'avaient fait aux cotes des Musulmans de Bosnie-Herzegovine. Et avec eux les Allemands puisqu'on a pu voir fleurir dans les mains des guerilleros de l'armement allemand et americain. Leur soutien partisan lors des negociations de Rambouillet n'est plus un secret pour personne depuis que le journal francais *l'Humanite* a revele les dessous des clauses que Mme Albright a fait rajouter au texte initial pour le rendre inacceptable par Belgrade.

Preoccupe d'affermir ses contacts avec les communautes musulmanes des Balkans, Washington est soucieux de ne pas troubler les affaires, memes occultes, des familles musulmanes les plus influentes de la "grande Albanie" que les gens de l'UCK

Mme Clive V. Jugoslaviji
(pise Pierre Henri Bunel)

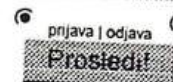
Posledice agresije NATO na SRJ: Oteti i nestali stanovnici Kosova i Metohije i gradjani SRJ

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Monsieur Kouchner ne voyait pas arriver les forces de police et les magistrats qu'on s'était engagé à lui fournir, selon ce qu'il avait confié à la presse et aux télévisions. Pourtant, à force d'énergie et d'efforts de persuasion, il finit par mettre sur pied une sorte d'administration judiciaire, en tentant de faire participer des Serbes et des Albanais.

Et il faut bien dire que les Serbes si décriés étaient bien moins réticents que les retors Albano-Kosovars qui, ici aussi, se sentaient soutenus par plus fort que l'ONU et l'Otan. Ils tiraient de ce soutien occulte une insolence redoutable. Après avoir décrié les Serbes comme la peste, l'ONU devait en fait faire face au choléra des sbires d'Agem Ceku.

Les stocks d'armes de l'UCK

Avant même que l'Otan soit entrée en Yougoslavie pour occuper le Kosovo, les sbires de Agem Ceku avaient commencé à mettre au point leur approvisionnement en armes et munitions. Certes, ils disposaient déjà de matériel venant d'Allemagne ou des États-Unis comme le montraient clairement les prises de vues de télévision abondamment diffusées, mais encore ils avaient mis sur pied des filières compliquées passant par la Suisse et l'Afrique. Trop confiants, sans doute, les trafiquants ont été démasqués à cause des changements de la législation suisse qui interdit non seulement le trafic d'armes mais aussi le transit des sommes qui en découlent. C'est ainsi que les policiers suisses ont arrêté en juillet 2000 un Français et un Kosovar qui avaient acheté à la Bulgarie, pour les forces de l'UCK plusieurs milliers de grenades et plusieurs centaines de lance-roquettes. Selon les informations parvenues à la presse, la quantité d'armes devait être importante puisque le montant des transactions était d'environ 3 millions d'euro. Les marchandises ont quitté la Bulgarie en juillet 1999 pour un pays d'accueil africain complaisant et sont ensuite réparties vers l'Albanie où elles sont arrivées après le déploiement de la KFOR au Kosovo.

On pouvait se demander quelle utilité l'UCK allait trouver à ces armes offensives et plutôt lourdes alors que la mission d'imposition de la paix des Occidentaux avait déjà commencé.

L'évolution de la situation en Macédoine est une partie de la réponse à la question. Car il n'y a aucune surprise dans l'évolution actuelle de la guerre des Balkans. Après avoir semé le trouble dans la province yougoslave du Kosovo, les terroristes albanais tentent depuis plusieurs mois de destabiliser la frontière sud de la Serbie et maintenant s'attaquent à la Macédoine.

Le cancer islamiste porte par l'UCK s'attaque à la Macédoine

Cette évolution était prévue depuis longtemps. Les stratèges militaires - les seuls qui ne soient pas inféodés à des élections et qui se moquent de l'opinion que manipulent les tenants du politiquement correct - ont envisagé depuis 1991 le risque de retour à une situation dans les Balkans analogue à celle du début du siècle. Ils ont prévu une vague de crises qui, après la Slovanie et la Croatie glisserait vers la Bosnie-Herzégovine, puis la Macédoine en passant par le Sandjak et le Kosovo. On a même envisagé des difficultés avec la région de Voïvodine, au nord de la Yougoslavie, où vivent de nombreux Magyars. La destabilisation de la Macédoine était si évidemment prévisible que les États-Unis y avaient déployé, dès la déclaration d'indépendance du pays, deux bataillons sous le beret bleu de l'ONU.

Les spécialistes militaires avaient tiré le signal d'alarme, mais évidemment, les politiciens se sont trouvés dans l'incapacité de réagir. Gouverner, c'est prévoir. Ils préférèrent laisser pourrir la plaie albanaise.

Depuis longtemps les mafias albanaises vivaient de trafics divers -

drogue, armes, femmes, voitures volees, etc. -. L'intervention d'une force europeenne en 1997 a l'occasion de l'operation *Alba* incita les mafieux les plus impliqués dans le gangsterisme, les Musulmans du nord du pays, a émigrer vers le Kosovo ou ils importèrent une partie des armes qui n'avaient pas rejoint les casernes lors de l'intervention franco-italienne.

On sait quelle part ont pris ces " faux Kosovars ", soutenus par l'Allemagne et les Etats-Unis, dans l'insurrection contre la Yougoslavie, et quelle politique d'épuration ethnique ils ont conduite sous la ferme autorité de Agem Ceku, chef militaire de l'uCk. nous connaissons ses "exploits" en matière de droits de l'homme en Croatie et au Kosovo.

Le demantelement de l'uCk, plus apparent que reel, a laisse le champ libre aux actions de l'uCpbm, qui se mit a destabiliser la zone tampon imposee en Serbie par l'administration de l'ONU, interdite aux forces yougoslaves. La vallee de Prechevo etait en fait livree aux exactions des terroristes de Hacim Thaci et de Agem Ceku.

Maintenant, c'est le tour de la Macedoine. Et l'implication americaine dans cette ancienne republique yougoslave met le Departement d'Etat dans une position difficile : ou l'administration americaine continue de soutenir les terroristes albanais, et ils destabilisent le pays, ou les forces americaines de la KFOR, responsables de la zone ou operent les bandits de Hacim Thaci et Agem Ceku se desolidarisent de ces criminels qu'elles ont soutenus jusqu'a present.

Les Serbes sont le seul recours

Apres avoir soutenu l'uCk avec la dernière energie, en allant jusqu'au crime de guerre, et vilipende Belgrade, les autorités politiques de l'Otan s'appuient maintenant sur la Yougoslavie pour participer aux operations de remise en ordre de la region. Les evenements actuels exposent clairement que prendre parti pour l'uCk etait une faute politique, faire la guerre pour le compte des Albanais etait une faute militaire qui a conduit aux crimes de guerre que nos dirigeants politiques ont commis en utilisant les forces de l'Otan dans les conditions ou ils les ont utilisees.

Et maintenant, l'Otan n'a plus d'autre ressource que de s'appuyer sur Belgrade pour retablir l'ordre dans la vallee de Prechevo. Et comme M. Kostunica est un patriote, ce que d'aucuns appellent " nationaliste ", on peut s'attendre a des passes politiques interessantes. D'autant que pendant les quelques mois durant lesquels la region de Prechevo a ete livree par l'incurie des planificateurs de l'Otan aux exactions de l'UCPMB, les gens de bonne foi ont pu toucher du doigt la realite du comportement des partisans de la " Grande Albanie " et prendre conscience de ce qu'il risquait de se produire en Macedoine. Cela n'a pas manque.

Les extrémistes albanais veulent realiser une grande Albanie qui ne serait en fait qu'une sorte de Kurdistan europeen. On a connu la meme quadrature de cercle entre l'Allemagne et la France pendant des siecles. On n'a aplani les differends entre l'Allemagne et la France e propos de l'Alsace et de la Moselle qu'en assurant la libre circulation des personnes et des biens entre les deux pays. Si un Mosellan ou un Alsacien, ne en France se sent plus allemand que francais, rien ne l'empeche de travailler en Allemagne. Comme les conditions de vie sont somme toute confortables au plan materiel, il n'y a plus de probleme entre les peuples : "Lorsqu'il y a du foin au ratelier les chevaux ne se battent plus", dit un proverbe francais.

Il en est de meme avec les gens de culture albanaise dans les Balkans : ce ne sont pas tout a fait les Kurdes d'Europe, puisqu'il existe une Albanie, mais il faut reconnaitre que les Albanais sont presents dans quatre pays : l'Albanie, la Yougoslavie, la Macedoine et quelques elements en Grece. Le fantasme de la Grande Albanie est plus ancre chez les terroristes de l'uCk qu'en Albanie meme. Compte tenu des contacts que j'ai eus avec des Albanais, il me semble meme que les Albanais considerent leurs " cousins " du

Kosovo avec le meme recul que les gens de la republique d'Irlande considerent les Irlandais de l'Ulster.

Quel dirigeant politique prendra la decision de faire poursuivre les dirigeants de l'uCk pour crimes en ex-Yougoslavie, histoire de faire bonne mesure ? Il serait plus que temps, parce que le soutien a ces terroristes, comme aux Tchetchenes, vient de la branche dure de la conference islamique.

2. Le transfert de Slobodan Milosevic a La Haye

Toujours pris par leurs fantasmes, les Americains ont achete a Belgrade la livraison de Slobodan Milosevic au TPI de La Haye. Il semble que les administrations americaines successives n'aient rien compris : la question Milosevic est parfaitement accessoire devant l'evolution de la guerre civile balkanique vers le sud. L'Otan a deja perdu une guerre contre la Yougoslavie, meme si la diplomatie europeenne a rattrape les choses apres. Car ne nous cachons pas que c'est la diplomatie et les elections qui ont fait partir Milosevic du pouvoir, et non les bombes de l'Otan. Donc la guerre de 1999 est bien un echec.

Quoiqu'il en soit, Slobodan Milosevic est donc parti pour La Haye. " Enfin " diront deux types d'observateurs. Parmi ceux qui se rejouiront, on trouvera evidemment les gens peu au fait des dessous des cartes auxquels on fait avaler n'importe quoi par les medias " alignes ". On trouvera aussi les valets de l'argent roi. Pourtant un examen plus equitable des choses met en evidence une realite plus dramatique.

En outre, il semble bien que l'action a laquelle s'est prete le Premier ministre Djindjic releve plus de l'enlevement que de l'extradition et que cette action soit meme en dehors de la loi yougoslave.

Ne nous y trompons pas. J'ai ete satisfait de l'arrestation de Slobodan Milosevic que je considerais deja comme un criminel de guerre alors qu'il n'etait pas encore question de le critiquer a l'Otan. En effet, lorsque j'etais officier de renseignement de l'Otan en Bosnie-Herzegovine, il etait hors de question de critiquer le principal allie des occidentaux dans la signature par les Serbes de Bosnie de l'accord de Dayton. Son arrestation par les Yougoslaves me paraissait dans le cours normal des choses, mais seulement parce que c'etait la justice yougoslave qui s'etait saisie du dossier.

(Je precise cette position personnelle ne releve que de mon jugement sur ce que me semble etre l'action de l'ancien president avant la guerre civile. Je crois qu'il a conduit la Yougoslavie dans le piege dont se sont ensuite servis les Allemands d'abord, et les Americains ensuite. Mais il y a d'autres coupables des malheurs des Balkans : les politiciens europeens qui n'ont pas ete capables de faire taire les Allemands et de prier les Americains de se meler de leurs affaires. Toutefois, il s'agit de l'opinion d'un observateur exterieur qui n'a pas vecu le debut de la guerre civile).

Le TPI, un tribunal sans foi ni loi

En revanche, l'evolution, helas previsible, des choses est loin de me satisfaire, parce que je ne reconnais aucune legalite ni legitime au TPI.

Si je souscris entierement a la creation d'un tel tribunal qui peut etre utile dans le cadre de l'harmonisation du monde, il me semble qu'en l'espece on a une fois de plus "mis la charrue avant les boeufs".

Un tribunal est fait pour faire appliquer les lois. Or il n'existe pas de loi internationale mais des traites. Aucun traite ne peut, en l'etat actuel des choses, faire office de code penal ou de code de procedure penale. En outre, le mode de selection des magistrats, qui doivent rester independants des pouvoirs politiques, ne fait l'objet d'aucun processus legalement determine.

Avant de le faire fonctionner, il me semble donc indispensable de faire promulguer des lois penales internationales qui semblent plus urgentes que les arrangements que savent prendre les états en matière économique et commerciale.

Ce TPI s'est jugé incompétent pour donner suite à la plainte d'Amnesty International contre l'Otan pour crimes de guerre lors des bombardements de l'ex-Yougoslavie.

Si le procureur du TPI, Mme Carla Del Ponte a debouté Amnesty International, c'est peut-être sur ordre, mais le simple fait de refuser d'engager une procédure d'enquête avec appel à témoins est bien un déni de justice. Et pourtant j'aurais témoigné bien volontiers dans un tel procès.

C'est pourquoi je considère que ce tribunal, tel qu'il agit actuellement, est non seulement sans loi mais encore sans foi.

Monsieur Milosevic n'était pas un dictateur

On va donc juger devant un tribunal discutable un homme que la presse "alignée" a commencé par qualifier "d'ancien dictateur de Belgrade". Que c'est beau !, lorsque l'inspirateur de cette pensée unique est un pays dont le président a été élu... par des juges, contre la majorité des votes de sa population !

Pourtant, M. Milosevic, lui, après avoir été élu par les Yougoslaves, a bien été obligé de se retirer lorsqu'il a été battu aux élections. Je ne connais pas de dictateur qui ait quitté le pouvoir sans révolution. M. Milosevic n'était donc pas un dictateur, il serait bon de le rappeler.

En revanche, je suis beaucoup plus inquiet du rôle de l'argent dans cette élection, et surtout dans l'expulsion par un pays indépendant de l'un de ses nationaux. Car, ne nous y trompons pas, la non plus, le financement de la campagne électorale, et surtout le chantage conduit auprès des candidats était bien le suivant : on vous aide financièrement, et on financera le relèvement de la Yougoslavie, si vous nous aidez en faisant battre Milosevic aux élections.

Si M. Djindjic a finalement décidé de livrer l'ancien président sans attendre la décision de la justice yougoslave, c'est évidemment dû à l'action des Américains. Le fait que l'avion qui a conduit l'accusé à La Haye soit parti de Tuzla, base américaine en Bosnie-Herzégovine, est significatif. Le Premier ministre Djindjic a-t-il agi de son propre chef ou avec l'aval discret de Vojislav Kostunica ? C'est difficile à dire pour un observateur extérieur. Mais ce qui est sûr c'est qu'il l'a fait en pensant à l'argent dont la Yougoslavie a tant besoin pour se relever des devastations que lui a causées l'Otan en 1999.

Encore la CIA ?

Cette décision risque fort de provoquer des troubles graves en Yougoslavie. En Serbie, les partisans de M. Milosevic pourraient bien se lancer dans des manifestations dégénérant en émeutes. Et surtout, le Monténégro pourrait bien profiter de ce qu'il faut bien appeler un affaiblissement dramatique du président Kostunica pour tenter l'aventure séparatiste.

Et si la CIA avait fait des propositions de soutien à Djindjic, au cas où le remplacement de l'actuel président viendrait à l'ordre du jour ? Et qui sait si la CIA n'est en train de tout faire pour que ce remplacement vienne effectivement immédiatement à l'ordre du jour ?

Ce serait une bonne affaire pour Washington de voir succéder à Kostunica, patriote et assez opposé aux Américains, un valet qui vient de leur donner des preuves évidentes de sa servilité.

Incapables de venir a bout de Saddam Hussein, ridiculises par les Chinois a propos de leur avion espion, les Americains emportent enfin une " victoire " internationale sur un petit pays ravage par cette politique de la canonniers qu'ils ont tant denoncee lorsqu'ils etaient encore des nains politiques.

Mais qu'ils se souviennent de - ou qu'ils se renseignent sur - ce qu'est une « victoire a la Pyrrhus ». Quant a la politique europeenne, que devient-elle dans tout cela ? Elle ne cesse de ramper parce que les bombardements de la Yougoslavie ont desequilibre l'Euro, accroissant la charge d'investissements dans les anciens pays de l'Est et surtout dans les Balkans.

Apres avoir devaste la Yougoslavie les Americains sont retournes se cacher derriere leurs valets

On n'entend pas beaucoup Washington a propos de la Macedoine, et pourtant, c'est bien la Maison Blanche qui avait entretenu des bataillons de stabilisation americains sous beret de l'Onu a l'epoque de la guerre civile en Bosnie-Herzegovine.

Maintenant, les Americains vont engranger les dividendes de la guerre, pendant que les Europeens vont avoir le souci d'organiser la paix... sans avoir les hommes d'etat capables de le faire, ceux qui seraient suffisamment integres pour ne rien devoir aux grands groupes economiques multinationaux.

L'Homme et sa culture

Le proces de M. Milosevic ne pourra donc etre qu'une forfaiture de plus, perpétre par les agents de gouvernements qui n'ont pas de lecon de morale a donner a quiconque.

Avec cette affaire, nous avons une preuve de plus du fait que les Americains ne savent pas prendre en compte une donnee essentielle des relations humaines : chaque peuple europeen a une culture et une civilisation multimillenaire, alors qu'eux sont ignorants de toutes ces subtilités.

Ils ont commis la meme faute en Asie, la continuent en Afrique, s'y sont adonnees en Yougoslavie, et sont en train de s'y enfoncer en Afghanistan : dans toutes ces calamites pour les peuples broyes, les responsables sont toujours les memes, les grands capitalistes qui ont oublie que l'economie doit etre au service de l'Homme, et non le contraire.

Ce que nous, Europeens de l'Atlantique a l'Oural, nous savons tous.

Les guerres qui nous ont opposes ou reunis n'ont pu se regler que par les compromis culturels. C'est vrai dans les Balkans, mais la question de l'Alsace et la Moselle relevait de la meme problematique. C'est pourquoi elle peut etre un message d'espoir.

Apres la derniere guerre mondiale, devant l'inutilite de la force pour regler cette question, la disparition du barrage que representaient les anciennes frontieres a rendu caduc tout recours a la force. Les Mosellans ou les Alsaciens qui se sentent plus francais passent leur temps de detente en France, ceux qui se sentent plus allemands vont se distraire en Allemagne... et souvent, comme je le faisais lorsque j'habitais Strasbourg, vont d'un cote a l'autre de la frontiere suivant les circonstances...

Mais pour proteger notre avenir, il faut savoir proteger nos cultures, diverses et complementaires, et pour cela refuser l'uniformisation decretee par des financiers et des economistes qui manipulent les gouvernements pour le plus grand malheur des peuples.

La culture est le plus grand ennemi des dictateurs, meme financiers.

Parce qu'elle est l'outil qui permet de refuser une société de consommation qui n'est qu'une incivilité du gaspillage, promotrice de l'abaissement et de l'asservissement.

* Pierre Henri Bunel, officier français, accusé d'être l'espion yougoslave dans le Haut Commandement de l'OTAN à Bruxelles.

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Justice? Or its Antithesis?

by Stephen Gowans

[posted 28 November 2001]

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Former Yugoslav President Slobodan Milosevic, under detention at the Hague in connection with murder, deportation and genocide charges, says he's under drastically increased pressure to recognize the Hague Tribunal.

In three appearances before the tribunal, Milosevic refused to plead to the indictments against him, and refused to appoint lawyers, arguing the tribunal, and his detention, are illegal.

And now Milosevic's Belgrade lawyer, Dragoslav Ognjanovic says that strong spotlights have been left on all night in Milosevic's cell, a subtle form of torture.

Why is Milosevic being deprived of sleep?

And why is the former Yugoslav president denied access to the media? After doing an interview with American media, Milosevic was reprimanded by Hague authorities, and warned against further breaches of rules that prevent the former president from talking to the press.

Why won't the Hague Tribunal allow Milosevic to conduct his own defense?

And why is Milosevic's microphone cut-off when he appears before the tribunal?

The usual reply is that Milosevic would make a mockery of the proceedings. And if given access to the media he would have a platform to spout nonsense. But surely, if it's nonsense he'll spout, let him. Nonsense will be obvious for what it is, and the press will soon grow tired of it. But another answer seems more likely: Maybe it's not nonsense Milosevic has to speak. And maybe Milosevic's being allowed to conduct his own defense would expose the tribunal for what it is -- a mockery of justice.

Augusto Pinochet, dictator, murderer, goes free. Ariel Sharon, architect of the Sabra and Shatilla massacres, ethnic cleanser, and war criminal, presides over the commission of fresh war crimes as prime minister of Israel. War criminals Henry Kissinger and Bill Clinton make a king's ransom from speaking engagements. Meanwhile, we're showered with absurdities from the US foreign policy establishment connected Human Rights Watch about war criminals having nowhere to hide, Milosevic being the signal case.

The hypocrisy is plain, if the case is made, but who makes the case? People on the margins, heard by few. But what if someone like Milosevic, who, if allowed to speak to the media, reached countless numbers? He'd have a platform to make the case, if the tribunal's rules didn't gag him. And maybe that's why he's gagged.

Washington and London have always been afraid of their own people hearing the other side. During NATO's 78-day terror campaign against Yugoslavia, Serb Radio-TV, which carried a different view of the bombing than delivered by the complicit and tightly

controlled Western press, was deliberately bombed, a blatant war crime. British Prime Minister Tony Blair said that Milosevic's propaganda machine had to be taken out. What he meant was that NATO had to control the public relations agenda.

Weeks ago, US bombers took out Al Jazeera in Afghanistan, for the same reason — it threatened Washington's control over what the public saw and heard and understood. Al Jazeera offered something other than the tightly controlled and scripted US take on the war against Afghanistan. Control the story, and you control the hearts and minds of the public. Give people like Milosevic and the Afghans carried on Al-Jazeera a platform, and the carefully crafted complex of lies may fall apart.

As to the nonsense about war criminals having nowhere to hide, they do. Behind a Security Council veto, for one. And behind a compliant press, whose deafness, dumbness and blindness owes much to Chauvinism, and the fact that letting the White House, State Department, and Pentagon write your copy is a good business model. Keeps cost down.

Up to now, Milosevic has been under indictment for murder and deportation, in connection with events in Kosovo. The White House and State Department and Pentagon, and yes, the media too, tried, and convicted Milosevic of committing genocide in Kosovo. There were 100,000 missing and presumed dead. Then 10,000. Then forensic pathologists turned up only 2,000 corpses, none in mass graves, their identities (were they ethnic Albanian Kosovars?) uncertain. Then doubts arose about the authenticity of the Racak massacre, the casus belli for terrorizing Yugoslavia with bombs for 78 days. And then the indictment came, and with it, no charge of genocide.

Now, in new indictments, Milosevic is charged with genocide in connection with earlier wars in Croatia and Bosnia. It's as if the tribunal had come up with the charge first and has worked backwards from there. Now that we've made the charge, we'll need the evidence to make it stick.

Genocide? In what connection has that word been uttered before? East Timor. That genocide was carried out by a pal of Washington's, the dictator Suharto, right under Washington's nose and with its full approval. Nothing as insignificant as genocide was going to stand in the way of US businesses turning handsome profits in an Indonesia known as an "investor's paradise," "hell" being more frequently uttered by those who have to work there. And yet there was no indictment. Earlier, Suharto had arranged for the systematic killing of between 500,000 and one million communists, while Washington checked off the names. No indictment for that crime either.

Iraq. Over the last decade, US enforced sanctions of mass destruction have killed over one million Iraqis. That's a genocide. Will the perpetrators be held accountable? No. They wield a Security Council veto.

The Security Council set up the Hague Tribunal, which means Security Council members, some of which committed brazen war crimes in their 78-day terror campaign against Yugoslavia, will never be indicted, unless you assume the tribunal's prosecutors are going to indict their bosses who appointed them.

An International Criminal Court, which would obviate the Security Council striking tribunals, and allow anyone to be indicted, won't do the trick either. Washington won't agree to it, unless Americans are given blanket immunity from prosecution, or Washington controls who's indicted.

And it also means that war crimes, crimes against humanity, and genocides, committed by permanent members of the Security Council and their allies, will never be the subject of a tribunal. Handy, isn't it?

So, this is what we get as justice. Washington backs fascist elements in Croatia and Islamists in Bosnia and Kosovo connected to Osama bin Laden, the Yugoslav federation spins apart under the pressure of the centrifugal forces nurtured by Security Council members, and the Serbs, at the center of the opposition, are branded the new Nazis, and are brought before a Security Council created tribunal to answer for crimes against humanity by the very forces that set in motion the descent into war and terrorism and chaos, and now, growing poverty.

Justice? How about its very antithesis?

Mr. Steve Gowans is a writer and political activist who lives in Ottawa, Canada.

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Milosevic tijdens de eerste zitting van het internationaal straftribunaal in Den Haag. Hij is zwaar, dat het proces een ontgoocheling kan worden

Prikkelend proces

In zaak-Milosevic, die volgende week wordt vervolgd, gaat het niet alleen om dader en slachtoffers. Toekomst van internationaal recht staat op 't spel

ABE DE VRIES

In 1990 en 1991 leek het even of de aardbol, verlost van de wapenwedloop tussen de Sovjet-Unie en de Verenigde Staten, voortaan één oppergezag zou respecteren: dat van de Verenigde Naties. Toen begon de oorlog om de verdeling van Joegoslavië. De mijneraars werden opgeschrikt toen herenigd Duitsland opeens uit de rijen brak, eenzijdig Slovenië en Kroatië erkende en de Europese Unie dwong te volgen. Daarna soleerde Amerika. Realpolitik dwong de VN in de coulissen en trok de NAVO in het volle licht.

Deze ontvullende ommakeer werd voortgestuwd door de aandacht in het Westen voor de rol van Slobodan Milosevic in de oorlog, de president van Servië, later Joegoslavië, die al snel verantwoordelijk werd gehouden voor bijna al het Balkan geweld. Mede daardoor deed de voorzichtige neutraliteit van de VN in de Bosnische oorlog absurd aan. Die had immers tot niets geleid: het Westen had behoefte aan een versimpelde voorstelling van zaken. Er

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moest duidelijk een kant worden gekozen. Voor de supporters van de VN was de afgang van de vredesmacht in Bosnië een domper, maar ook zij kregen een beetje hun zin. Het Joegoslavië-tribunaal van de VN, gevestigd in Den Haag, was in het begin niet meer dan een politiek drukmiddel, maar werd uitgebouwd tot een verroffend hof.

Twee in beginsel heel verschillende stromingen in de internationale politiek kunnen zich goed vinden in de berechting van Milosevic. Het zijn de realisten, die de slagkracht en het prestige van de 'nieuwe NAVO' koesteren en bewaken, en de idealisten, die het nog tere kasplantje van het internationaal strafrecht bewateren. De zaak-Milosevic begint pas in 2002 – de derde procedurele zitting is op maandag 29 oktober –, maar nu al is sprake van het 'proces van de eeuw'. Een klinkende overwinning van het internationaal recht, heet de

zaak op voorhand. Toch kan het allemaal tegenvallen. De zware beschuldigingen – misdaden tegen de menselijkheid in Kosovo en Kroatië en straks genocide in Bosnië – zijn moeilijk te bewijzen, zoals Clingendael-medewerkers Rob de Wijk en Dick Leurdijk in de *Volkskrant* stelden. Zó moeilijk, dat het proces op een ontgoocheling kan uitdraaien. De zaak is als rechts-politiek experiment een waagstuk. Voor het eerst worden de daden en nalatigheden van een voormalig staatshoofd door een VN-tribunaal gewogen: een novum, dat richtinggevend kan worden voor het komende Internationaal Strafhof in Den Haag. Dat hof zal, zodra genoeg landen het statuut hebben bekrachtigd, de functie van het Joegoslavië-tribunaal wereldwijd uitoefenen. Onzeker is of de vervolging van Milosevic de komst van het Strafhof bespoedigt. Niet iedereen zit te springen om een internationale rechtbank die binnendringt in de staatssoevereiniteit. Het Amerikaanse Congres, medefinancier van het Joegoslavië-tribunaal, weigert aan het Strafhof mee te werken.

Dan is er de praktische aanpak van de zaak die belooft juridisch vuurwerk op te le-

veren. Om de 'bevelsverantwoordelijkheid' van een politiek leider voor individuele en groeps misdaden te bewijzen, moet hoofdaanklager Carla del Ponte bewijs aandragen tegen de tussenliggende commandoketen. Geen makkelijke opgave. Het leeuwendeel van de misdaden komt op het conto van bendes paramilitairen. Hoe te bewijzen dat zij werden gestuurd door de Joegoslavische staat? Zijn de getuigen van Del Ponte zelf 'schoon'? Handelen zij uit persoonlijk of politiek belang? Is hun identiteit te achterhalen? Kunnen ze worden geïntimideerd? Del Ponte moet kunstgrepen toepassen, en de vraag is hoe ver de rechters daarin meegaan. Ver, zo is tot nu toe gebleken. Hun visie op het leerstuk van de bewijsvoering – anoniem getuigen is toegestaan, sommige verdedigingen zijn uitgesloten – heeft in kringen van strafrecht deskundigen verbazing gewekt. 'Feit is dat de voormalige leiders van Joegoslavië worden berecht met methoden die elke rechtbank in Groot-Brittannië of de Verenigde Staten onaanvaardbaar zou vinden,' schreef het Amerikaanse blad *The Spectator*.

Ook moet nog blijken hoe het hof zich afschermt van politieke beïnvloeding door belanghebbende staatsapparaten, die de aanklager de meeste bewijzen hebben gegeven. Hoe wegen de rechters bewijsmateriaal dat Kroatische, Bosnische, Kosovo-Albanese en vooral westerse inlichtingendiensten hebben afgeleverd? Bandjes van afgeluisterde gesprekken werden in het proces tegen de Bosnisch-Servische generaal Radislav Krstic toegelaten. De herkomst van dergelijke opnamen is moeilijk te achterhalen, de mogelijkheden van manipulatie en vervalsing zijn groot. Inlichtingendiensten beconcurreren elkaar met bandjes, zoals de CIA en de Franse geheime dienst in de kwestie-Racak. Opnames van de CIA moeten bewijzen dat Belgrado opdracht gaf tot massamoord in dit Kosovaarse dorp, terwijl uit telefoongesprekken afgeluisterd door de Fransen juist zou blijken dat Albanese extremisten de zaak in scène hebben gezet.

Bandjes kunnen opduiken, maar ook, net als fotorolletjes, verdwijnen. In 1995 zei de CIA dat er tapes waren van radioverkeer tussen de Bosnisch-Servische generaal Ratko Mladic en generaal Momcilo Perisic, de toenmalige chef-staf van het Joegoslavische leger. Perisic zou Mladic instructies hebben gegeven voor de operatie rond Srebrenica. Toch is Perisic, die na zijn ontslag een kopstuk werd in de oppositie tegen Milosevic, door het Joegoslavië-tribunaal niet aangeklaagd. Van de bandjes is niets meer vernomen. Kortom, in dit proces gaat het niet alleen om het bestraffen van een misdadiger en het recht doen aan slachtoffers. Het internationaal strafrecht zelf staat op het spel.

Milosevic kan in Den Haag een eerlijk proces krijgen, maar de druk om hem hoe dan ook te veroordelen is groot. Dat betekent dat het tribunaal een groot afbrandrisico loopt. Dat gevaar wordt nog vergroot door de volgende houding die de juristerij in Nederland en elders tot dusver aanneemt, zoals de Nederlandse emeritus-hoogleraar volkenrecht Paul de Waart heeft signaleerd. Een meer kritische respons van het vakgebied kan volgens De Waart de kwaliteit van de procesgang – en dus de geloofwaardigheid van de vonnissen – alleen maar ten goede komen.

De eerste aanklacht nodigt uit tot kritiek.



Del Ponte moet zware bewijslast leveren

Die aanklacht, voor oorlogsmisdaden in de Servische provincie Kosovo, is weinig meer dan een opsomming van bloedbaden. De aanklager beperkt zich tot de constatering dat Milosevic de baas was, niets aantoonbaars deed om de misdaden te voorkomen en dus verantwoordelijk is. Die redenering zal menig staatshoofd verontrusten. De Russische president Vladimir Poetin bijvoorbeeld, en de Israëlische premier Ariel Sharon. Op die manier hadden de premiers Louis Beel en Willem Drees kunnen worden gepakt voor de 'politie acties' in Nederlands-Indië, en

diverse Amerikaanse presidenten voor 'oorlogsmisdaden' in Vietnam en Cambodja.

Voor wat betreft de Bosnische oorlog ziet Del Ponte zich voor het probleem gesteld dat de Bosnisch-Servische strijdkrachten officieel niet onder Belgrado ressorteerden, terwijl Milosevic destijds nog geen president van Joegoslavië was. Alleen bewijzen dat de troepen

van Karadzic en Mladic door Belgrado werden gesteund, is niet genoeg. Del Ponte moet aantonen dat paramilitairen, zoals Arkans Tjagers, door Milosevic naar Bosnië waren gestuurd om te moorden. Wijlen Zeljko Raznjatovic, alias Arkan, kan niet meer getuigen. Een andere militieleider, Vojislav Seselj, zei tegen de BBC dat de president hem steeds persoonlijk had gevraagd zijn mannen in te zetten. Maar het tribunaal kan moeilijk bouwen op de beweringen van een extreemrechtse fanaticus.

De oorlog in Kroatië laat dezelfde dilemma's zien. Het tribunaal houdt Milosevic verantwoordelijk voor de verdrijving van tweehonderdduizend Kroaten in 1991 en 1992, de moord op honderden mensen. Maar toen het Joegoslavische leger in 1991 Vukovar in puin schoot, had Milosevic daarover formeel niets te vertellen, en al snel hadden de Serviërs in Kroatië hun eigen republiek en leger. De toenmalige chef van de Joegoslavische geheime dienst, Jovica Stanisic, en zijn opvolger Rade Markovic steunden de Serviërs buiten Servië en kunnen het hun baas lastig maken, maar hun handen zijn waarschijnlijk nog roder van bloed dan die van hun chef. Voorzover bekend zijn zij niet aangeklaagd.

Aangezien criminele staatshoofden als Milosevic zichzelf verregaand immuun plegen te maken voor conventionele bewijsvoering, zal *crime fighter* Del Ponte waarschijnlijk schimmige deals sluiten met 'insiders': anonieme kroongetuigen, ministers en vechtersbazen die beweren uit eigen ervaring te weten wat Milosevic aandeel was. Een prikkelende strategie. Voorstanders zien nauwelijks andere manieren om de ergste misdadigers te straffen en nemen de nadelen op de koop toe. Critici betogen dat het tribunaal met dit soort activisme het internationaal strafrecht in diskrediet brengt.

De Amerikaanse historicus Robert Hayden vindt dat het opkomen voor mensenrechten bij het tribunaal is verworden tot 'mensenrechtenisme' dat de mensenrechten juist bedreigt. Dat ligt in de lijn van wat de Brit Michael Ignatieff stelt in zijn recente boek *Human Rights as Politics and Idolatry* (*Mensenrechten als politiek en verafgoding*). Ignatieff vindt dat mensenrechtenactivisten terecht kritiek krijgen uit Azië, de islamitische wereld en het Westen zelf op te hoge ambities en de onwil te accepteren dat er grenzen zijn aan het beschermen van mensenrechten.

Is het internationaal recht gediend met ondoorzichtige, alleen door het tribunaal zelf te controleren afspraken en procedures in de zaak-Milosevic? Wordt het recht er transparanter van, draagt zo'n beleid bij aan de worteling en de voorspoedige groei van het kasplantje? Niet alleen Del Ponte en de rechters moeten antwoord geven. Bij zulke vragen behoren ook de juristerij en de media uitgebreid stil te staan.

De aanklacht zal andere, westerse staatshoofden verontrusten

14-11-2001

Door de NAVO zelf met te roven als
overlegpunten in de aanpak, wordt
zelf het in beeld komen (alleen maar) van de
NAVO als nog steeds veranderende en
invaliderende instelling

→ historische superieioriteit

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Is nog ~~bevestigd~~ ^{aanvraag} ~~aanvraag~~!

→ lering: in Angelant en net
→ alle de blak reeds die
net, reeds meezona!

Art 6 ECHR

in the decision on the preliminary motions of 8 members

"10 The International Tribunal meets this requirement in that the rights of the accused, comparable to those in the ICCPR are protected in the International Tribunal's statute, in particular in Article 27."



in art 21 Statute could
O.U. general that in art 21
is (not 27) as minimum
guarantees:

we have the equivalent
not 27



location: Legation in
art 9 lit 3 ICCPR
Genet?

1. adequate time for preparation of his defence
2. facilities for the preparation of his defence
3. the right to defend himself
in person → without Court Prosecutor
4. or through legal assistance of his own choosing

*"legal assistance" is not true, since the
counsel is not "counsel authorized
by the Tribunal"

→ rehabilitation under order, Article 2 (facilities) as

Vladimir Krsljanin

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CNN INTERNATIONAL

SHOW: Q&A 03:30 PM Eastern Standard Time

November 23, 2001 Friday

Transcript # 112301cb.k18

SECTION: NEWS; INTERNATIONAL

LENGTH: 3538 words

HEADLINE: Will Slobodan Milosevic Receive a Fair Trial?

GUESTS: Florence Hartman, Ramsey Clark, Geoffrey Robertson, Grace Amakye

BYLINE: Zain Verjee

HIGHLIGHT:

Former Yugoslav president Slobodan Milosevic faces an indictment of genocide in Bosnia from the United Nations War Crimes Tribunal. But, can he get a fair trial?

BODY:

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Mr. Milosevic, will you be quiet please?

(END VIDEO CLIP)

ZAIN VERJEE, CNN ANCHOR (voice-over): A defiant Slobodan Milosevic at the United Nations War Crimes Tribunal. He's now become the first former head of state indicted on charges of genocide. But he refuses to recognize the court and says, "You'll never get a fair trial." On this edition of Q&A: the Milosevic indictment.

Hello and welcome to Q&A. I am Zain Verjee. Jim Clancy is on assignment.

The former Yugoslav president now faces his third and most serious indictment, that of genocide including the execution of thousands of Bosnian Muslims in 1995. Extradited from Belgrade in June, Milosevic already faces charges for war crimes in Kosovo and Croatia.

We reached Florence Hartman of the United Nations War Crimes Tribunal in The Hague, and I asked her why the charge of genocide comes now.

(BEGIN VIDEOTAPE)

FLORENCE HARTMAN, UNITED NATIONS WAR CRIMES TRIBUNAL: Slobodan Milosevic has been indicted for genocide in the case of Croatia and Kosovo, the two previous indictments against him. We couldn't collect enough evidences for genocide. In the case of Bosnia, we could prove for the indictment, the intent and the execution of genocide against innocent civilian in large part of Bosnia-Herzegovina.

Milosevic has been indicted for genocide because of the widespread killing of thousands of Bosnian Muslims and Bosnian Croats because of serious bodily and mental harm to thousands of Bosnian Muslims and Bosnian Croats over Bosnia-Herzegovina because of the detention of Bosnian Muslims and Bosnian Croats, civilian in detention facilities. And we could -- we will be able in trial to prove the intent.

VERJEE: You say you have evidence. What kind of evidence do you have specifically?

HARTMAN: We can not speak about evidences before the trial. They will be presented in the course of the trial. We can expect the trial to start next year. In the meanwhile, the prosecutor, within the next days, submit a request

for rejoinder, because we would like to have only one trial against Milosevic including all the counts against him for Croatia, Kosovo and Bosnia-Herzegovina with the genocides for Bosnia-Herzegovina.

We believe that he deserved one trial because it's the same joint criminal enterprise from the beginning to the end, and that the purpose of this criminal enterprise was the forcible and permanent removal of the majority of non-Serbs from large areas in Croatia and Bosnia and also in Kosovo.

VERJEE: Slobodan Milosevic has been defiant, though, during his three appearances at The Hague. He sees the court as illegitimate, as biased. How do you answer critics that say he is not going to get a fair trial?

HARTMAN: Well, in the last status conferences, the judges took some instruments to avoid this problem. The answer to his critics about the legitimacy of the court and the appointed amicus curiae, it means legal experts of the court, who would be able to be able to participate to the trial and ask questions to the witnesses of the prosecution. And I believe that we have all instruments to have a fair trial.

Mr. Milosevic has the right to decide to defend himself without any defense counsel and it is his choice for the moment. But the obstruction of an accused can not stop the trial. The justice will go on, and Milosevic will have to answer the question on his responsibility for crimes committed in Croatia and Bosnia and Kosovo and for the account of genocide in the case of Bosnia.

VERJEE: Ms. Hartman, where is a war crime a war crime? And the reason I am asking you that is because it seems as though the losers are the ones that are charged with war crimes and the winners are not.

HARTMAN: I don't believe we can speak about losers and winners. For instance, if we speak about the parties which took part in the war -- in the different war in former Yugoslavia -- you have indictees on the Serb side, on the Croat side, and on the Bosnian side. If you speak about NATO in Kosovo, which was involved in military operations, we study the possibility of a commission of war crimes on the basis of the information we could collect then, we didn't have any war crimes.

You know that the war itself is not a crime. It's allowed by the Conventions, but they have to respect some specific things. And you have the commission of war crimes when it is not within the rules predict for the war. In the case of NATO, we couldn't collect any evidences to bring a case against NATO or whoever in the war in Kosovo. But on the basis of the information or the evidences we had, if something come up, we could study it again.

VERJEE: Do you see any expansion of the War Crimes Tribunal to include that of trying terrorists?

HARTMAN: The question must be asked to the politician, in fact, precisely to the Security Council. The Security Council gave the framework of the tribunal with a precise mandate on former Yugoslavia. We have another tribunal -- international tribunal for Rwanda. But we don't have any competency for any jurisdiction for terrorism or for crimes committed outside of former Yugoslavia or Rwanda. It's up to the Security Council to extend our mandate or to establish another court or to find any solutions.

VERJEE: Florence Hartman, thank you so much for speaking to us. Appreciate that.

HARTMAN: Thanks to you. Thank you.

(END VIDEOTAPE)

VERJEE: Last week, the international court agreed to allow a former U.S. attorney general, Ramsey Clark, to be the legal adviser to Slobodan Milosevic. Mr. Clark joins us now from our studios in New York. Mr. Clark, do you think Slobodan Milosevic will get a fair trial?

RAMSEY CLARK, FORMER U.S. ATTORNEY GENERAL: Your voice has gone out.

VERJEE: I am sorry. Can you hear me now?

CLARK: Yes.

VERJEE: Do you think Slobodan Milosevic will get a fair trial?

CLARK: I think it will be extremely difficult. His right to counsel, which is a fundamental right, protective of all other rights, has been violated since June. He has been systematically frustrated in his effort to obtain legal counsel. I have been there three times and I had not been permitted to see him. There have been lawyers who had waited for months and months.

Last week, Judge May sent me an order in which he had authorized me to -- he said it was deemed appropriate that I should serve as his legal adviser. But the right under the rules of the Tribunal and under international law, under the International Covenant on Political and Civil Rights is that an accused has the right to a counsel of his own choosing. And President Milosevic has not chosen a counsel to represent him, and he is not going to be restricted in his right to seek outside advice, which is what he does when he wants to see -- to talk to someone like me because he doesn't believe the Tribunal is legal. He doesn't believe the Security Council had the power to create it, which is pretty obvious to any student of history or anyone who wants to read the U.N. charter. He doesn't believe that it can be equal.

Equality is the mother of justice, which will only -- in Rwanda, for instance, there is not a Tutsi indicted. Everybody indicted is a Hutu. The Tribunal is war by other means. Despite what was said a few minutes ago in The Hague, overwhelmingly, the persons charged are Serbs -- very few people from the Muslim community and very few from the Roman Catholic community of Croatia or elsewhere.

VERJEE: Well, then what does the Tribunal have to do to make sure Milosevic gets a fair trial or at least is perceived as being so?

CLARK: Well, it's an illegal tribunal, literally, in my opinion. It's something I have worked on since 1969 (UNINTELLIGIBLE). We have an international criminal court. It was approved in Rome in July of 1998 by 120 nations. There were seven who rejected it, the United States being preeminent among them. Now, 38 countries have ratified it. As soon as 60 ratify, it will go into effect. Then you can have equality. Then, every country that violates

crimes can be indicted.

When our secretary of defense says he doesn't want Osama bin Laden alive, he wants him dead, he is ordering the troops to kill him, which is a war crime obviously. It's murder. You can't kill someone, unless he is threatening your life, unless there is a circumstance that leaves you no alternative. And yet here, we have that order. That's why we don't want to have an international criminal court.

We want special tribunals that we put through. I mean it was our ambassador to the United Nations, Madeleine Albright, who is responsible for creation of these two tribunals. No one else really wanted them. And what we do there is that we use them to pursue enemies and to establish dominion over an area. It's a pretty serious corruption of international law.

VERJEE: Do you believe Slobodan Milosevic is innocent?

CLARK: I always presume innocence. I don't believe that a fair trial is possible under any other circumstances. I think that's a fundamental, psychological necessity. And the man has been demonized for years in the media and elsewhere. And there's no way for him to get a fair trial except by a presumption of innocence. Yet, who is presuming him innocent? No one. And before I can tell you whether he has committed a crime, I've to see the evidence, and all I give...

VERJEE: So you are saying that the tribunal has basically written him off as guilty and is not offering him a fair trial and is not offering him legal counsel or access or anything?

CLARK: Well, I think the tribunal knows that it was created to convict people for crimes against humanity. And the charge of genocide in Bosnia is ridiculous. The immediate preceding prosecutor, Richard Goldstone, who is a very distinguished South African jurist on the Supreme Court there now -- he was a fighter against apartheid -- in a book University of Yale Press published just last year said what's not understood is that even if Milosevic may have approved the criminal conduct of Karadzic and Wadik (ph), did not make him guilty of a war crime nor did the fact that he supplied weapons or even troops to the Bosnian Serb army.

To indict Milosevic, it was necessary to establish before a criminal tribunal that he was a party to the crimes committed by the Bosnian Serb army and we didn't have such evidence. You got to remember he was the president of what was left of the Federal Republic of Yugoslavia. Four major segments of the six republic federation have been forced off by United States and Germany and other countries. He was fighting to protect the sovereignty of his own country, but he was not in Serbia -- in the Serbian parts of Bosnia.

There was a Republic of Srpska. And their army was the army that was fighting there, and that's known. And because he was the president of another country, you'd have to show he was actually involved and directly involved that he might have empathized with them -- they were Serbs -- is not sufficient for a crime as Goldstone said. And as Goldstone wrote last year in this important book, he couldn't indict him because he didn't have evidence. He is indicted now because -- and for genocide which is absurd -- I mean that's really demeaning to the concept of genocide.

VERJEE: But the court says that they have evidence to prove it.

CLARK: Well, let's see it. Yes, they -- but we haven't seen it. But what we know is there is nothing of the magnitude that -- genocide is what you saw in Europe with the Jews and the Romani. We forget the Romani, but they were slaughtered by millions, literally. And it's what you saw in what was called Capuche at that time and other places. If 600,000 people were killed in Rwanda -- you had something like that. What you had was conflict. You had war in Bosnia and a very cruel war with probably a lot of war crimes by all parties. But I can't assume or presume that anyone is guilty. Because they say it doesn't make it so. The fact that they say it makes it show that they have not presumed innocence, though.

VERJEE: Just very briefly. Not recognizing the court, saying it's illegitimate. Is that a legitimate defense and another avenue for appeal?

CLARK: Well, it's a very important idea for the public to know. And I think President Milosevic felt that if he spoke it out, more attention will be paid. We don't want to pay attention to the fact. But look at this: If the Security Council can create any law it wants to, as has frequently been said, if there are no restraints on it, if it is not restrained by international law even, then we're going to be a lawless world.

And the Security Council did not have the power to create this tribunal. That's why we have this Treaty for International Criminal Court, which if it's independent and impartial, can finally put us on the road to legal protection for international crimes including terrorism and not just a single nation, a single people, a single period of time; everybody, everywhere all the time.

VERJEE: Ramsey Clark, the former U.S. attorney general, thank you for speaking to us.

Next on Q&A, the role of the international court and the international war on terror.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: In the event -- don't interrupt. In the event of your not entering a plea, the trial chamber has a power to enter a plea of not guilty. That we will do.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

VERJEE: Slobodan Milosevic will stand trial for genocide in Bosnia and for war crimes in Croatia and Kosovo. To talk about it from London, Geoffrey Robertson, an international human rights Lawyer. And also joining us is Grace Amakye, a criminal lawyer who has been involved in the Orusia (ph) international criminal court. Good to have you both with us.

First of all, Geoffrey, your reaction to the Bosnia indictment.

GEOFFREY ROBERTSON, INTERNATIONAL HUMAN RIGHTS LAWYER: Well, it's the third

(ph) of a man who certainly deserves to be put on trial for genocide. Several hundred thousand people died as a result of his command responsibility for killings in Kosovo, Bosnia and Croatia. And we have, thank God as a world, reached the stage where people who achieve political power through racist rhetoric and then turn that power into mass murdering innocent civilians are put on trial.

It's very good that Ramsey Clark, who has been admitted as his lawyer. He has been trying to have it both ways, he has been making these petulant outbursts, trying not to recognize the court. But, while at the same time, trying to have legal advice in the back of the court. But that's fine. He's now got Ramsey Clark. And I am sure that the former attorney general of the United States, remembered for prosecuting -- some would say persecuting Dr. Spock (ph) -- will be able to defend him and make all those points.

And if he is not guilty, as Mr. Clark suggests, then, after a fair trial before a court that does often acquit or acquitted three Croats the other day, and a court that is dealing with Serbs, Croats and Muslims as a result of that war will acquit him. If he is not -- if the prosecution can't prove beyond reasonable doubt that he is guilty of the crime genocide and the other crimes against humanity and war crimes that he is being charged with.

VERJEE: Grace, your reaction. Grace, can you hear me?

GRACE AMAKYE, INTERNATIONAL WAR CRIMES TRIBUNAL LAWYER: Yes.

VERJEE: Yes, your reaction to the Bosnia indictment.

AMAKYE: Yes, sorry. I didn't hear the question.

VERJEE: OK, don't worry, I'll repeat it. What's your reaction to the Bosnia indictment?

AMAKYE: Well, I agree entirely with Geoffrey's sentiment since, as far as it's about time that, indeed, the Yugoslavian tribunal managed to get the counts of genocide included on this Milosevic's indictment. And plainly, now, he is legally represented, although he won't have us believe that he's represented by Ramsey Clark. And perhaps...

VERJEE: But Ramsey Clark has said that this tribunal is not independent. It's not neutral. There's no impartiality. There's no access by Slobodan Milosevic to legal counsel and it's not legitimate. Can you get a fair trial here?

ROBERTSON: But it is legitimate. It's been set up according to international law by the unanimous security members of the Security Council. It has never been objected to by the General Assembly. They've supported it in a number of resolutions. It is legitimate.

Whether Slobodan Milosevic is going to be fairly tried is a matter for him. If he doesn't like having an English judge. He was a member and after all, England was a member of NATO. Then he can use the what we call the "Pinoche precedent" to object to that particular judge. But he's got to make up his mind. He's got to enter the proceedings and either represent himself or have counsel to make these. Of course, he can't claim...

van holst en steijnen

From: Despotovic, Ruza <despot@wish.net>
To: Nico & Neeltje Steijnen <n.h.van.holst@freeler.nl>; Globalreflexion <office@globalreflexion.org>
Sent: zaterdag 14 juli 2001 16:19
Subject: Fw: - Ljudska prava - Equal 'Justice' for Serbs and Croats

— Original Message —

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To: Ed Agro <edagro@bellatlantic.net>
Sent: Friday, July 13, 2001 1:13 AM
Subject: - Ljudska prava - Equal 'Justice' for Serbs and Croats

Equal 'Justice' for Serbs and Croats

Finally, Milosevic was transferred to The Hague. The move, however, caused a crisis in Yugoslav/Serbian political leadership, creating a rift between the more pro-Western Serbian government lead by Djindjic and the more Serb nationalist (patriotic?) FR Yugoslav government lead by Kostunica.

A few days later, the transfer, or maybe I could call it extradition (since Croatian Constitution allows it) of two Croatian war crimes suspects to The Hague, caused a crisis in Croatian government, that ended up with two (four, by the more recent count) ministers resigning and a split in the governing coalition.

Of course, that's maybe what prime minister Racan wanted: the more nationalist-populist social-liberals became a pain lately with their ever shifting loyalties between their present coalition partners, the ruling social-democrats, and the Croatian Democratic Union (HDZ) opposition bloc. So, while this crisis may accidentally serve both Serbia (that got \$1.28B in aid) and Croatia well, there are much larger things at stake here - like the independence of international justice for example.

Oddly, despite their professed social/cultural differences, those two societies reacted to the extradition/transfer of their war crimes suspects to the international court in strikingly similar manner: with anger. Obviously, people in both societies remain sharply divided and intensely sensitive about the issue of extradition/transfer of their citizens, be they potential war criminals, to the ICTY. ICTY is an international body, established by the wealthiest and most powerful Western nations, and thus perceived as a tool of Western pressure (despite being run by the UN and including judges from let's say China).

This perception was only highlighted by tying the U.S. participation in the Donors Conference on June 29 to the Yugoslav/Serbian cooperation with The Hague tribunal. That cooperation materialized a day before the conference, with Slobodan Milosevic's transfer to The Hague. Yugoslavia/Serbia was promptly rewarded with \$1.28B in aid and grants.

In Croatia's case the extradition of the two (un-named) war crime suspects was not directly tied to any economic gains. Instead, it was indirectly implied, by the, immediately preceding, Yugoslav/Serbian example, that those, who would not cooperate with The Hague tribunal, stood chances of losing favor with the West: something that Croatian economy, ravaged by the succession of communism, war and corruption, simply could not afford.

Establishing a connection between justice and economic aid is certainly an effective way of getting things done. Nevertheless, it sets a bad precedent for justice, while holding the victims as hostages. The refugees, displaced persons, persons traumatized by war, the poor - they would be the prime victims in both societies, should the West withhold the aid. On the other hand, as long as the ICTY needs to have local governments bribed or threatened into compliance, the justice, meted out by it, will be viewed as an attempt by the rich and powerful of the world

to teach the small nations their place in the greater order of things.

This matter is further worsened by Western powers having been de facto accomplices in all three parts of the former Yugoslav tragedy: communism, war, nationalism & corruption. They condoned the acting political leadership(s) in the region during the each particular period for a long time. Yet now they want to judge while refusing to be judged themselves.

Ivo Skoric

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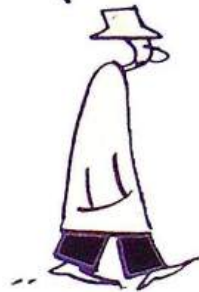
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MILOSOVIC
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"Freedom" Association

**Yugoslav Committee to
Free Slobodan Milošević**

**11000 Beograd, Rajičeva 16
tel: +381 11 630 206
fax: +381 11 639 152**

PETITION FOR FREEDOM

NATO "Tribunal" in the Hague is inquisition of modern times, the institution in charge of persecution of Serbs and the one who wants to impose the collective guilt to the Serbian people for everything that happened in former Yugoslavia.

It represents an illegal institution who has been founded against the UN Charter.

They want to prove that they have the liberty to attack freedom, but that you haven't the liberty to defend it.

Slobodan Milosevic, long time president of Serbia and Yugoslavia, has been arrested on an illegal and insolent way and, to disgrace of Serbia, kidnapped and surrendered to the illegal Hague Tribunal. In an attempt to further humiliate the Serbian people they chose to commit this crime on St. Vitus Day.

What are the reasons for their attempt to put President Milosevic on "trial" in the Hague?

His defense of Serbian people and of our national interests, of our Kosovo and Metohia, his struggle for freedom, human rights and dignity. He is the world known leader who stood up together with his people against NATO and its criminal aggression. He is the symbol of Serbian people's resistance to NATO occupation.

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Dignified and defiant appearance of president Milosevic in front of NATO inquisition is the best example of consequent defense of people's and state interests.

We demand immediately

**Freedom for Slobodan Milošević,
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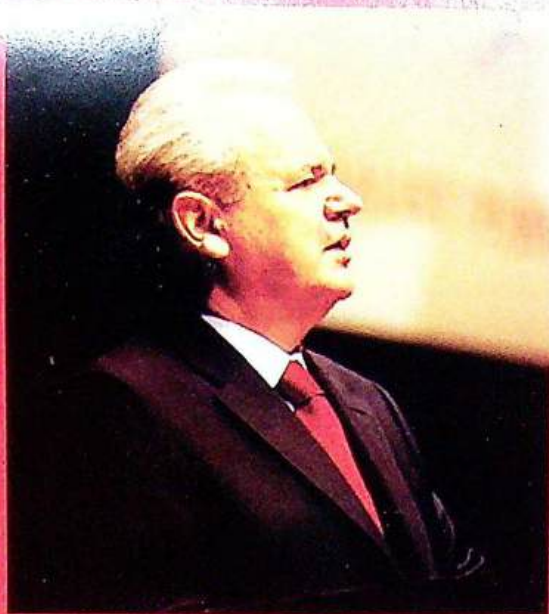
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"Even more so today, when danger of global violence is certain, what we need is an organised resistance to violence on a global scale.

At the moment, country defends itself from the evil looming over it and the left and the right should stand together, the religious ones and atheists, those educated and those who are not, the old and the young, those who did not get along well or love each other, those who did not talk to each other, those who think that they have forever and definitely parted ways. Those who have one thing in common - the love of their country. And that they feel obliged to defend it from the colonial status where foreign armies will march in, whose economy will be in the function of development of other countries, whose culture will be ruined, whose past will be wiped out and who will be ruled by those bribed or blackmailed hoodlums whom every nation has even at the best of times, but evil times is particular."

Slobodan Milošević