The Milosevic indictment: a mass of contradictions

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Enormous publicity was given last week to the war crimes indictment of Slobodan Milosevic and four other Serbian leaders handed down by the International Criminal Tribunal for the former Yugoslavia (ICTY). But there was little examination, either of the evidence or the legal principles on which the indictment is based.

The most striking feature of the 36-page indictment is what is ***not*** in it. After months of comparisons of Milosevic to Hitler and of Serb conduct in Kosovo to the Nazis, the ICTY prosecutor, Canadian jurist Louise Arbour, chose not to bring charges of genocide against any official of the Federal Republic of Yugoslavia or any leaders of the Serb nationalist paramilitary forces. Asked at a press conference why no such charges were brought, Arbour would only say that the standard of proof before the tribunal was higher than that of NATO or the media.

While this may not have been intended as a rebuke to the American government and media propaganda, it is quite extraordinary how the estimates of deaths in Kosovo have shrunk, from the 100,000 repeatedly asserted by US Secretary of Defense William Cohen, to the 4,600 claimed in a US State Department report issued a month ago, to the 346 cited in the war crimes tribunal's indictment.

American officials hailed the indictment of Milosevic, and simply ignored the radical difference between the death toll presented by the tribunal and the figures issuing from the Pentagon and State Department. A few days after the indictment was made public, the top State Department human rights official, David Schieffer, cited the figure of 225,000 as his agency's estimate of the total number of missing Kosovar men.

The ICTY indictment contains a lengthy appendix listing by name 340 Albanians allegedly killed by Serb gunmen—soldiers, police or paramilitaries—since January 1, 1999. The document contains brief descriptions of six incidents of multiple or mass killings. No one can condone such killings, whether they were motivated by ethnic hatred or committed in the course of the war between the KLA and Yugoslav forces. But two points must be made. A handful of incidents hardly amounts to the systematic, genocidal slaughter which NATO officials and the Western media claimed was taking place in Kosovo, and which provided the pretext for outside military intervention. And the cumulative death toll is far smaller that the number of fatalities inflicted on civilian non-combatants by the US-NATO bombing.

Much of the indictment is a rehash of the US-NATO version of the history of the breakup of Yugoslavia. It demonizes the Serbs and ignores the atrocities committed by other ethnic chauvinist forces—Croat, Muslim and Albanian. In the course of this outline, several facts are conceded in the indictment which actually undermine its own argument. Paragraph 23 admits that it was the KLA, not the Milosevic regime, which precipitated the civil war in Kosovo. The passage reads:

"While the wars were being conducted in Slovenia, Croatia and Bosnia and Herzegovina, the situation in Kosovo, while tense, did not erupt into the violence and intense fighting seen in the other countries [these "countries," of course, were constituent parts of one country, Yugoslavia, for more than 70 years]. In the mid-1990s, however, a faction of the Kosovo Albanians organized a group known as *Ushtria Çlirimtare e Kosovës* (UÇK) or, known in English, as the Kosovo Liberation Army (KLA). This group advocated a campaign of armed insurgency and violent resistance to the Serbian authorities. In mid-1996, the KLA began launching attacks primarily targeting FRY and Serbian police forces. Thereafter, and throughout 1997, FRY and Serbian police forces responded with forceful operations against suspected KLA bases and supporters in Kosovo."

This civil war intensified in 1998, with the Yugoslav Army using its superior weaponry, mainly tanks and artillery, to smash up KLA strongholds, and the Albanian nationalists resorting to guerrilla tactics. "Many residents fled the territory as a result of the fighting and destruction or were forced to move to other areas within Kosovo," the indictment states. "The United Nations estimates that by mid-October 1998, over 298,000 persons, roughly fifteen percent of the population, had been internally displaced within Kosovo or had left the province."

Every war, and particularly every guerrilla war, produces large numbers of refugees.

If nearly 300,000 people were displaced by warfare on the scale of that which prevailed in 1998, it is not unreasonable to believe that the onset of NATO bombing of Kosovo on March 24, combined with a vastly escalated Serbian military offensive against the KLA, accounts for the doubling or tripling of the flow of refugees, without hypothesizing a plan by the Yugoslav regime to eliminate the Albanian population of Kosovo.

Another issue is raised by this account: if the killings in Kosovo arise out of a civil war between the KLA and the Yugoslav authorities, in which brutal measures were employed by both sides, then is not the KLA, too, guilty of war crimes? KLA gunmen carried out such atrocities as the murder of Serb students at a coffeehouse in Pristina, the shooting of postal workers and other civil servants, and, by many accounts, the execution of Kosovar Albanians opposed politically to its separatist politics or it connections with drug trafficking.

In paragraph 91 the indictment says Milosevic's objective in the struggle in Kosovo has been "to ensure continued Serbian control over the province." This is a highly significant admission, because it underscores the shaky legal basis of the indictment. Kosovo is recognized internationally as part of Serbia, and has been for most of this century. Every existing government, backed by international law, maintains that it has the right to use force to defend its sovereignty against an armed secessionist movement. What the ICTY indictment claims are "war crimes" took place precisely in the context of a civil war between a central government, that of Yugoslavia, and a separatist insurgency, in the form of the KLA.

Here it is critical to understand the legal double standard employed by the great powers in their intervention in the former Yugoslavia. As Yugoslavia began to break up in the late 1980s and early 1990s, under the

combined impact of the disintegration of Stalinism in the Soviet Union and Eastern Europe, and demands by the International Monetary Fund which wrecked Yugoslavia's economy, Germany and the United States played key roles in supporting secession, first by Slovenia, then Croatia and finally Bosnia.

Prior to 1991, Yugoslavia was a federal republic with six constituent republics—Slovenia, Croatia, Bosnia, Montenegro, Serbia and Macedonia. The breakaway and independence of four of these republics transformed the internal republican borders into international borders. Any attempt by the Serb-dominated federal government in Belgrade to defend either the federal republic itself, or the position of Serbs who now found themselves a persecuted minority in the new states of Croatia and Bosnia, was branded as aggression by the United States and the European powers.

The republican borders of Croatia and Bosnia were proclaimed to be inviolate—for instance, in the 1995 Dayton Accords. Yet in the case of Serbia, the republican borders are held to be anything but inviolate, and the attempt by the Yugoslav government to defend these borders against the secessionist KLA is branded aggression, genocide, etc.

The US-NATO propaganda, and the indictment of Milosevic, present the Yugoslav army as an alien occupying force in what is clearly, under international law, Yugoslav territory. While Serbs in Bosnia and Croatia were condemned for seeking to amalgamate their territories into a "greater Serbia," the US and NATO are openly supporting the KLA, a movement whose declared aim is a "greater Albania," achieved through the separation of Kosovo from Serbia and its integration with Albania proper and the Albanian-populated regions of Macedonia, Montenegro and even Greece.

Again, the indictment ignores the fundamental difference between a war between two independent states, and a civil war. What was the government of Yugoslavia to do when confronted with an armed insurgency in Kosovo, which enjoyed considerable external backing? Were the Serbs legally prohibited from using force to oppose secession? By that standard, Abraham Lincoln's policy in the American Civil War was a war crime.

There are any number of contemporary examples of governments—many of them participating in the US-NATO war against Yugoslavia—which have carried out violent repression of secessionist or insurgent movements. To cite only a few: Spain against the Basque ETA, France in Algeria, Britain in Northern Ireland, and, on a scale dwarfing the conflict in Kosovo, Turkey against its Kurdish minority and the separatist PKK.

As for the United States, the list of such wars is endless. Having developed techniques like the forced removal of entire populations in the wars against the Indian tribes in the 19th century, the American military developed its methods of counterinsurgency, or "low intensity warfare," in the Philippines, Mexico, Guatemala, El Salvador, Nicaragua and throughout South America, and, bloodiest of all, in Vietnam.

Even if the worst accounts of the events in Kosovo are true, Milosevic cannot compare to American imperialism when it comes to waging wars against popular insurgencies and carrying out massive and violent repression against civilian populations.

The tendentious and hypocritical character of the indictment of Milosevic poses an obvious question: is there an objective standard of guilt? This question is really twofold: Are there actions in war that, no matter what the circumstances, must be considered criminal? And are these standards applied equally to all sides in a conflict?

Let us consider the Statute of the International Tribunal for the former Yugoslavia, adopted by the UN Security Council in 1993. Articles 2 through 5 of the statute outline actions under four broad categories: breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity.

Nearly all the actions described—torture, murder, use of poison gas, extermination of members of a particular ethnic group—would be considered crimes by any truly civilized society. But many of these violations have been committed by the US-NATO forces in the course of their war against Yugoslavia.

Take Article 3, section (b): "wanton destruction of cities, towns or villages, or devastation not justified by military necessity." Or Article 3, section (c): "attack, or bombardment, by whatever means, of undefended towns, villages, dwellings or buildings."

Both sections describe perfectly the US-NATO bombing of bridges, water treatment plants, hospitals, nursing homes, market places and other civilian targets.

Article 3, section (a) bans "employment of poisonous weapons or other weapons calculated to cause unnecessary suffering." The United States has employed at least three such weapons against Yugoslavia: depleted-uranium warheads, which result in radiation poisoning and radioactive contamination, causing cancers long-term; "blackout bombs," specialized graphite weapons whose purpose is to short out the electrical power system on which life in an industrialized society depends; and cluster bombs, anti-personnel weapons which amount to mining the countryside from the sky.

Paragraph 34 of the indictment of Milosevic condemns the offensive by Yugoslav forces against the KLA on the grounds that "Towns and villages have been shelled, homes, farms and businesses burned, and personal property destroyed. As a result of these orchestrated actions, towns, villages and entire regions have been made uninhabitable for Kosovo Albanians." This could serve as a succinct statement of the impact of US-NATO bombing on the whole of the Serbia, a region with ten million people, five times the population of Kosovo alone.

There will be no indictments of Clinton, Albright, Cohen or General Wesley Clark by the International Tribunal on the former Yugoslavia. And not merely because the American, British, Canadian and other judges from imperialist countries will not permit it. The US government, despite hailing the indictment of Milosevic, does not accept the authority or the jurisdiction of tribunals established by the United Nations.

In 1984 the Reagan administration repudiated the jurisdiction of the International Court of Justice (the "World Court") after the Court found that the mining of Nicaraguan harbors by the US Central Intelligence Agency was a violation of international law.

This stance is maintained by the Clinton administration in relation to the events in Yugoslavia. On June 2 the International Court of Justice agreed to consider charges of war crimes and crimes against humanity which were filed by Yugoslavia against eight of the NATO powers involved in the air war. The World Court declared its concern over the legality of the bombing, while refusing the Yugoslav request for an emergency order calling for a ceasefire.

Yugoslavia had filed charges against all ten countries contributing to the bombing, but the court dismissed the charges against the United States, as well as Spain, because neither country recognizes the jurisdiction of the World Court over charges arising from the UN Convention on Genocide.

This is in sharp contrast to the position which the US representatives took during the Nuremberg Trials of Nazi war criminals after the Second World War. The International Court at Nuremberg declared: "To initiate a war of aggression, therefore, is not only an international crime, it is the supreme international crime differing only from all the war crimes in that it contains within itself the accumulated evil of the whole."

The head of the American prosecution staff, Supreme Court Justice Robert Jackson, stated that "launching a war of aggression is a crime and... no political or economic situation can justify it."

Jackson emphasized that this standard should be applied to all countries, including the United States. "If certain acts in violation of treaties are crimes," he said, "they are crimes whether the United States does them or whether Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have

invoked against us.”