

Milosevic trial: Hague Tribunal shows its partisan nature

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The trial of Slobodan Milosevic being held at The Hague has been hailed as the climax of the efforts of the International Criminal Tribunal for the former Yugoslavia (ICTY) to establish justice for the victims of ethnic cleansing and war crimes in the Balkans.

The *World Socialist Web Site* remains an implacable opponent of Milosevic, the ex-leader of Yugoslavia. He is a former Stalinist, turned Serbian chauvinist, whose championing of capitalist restoration was the economic precursor to the dismemberment of Yugoslavia through bloody civil war. However, this does not imply lending an ounce of support to the ICTY and its proceedings. It is not necessary to extend the slightest sympathy towards Milosevic in order to recognise that what is taking place at The Hague is a travesty of justice.

A growing number of civil rights activists, international law experts and human rights groups have raised their concerns at the ICTY's lack of genuine impartiality and its routine violation of basic standards of jurisprudence, even those that it is ostensibly committed to upholding in its own rules and procedures.

In one attempt to deflect these criticisms, the *Guardian* newspaper carried an August 6 editorial insisting that the "Hague Tribunal sets a valuable precedent". The paper states, "Amid continuing questions about its legitimacy and methods, the basic, essentially humane purpose behind the creation of the Hague court should not be forgotten.

"Those that claim that this is 'victors' justice' should note that Serbs are not The Hague's only targets. Far from it. Last month, the Croatian government agreed to extradite two high-ranking military chiefs despite a domestic furore... Clearly, one country's agreement to cooperate encourages others to follow suit, as confidence in the court's impartiality grows."

The nominally left/liberal *Guardian* goes on to claim that "the Hague is a ground-breaking attempt at even-handed justice that those most affected, the ordinary people of old Yugoslavia, can understand even if, like the Tribunal's western critics, they find it uncomfortable."

In conclusion, the editorial states that those who feel the list of those indicted for war crimes is incomplete should content themselves with the knowledge that even though the US is opposed to a permanent international criminal court, the Hague Tribunal is a step in this direction.

The *Guardian's* argumentation is pure sophistry. As the former President of Yugoslavia, Milosevic is the only head of state to stand trial for war crimes in the Balkans and the vast majority of those charged with war crimes as Serbian. In order to ensure Milosevic's prosecution and conviction, moreover, the ICTY has in effect been made judge, jury and executioner.

On August 30, during Milosevic's second arraignment before the court, ICTY Chief Prosecutor Carla Del Ponte was granted more time to prepare the charges and evidence against Milosevic underlying his indictment for war crimes and human rights abuses during the Kosovo conflict, originally issued two years ago. Del Ponte has subsequently issued a further indictment for alleged offences committed in Croatia. These relate to the

alleged murder of 650 Croats and other non-Serbs and the deportation of 170,000 Croats between August 1991 and June 1992. Although the actual offences were committed by a variety of suspects—from the Yugoslav Army to local police—Del Ponte insists that Milosevic had "effective control or substantial influence" that extended to giving financial support and logistical support to those involved.

If this were true, it begs the question, why, if Milosevic was so deeply involved in atrocities in Croatia and then later Bosnia, was he made one of the main signatories of the US-brokered Dayton Accord in 1995? At the Wright-Patterson air base in the USA, American and European leaders hailed him as the guarantor of peace on the Serbian side. In exchange for accepting the partition of Bosnia and its establishment as a NATO protectorate, economic sanctions on Serbia were lifted temporarily. If Milosevic is guilty of war crimes in Croatia and Bosnia, jurisprudence would dictate that Western leaders such as former US president Bill Clinton be named as accomplices after the fact.

NATO's own actions during the Kosovo conflict are regarded as being exempt from any human rights considerations. No account is being taken of what role the 79-day NATO aerial bombardment had on creating the huge refugee crisis. And this even though, by its own admission, the indictment against Milosevic states that the number of displaced peoples in Kosovo by October 1998 was 15 percent, whereas just two months after the NATO intervention had begun a third of the population was expelled and thousands more were internally displaced. Neither is there to be any examination of the covert support given to the ethnic Albanian separatists of the Kosovo Liberation Army (KLA) by the CIA or European intelligence services, nor how this could well have exacerbated the conflict.

While the ICTY claims to have established a prima facie case showing Milosevic's ultimate responsibility for the alleged atrocities carried out on the Serbian side, the same cannot be said regarding the Croats and Muslims. According to the Croat daily *Nacional*, the ICTY had originally laid charges of responsibility for war crimes against the late Croatian president Franjo Tudjman and Bosnian Muslim leader Alija Izetbegovic. But these have never seen the light of day, even though Izetbegovic, for example, was directly implicated in the slaughter of 200 Sarajevo Serbs by a unit of the BiH Army directly under his command. It cannot be seriously maintained that NATO was unaware of Tudjman's support for acts of ethnic cleansing. Prior to the outbreak of the Bosnian conflict he met with Milosevic to hold tentative talks regarding the partition of the republic. Records provide evidence of a dialogue between Tudjman and the president of the rump Croatian state in Bosnia, Mate Boban, regarding ethnic cleansing carried out by the Bosnian Croats.

The failure to act on any of this information can only be explained by the fact that the Croat-Muslim alliance was formed under NATO auspices and an admission of such human rights abuses would compromise the Western powers.

Then there is the case of KLA leader Agim Ceku. The ICTY was

investigating Ceku for alleged war crimes against ethnic Serbs in Croatia during 1993 and 1995. According to *Jane's Defence Weekly* he "masterminded the successful HV [Croatian] offensive at Medak (in 1993) and in 1995 was one of the key planners of the successful Operation 'Storm' which led to the eviction of 200,000 ethnic Serbs." One hundred civilians were killed in the former and four hundred and ten in the latter operations.

From being HV Chief of Staff, Ceku went on to lead the separatist forces of the KLA in the Kosovo conflict. Even though he was under investigation by one UN agency, this did not prevent him from being appointed by another UN body to head the new army set up in Kosovo under Western supervision. United Nations Special Representative Bernard Kouchner made him chief of the Kosovo Protection Force, described as the province's equivalent to the US National Guard, and formed almost entirely out of KLA fighters.

The attempt to present the ICTY as a "first step" towards a permanent court to punish the perpetrators of war crimes and human rights abuses does not stand up to examination. The ICTY is a United Nations body in name only. It was established without a full meeting of the General Assembly, which would have necessitated ratification and compliance with the UN Charter, and many tenets of international law. Rather than being an independent judicial body, it was created in 1993 as a subsidiary of the UN Security Council. The sole authority cited for its creation was the UN Charter, Chapter VII, Article 29, which states: "The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions."

Security Council resolutions 808 and 827 stated that the situation in Bosnia presented a threat to international security and that the prosecution of war criminals would contribute to establishing peace. This is a false interpretation of the UN Charter. The clause cited only allows for subsidiary organs concerned with matters of an economic or military nature. Moreover, the threat to international security traditionally refers to conflicts between nation-states, rather than a civil war.

The main instigator of the ICTY was the US, which has consistently opposed the universal application of human rights laws. When in 1984 the International Court of Justice (ICJ)—formed to adjudicate conflicts between UN member states—ruled that mines laid by US forces in Nicaragua's Managua harbour were in violation of international law, the Reagan administration refused to recognise its authority.

The US has also opposed the steps towards creating a more permanent international criminal court on genocide, aggression and war crimes. In 1998, an International Criminal Court was agreed upon by 120 nations meeting in Rome. The US refused to be a signatory unless its military forces were exempted from the jurisdiction of the proposed body. When this demand was rejected, the US refused to ratify the treaty.

These double standards are maintained by the ICTY. To lend legitimacy to its air strikes, NATO deliberately loosened the definition of legitimate military targets to maximise the casualties and suffering among the civilian Serb population. It carried out the bombing of water systems, energy plants, bridges, radio stations and even hospitals. This was all justified on the basis that Milosevic was carrying out "genocide" and that the Serbian people, by supporting a latter-day Hitler, were not worthy of protection under the statutes of the Geneva Convention. By failing to hold NATO to account, the ICTY demonstrates it accepts this barbaric premise.

According to Articles 16 and 32 of the ICTY, the Chief Prosecutor shall not receive instruction from any government or any source and the Tribunal's expenses are to be provided for by a regular budget from the UN. However, the Hague Tribunal has been the recipient of corporate patronage and routinely works in tandem with the departments overseeing US foreign policy. In 1994/5 it is estimated that the US provided \$700,000 in cash and \$2,300,000 worth of equipment to the Tribunal. Among the private sponsors are the international financier George Soros and the

Rockefeller family. In 1996 the ICTY chief prosecutor met with the NATO secretary-general and European commander in chief to "establish contacts and begin discussing modalities of co-operation and assistance". The ICTY chief prosecutor informed US President Clinton of the indictment of Milosevic two days before the rest of the world received the information. Indeed the Tribunal is so clearly identified as the offspring of the US that the ICTY president even described former US Secretary of State Madeleine Albright as the "mother of the Tribunal". Richard May, presiding judge in the Milosevic case, is from the UK, the country second only to the US in leading NATO's military assault on Yugoslavia.

The ICTY yearbook for 1994 states: "The Tribunal does not need to shackle itself with restrictive rules which have been developed out of the ancient trial-by-jury system." The "restrictive practices" referred to here are none other than those that are internationally recognised as being the preconditions for receiving a fair trial and due legal process.

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In contradistinction to widely accepted legal norms, the ICTY lays the charges, carries out the prosecution and appoints the judges. There is no jury, and prosecution and judges are all on the same payroll. The burden of proof is so loose that hearsay is regarded as legitimate evidence. Whereas in most normal law courts, any evidence proven to be unreliable can lead to the charges being dropped, at The Hague the trial continues. Rule 92 states that confessions shall be presumed free and voluntary, even though the duration for which a suspect can be held without charge is 90 days.

The ICTY was also given responsibility for setting up and administering the legal system in Kosovo. In June this year, both UN legal advisers and the human rights group Amnesty International accused the ICTY's judicial system in Kosovo of ethnic bias and of making "politically driven decisions".

The allegations were prompted by the sentencing of former Serbian policeman Zoran Stanojevic to 15 years in prison for allegedly taking part in the so-called "Racak massacre". The bodies of 45 Albanians were discovered at the Kosovan village in January 1999. At the time these were said to be civilian victims of a Serbian execution squad, though this was never conclusively proven and has always been disputed. The Racak incident was seized upon as a pretext to scupper the Rambouillet peace negotiations and launch NATO's military offensive against Serbia. (The incident is also referred to in the original ICTY indictment of Milosevic.)

A panel of two international judges and one Albanian judge had considered abandoning the Stanojevic trial for lack of evidence, but, according to a UN legal adviser, "they didn't dare to do it. Politically speaking it was not possible." The legal officials said the trial was dogged by procedural irregularities and that forensic evidence and initial witness statements contradicted trial testimony.

During the course of the Stanojevic trial, witnesses altered their evidence. Two witnesses claimed that the victims had been shot through the front of the head, even though this was contradicted by forensic evidence. A reconstruction with the participation of the accused and his counsel present was not possible on two occasions, due to threats made by Albanian separatists objecting to the presence of any Serbs in the village.

The same bias is evident in the Hague trial of Milosevic. The initial efforts of the Tribunal have centred on preventing Milosevic from receiving legal advice to mount his defence. At his first arraignment before ICTY in July, following his abduction from Yugoslavia, Milosevic stated that he would mount his own defence, whilst challenging the jurisdiction of the Tribunal itself.

For almost a month the Tribunal denied Ramsey Clark—a former US Attorney General and an expert on international law—the opportunity of providing legal advice to Milosevic. They offered him a meeting of only two hours duration with Milosevic, which would be monitored by ICTY

staff throughout. Clark challenged this on the grounds that to deny an accused access to legal advice on the pretext that the defendant had not appointed legal counsel was in violation of accepted legal norms and the rules and procedures set out by the ICTY itself. In an Emergency motion, he showed how the Tribunal was in breach of its own Article 5 and added: The Tribunal's "position violates both the principle and practice of the right of a person to conduct his own defence and the right to assistance of counsel. Its ruling means that an accused held in prison pending trial who is underrepresented, or chooses to represent himself forfeits all legal assistance and the practical means essential to conduct his defence. The position is arbitrary, unlawful, a denial of assistance of counsel and due process of law..."

Clark also exposed how the proposal to have the two-hour meeting monitored by ICTY staff contravened Rule 67(D) of the Tribunal's Detention Rules, on the right of a pre-trial detainee to confidential consultation. Whilst Clark was eventually allowed to meet with Milosevic for several days, Milosevic was not allowed to read out the result of this consultation to the Tribunal, which took the form of a challenge to the judicial legitimacy of the ICTY. On August 30, at his second arraignment, Judge Richard May switched off Milosevic's microphone.

A brief quote from just one section of this 5,200 word challenge is sufficient to show why the judge took such an unprecedented step: "If the United Nations Charter had authorised the Security Council to create criminal courts, it could not create a court for one nation or episode for political purposes, to persecute selected groups or persons, and such a court is incapable of equal justice under law. An ad hoc court violates the most basic principles of all law... A court created only for the crimes in one country is by definition discriminatory, incapable of equal justice, a weapon against chosen enemies, or antagonistic interests and war by other means. If there is to be any international criminal court, it must act equally as to all nations with none above the law. This ad hoc Tribunal for a single nation corrupts international law."

Whatever valid criticisms concerning the ICTY's double standards and bogus legitimacy Milosevic was able to formulate with Clark's assistance cannot eliminate his own responsibility for the fate that has befallen millions of ordinary Yugoslav people. As President of Yugoslavia, Milosevic was responsible for implementing IMF and World Bank austerity measures, which produced a massive strike wave across the country. His late conversion to Serb nationalism was specifically aimed at derailing such working class opposition to his government's pro-capitalist policies. In playing the nationalist card, he was not alone. Franjo Tudjman promoted Croatian chauvinism, whilst Izetbegovic championed Bosnian separatism. The reason why Milosevic found himself at odds with the Western powers, as opposed to his fellow champions of communalism in the other former Yugoslav republics, was because the maintenance of a unitary state stood in the way of American and European foreign policy in the region.

His adoption of Serb chauvinism has been a definite contributory factor in fanning ethnic hatred, which, together with the US and European policy of dismembering Yugoslavia, set the stage for a series of bloody civil wars. The legacy has been the creation of a series of mini-states, in which the Western powers exercise untrammelled economic and political control. The function of the ICTY is to provide a legal veneer for this predatory imperialist policy.



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