

The Hague Tribunal: Milosevic charges NATO with war crimes

Part 1

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This is the first of a three-part series dealing with the trial of former Yugoslav President Slobodan Milosevic at The Hague. See Part 2 and Part 3.

On Tuesday, February 12, proceedings opened in the trial of Slobodan Milosevic at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague.

For the next two days, the prosecution team led by Carla Del Ponte offered its introductory remarks in the indictment of the former Yugoslav president for war crimes in Croatia, Bosnia, and Kosovo.

Afterwards, in what was obviously highly politically embarrassing for the ICTY and the Western powers, Milosevic's defence statement presented a serious legal rebuttal of the charges against him. Milosevic then turned the tables on his accusers by arguing cogently that the main responsibility for the eruption of ethnic conflict in the Balkans rests with the United States, Germany and the other NATO powers and that it is they who should in fact be charged with war crimes.

Milosevic was naturally keen to present himself in the best possible light at all times and no objective observer of Balkan events over the past two decades would fail to acknowledge that he shares political responsibility for the tragic events of the 1990s. But the fact remains that his version of what took place contains far more truth than the equally self-serving account presented by the Western governments that provides the political underpinnings of the present trial.

In opening the prosecution argument, del Ponte said that the ICTY was based on the application of "international humanitarian law". Milosevic was being prosecuted "on the basis of his individual criminal responsibility", and "No state or organisation is on trial". "This is a criminal trial," she went on and the prosecution would not respond to Milosevic's attempt to "make interventions of a political nature".

These gyrations are extraordinary. How can Milosevic be on trial simply as an individual, given that he is being charged precisely because he was a former head of state? Moreover, who but the wilfully naïve could possibly accept the non-existence of a political dimension to the most high-profile trial in the world today?

Del Ponte attributed the entire tragedy of the breakup of Yugoslavia to the personal ambition of Milosevic. Her attempt to do so reached bizarre dimensions. Milosevic was neither nationalist nor racist, she said. Rather, "Beyond the nationalist pretext and the horror of ethnic cleansing, behind the grandiloquent rhetoric and the hackneyed phrases he used, the search for power is what motivated Slobodan Milosevic."

Senior Trial Attorneys Geoffrey Nice and Dirk Ryneveld followed up with an outline of the charges against Milosevic, listing various examples of killings and atrocities in Croatia, Bosnia and Kosovo.

In order to make Milosevic directly responsible for crimes that were mostly attributed to various Serbian irregular forces, and less often to

soldiers serving in the regular army, Nice simply insisted that Milosevic must have known what was happening and was therefore culpable.

Beginning with the indictment on Kosovo, Nice accused Milosevic of poisoning the political atmosphere through repressive acts and inflammatory nationalist speeches. Nice did acknowledge the emergence of a separatist movement within the ethnic Albanian population in the late 1980s. But as regards terrorist violence by the Kosovo Liberation Army (KLA), he gave this an apologia by stating his surprise that "the reaction of Kosovo, or of the Kosovo Albanians, was as muted and peaceful for a time as it was."

Nice played a clip from a speech by Milosevic on June 28 1989, celebrating the 600th anniversary of the Battle of Kosovo, highlighting just one statement: "Six centuries later—today—we are once again fighting battles and faced with battles. They are not armed battles, although such battles are not excluded either." The fact that Milosevic did not exclude "armed battles" was meant to associate him with what followed in the next years.

Nice then gave a highly truncated chronology of the subsequent breakup of Yugoslavia and the conflict that ensued. He insisted that the unifying thread between the conflict in Croatia, Bosnia and Kosovo was Milosevic utilising ethnic cleansing to carry out his "aim or objective of control and domination by Serbs over territory with different co-perpetrators who were all part of a common plan." In Croatia, everything carried out by the army, the Territorial Defence units of the Krajina and of Slavonia, the Territorial Defence of Serbia and of Montenegro and "a broad array of paramilitaries" was supposedly done as part of Milosevic's "plan". "The evidence shows that the forces I've cited operated together towards a single goal at the direction of this accused", alleged Nice.

When dealing with Bosnia and the charge of "genocide", Nice made sure all possible bases were covered. In order to avoid any reference to the disputed figures regarding Serbian atrocities, Nice simply alleges, "the accused intended to destroy the Bosnian Muslim and Bosnian Croat communities *in part*, which is in accordance with the definition of genocide". He continued, "*Alternatively, that genocide was the natural and foreseeable consequence of the joint criminal enterprise forcibly and permanently to remove non-Serbs from the territory under control. Alternatively, the accused was an accomplice and he knew that some of the perpetrators were committing genocide* and he undertook acts which assisted in their commission. *Further or alternatively, as a superior within the meaning of Article 7(3) of our Statute, he knew or had reason to know that genocide was about to be committed or had been committed* and did not prevent or punish the perpetrators thereof." [Emphasis added throughout]

With such a list of widely different alternatives, it is not necessary to prove that Milosevic was directly responsible for any atrocities. He should

have known that this was an inevitable consequence of his policies even if the acts were committed by others whom he formally did not command. By defining the crime of genocide as destroying a people “in part”, the awkward fact of the actual numbers killed—the size of the part, or how they were in fact killed; whether there was anything comparable to the Nazi concentration camps or the type of wholesale ethnic slaughter in Rwanda—is avoided.

Finally, as an additional insurance against having to prove any actual connection between Milosevic and any one of the alleged war crimes, Nice stated; “The Prosecution will assert and does assert that this accused took pains to conceal his participation in the enterprise. However, the Bosnian Serb leadership and military could not have done what they did without his massive ongoing informed assistance.” For, as Nice later admits; “We accept that our proof against this accused, certainly at this stage, for complicity in these awful events is via his support for the Republika Srpska [the Serbian enclave in Bosnia Herzegovina—CMJ] and via his support for its army. We do not, of course, exclude the possibility of being able to go further in due course.” In other words, the prosecution has no proof, other than the say so of its paymasters in Washington and other Western governments.

As further proof that Milosevic should be found guilty of war crimes, the supposedly non-political prosecution cited then US Secretary of State Eagleburger in a December 16, 1992 press release. “Serbian President Slobodan Milosevic and the leader of Bosnian Serbs must answer ‘in a court of law, I would hope,’ for atrocities committed by military and detention camp commanders in shattered Yugoslavia... The fact of the matter is that we know that crimes against humanity have occurred, we know when and where they occurred. We know, moreover, which forces committed those crimes, and under whose command they operated.”

And the guilty parties, Eagleburger made clear in the same release, were Milosevic and Radovan Karadzic, leader of the Bosnian Serbs. Having quoted this, Nice added, “Well, this Tribunal is only concerned, perhaps tangentially, with the workings of politics. Let there be no doubt, first, this accused was already being identified, well-identified for complicity; but second, and the point of irresistible importance in this case, he was on notice from the *highest authority of his duty to comply with international law.*” This is astonishing, in that Milosevic is charged with not doing what Eagleburger (“the highest authority”) tells him to do and he is to be deemed guilty because Eagleburger says he is! And this statement is made by a man in the course of denying any political bias.

Milosevic became one of the prime guarantors of the 1995 Dayton Accord ending the Bosnian civil war and worked closely with the US in its implementation. This was why the initial indictment against him focused exclusively on Kosovo, otherwise the US and European powers would have great difficulty in explaining why they had decided to deal so directly with an alleged war criminal.

Unfortunately for the West, the case against Milosevic in Kosovo was considered so poor that charges relating to Croatia and Bosnia were hastily added. But this meant that the obvious political anomaly has once again been placed at centre stage. And how does Nice deal with this? With unabashed sophistry: “It may be that he was the person who impressed international negotiators with charm or even seeming reasonableness and moderation, even if appearances were different from what was revealed on the ground... But of course, whatever decisions the accused made in 1995 have no effect on his involvement in what was done...”

So the US and European politicians and their top military brass were simply naïve dupes of the wily Milosevic, who hoodwinked them with his inexhaustible reservoirs of charm like a modern-day Cary Grant.

Finally, the prosecution turned to Kosovo, where the war is portrayed as the sole result of aggressive Serbian nationalism and excessive repression carried out at Milosevic’s behest against the KLA. As an example, Nice singled out the so-called Racek massacre, which was the pretext for

Western intervention, but then acknowledged that the incident, “doesn’t feature in the allegations reflected in the indictment”. This omission is for the simple reason that there is no concrete proof that a massacre ever took place!

The prosecution’s other allegation was that Milosevic had organised the so-called “internal displacement” of 200,000 Kosovo Albanians as a specific form of ethnic cleansing. That is, Milosevic did not initially evict ethnic Albanians from the country, but the fact that there was a movement of the population during a time of civil war is supposed to be proof of ethnic cleansing.

Nice concluded with an assertion so bizarre that Chris Carter would have balked at using it as a plotline for the *X-Files*. Milosevic had “brought upon himself” a war with NATO because it “provided him with the opportunity” to expel the Albanians from Kosovo, “while purporting to defend his country”. In any case, according to Nice’s twisted logic, “Even if there was no devious plan of the kind I summarise, as many think, to lure external violence on Kosovo to justify pushing the Albanians out, the doing of it when it happened is without excuse or justification of any kind and would remain offences as described in this indictment.”

Ryneveld then took the floor to assert, “the trial before you today is primarily a deportation case”. By this he meant “over 800,000 Kosovo Albanian civilians had been forced from their homes by Serb forces and had to flee to neighbouring states”. Serb forces being a catch-all covering “the forces of the FRY [Federal Republic of Yugoslavia]; Yugoslavia, the republic; and of course the MUP [Ministry of the Interior]; the police; and certain paramilitary groups.”

He spoke of thousands of deaths, but qualified this with the rather strange admission, “it must be said that there was an armed conflict ongoing in Kosovo between the FRY and Serb forces, on the one hand, and the Kosovo Liberation Army, or KLA, on the other hand. Further, it must be said that in terms of armed conflict, it is an unfortunate, disturbing, but inescapable fact that people are killed. Undoubtedly, during this particular armed conflict, certain armed combatants from both sides of the conflict were killed as legitimate casualties of war. The fact that people die during times of war does not necessarily signify that a war crime has been committed.”

This is the most defensive formulation imaginable. Instead of genocide, we have a “deportation case” and an admission that many of the casualties on all sides in Kosovo were soldiers killed in combat or casualties of war, rather than victims of Serbian war crimes (naturally no reference is made to possible war crimes by any other ethnic group).

With regard to the role played by the NATO bombing campaign in forcing the subsequent mass exodus of ethnic Albanians, the prosecution simply insisted that Albanian witnesses, i.e., Milosevic’s political enemies, will tell you that the vast majority of refugees fled their homes because of the attacks by Serb forces and not because of NATO bombing. To back up allegations that Serb forces pursued a deliberate policy of rape, witness testimony would be “in closed session or by way of pseudonym and facial distortion,” thus leaving no means of checking the veracity of such evidence.

To be continued



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