

The Milosevic Trial: journalists warned to stop criticisms

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Prosecution lawyers in the trial of former Yugoslav President Slobodan Milosevic have warned journalists to stop criticising their performance and evidence. Milosevic is appearing before the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague accused of war crimes.

Opening the second phase of the trial—covering the wars in Croatia and Bosnia—Prosecutor Geoffrey Nice complained, “These proceedings are in public in order that the public can see our work is done properly ... They’re not here to provide copy or particularly good copy for newspapers or matters of that sort.”

There is no doubt that Milosevic’s utilisation of Serbian nationalism to shore up his position within Yugoslavia played a significant role in enflaming ethnic tensions and encouraging crimes against Kosovan Albanians. But that does not change the fact that The Hague trial is a politically motivated kangaroo court. Its claim that Milosevic was solely responsible for events in Yugoslavia is aimed at covering over the role of the Western powers in fanning the flames of civil war in order to divide the country into a series of impotent ethnically-based states—entirely dependent on imperialist favour.

The prosecution’s efforts to this end, however, have produced a less than convincing case against Milosevic—a fact that is causing consternation in some circles. Whilst the media has been largely supportive of Milosevic being found guilty there has been criticism that the prosecution has failed to provide conclusive evidence of his guilt that justifies their own uncritical support for the NATO bombing of Yugoslavia.

The *Institute of War and Peace Reporting* laments the “unfavourable media reports of the prosecution’s performance during the Kosovo phase of the trial, when it was criticised for not producing a ‘smoking gun’ or key insiders” that could provide cast-iron proof that Milosevic masterminded ethnic cleansing.

Typical of these unfavourable media reports is one by John Laughland in the British conservative *Daily Mail* last month. In his article entitled, “If this man is a war criminal where is all the evidence?” Laughland ridiculed the prosecution for presenting two Serbian “key insiders”—Radomir Tanic and Radomir Markovic—as witnesses. Tanic claimed in court he actually heard Milosevic give the order for ethnic cleansing but later admitted it was only his interpretation. Laughland says Tanic “was shown to be an agent of the secret services of various Western countries and to be so unfamiliar with the corridors of power that he could not even say on which floor of the presidential palace Milosevic’s office had been”.

When Markovic—Milosevic’s spy chief—appeared before The Hague he told the court that he had been forced under duress to give a statement incriminating Milosevic. Laughland complained that

contrary to the prosecution’s intentions, Markovic had said Milosevic “had never ordered the expulsion of the Albanian population of Kosovo, that the former president had repeatedly issued instructions to the police and the army to respect the laws of war, and to protect the civilian population even if it meant compromising the battle against Albanian terrorists.”

After eight months and 124 witnesses the prosecution has completed its evidence for the indictment covering war crimes in Kosovo in 1998/99. This was supposed to constitute the entire substance of the original case against Milosevic. Bosnia and Croatia were only added because of concerns that the evidence of direct responsibility for war crimes in Kosovo was not strong enough. The Kosovo indictment was drawn up at the height of the NATO bombing of Yugoslavia when politicians talked—and the media duly reported—of hundreds of thousands of unarmed civilians being murdered by “Serb forces”. In the end, the indictment covers the deaths of 340 civilians at 10 alleged massacre sites.

But the case has proved to be fairly disastrous. Two thirds of the witnesses have been Kosovan farmers and villagers who claimed to have seen the massacres. There has been a handful of low-ranking Yugoslav Army or police officers who alleged they saw or took part in atrocities. Other witnesses include former Kosovo Liberation Army soldiers, diplomats and politicians involved in the Organisation for Security and Cooperation in Europe (OSCE) and researchers for the Office of the Prosecution (OTP).

The difficulty the prosecution has had in linking Milosevic directly to war crimes was shown by General Peter de la Billiere. Involved in counter-terrorist activities for 41 years and commander of the British Army in the Falklands and Gulf Wars, de la Billiere told the court he had been impressed by the Yugoslav Army’s rulebook and its “attention to humanitarian issues”. He then revealed he had never visited Yugoslavia or been involved in the war there and that the indictment itself was “the sole document on which I have made a judgement as to what happened on the ground.” If the indictment was true, he continued, there must have been “massive logistic and manpower organisation” to carry out the genocide. However, it emerged there were “no documents produced or seen indicating a concerted campaign”. He continued, “We do not have any written directions suggesting what these instructions were and indeed nor are there ... nor is there any record of war diaries or situation reports. So one can only make the assumption that the instructions were given verbally.”

Faced with the lack of a single written order Nice told the court, “criminals or politicians who do acts that are or are subsequently revealed as being criminal, don’t leave traces behind them. They

don't leave paper trails. That's why, of course, this accused operated in that curiously empty office, dealing with people on a one-to-one basis".

It is precisely the inability of the prosecution to present witnesses who dealt with Milosevic on a one-to-one basis that has provoked the criticism. In an attempt to dig itself out of this hole, the prosecution recently called Zoran Stijovic, who had transcribed Markovic's statement. But he only made matters worse for the prosecution. Stijovic told the tribunal, "I didn't come here of my own free will and it was my fault that [Markovic's] statement was placed before the Tribunal here". He was surprised the prosecution had used the statement since it was just an information gathering exercise for another court case and had no legal status in Serbia. Stijovic added that there was no lawyer present during Markovic's interview and he had not been cautioned about incriminating himself.

The second problem confronting the prosecution will be to explain why Milosevic is now being charged with war crimes in Bosnia and Croatia when it is common knowledge that the US and European powers maintained diplomatic ties with his regime and he was viewed by Washington in particular as the main guarantor of the 1996 Dayton Accords that ended the Bosnian civil war.

Nice tried to dismiss such questions at the end of his address to the court. He argued, disingenuously, "Your Honours, this Tribunal is, of course, not political. It doesn't need to concern itself with or to explain how it was that the accused was left to recover after Dayton ... as an apparently respectable member of the community."

Nice's statement is a diplomatic sideswipe at the US government, to which the court has tried to attribute sole responsibility for promoting Milosevic as "the guarantor of peace" in the Balkans after Dayton and making him an "apparently respectable member of the community".

The prosecution has also criticised the US government's attitude to the Milosevic trial. The first part of the trial was notable for the absence of the key US personnel involved in the Kosovo War. US envoy Richard Holbrooke was the main negotiator with Milosevic between October 1998 and March 1999. Christopher Hill mediated talks between Kosovan Albanians and Milosevic in 1998 and at the Rambouillet talks before NATO started bombing. General Wesley Clark was commander of NATO during the bombing campaign. To date, the US government has refused to allow them to appear for fear of compromising security and intelligence operations and setting a precedent that could lead to the conviction of US officials. The only American citizen to appear at The Hague has been William Walker who was "provided" by the OSCE in his capacity as head of its Kosovo Verification Mission (KVM).

Nice has previously expressed his frustration at negotiations with an unnamed power—believed to be the US—over "Rule 70" witnesses, which is the ICTY's ruling specifically designed to limit or prevent disclosure of state secrets. He said he could not accept the conditions imposed by this unnamed government, which thinks it "can simply set its terms".

The refusal of the Bush administration to subject US personnel to international tribunals undermines the humanitarian pretext for the NATO intervention in the Balkans and threatens the authority of the European powers and the ICTY—particularly if they fail to convict Milosevic.

The British government in particular has invested a lot of time and effort in the Milosevic trial. Nice is British as is presiding Judge Richard May, a former Labour Party parliamentary candidate who stood against Margaret Thatcher, and nearly all the army and

intelligence officers who have appeared before the court. British Special Forces have been in the forefront of arresting suspected war criminals and MI5 and MI6 have been behind a lot of the ICTY's investigations.

The tensions between the US and European powers have surfaced on many occasions during the trial. Many European officials and politicians have referred to US officials in diplomatic terms such as "Milosevic's collocutors"—a term meaning "those involved in discussions" but implying collaboration. One of many such occasions was provided by Knut Vollebaek, former chairman of the OSCE and head of the UN mission in Kosovo. He told the tribunal that the Norwegian government saw the resolution of the Balkans conflict as a means to build on the international prestige it had gained with the Oslo Israeli-Palestinian Accords. He praised the leading role of the OSCE mandated by UN resolutions and referred to the Milosevic-Holbrooke agreement negotiated by the US in 1998 to implement a ceasefire between the KLA and Yugoslav Army and police as simply "an added agreement."

Vollebaek then criticised US Secretary of State Madeleine Albright over her threat to withdraw Walker and the KVM. She had made the threat after the Yugoslav government pronounced Walker *persona non grata* for calling the shootings at Racak a "massacre of innocent civilians", when they insisted the bodies were of KLA fighters gathered together to create the false impression of a massacre. Walker's statement famously provided a pretext for NATO intervention, but Vollebaek called it an "emotional response to Racak" and said that Albright had "no right to give such a statement. I suppose this was her personal opinion or assessment." He also criticised Albright who imposed the KLA as the leading faction in the Kosovar Albanian delegation at Rambouillet, for insisting that the "international presence" in Kosovo he had been trying to negotiate had to be "NATO-led".

Criticism of Walker was also made by General Joseph Misonneuve, Assistant Deputy Chief of Canadian Army Defence staff and an OSCE inspector, who told the tribunal that it had led to the Yugoslav Army breaking off its "professional and very productive discussions". He added, "I can't answer why Walker made this assessment," as he knew there had been a big battle between the Yugoslav Army and the KLA whose members were amongst the dead.



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