

Milosevic trial sets precedent: US granted right to censor evidence

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Earlier this month the US government demanded and received the right to censor testimony at the International Criminal Tribunal for the former Yugoslavia (ICTY).

A press release issued before Democratic presidential candidate Wesley Clark gave evidence at the trial of former Yugoslav President Slobodan Milosevic said Clark's testimony would be given in closed session. The press release also said the normally simultaneous broadcast of the testimony would "be delayed for a period of 48 hours to enable the US government to review the transcript and make representations as to whether evidence given in open session should be redacted in order to protect the national interests of the US."

Milosevic faces 66 counts of war crimes and genocide allegedly committed in Croatia, Bosnia and Kosovo in the 1990s. Clark was commander of the 78-day NATO bombing campaign against Yugoslavia in 1999 that destroyed much of Serbia's industrial infrastructure and left thousands of civilians dead.

There have been several attempts to prosecute Clark himself for war crimes committed during the NATO bombing. In that year a group of Canadian lawyers and academics asked the ICTY to investigate and indict Clark and others for war crimes in Yugoslavia saying that there was "overwhelming evidence that the attack was unlawful and that the conduct of the attack [was] on civilian objects." Former US Attorney General Ramsey Clark has also accused Clark and other leaders of war crimes and crimes against humanity and in September 2000 a Belgrade court found Wesley Clark and other Western leaders guilty.

However, the ICTY has refused to indict any US or NATO military or political leaders as it deals out victors' justice on behalf of the Western powers.

Clark has admitted the illegal basis on which NATO fought a war of aggression in Kosovo. In his book *Fighting Modern War*, Clark says the war "was coercive diplomacy, the use of armed forces to impose the political will of the NATO nations on the Federal Republic of Yugoslavia, or more specifically, on Serbia."

The Bush administration is keen to see Milosevic found guilty and so wanted Clark to testify. But its primary concern is to protect US officials from ever facing trial for war crimes and to prevent any act of military aggression on its part being judged illegal. To this end it has refused to ratify the International Criminal Court and bribed and bullied governments to promise that they will never prosecute US officials or military personnel.

At the ICTY testimony involving US citizens has been carefully controlled. The *Washington Post* prevented a former reporter Jonathan Randall from appearing at the trial of Radoslav Brdjanin, a Bosnian Serb accused of genocide and persecution. The testimony given at Milosevic's trial by William Walker, the former head of the Kosovo Verification Mission, was restricted to the alleged massacre at Racak that provided the pretext for the NATO bombing of Serbia.

The Bush administration is also concerned that Milosevic has based his self-defence on pointing the finger at his accusers and charging them with war crimes. This, and the prosecution's inability to produce a "smoking gun" to prove Milosevic's guilt, has weakened the court's credibility. Charges of genocide have been dropped against all but one of those accused at the ICTY. With most of the convictions based on individual crimes against humanity, the premise that Milosevic organised a systematic ethnic cleansing

campaign remains unproven.

The appearance of Clark at the ICTY was therefore fraught with dangers. He has played a key role in the US drive to establish its world hegemony. Before he became NATO Supreme allied commander, he was director for strategic plans and policy, for the Joint Chiefs of Staff with responsibilities for worldwide US military strategic planning. In this capacity he was part of the team negotiating the Dayton Accord ending the five-year war in Bosnia. This is where Clark first met Milosevic, who was granted a key role under the accord in policing and enforcing the agreed peace formula.

From 1996 to 1997 Clark served as commander-in-chief of the US Southern Command in Panama, where he was responsible for the direction of military activities in Latin America and the Caribbean.

US officials have downplayed the extent to which they censored Clark's testimony saying, "Nothing was redacted, only one thing related to the US government ... He gave very specific testimony about Milosevic's intentions. Nothing about Milosevic has been cut."

In one respect this is true. A close reading of the transcript shows that the prosecution were determined to focus on Milosevic's role and prevent any revelations about US or NATO "intentions" emerging and any discussion of the NATO action. Judge Richard May went along with this, preventing Milosevic from pursuing any areas that fell outside Clark's carefully restricted and vetted testimony.

Beginning his cross-examination, Milosevic pointed out the unprecedented nature of the court's acquiescence in the face of US pressure saying, "I don't quite understand the position of this witness ... representatives of the government of his country may be able to review the transcript, to approve some of it, to redact some of it possibly, and only then to release it to the public. I am not aware of any legal court in the world delegating its authority of this kind to any government. This would be the first time for any such thing to happen."

Judge May quickly prevented Milosevic from elaborating, stating, "We are not going to argue this point. We have made our order. The reason that the government have any rights in the matter at all is this, that in order to provide information to this Court, it is occasionally—and I stress occasionally—necessary for governments to do so, and they are allowed to do so

under our Rules on certain terms, and these are one of the terms which has been followed in this case."

When Milosevic tried to question Clark about his book *Fighting Modern War* with the words, "General Clark, in your book you say that the NATO military action against Yugoslavia in the spring of 1999 could not be called a war," May again intervened:

"I don't think we are going to have that debate. That's precisely what I have been talking about. You're not allowed a free-ranging discussion about the NATO action."

May also prevented Milosevic asking Clark, "Is it true that in an interview that you gave to the *New Yorker* on the 17 November you said that the war you waged was technically illegal?" and declaring that Clark had "given no evidence about the legality of the war."

That the US government was allowed to censor evidence at an international court set up by the United Nations in a Western democracy and presided over by a British judge speaks volumes about the nature of international justice. It also indicates the type of justice Saddam Hussein will face should he ever come to trial in US-occupied Iraq.

If Milosevic had been given free rein to question his accusers such as Clark, he could have provided ample evidence, not only of the years in which the US enjoyed close relations with his regime, but of how Washington set out to provoke a war in order to seize control of the Balkan region, using the pretext of human rights abuses by Serbia. The parallels with Iraq are obvious. The only difference in the case of Saddam Hussein is that the record of US support for his regime is longer and the pretext used for war is more flimsy and discredited.



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