

ANALYSIS: New Twist in Milosevic Defence

Author: [Mirko Klarin](#)

Court-appointed lawyers try to persuade Milosevic that he is wrong to spurn their service.

"As far as I know Latin, *amici curiae* are not friends of mine, but friends of the court," Slobodan Milosevic snapped at officials of the tribunal's registry office. "So why should I meet them?"

Maintaining his refusal to accept the legitimacy of the International Criminal Tribunal for the former Yugoslavia, ICTY, the former Yugoslav president thus sought to dismiss any possibility that he would consult with the trio of lawyers appointed by the court.

As Milosevic has failed to hire his own counsel, the tribunal has appointed the lawyers Michail Wladimiroff, Steven Kay and Branislav Tapuskovic, from the Netherlands, Britain and Yugoslavia respectively, as independent "friends of the court" to make representations on his behalf, in the interest of a fair trial.

The three are seeking to persuade Milosevic that he is wrong to spurn their services, and to this end, on October 19, they submitted to the tribunal a brief challenging the jurisdiction of the court and requesting the dismissal of charges against Milosevic and his immediate release.

According to the terms of their appointment, the task of the lawyers is not to represent Milosevic but "to assist the trial chamber in the proper determination of the case". But they are acting in the spirit of how they believe he would like to be defended.

Their brief, therefore, articulates in legal terms the essence of Milosevic's political tirades in two previous appearances before the judges, and his rather rough written memorandum, apparently drafted with the assistance of the International Committee for the Defence of Slobodan Milosevic, that he submitted to the court on August 30.

In attempting to explain to the judges in more formal, legal language what they thought the accused really intended to say, the lawyers have asked the judges to afford Milosevic "the benefit of arguments that are not explicitly raised by him, but which are inherent to the point of his objections".

Summing up his main points, their brief focused on "the illegal foundation of the ICTY, its lack of impartiality and independence, its lack of capacity to provide the accused with a fair trial or to guarantee his human rights, its lack of personal jurisdiction and its lack of territorial jurisdiction".

Refining Milosevic's oft-repeated complaint that the tribunal is "illegal" and "false", the lawyers say that, according to Milosevic, the court "should have been created either by treaty or by amendment of the Charter of the United Nations, but not by resolution of the Security Council".

The *amici* know his terrain well, since, as defence counsel to Dusko Tadic, Wladimiroff and Kay disputed the legality of the founding of the tribunal in 1995. They thus want Milosevic's objections to be complemented by arguments put forward in that case.

They insist that the Appeals Chamber's rejection of these arguments at that time are not pertinent to Milosevic, because "the accused has the right to raise the same or comparable objections for the benefit of

a decision on the merit of his case".

Building on these arguments, they contend that the tribunal judges - who may serve on the Appeal Chamber for cases in which they are not involved - cannot objectively assess their own competence. Instead, they call for the International Court of Justice in The Hague to review the questions of the Security Council's competence to set up a judicial organ and of the tribunal's authority to interfere in the internal affairs of a sovereign state.

The lawyers also take up Milosevic's argument about the politicised nature of the indictment. Although former chief prosecutor Louise Arbour announced an investigation into Kosovo on March 10, 1998 [see, [The Prosecutor Investigates Kosovo](#)], Tribunal Update 67, March 9-14, 1998], the lawyers point to UN Resolution 1160, adopted March 31, 1998, which "urged" the prosecutor to investigate the violence in Kosovo.

"Acting upon that exhortation, the investigation was commenced", they state.

Turning to Milosevic's objection made in an August 30 status conference that his human rights were violated when he was prevented from contacting the press from the UN detention unit, the lawyers suggest that the accused was "implicitly asserting [the court's] bias".

They argue that such a ban violates the defendant's right to free expression. Since the indictment is public and the tribunal president and chief prosecutor have made statements to the media about his case, "the accused has a reasonable interest to . . . protect his honour and reputation and . . . inform the public about his vision of the indictment".

Expanding on Milosevic's own arguments, they lawyers argue that immunity for former head of state is "customary under international law". They assert that there is no precedent for such an international prosecution and that treaties providing for that possibility were not ratified or implemented. The Nuremberg principles, which the UN General Assembly proclaimed in 1950, they said, "express the aspiration of the UN members at that time, but were not affirmed and adopted in law".

The *amici* also repeated the claims by Milosevic and his international support committee that his transfer to The Hague on June 28, 2001, was unlawful. They note that the warrants for his arrest were handed by the tribunal to the Yugoslav government, but that it was the government of Serbia which surrendered him to the court. They claim that Serbia had no authority to do this, and since it is not a member of the United Nations, it is "under no international obligation to co-operate with the Tribunal".

In any event, they insist that Milosevic's transfer also contravened the Yugoslav constitution, which they said "does not provide for the extradition or transfer of Yugoslav citizens to an international body". In making this common argument, they deployed a fairly creative interpretation of the relevant constitutional provision, which only refers to extradition to foreign countries but does not mention "transfers" to "international bodies".

They further argue that the abrupt manner in which Milosevic was surrendered to The Hague violated his rights by failing to allow him access to a local court to challenge the lawfulness of his transfer abroad.

In conclusion, the lawyers underscored Milosevic's objections to the "arbitrary and discriminatory limitation of the territorial jurisdiction of the tribunal to the former Yugoslavia" - in short, that the tribunal is politically motivated, and that the accused "should be allowed to raise political arguments" to make his case.

The prosecution is expected to respond to the lawyers' arguments next week. Oral arguments on the issues will be heard at the next status conference, scheduled for October 29.

As the court has several times rejected such arguments, it is doubtful that it will be any more responsive to them in this instance. Yet the sensitivity shown by Messieurs Wladimiroff, Kay and Tapuskovic to his key objections could just help Milosevic conclude that he was wrong to treat the "friends of the court" as his foes.

Mirko Klarin is IWPR senior editor for the war crimes tribunal and editor-in-chief of SENSE News Agency.

Location: Balkans
Serbia
Kosovo

Focus: International Criminal Tribunal for the former
Yugoslavia

Source URL: <https://iwpr.net/global-voices/analysis-new-twist-milosevic-defence>