

Milosevic & Others - The Indictment

Author: [IWPR](#)

Tribunal Update 127: Last Week in The Hague (24-29 May, 1999)

Tribunal for the former Yugoslavia (ICTY) announced the indictment of, and

issued warrants of arrests against: Slobodan Milosevic, the President of

the Federal Republic of Yugoslavia; Milan Milutinovic, the President of

Serbia; Nikola Sainovic, Deputy Prime Minister of the FRY; Dragoljub

Ojdanic, Chief of Staff of the Yugoslav Army; Vljako Stojiljkovic, Minister

of Internal Affairs of Serbia.

Probably no other indictment in the history of justice has ever enjoyed

such instant and global publicity. Its announcement was relayed live on

several global and continental TV channels. The text of the indictment was

instantly made available on dozens of human rights internet websites, and

the news of indictment was splashed across cover pages of the print media

across the world, with one notable exception: the Federal Republic of

Yugoslavia, or Serbia, to be precise.

There is a reason for all this: the indictment is, we have all been told,

first in the history of this (or any other) international Tribunal to

charge an acting Head of State, during an on-going armed conflict, with the

commission of serious violations of international humanitarian law, i.e.

war crimes.

At least as the first co-accused - Slobodan Milosevic - is concerned, the

indictment has long been expected - ever since he as the then President of

Serbia was branded a "probable war criminal" in December 1992, by the then

US Acting Secretary of State, Lawrence Eagleberger. Foundations for the

Tribunal were laid half a year later, and its Prosecutors, first Richard

Goldstone and then the current incumbent, Louise Arbour, have been swearing

by the word that they would "climb the ladders of responsibility as high as

the evidence will lead them."

The main obstacle to that ascent, at least in the case of Milosevic, was

the so-called "legal chain of command". Milosevic was the Serbian President

at the time when "Serbia was not involved in war." If armed forces of the

former SFR Yugoslavia (Yugoslav People's Army, JNA) and the present

Yugoslavia (Army of Yugoslavia, VJ) were involved in atrocities committed

in the wars in Croatia and Bosnia and Herzegovina, this would normally only

indicate command responsibility of the leaders of Yugoslavia, not of

Serbia.

This, according to a prediction made by human rights lawyer Srdja Popovic,

in issue No. 7 of the IWPR's newsletter, Tribunal February-March 1997), is

"precisely the direction Milosevic wants the investigation to take."

Louise Arbour, the current Chief Prosecutor, understood well that following

the lead of the "legal chain of command" would not take her far. In an

interview with Tribunal Update last November and published in part in issue

No. 123, she commented on the matter at some length. Her statement is

crucial for proper understanding of the "Milosevic & Others" indictment.

At the time Arbour noted: "The evidence [in command and control

investigation] is neither as self-evident nor as easily available. A high

level of sophistication in investigation of such responsibility is needed

in order to gain an overview of military, paramilitary and political

structure, and to understand the functioning of a chain of command.

"Finally, what is even more difficult, as was learned from the conflicts in

both the former Yugoslavia and Rwanda, is the fact that what on paper or by

law may appear to be a command structure, may not be so in reality. The

investigation must cover all those issues in accordance with the standard

of proof applicable in criminal cases in order to determine and understand

what was the command structure both in theory and in reality. This

necessitates inordinate amount of time, energy and level of sophistication

in order to produce results."

The following paragraphs of the "Milosevic & Others" indictment should then

be read carefully in light of the above: "(Paragraph) 21. Although Slobodan

MILOSEVIC was the President of Serbia during the wars in Slovenia, Croatia

and Bosnia and Herzegovina, he was nonetheless the dominant Serbian

political figure exercising de facto control of the federal government as

well as the republican government and was the person with whom the

international community negotiated a variety of peace plans and agreements

related to these wars."

Paragraph 21 is an indication of what is likely to come at a later stage:

the widening of the case against Slobodan Milosevic to include violations

of the international humanitarian law that occurred precisely at the period

when "Serbia was not at war," although its president had a "de facto

control" over federal government and its forces engaged in the wars in

Croatia and Bosnia and Herzegovina.

That possibility was also announced in some other parts of the indictment,

albeit it is primarily focused on the de jure basis for the responsibility

of Milosevic and others for crimes committed in Kosovo over the first five

months of this year.

De jure, the matter appears to be clear: "(Paragraph) 56. As President of the FRY, Slobodan MILOSEVIC functions as President of the Supreme Defense Council of the FRY. The Supreme Defense Council consists of the President of the FRY and the Presidents of the member republics, Serbia and Montenegro. The Supreme Defense Council decides on the National Defense Plan and issues decisions concerning the VJ. As President of the FRY, Slobodan MILOSEVIC has the power to "order implementation of the National Defense Plan" and commands the VJ in war and peace in compliance with decisions made by the Supreme Defense Council. Slobodan MILOSEVIC, as Supreme Commander of the VJ, performs these duties through "commands, orders and decisions."

When the conflict started in Kosovo in March 1998, it appeared that Milosevic would get away with it again, because in the meantime he became the President of Yugoslavia and it was the police forces of Serbia that were engaged in committing atrocities in Kosovo. Even when the conflict escalated and the regular military units entered it, the majority of reports pointed at the atrocities and crimes committed by members of the

Serbian special police and the paramilitary formations from Serbia, neither of which could easily fit under the chain of command of the President of Yugoslavia.

The following Paragraph of the indictment, however, makes it clear that Milosevic was not only de facto, but also de jure responsible for activities of the Serbian police: "57. Under the FRY Act on the Armed Forces of Yugoslavia, as Supreme Commander of the VJ, Slobodan MILOSEVIC also exercises command authority over republican and federal police units subordinated to the VJ during a state of imminent threat of war or a state of war. A declaration of imminent threat of war was proclaimed on 23 March 1999, and a state of war on 24 March 1999."

Everyone knows just how unlimited Milosevic's power has been over the past 10 years, and Arbour at one point complained that such alleged "public knowledge" is in fact her worst enemy. "The transformation of public perception into an indictable case, on the standards that we are satisfied with and for offences that are within our Statute, is a considerable transition to be made," she said in an IWPR interview two years ago.

Judging by the below paragraphs extracted from the indictment, the transition has now been successfully made. Arbour must have finally traced

the famous "missing link" in Milosevic's chain of command: "58. In addition to his de jure powers, Slobodan MILOSEVIC exercises extensive de facto control over numerous institutions essential to, or involved in, the conduct of the offences alleged herein. Slobodan MILOSEVIC exercises extensive de facto control over federal institutions nominally under the competence of the Assembly or the Government of the FRY. Slobodan MILOSEVIC also exercises de facto control over functions and institutions nominally under the competence of Serbia and its autonomous provinces, including the Serbian police force. Slobodan MILOSEVIC further exercises de facto control over numerous aspects of the FRY's political and economic life, particularly the media. Between 1986 and the early 1990s, Slobodan MILOSEVIC progressively acquired de facto control over these federal, republican, provincial and other institutions. He continues to exercise this de facto control to this day.

"59. Slobodan MILOSEVIC's de facto control over Serbian, SFRY, FRY and other state organs has stemmed, in part, from his leadership of the two principal political parties that have ruled in Serbia since 1986, and in the FRY since 1992.

"60. Beginning no later than October 1988, Slobodan MILOSEVIC has exercised de facto control over the ruling and governing institutions of Serbia, including its police force. Beginning no later than October 1988, he has exercised de facto control over Serbia's two autonomous provinces -- Kosovo and Vojvodina -- and their representation in federal organs of the SFRY and the FRY. From no later than October 1988 until mid-1998, Slobodan MILOSEVIC also exercised de facto control over the ruling and governing institutions of the Montenegro, including its representation in all federal organs of the SFRY and the FRY.

"61. In significant international negotiations, meetings and conferences since 1989, Slobodan MILOSEVIC has been the primary interlocutor with whom the international community has negotiated. He has negotiated international agreements that have subsequently been implemented within Serbia, the SFRY, the FRY, and elsewhere on the territory of the former SFRY..."

Thereafter follows an extensive list of international negotiations, meetings and conferences, beginning with The Hague Conference in 1991 and ending with the Dayton peace negotiations in November 1995.

In her final paragraph devoted to Milosevic's responsibility, Arbour concludes the above analysis - based on supporting evidence that seemed

convincing enough to Judge David Hunt to confirm the indictment - in the following manner: "62. As the President of the FRY, the Supreme Commander of the VJ, and the President of the Supreme Defense Council, and pursuant to his de facto authority, Slobodan MILOSEVIC is responsible for the actions of his subordinates within the VJ and any police forces, both federal and republican, who have committed the crimes alleged in this indictment since January 1999 in the province of Kosovo."

In a similar way, she analyzed the de jure and de facto authority of the other co-accused, pointing out that each of the accused is individually criminally responsible for the crimes alleged against him in this indictment, pursuant to Article 7(1) of the Tribunal Statute, which includes committing, planning, instigating, ordering or aiding and abetting in the planning, preparation or execution of the alleged crimes.

By virtue of their positions of power and their de jure and de facto authority, Milosevic, Milutinovic, Ojdanic and Stojiljkovic are also - or alternatively - charged with criminal responsibility for the acts of their subordinates (the so called "command responsibility", pursuant to Article 7(3) of the Tribunal Statute.)

Each of the accused is charged with three counts of crimes against humanity

(for unlawful deportation, murder and persecution on political, racial or

religious grounds), and for one count of violations of the laws or customs

of war (for murder).

The indictment alleges that, between 1 January 1999 and late May 1999, the

military forces and some police units of the FRY, the police force of

Serbia and associated paramilitary units jointly engaged in a widespread

and systematic series of offensives against many predominantly Kosovo

Albanian towns and villages. By the date of the indictment, approximately

740,000 Kosovo Albanians, about one-third of the entire Kosovo Albanian

population, had been expelled from Kosovo, and thousands more are believed

to be internally displaced.

The indictment further describes in detail when and how Albanian civilians

were expelled and deported from a score of Kosovo cities and towns:

Djakovica, Gnjilane, Kosovska Mitrovica, Orahovac, Pec, Pristina, Prizren,

Srbica, Suva Reka and Urosevac.

The general operational pattern was that Kosovo Albanian residents were

ordered to leave their homes, upon threat of death; their property was

stolen and their homes destroyed. They were forced to join convoys of

similarly displaced Kosovo Albanians en route to the borders; they were physically mistreated; in many instances men were separated from the women and children and they were killed. At the border, the property they had with them was stolen, including their identification papers and motor vehicles. In some cases, the villages were initially shelled and Kosovo Albanians were killed in the shelling.

A good illustration of such a "general pattern" is Paragraph 97a of the indictment that describes the deportation of the Kosovo Albanian population of Djakovica: "97-a. Djakovica/Gjakove : On or about 2 April 1999, forces of the FRY and Serbia began forcing residents of the town of Djakovica/Gjakove to leave. Forces of the FRY and Serbia spread out through the town and went house to house ordering Kosovo Albanians from their homes. In some instances, people were killed, and most persons were threatened with death. Many of the houses and shops belonging to Kosovo Albanians were set on fire, while those belonging to Serbs were protected. During the period from 2 to 4 April 1999, thousands of Kosovo Albanians living in Djakovica/Gjakove and neighbouring villages joined a large convoy, either on foot or driving in cars, trucks and tractors, and moved

to the border with Albania. Forces of the FRY and Serbia directed those fleeing along pre-arranged routes, and at police checkpoints along the way most Kosovo Albanians had their identification papers and license plates seized. In some instances, Yugoslav army trucks were used to transport persons to the border with Albania."

The five indicted leaders are also charged with responsibility for acts committed by forces under their command and control, which had, on a number of occasions during this period, deliberately shot and killed Kosovo Albanians, including women and children. Specifically, the five indictees are charged with the murder of over 340 persons identified by name in an annex to the indictment. Several such massacres are described: Racak (45 killed); Velika Krusa (105); Izbica (around 130).

The papers include a description of one of the massacres that took place in Djakovica: "98-g. On or about the early morning hours of 2 April 1999, Serb police launched an operation against the Qerim district of Djakovica/Gjakove. Over a period of several hours, Serb police forcibly entered houses of Kosovo Albanians in the Qerim district, killing the occupants, and then setting fire to the buildings. In the basement of a house on Millosh Gilic Street, the Serb police shot the 20 occupants and

then set the house on fire. As a result of the shootings and the fires set by the Serb police, 20 Kosovo Albanians were killed, of whom 19 were women and children."

While announcing the indictment against "Milosevic & Others", the Prosecutor Louise Arbour took pains to stress that it "does not represent the totality of the charges that may result from our continuing investigations of these accused, nor does it represent our final determination of the responsibility of others in relation to the same events. (...) We are continuing to develop an evidentiary base upon which I believe we will be able to expand upon the present charges. We are still actively investigating other incidents in Kosovo, as well as the role of the accused, or of some of them, in Croatia and Bosnia in earlier years. And she added: "We are also still investigating the role and responsibility of others into the crimes contained in this indictment."

Apart from the fact that she must have found the "missing link" in Milosevic's chain of command for Kosovo, Arbour has obviously also gone some way in investigating his role in the wars in Croatia and Bosnia at the time when "Serbia was not in [sic] war."

The indictment draws a parallel between Kosovo and the two earlier wars in

Paragraph 35: "35. The unlawful deportation and forcible transfer of

thousands of Kosovo Albanians from their homes in Kosovo involved

well-planned and coordinated efforts by the leaders of the FRY and Serbia,

and forces of the FRY and Serbia, all acting in concert. Actions similar in

nature took place during the wars in Croatia and Bosnia and Herzegovina

between 1991 and 1995. During those wars, Serbian military, paramilitary

and police forces forcibly expelled and deported non-Serbs in Croatia and

Bosnia and Herzegovina from areas under Serbian control utilizing the same

method of operations as have been used in Kosovo in 1999: heavy shelling

and armed attacks on villages; widespread killings; destruction of

non-Serbian residential areas and cultural and religious sites; and forced

transfer and deportation of non-Serbian populations."

As expected, official Belgrade took the news of indictment with

indignation, describing it as but another form of political pressure on

Milosevic to accept NATO requests. They are in for a surprise, however:

while the bombing will stop one day, the indictment is here to stay.

President Milosevic could have made a deal with President Clinton, Prime

Minister Blair or General Clark, but not with Prosecutor Arbour.

The always present possibility of a political compromise at the expense of justice was certainly one of contributing factors for Arbour's rush to raise an indictment that covers only five months of the extensive political career of Slobodan Milosevic, which both de jure and de facto spans more than a decade.

Announcing the indictment, Arbour admitted that she had been "very concerned that these accused -- alone or with the assistance of others -- might succeed factually in putting themselves outside of the reach of the law, go somewhere, disappear."

She went on: "It was a source of concern that I thought was serious enough, that required us to deploy a particular effort in the office to lead this investigation to completion as quickly as possible." She obviously took seriously rumours of recent weeks that Milosevic was seeking a guarantee of immunity from international criminal prosecution -- or even a "golden exile" in South Africa or some other country -- in exchange for his assent to a political solution for the current crisis.

To those who expressed their concern about the impact that this indictment may have on the "peace process", Arbour sent a strong message at the press

conference: "Although the accused are entitled to the benefit of the

presumption of innocence until they are convicted, the evidence upon which

this indictment was confirmed raises serious questions about their

suitability to be the guarantors of any deal, let alone a peace agreement.

They have not been rendered less suitable by the indictment. The indictment

has simply exposed their unsuitability."

Location: Africa
Balkans

Focus: International Criminal Tribunal for the former
Yugoslavia

Source URL: <https://iwpr.net/global-voices/milosevic-others-indictment>