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# Beyond the Star Chamber

## Shutting Down the Milosevic Defense in The Hague

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**Editor's Note**

We bring to the attention of our readers this important analysis by Tiphaine Dickson on the Milosevic trial, which points to the blatant criminalization of international law in support of the 1999 US-NATO led military invasion and occupation of Yugoslavia.

What we are dealing with in the case of the Hague Tribunal is the criminalization, at the institutional level, of a UN sponsored body.

The ICTY has not only been involved in the cover-up of US-NATO war crimes and atrocities, but in the indictment through Star Chamber procedures, of the former head of state for the crimes committed by the invading NATO forces, not to mention the atrocities carried out by their proxy terrorist organization, including the Kosovo Liberation Army (KLA), which was granted in the wake of the 1999 invasion, despite its links to Al Qaeda and organized crime, the status of a bona fide UN body.

The "Criminalization of the State", is when war criminals legitimately occupy positions of authority, which enable them to decide "who are the criminals", when in fact they are the criminals. This criminalization of the State is not limited to the Bush administration, it permeates the UN system, which supports US-NATO led military interventions under the disguise of peacekeeping. These humanitarian interventions led by the war criminals, are implemented under the auspices of what is euphemistically called the international community.

Peacekeeping in Yugoslavia, Afghanistan, Haiti and Iraq is tantamount to military occupation.

Needless to say, to reach their design, war criminals in high office must also redefine the contours of international law, establishing a system reminiscent of the Star Chamber procedures of the 17th Century.

And this is precisely the thrust of Tiphaine Dickson's investigation, on the Milosevic trial.

On February 14th, The Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) hearing the Milosevic case resumed proceedings after having adjourned last week following a UN physician's opinion that Slobodan Milosevic would require some days to recover after having been affected by influenza in early February. Media coverage had again complained of "delays in the trial", and of illness—generally described as "bouts of flu"– as the cause of "lost time". The Chamber faulted President Milosevic for "wasting

time" in his examination of the former Foreign Minister of Yugoslavia with respect to the secession of the former republics and of foreign involvement in the conflicts that ensued as a result. Mr. Milosevic was told the questions—of evident relevance, and indeed of crucial importance– were "pointless". The Prosecutor has asked for the proceedings to continue in absence of Mr. Milosevic. The situation is ominous and there is evidence that the ICTY is poised to take radical measures, including the interruption, and ultimately the premature conclusion of Slobodan Milosevic's defense.

Indeed, the ICTY, a UN Security Council institution, has set the stage to justify ending these proceedings, while holding President Milosevic responsible for the result, in four rulings, two of which were handed down in the last two weeks. First, counsel is imposed against his will. Second, *in absentia* proceedings are approved. Third, imposed counsels are not allowed to withdraw from the case for ethical reasons. And finally, the duration of the Prosecution case is artificially reduced, and the time afforded to Slobodan Milosevic inflated by counting his cross-examinations of Prosecution witnesses as time devoted to his defense, in an unusual order devoted to statistics. Slobodan Milosevic is either directly or indirectly made responsible for the unfortunate state of affairs in all four decisions. All is in place to wrap it up.

In September, the Trial Chamber imposed counsel against the clear wishes of the defendant, a practice described by the United States Supreme Court as having been largely abandoned since the unlamented late 16th and early 17th century Star Chamber, an executive entity infamous for trying political cases. The Chamber's decision to impose counsel with broad powers to determine the strategy of the defense created a crisis, as defense witnesses refused to cooperate with imposed counsel Steven Kay and Gillian Higgins, previously ICTY-appointed *amici curiae* (friends of the court), thrust upon Slobodan Milosevic as defense advocates, oblivious to the fact that they'd been parties in the proceedings for over two years, and that this created– at minimum– an apparent conflict of interest. Mr. Kay complained bitterly, and publicly, about the non-cooperation of the defense witnesses (the Chamber had received Slobodan Milosevic's list of witnesses when they imposed counsel), and complained of Milosevic's lack of cooperation as well, as the proceedings came to a virtual standstill with a mere trickle of witnesses making the trip to testify in The Hague.

The imposition of counsel upon an unwilling accused– in clear violation of *the International Covenant on Civil and Political Rights,* which provides for the *minimum* fundamental right to defend oneself in person– was approved, as a matter of law, by the Appeals Chamber (the initial imposition was appealed against by Mr. Kay and Ms. Higgins) last November. The ruling reduced this right– which is guaranteed by the ICTY's *own* Statute as a *minimum* fundamental right– to the rank of a mere "presumption". In so doing, the ICTY's President, American Theodor Meron, stated that all the "minimum" fundamental rights afforded to the accused by the ICTY's Statute (which were imported, almost verbatim, from the *International Covenant on Civil and Political Rights*, leaving out only—inexplicably– the Covenant's provision of the right to be tried by an independent, impartial, and competent court) were "at a par" with the right to represent oneself in person. In other words, the right for a defendant to represent himself is just a "presumption" as are all the other basic, fundamental, internationally recognized, *minimal* trial rights provided by the ICTY's Statute, such as the right to know the nature of the charge, the right to remain silent, the right to present evidence in the same conditions as the Prosecutor, the right to an interpreter, and the right to be tried in one's own presence. In fact, they are all stripped of their essence as *rights.* The *ad hoc* international legal order holds them to be mere "presumptions" to be

violated at the discretion of a trial chamber when expedient, or "justified". And as they are no longer *really* rights, it then follows that they cannot even *really* be violated. And if they can't be violated, there is not much incentive to respect them, much less guarantee them, as "minimal rights", nor to sanction or remedy their breach.

President Meron's decision was almost universally understood as having handed a victory to President Milosevic, as it overturned, not the *legality,* nor even the propriety, of the imposition of counsel, but rather the *modalities* set out by the Trial Chamber for such "assignment"—that is the ICTY's delicate formulation– of counsel. Hence, President Meron directed that Mr. Milosevic be allowed to present his defense and question his own witnesses, with imposed counsel on standby in case of illness. Elsewhere in the Appeals Chamber ruling, however, President Meron made a startlingly ominous claim: the right to be tried in one's presence is not absolute (it, too, it seems, is but a "presumption") and can be obviated by "substantial disruption" of the proceedings. This disruption need not be deliberate or even intended by the accused, and can be caused merely by illness. The possibility of holding *in absentia* proceedings in the Milosevic case as a result of illness (as had been forcefully advocated by the former US Ambassador for War Crimes Issues, David Scheffer, in the *International Herald Tribune* last summer), had just been approved by the Appeals Chamber.

In early February, President Meron denied a request by imposed counsels to resign from the proceedings, citing ethical incapacity to continue in absence of cooperation from the "client", and complaining of his public criticism of their work. The British barristers directly blamed President Milosevic —the very person whose rights are being violated by this imposition– for their ethical predicament: "[T]he accused has made a relationship of '*candid exchange and trust'* impossible ." President Meron accordingly took Kay and Higgins' word for it, and set the responsibility for their inability to act for an unwilling accused squarely at the feet of the very victim of the measure: "an accused does not have the right to unilaterally destroy the trust between himself and his counsel." (Although, as President Milosevic had pointed out at a previous hearing, it is impossible to destroy, unilaterally or otherwise, something that has never existed in the first place.) Thus, citing the Appeals Chambers' previous ruling in the equally astonishing (and dismal, from a legal and human rights perspective) case of General Vidoje Blagojevic, President Meron resolved any and all ethical issues– including such questions of interest to lawyers everywhere, such as: how do you represent a client who refuses your services, who will not speak to you, whose witnesses do not trust you, who will not communicate facts to you, (such as those relevant to a defense, including alibi) and how does one act for an unwilling accused when one has acted for *another party* in the very same proceedings?—by insisting on counsel's obligations towards the ICTY, an institution not recognized as a legitimate legal body by Slobodan Milosevic. President Meron held that: "In such circumstances, "where an Appellant unjustifiably resists legal representation from assigned Counsel, Counsel's professional obligations to continue to represent the accused remain."

It is unfortunate that President Meron's decision does not reveal whether the British Bar Council provided an opinion with respect to the ethical issues raised or whether one was in fact sought by imposed counsel. Whatever the position of the UK Bar, a venerable institution whose opinion might well have been of assistance to this debate, as far as the ICTY is concerned, Mr. Kay and Ms. Higgins must continue to act, as President Meron held that President Milosevic cannot be allowed to "manufacture" a reason for counsels' withdrawal by refusing to cooperate. To "permit" him to do so, wrote Theodor Meron, would be to

“render nugatory” the Appeals Chamber decision to approve imposition of counsel! One can only admire the perfection of that argument’s circularity.

As a final indication that these proceedings may well (soon) be derailed, late last week, the Trial Chamber issued an odd calculation of the time devoted by both parties, the Prosecutor and Mr. Milosevic, to the presentation of their respective cases. The ruling goes so far as to count the *minutes* the institution has apparently suffered through in what was announced as the “Trial of Century”. This bizarre accounting of time, unheard of in normal trials, and glaringly at odds with known practice in the adversarial system, is meant to suggest that these proceedings have gone on tediously long, and that in “bending over backwards” the International Criminal Tribunal for Yugoslavia now risks violating the “integrity” of international justice if it continues to afford such overwhelming fairness to the accused. Such a suggestion stands in sharp contrast with the reality of a skewed process which has, from the moment the defendant was indicted—that is at the height of an illegal bombing campaign, in the course of a war of aggression against the nation of which he was the legitimate President, by a Prosecutor who diligently informed the media that his new status would disqualify him from negotiating peace— has not been characterized by fairness, but by the steady violation of President Milosevic’s rights and of international law itself.

These proceedings have indeed, on occasion, been excruciatingly slow, but the main victim has been President Milosevic, “transferred” to The Hague — that is snatched from a Belgrade facility without recourse to common law courts and in violation of the Yugoslav constitution, according to the (then) Yugoslav constitutional court– and detained under UN authority since June 28th, 2001. It is astonishing to note that international justice, or what attempts to portray itself as such, would tolerate the four and a half year detention of a man suffering from malignant hypertension, and worse yet, employ his illness as a justification, only once his defense had begun, to impose counsel, in a display of medical concern much less apparent during Ms. Del Ponte’s inexplicably historical/political marathon presentation of evidence, much of which was not immediately relevant, putting it mildly, to the charges contained in the indictments. That the ICTY would attempt to blame Slobodan Milosevic for this interminable trial is absurd. Indeed, the Prosecution’s case, presented while investigations were ongoing was for many observers unintelligible, and meandering.

His surprisingly underreported defense, however, threatens to shed some light on what he (and increasingly, his witnesses) have described, not as the “Balkan Wars”, but as a single war against Yugoslavia, a state no longer in existence, whose last days were punctuated by aerial bombings not seen in Belgrade since they were carried out by the Allies at the end of WWII and Nazi Germany in 1941. *That* is the war President Milosevic is beginning to investigate in his defense, and that may well be the reason why suddenly “time is being wasted”, the “trial has drawn on long enough”, and that the “integrity” of the proceedings are now at stake. Indeed, this defense could well present the very “substantial disturbance” required to shut it—and perhaps the whole institution– down.

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