

Yugoslavia: Human Rights Watch in Service to the War Party

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A Review of "Weighing the Evidence: Lessons from the Slobodan Milosevic Trial" (Human Rights Watch, December, 2006)

by Edward S. Herman and David Peterson and George Szamuely; February 25, 2007

Part 1: Introduction: The Role and Biases of Human Rights Watch

Human Rights Watch (HRW) came into existence in 1978 as the U.S. Helsinki Watch Committee. Early documents affirmed that its purpose was to "monitor domestic and international compliance with the human rights provisions of the Helsinki Final Act." [1] But though a private U.S.-based organization whose vice chairman once stated "You can't complain about other countries unless you put your own house in order," [2] its main focus was on Moscow. Thus its literature also affirmed that founding the Committee "was intended as a gesture of moral support for the activities of the beleaguered Helsinki monitors in the Soviet bloc," and its early work was well geared to advance the U.S. government's policy of weakening the Soviet Union and loosening its ties to Eastern Europe. [3] While the organization has broadened its horizons and grown enormously since its \$400,000 seed money from the Ford Foundation, it has never sloughed off its close link to the Western establishment, as evidenced by its leadership's affiliations, [4] its funding, [5] and its role over the years. Because of its institutional commitment to human rights and its broad purview, however, HRW has done a great deal of valuable work, as for example in helping to document the character and effects of the Reagan era wars across Central America, where its Americas Watch reports on the U.S. support for the Nicaragua *Contras*, the Salvadoran army and death squads, and Guatemalan state terror were eye-opening and led to intense hostility on the part of the Reaganites and *Wall Street Journal* editors. [6]

But despite these and countless other constructive efforts, the organization has at critical times and in critical theaters thrown its support behind the U.S. government's agenda, sometimes even serving as a virtual public relations arm of the foreign policy establishment. Since the early 1990s this tendency has been especially marked in the organization's focus on and treatment of some of the major contests in which the U.S.

government itself has been engaged—perhaps none more clearly than Iraq and the Balkans. Here, its deep bias is well-illustrated in a March 2002 op-ed by HRW’s executive director, Kenneth Roth, published in the *Wall Street Journal* under the title “Indict Saddam.”[7] The first thing to note about this commentary is its timing. It was published at a time when the United States and Britain were clearly planning an assault on Iraq with a “shock and awe” bombing campaign and ground invasion in violation of the UN Charter. But Roth doesn’t warn against launching an unprovoked war—though wars of aggression had been judged by the Nuremberg Tribunal to be the “supreme international crime” that “contains within itself the accumulated evil of the whole.”[8] On the contrary, Roth’s focus was on Saddam’s crimes, and provided a valuable public relations gift to U.S. and British leaders, diverting attention from and putting an apologetic gloss on their prospective supreme international crime.

Three years earlier, when the NATO powers had begun the bombing of Yugoslavia on March 24, 1999, HRW said nothing critical about that action; as we shall see, it focused mainly on the crimes of the target country then under attack. In a 1998 commentary for the *International Herald Tribune*, Fred Abrahams, an HRW researcher whose major focus has been Kosovo, urged regime-change for Yugoslavia, either through President Slobodan Milosevic’s indictment or a U.S. war to affect the same outcome. “At what point will the Clinton administration decide that they have seen enough?” Abrahams asked. “[T]he international community’s failure to punish Milosevic for crimes in Croatia and Bosnia sent the message that he would be allowed to get away with such crimes again. It is now obvious that the man who started these conflicts cannot be trusted to stop them.”[9] This line also served the United States and other NATO powers well, and both cases show a clear adaptation of HRW definitions of human rights and choice of worthy victims to the needs of the Western powers and institutions that nurture the organization. (In Part 3, we deal with the mind-boggling misrepresentation of history in Abrahams’ statement about Milosevic’s unwillingness to stop these wars—in fact, Milosevic signed-on to every major peace proposal 1992-1995, whereas Abrahams’ favorite state regularly sabotaged them.)

Roth’s “Indict Saddam” starts as follows: “The Bush administration’s frustration with a decade of porous sanctions against Iraq has led to active consideration of military action. Yet one alternative has yet to be seriously tried—indicting Saddam Hussein for his many atrocities, particularly the 1988 genocide against Iraqi Kurds.” This clearly implies that the sanctions imposed on Iraq were ineffective (“porous”) and that the administration’s alleged frustration on that account was real and well grounded, establishment claims that were false and misleading and that an unbiased analyst might have had some doubts about at the time. We may note also the lack of concern with the “active consideration of military action.”

But equally important, Roth ignores the devastating sanctions imposed on Iraq by the United States and Britain via the UN for over a decade, which prevented the repair of Iraq’s sanitation facilities, water purification and agricultural irrigation systems, all of which had been deliberately destroyed in the 1991 bombing war.[10] Through their power to magnify hardship, malnutrition, and disease, this form of economic and political warfare “may well

have been a necessary cause of the deaths of more people in Iraq than have been slain by all so-called weapons of mass destruction throughout history,” John and Karl Mueller write in their aptly titled “Sanctions of Mass Destruction.”[11] This would seem to constitute first-order war criminality, and with a million fatalities should be worth great attention from a human rights group. But as Madeleine Albright once told CBS TV’s *60 Minutes*, the price of half-a-million Iraqi children’s deaths was “worth it,”[12] and Roth and HRW looked the other way. HRW never produced a major report on the sanctions. It never called attention to U.S. and British responsibility for this death-dealing policy. And though HRW did point out that the deliberate starvation of civilian populations is a war crime, it never suggested that U.S. and U.K. officials were guilty of these war crimes. And of course it never called for any tribunals to try the responsible parties.[13]

Also of interest is the fact that in this same *Wall Street Journal* commentary, Roth describes in detail Saddam Hussein’s crimes against the Kurds, which he repeatedly calls “genocide,” whereas the number of Iraqis killed by Western sanctions were between five and ten times the number of Kurds killed by Baghdad forces, but don’t get mentioned, let alone described as victims of “genocide.”[14] Roth asserts that bringing Saddam to justice for his treatment of the Kurds ran into difficulties because France and Russia each had “extensive business interests” in Iraq, and China was worried about comparisons with their treatment of Tibetans. Nowhere does Roth mention the U.S. business dealings with Saddam, loans to his regime, supplying it with helicopters, intelligence and chemical weapons, and the Reagan administration’s protection of Saddam from Security Council actions. Instead, paralleling HRW’s condemnation and delegitimization of Belgrade during 1998-1999, by this stage in early 2002, it was the condemnation and delegitimization of the Iraqi regime that had become of paramount importance to Roth. Although he noted that bringing indictments against Saddam “would not guarantee his ouster,” Roth added that they “would certainly help build consensus that he is unfit to govern, and thus that something must be done to end his rule.”

The word “genocide” has also never been applied by Roth or HRW to the enormous death toll caused by the U.S. invasion and occupation of Iraq, 2003-2007, although the numbers of civilians that have died as a consequence of that UN Charter violation now exceed the Kurd “genocide” attributed to Saddam by a multiple that may have reached six or more.[15] But HRW has shown little interest in these totals, and when the British medical journal *Lancet* published an estimate of some 100,000 Iraqi civilian deaths for the first 18 months following the March 2003 invasion, HRW senior military analyst (and former Pentagon intelligence analyst) Marc E. Garlasco quickly dismissed the findings as “inflated” and the methods used as “prone to inflation due to overcounting.”[16] Subsequently, Garlasco admitted to not having read the report when he offered his initial assessment about it to the press.[17] Roth and HRW have shown no qualms over using the word “genocide” frequently in reference to Serb conduct in Bosnia and Herzegovina as well as in Kosovo, although there also the number of victims falls far short of the numbers in Iraq, whether from the “sanctions of mass destruction” or the invasion-occupation of 2003-2007.[18] Once again, this word usage is well geared to the support of U.S. and NATO policy.

In all these cases the HRW focus has been on methods of fighting and their impact on civilians. As noted, this bypasses any possible challenge to cross-border attacks that constitute the “supreme international crime,” which HRW takes as a given (with exceptions as described below). It may be argued, however, that if a war itself is illegal, then any military or civilian killings that follow from this crime cannot be defended on grounds that they are the unavoidable consequence of war; [19] but this is not the philosophy of HRW, which ignores that basic illegality. Instead, HRW has repeatedly stated that it “does not make judgments about the decision whether to go to war—about whether a war complies with international law against aggression. We care deeply about the humanitarian consequences of war, but we avoid judgments on the legality of war itself because they tend to compromise the neutrality needed to monitor most effectively how the war is waged....”[20]

But this is a disingenuous evasion on multiple grounds. The decision to go to war is the one that assures there will be both military and civilian casualties, as was stressed by the Nuremberg Tribunal in explaining its own focus on the “supreme international crime,” and for that reason alone an unbiased human rights organization would not ignore it. Given that HRW’s own state is the one that has been carrying out serial wars in violation of the UN Charter, the exclusion of this primary cause of human rights violations in itself compromises any neutrality the organization may claim to observe.

What is more, there is evidence that HRW leaders have been pleased with these aggressions. We will show later that it urged them on in the case of the Balkans wars, and Roth’s piece “Indict Saddam” was a form of public relations support for the prospective attack on Iraq . Roth even celebrates the breakdown of international law against aggression, allegedly in the interest of “human rights.” He stated that “We will remember 1999 as the year in which sovereignty gave way in places where crimes against humanity were being committed.”[21] Of course, it is the U.S. and British leadership which determines when “crimes against humanity” are committed, but Roth has faith that these leaders are the proper deciders and that the sacrifice of a basic principle of international law is thus justified. This is an only slightly veiled defense of recent U.S. aggressions, and so the alleged refusal by HRW to make judgments about decisions to go to war is in fact a form of apologetics for aggressive war.

HRW’s professed neutrality is disingenuous for yet another reason: The organization has never applied it to the armed conflicts within the former Yugoslavia . There, HRW has treated the conflicts and their impact upon civilian populations as the direct consequences of cross-border aggression, and has held the ethnic Serb leadership in Belgrade to be uniquely responsible for them. The entire first half of HRW’s *Weighing the Evidence* is devoted to a summary of the Office of the Prosecutor’s evidence that Belgrade provided financial, material, and personnel support to ethnic Serb combatants in Croatia and Bosnia-Herzegovina—treating this support as clear-cut violations of the international law against aggression: “[H]ow Belgrade orchestrated the vicious wars in Bosnia, Croatia and Kosovo,” as *Weighing the Evidence* author Sara Darehshori put it.[22] HRW has never done the same in other theaters of armed conflict where it maintains an interest—say, documenting how

Washington's financial and material support "orchestrates" Israel's 40-year-old military occupation of the Palestinian Territories or Israel's cross-border attacks into Lebanon; and as already noted, U.S. crimes of aggression are treated with "neutrality." But HRW-style neutrality disappears when it is dealing with U.S. targets such as Serbia, where HRW widens its human rights concerns beyond mere methods of combat to include "who started it" and the "accumulated evil of the whole."

In a closely related double standard—and point of illogic—throughout their coverage of the Balkans conflicts, and in close accord with the position of the International Criminal Tribunal for the Former Yugoslavia (ICTY or Tribunal), Roth and HRW demanded that the villains (Serbs) must be brought to justice if a true peace is to prevail.[23] This was allegedly required to help deter future villainy and because the victims need the consolation of justice. But this principle should clearly apply to villains who commit the "supreme international crime," and it was precisely such villains who were tried at Nuremberg. Wouldn't we want "justice" brought to aggressors to teach potential aggressors that such behavior doesn't pay? And isn't such justice necessary to bring peace of mind to the victims of aggression so that true peace can prevail? The point doesn't arise for Roth and HRW, who not only are completely oblivious to this double standard, but in their Balkans efforts have worked closely with the perpetrators of the supreme crime in allegedly bringing justice to the lesser criminals. Here again it is clear that Roth and HRW are not neutral, but, having internalized the perspectives of the Western powers, they serve aggression when carried out under the right auspices.

HRW not only overlooks the rule of law as regards aggression, it has never addressed the massive abuses of the judicial process in the politicized work of the ICTY,[24] apparently because it is serving the same cause as HRW. In another illustration of its cavalier attitude toward legality, HRW boasts that it "helped pressure the Yugoslav government to turn Milosevic and his cohorts over to the tribunal," in complete disregard of the fact that this was done by a kidnapping and in straightforward violation of the Yugoslav constitution and rulings of Yugoslav courts.[25]

Among other forms of bias, HRW accepts the NATO-friendly view that civilian deaths from high-tech warfare such as in aerial bombings and missile strikes are not *prima facie* "deliberate" as are face-to-face and low-tech killings of civilians. HRW holds that while the former may involve war crimes if not carried out carefully, the latter are war crimes *per se*. But this distinction is invalid, as bombs dropped from on high on or near civilian facilities are extremely likely to kill and injure civilians, even if the individuals killed were not specifically targeted; and this known high probability makes those killings deliberate for all intents and purposes.[26] Suicide bombers also sometimes target military personnel and do not always just attack civilians. Given that the actual civilian casualty totals of hi-tech bombings and other weaponry are usually far greater than those of suicide bombers and other face-to-face killings,[27] this HRW bias places the protection of U.S. and NATO methods of warfare ahead of human rights.

Another form of bias is the HRW tendency to offer low counts of U.S. and NATO victims, and

high counts for victims of U.S. and NATO targets. A study by Marc Herold reveals a pattern in which HRW “reports figures which are about one-third those of other reputable sources.” Herold points out that in the case of the NATO attack on Yugoslavia, HRW estimated 500 civilian deaths in Serbia, whereas other credible sources ran to 1,200-1,500 (and the Serbian official estimate was 1,800); and for Afghanistan, HRW estimated that at least 1,000 civilians were killed whereas Herold’s own studies yielded a total between 3,000-4,000. Herold also shows that in the specific case of a U.S. massacre at Chowkar-Karez in Afghanistan, HRW’s thinly based estimate of 25-35 dead was markedly below the figure of 90 reported in the media of Britain, India, Qatar and Egypt.[28]

On the other side of the ledger, Richard Dicker, the director of HRW’s International Justice Program (IJP) and a consultant on *Weighing the Evidence*, asserted that “hundreds of thousands killed and millions [were] forced from their homes in the four wars [Milosevic] lost while asserting Serbian nationalism.”[29] Dicker’s inflated rhetoric was not meant to be exact; nor did it need to be, and his “hundreds of thousands” killed has been drastically deflated by establishment sources, but without explicit acknowledgement by Dicker or HRW. In dealing with Serbia’s exquisitely demonized “strongman,” this human rights lawyer knew that just about any charge could be made to stick, whether at the ICTY or before the court of public opinion. In a more subtle display of numbers-bias, HRW’s *World Report 2007* says that in February 2006, staff at the Sarajevo-based Research and Documentation Center (RDC) “were threatened through an anonymous phone call and warned to stop their analysis on war-related deaths.” The motive was the “center’s downward revision of the number of wartime casualties,” which HRW stresses “has drawn criticism from Bosnian Muslims, the war’s principal victims.”[30] In fact, the RDC has found documentable totals of war-related deaths *on all sides* to be in the area of 100,000.[31] Thus HRW’s use of the phrase “downward revision” mischaracterizes the RDC’s work, as it understates the dramatic reduction by one-half to two-thirds of the much higher estimates of 200,000 to 300,000 that have been in circulation since late 1992, while HRW never once gives the specific number in the revised estimate that shows Dicker to have been guilty of inflation (and raises questions about HRW’s massive attention to an alleged “genocide” in Bosnia).

Another revealing form of bias has been HRW’s regular denial that the United States commits war crimes. Writing in late 2002, Kenneth Roth stated that “In recent wars, U.S. forces have made mistakes and even violated humanitarian law but have not committed war crimes.”[32] He admitted that the use of cluster bombs where substantial civilian casualties are “foreseeable” might be deemed by some court to be a war crime, but he himself declared that none were committed—a remarkable claim given that Roth and HRW have hardly examined all uses of cluster bombs and determined that in each of those cases civilian deaths were not “foreseeable.” This is the language of crude apologetics. Furthermore, there is the matter of the use of depleted uranium, a civilian-deadly weapon regularly employed by his country, which Roth ignores.

Michael Mandel has pointed out that during the war against Yugoslavia, “NATO convicted itself out of its own mouth,” its leaders repeatedly acknowledging the goal of breaking civilian morale, and targeting bridges, schools, factories, livestock, crops, power grids, media centers, religious buildings, including early Christian and medieval churches, chemical plants, and fertilizer factories.[33] Only a U.S.-war apologist could claim that this objective and these targets did not point to intentionality as well as reveal war crimes. Amnesty International had no trouble finding and naming plenty of war crimes.[34]

There are other forms of bias in HRW's work, such as an underplaying of really major crimes and a false even-handedness in cases where the preferred side does vastly more deadly and destructive things, as in case of Israel in Lebanon and Gaza, or the United States in Iraq, with the massive use of cluster bombs, the almost complete destruction of sizable cities like Fallujah, hospital bombings, and the use of phosphorus bombs as well as depleted uranium. Roth did castigate the Israelis for their July 30 airstrikes on the Lebanese village of Qana, saying and writing that the "IDF effectively turned southern Lebanon into a free-fire zone," and for its use of cluster bombs.[35] But HRW's treatment of Israel or the United States in Iraq has never come near the passionate intensity shown by their on-the-ground investigations and search for witnesses, their acceptance of contestable evidence, and their furious condemnations of Serb behavior in Bosnia and Kosovo and calls for punishment.

And in contrast with their treatment of the Serbs, when dealing with Israel and the United States, HRW has gone to great pains to provide "balance" in even-handedly condemning Hezbollah, the Gaza Palestinians and Hamas, and the Iraqi resistance. In the case of Hezbollah and Israel, HRW even compared their missile attacks in terms that were unfavorable to Hezbollah, whose missiles HRW alleges deliberately targeted civilians, whereas Israel simply was not careful enough. HRW ignored the fact of a major "supreme international crime," the volume of bombings and ordnance deployed, and the number of casualties, and it imputed an intent to Hezbollah fighters for which HRW had no supportive evidence.[36] This parallels the apologetics in the HRW contrast between unintended civilian casualties from high level bombing versus the "deliberate" killing of civilians in close-quarters combat.

In sum, HRW has done a great deal of valuable work on human rights, enough to frequently arouse the ire of U.S. and U.S. client state officials and their intellectual and media supporters. But like the Christian missionaries of earlier empires, HRW has also performed yeoman service in the advancement of U.S. foreign policy. Hans Köchler says that "Human rights have become an instrument of power politics in an environment in which no checks and balances exist to restrain the arbitrary use of power." And in his view, "In the war against Yugoslavia in 1999, NATO acted as the 'Holy Alliance' of our times, trying to justify with moral principles a campaign of war that was in complete contradiction to the UN Charter and to international law in general." [37] HRW has been a servant of this new Holy Alliance.

In the beginning, as the U.S. Helsinki Watch Committee, it did this by helping to publicize Soviet wrongdoing in Western capitals. Later, and during the current and the last decade in particular, it has made three principal contributions to U.S. policy interests. First and most notably, HRW has refused to challenge U.S. wars and interventions as such, taking them as givens and dealing only with second-order human rights phenomena within the theaters under attack. This refusal dates back to the Golden Age of the 1980s, when under challenge over their handling of the *Contra* war against Nicaragua and the Sandinista government's response to it, the group's leaders avowed that "Americas Watch takes no position on the

military conflict as such,” emphasizing that “we condemn the human rights violations committed by the insurgents as we condemn those committed by the government.”[38] Second, HRW has tended to underplay and undercount U.S. and “allied” human rights violations. At worst, it has found U.S. warmakers responsible for very narrow mistakes and oversights, for taking insufficient precautions in their methods of violence, for using proscribed munitions, and for causing “needless deaths.”[39] Third, and the most important from the standpoint of how atrocities are recorded and publicized, HRW has placed the targets of U.S. wars under the most demanding of human rights microscopes, invariably finding their political leadership guilty of serious crimes and calling for their removal and/or punishment.[40]

Even when HRW applies its microscope to U.S. conduct, as in the related cases of the prisoner of war camp at Guantanamo Bay, Abu Ghraib, and “rendition” to foreign states,[41] it never calls for the prosecution of the political leadership responsible for these practices, much less treat this conduct as something more grave than bad publicity, tarnishing America’s image abroad. Thus HRW began 2007 with a PR campaign calling for Guantanamo’s closure. But although HRW labeled Guantanamo a “shameful blight on US respect for human rights,”[42] and Kenneth Roth called it “utterly counterproductive,” a “symbol of the Bush Administration’s lawlessness when it comes to fighting terrorism,” a “tool for terrorist recruiters,” and a “disaster for America’s standing in the world and a disaster for the effectiveness of the fight against terrorism,”[43] no mention was made of the direct chain-of-command that runs from the White House to Guantanamo. Nor of the fact that Guantanamo is but one node in a network of similar U.S. practices that circle the globe—the reality of which is a U.S. Gulag.[44] Instead, early 2007 found HRW adopting the posture that Guantanamo is yet another “mistake,” and chiding Washington on grounds that its larger objectives in the so-called “war on terror” would be better served were it to shut the camp down.

Throughout HRW’s work runs the presumption that the United States is the global lawgiver, with special rights that call for special treatment, including in particular the non-reciprocal right to interfere in the sovereign affairs of other states and peoples, militarily if its leadership so decides. And this remains equally true whether HRW is documenting Washington’s “mistakes” across various theaters of war or, as we show below, HRW is decrying what it called Slobodan Milosevic’s “coordinated and systematic” campaigns to terrorize, kill, and expel ethnic non-Serbs from the territories he sought to dominate.[45] Can one imagine HRW referring to George Bush’s “coordinated and systematic” campaign to organize a global torture gulag? Or calling a Serb, an Iraqi, or a Sudanese action “unproductive” and a “tool for recruiters against U.S. imperialism”?

Part 2: HRW as a Campaigner for the NATO Wars in the Balkans

From the very beginning of the contests over the fate of the Socialist Federal Republic of Yugoslavia (SFRY), HRW challenged its territorial integrity and supported the dismemberment of the unitary state, a militarized response to the armed conflicts that ensued, and most vocally of all, the meting out of “justice” to the wrongdoers. In a commentary in the November 10, 1990 *New York Times*, Helsinki Watch Executive Director Jeri Laber and Kenneth Anderson urged SFRY’s breakup and the provision of Western aid to any breakaway republics that might “protect the rights of all their citizens.”[46] These authors failed to give the slightest weight to the fact that the declarations of independence within the breakaway republics were contrary to both federal and republican constitutions, not to mention international law—including the Helsinki Final Act.[47]

Most important, Laber and Anderson were blind to the fact that pressures for independence within the republics and provinces expressed a surge of nationalism, rather than any concern for the rights of “all their citizens.” Writing about the Republic of Bosnia and Herzegovina, Robert Hayden observed that “the free elections that marked the end of Communism, in November 1990,...[were] essentially an ethnic census. Given the chance to vote as Bosnians, the population of Bosnia and Herzegovina chose instead to vote, overwhelmingly, as Muslims, Serbs, and Croats.”[48] Obviously, this did not bode well for the rights of minorities. In a letter responding to Laber and Anderson’s call for the dismemberment of the SFRY, Hayden pointed out that “Those who would break up the country are strong nationalists, not likely to treat minorities within their own borders well.” Instead, it was only the unified federal state of *Yugoslavia* that provided protection for minorities—and very possibly would have continued to do so, had it not been attacked, delegitimized, and dissolved. “It seems truly bizarre,” Hayden noted presciently, “that ‘human rights’ activists so cavalierly advocate policies that are likely to turn Yugoslavia into the Lebanon of Europe.”[49]

Hayden’s warning was vindicated by history. The kind of recommendations made by Laber and Anderson, and more important but similar pressures from foreign states, most notably Germany and the United States, proved immensely destructive of human rights. However, although damaging to human rights, HRW’s policies were closely aligned with those of the U.S. government and George Soros, both major drivers of the neoliberal restructuring of Eastern Europe following the collapse of the Soviet bloc, with Soros himself deeply interested in the Balkans, helping to found and to fund media organizations in Kosovo and elsewhere that focus on the Balkans, as well as a major contributor to HRW.[50] Both of these state and non-governmental actors steadily supported the dismemberment of a semi-socialist Yugoslavia and its transformation into mini-states that in turn would be Western clients and open to foreign investment.[51]

The formation of the ICTY, created and effectively controlled by the United States and its allies,[52] has played a vital role in this process as well, and there has been a long tacit mutual support and commonality of policy and practice among these parties.

An important mechanism of dismantlement of Yugoslavia was to make the Serbs the unique arch-villains and to forestall settlement in the alleged interest of “justice.”[53] This demonization was strictly politically based—the villainy was broadly based, as many analysts and participants have noted,[54] but the critics of demonization could make no headway against the winds of power and propaganda, to which HRW was a major contributor. It was Milosevic and the Serb drive for a “Greater Serbia” that allegedly explained all,[55] even though Milosevic signed on to each and every peace proposal advanced in the key years 1992-1995,[56] and even though the Clinton administration and Izetbegovic sabotaged them all until Dayton,[57] with the Clinton team eventually using the 1999 Rambouillet Conference strictly as a means of clearing the ground for war.[58]

In December 1992, U.S. Deputy Secretary of State Lawrence Eagleburger called for a “second Nuremberg” tribunal to bring justice to the embroiled Yugoslavia, naming

Milosevic, six other Serb officials, and three Croats as its proper targets. “We know that crimes against humanity have occurred,” Eagleburger said, “and we know when and where they occurred. We know, moreover, which forces committed those crimes, and under whose command they operated. And we know, finally, who the political leaders are and to whom those military commanders were—and still are—responsible.”[59] Within less than three months, the Security Council adopted the first of its resolutions during 1993 that established an “international tribunal...for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.”[60]

Later that same year, HRW also called for the prosecution of no fewer than 29 different individuals by name, ranging “from the lowest prison guard to the former Yugoslav Minister of Defense and the Chief of Staff of the Yugoslav National Army.”[61] Of course, the Nuremberg tribunal had focused on the “supreme international crime,” but just as HRW has ruled out this crime—of aggression—as part of its list of human rights crimes, so did the founding Statute of the Tribunal,[62] understandably as that Statute was drafted by U.S. officials who wanted to be free of any obstruction to their own cross-border attacks. The point was to focus on the target Serbs and stave-off a negotiated settlement in the alleged interests of “justice,” until a proper political result could be obtained.

Michael Scharf, a former State Department insider, acknowledged that the ICTY was organized as “little more than a public relations device,” a “useful policy tool,” that could “fortify the international political will to employ economic sanctions or use force.”[63] But this only acknowledges what should be obvious from the ICTY’s origins, structure and performance: Namely, that the ICTY was an integral part of war-planning and war-making operations, and that it is neither independent nor designed to produce anything but a strictly politicized “justice” for Yugoslavia. As Michael Mandel argues, the ICTY was used by the U.S. policymakers “to justify their intention to go to war...by branding their proposed enemies as Nazis,” and by this means to “derail the peace process.”[64] HRW has also been a part of this war-making apparatus; as we have seen, its leaders have steadily called for “justice” and if need be war to bring the villains—at least the Arch Villains—to pay for their sins.

HRW regularly cites ICTY findings as unquestionable truth, and it is proud to have helped the ICTY to collect data on Serb crimes, publicize those crimes and the ICTY’s good work—and “to influence the U.S. government to condition financial aid for Yugoslavia on cooperation with the tribunal.”[65] Of course HRW has treated the ICTY as an arm of genuine justice, just as the ICTY has depended on nongovernmental organizations such as HRW as well as NATO officials for supposedly unbiased information. In a commentary titled “Human Rights, American Wrongs,” Kenneth Roth, while assailing the U.S. rejection of the International Criminal Court, stated that “Washington says it would never deploy US troops where they would be subject to an international tribunal. But...US troops in Bosnia and Kosovo have been subject to the jurisdiction of the Yugoslav war crimes tribunal. So were US bombers over Bosnia in 1995 and Serbia and Kosovo in 1999. The crisis over the International Criminal Court is a manufactured one.”[66] This is a clear illustration of Roth’s convenient

self-deception, as he fails to recognize that the ICTY was U.S.-controlled and that its failure ever to indict any U.S. officials was a foregone conclusion.

Even Jamie Shea, NATO's chief of public relations during the 1999 war, admitted that "NATO countries are those that have provided the finance to set up the Tribunal,...are amongst the majority financiers....I am certain that when Justice Arbour goes to Kosovo and looks at the facts she will be indicting people of Yugoslav nationality and I don't anticipate any others at this stage." [67] But nowhere was the truth of this point more dramatically evident than in the ICTY's own performance, as when Chief Prosecutor Carla Del Ponte refused to open an investigation of possible NATO war crimes on the grounds that the 495 dead Serbs documented by the ICTY's investigation were an insufficiently large number—"there is simply no evidence of the necessary crime base for charges of genocide or crimes against humanity," in the words of the Prosecutor's *Final Report*. [68] But under the ICTY's Statute, the Prosecutor is *obligated* not only to investigate but to prepare indictments where a *prima facie* case for crimes against humanity exists. [69] There is also the awkwardness that Milosevic's initial indictment rested on a "crime base" of 344 dead Kosovo Albanians, and of these, only 45 were reported to have died prior to the start of NATO's war. [70]

But even more remarkable, the indictment of Milosevic *et al.* for Kosovo was hastily put together based on unverified information supplied to the ICTY by the U.S. and U.K.; and it was issued two months into NATO's war, just as NATO had begun stepping up its bombing of Serb civilian facilities and was in need of a public relations boost to offset what Amnesty International (but *not* HRW) called *war crimes*. [71] So in a tacit alliance with HRW as well as the attacking (and ICTY-funding) countries, the ICTY actively supported commission of both the "supreme international crime" and its plain vanilla derivatives.

Michael Mandel shows that during 1998, just as NATO was building up its forces in preparation for the 1999 military attack on Yugoslavia, the ICTY greatly intensified its investigations and charges against the Serbs. [72] HRW did exactly the same: It had already written to Louise Arbour by early March, 1998, urging the Office of the Prosecutor to open an investigation into Serb-perpetrated atrocities, [73] and HRW was very quick to place monitors on the ground inside Kosovo in early 1998, and to step up its accumulation of evidence against Belgrade. It worked alongside the ICTY as a PR-arm of NATO, helping to create the moral environment for NATO's commission of the supreme international crime on March 24, 1999. It should be noted that, despite a period of intense anti-Serb propaganda that lasted some 12 to 15 months before the bombing war began, NATO Secretary General George Robertson told the British House of Commons that, "until Racak...the KLA were responsible for more deaths in Kosovo than the Yugoslav authorities had been." [74] And it is now well established that during that period the KLA was getting funds and training from the CIA. [75] These were points of no concern whatsoever to the ICTY and HRW.

In sum, HRW's performance in the Balkans has been perfectly geared to serve the aims of U.S. policy, but as that policy was one of keeping the pot of armed conflict boiling in

order to dismantle the SFRY and to weaken Serbia by putting an alleged pursuit of “justice” ahead of settling a series of grave internal conflicts, the effect of HRW policy has been extremely damaging to human rights. The same was and remains true in the cases of Iraq and Afghanistan . In each instance HRW has not challenged the privileges enjoyed by the aggressor states in their regular commission of the supreme international crime, thereby giving its tacit approval to this most fundamental of human rights violations—and in the case of the SFRY, actively urging aggression.[76] By virtue of biases which regularly underrate U.S. and allied human rights violations and inflate those of their targets, HRW facilitates the supreme international crime.

Part 3: HRW “Weighs the Evidence”

Weighing the Evidence: Lessons from the Slobodan Milosevic Trial (hereafter, WTE) was drafted under the auspices of HRW’s International Justice Program (IJP). Principal author Sara Darehshori is a Senior Counsel with the IJP. The document acknowledges the help (among others) of ten current and former HRW staff members, including the IJP’s Director Richard Dicker. Gratitude is expressed toward the ICTY prosecutor Dermot Groome “for reviewing the evidence sections of the paper;” Groome’s main responsibility at the Milosevic trial was to make the charge of “genocide” stick to the defendant. Thanks are also given to the Milosevic trial’s chief prosecutor Geoffrey Nice, who “was especially generous with his time and insights and deserves special mention.” To Diana Dicklich, the Prosecution’s case manager during the Milosevic trial. And to Alexandra Milenov, a Registry Liaison Officer for Serbia and Montenegro . Also, WTE acknowledges the help of unidentified “members of the Office of the Prosecutor, Chambers, Registry, Outreach, and Defense....” Finally, it mentions but does not identify by name the “assistance and leads given us by several journalists who covered the trial closely and provided us with insights from an observer’s perspective.”[77]

The IJP’s promotional literature tells us that its purpose is “to promote justice and accountability for genocide, war crimes, and crimes against humanity in countries where national courts are unable or unwilling to do so.”[78] But whenever we look at the IJP’s work, no matter where we turn, we find the former Yugoslavia occupying center stage. Of the 49 full-length “Reports” to have been archived on the IJP’s website through December 2006, roughly one-third of them (16) deal with the conflicts over the former Yugoslavia.[79] Similarly, of the 481 documents that the IJP archives “by Region,” 31 percent of them focus on “The Balkans” (i.e., on matters related to the former Yugoslavia, including the performance of the ICTY).[80] In keeping with this focus, the single longest document ever published by HRW (861 pages) was devoted to publicizing the work of the ICTY; as its Preface tells us, it was “intended as an accessible reference tool to assist practitioners and researchers as they familiarize themselves with ICTY case law.”[81] Indeed, HRW’s longest-ever study of a particular theater of conflict (623 pages) was devoted to the Serbian province of Kosovo . More precisely, it stated that its aim was “to document the war crimes committed by Serbian and Yugoslav government forces in Kosovo between March 24 and June 12, 1999—the period of the NATO bombing of Yugoslavia .”[82] No other theater or theme besides the former Yugoslavia and the work of the ICTY weighs anywhere near as

heavily in the IJP's scales. It would not be unfair to say that the former Yugoslavia has served HRW as a kind of real-world laboratory against which to test certain conceptions of human rights and international justice. WTE thus belongs to a lineage that has been years in the making, and this report exhibits the same overall pattern of advocacy and bias that has characterized HRW's treatment of Balkans issues from 1990 onward.[83]

Surely this extraordinary attention is not justified by the scale of the atrocities. As we noted earlier, HRW avoided reporting current estimates of war-related deaths in Bosnia, even though it acknowledged their "downward revision"—the unacknowledged numbers falling from 200,000 – 300,000 to 100,000 *on all sides*. [84] Although estimates of the deaths caused by the Indonesian invasion and occupation of East Timor are commonly in the order of 200,000, [85] the IJP archives only one major report on East Timor, but 16 on Yugoslavia. [86] Clearly, this degree of contrast in levels of attention cannot be correlated with the scale of atrocities under investigation, and flies in the face of HRW's claim that its aim is "redressing the more grievous human rights crimes." [87] The contrast can, however, be linked to U.S. foreign policy priorities. Thus, Indonesia was immensely important to Washington, and the U.S. supported its military attack on East Timor, with HRW favorite Richard Holbrooke serving first as the Carter and later the Clinton point man on East Timor, providing cover for Indonesia's genocidal performance. [88] But in the former Yugoslavia, Washington supported Croatia and the Muslims of Bosnia, and assailed the Serbs; and it can hardly be a coincidence that HRW was deeply interested in atrocities committed by Serbs, with Holbrooke again serving as the Democrats' point man, but this time by advocating hard-line policies toward the alleged Serb aggressors. (Holbrooke has been a guest speaker at multiple HRW events held in the United States and abroad. [89] His wife, Kati Marton, serves on the HRW Board of Directors. [90])

In another dramatic illustration of HRW's adaptation to the U.S. foreign policy agenda, we may contrast HRW's treatment of Serb conduct in Croatia, Bosnia, and Kosovo, on the one hand, to which HRW gives priority, documents extensively, and denounces with great indignation and generous use of the word "genocide," with HRW's treatment of the Croatian slaughter and ethnic cleansing of Serbs during Operations Flash and Storm in 1995, on the other. These operations were carried out by Croatian forces with the active support of the Clinton administration. Flash itself was a substantial ethnic cleansing of Serbs from Western Slavonia, carried out in May 1995, in which at least 450 Serbs were killed and an estimated 12,000 expelled. [91] As described by Brendan O'Shea, "This was conquest and a 'land grab'. This was precision ethnic cleansing supported and condoned by the United States ."[92]

Operation Storm was a larger-scale action that involved the brutal and carefully planned ethnic cleansing of the entire Serb civilian population of Croatian Krajina, some 250,000 people. Carried out within a month of the Srebrenica massacre in eastern Bosnia, Storm may well have involved the killing of more Serb *civilians* than Bosnian Muslim civilians killed in the Srebrenica area in July: Most of the Bosnian Muslim victims were fighters, not civilians, as the Bosnian Serbs bused the Srebrenica women and children to safety; the Croatians made no such provision and several hundred women and children were

slaughtered in Krajina.[93] The ruthlessness of the Croats was impressive: “UN troops watched horrified as Croat soldiers dragged the bodies of dead Serbs along the road outside the UN compound and then pumped them full of rounds from the AK-47s. They then crushed the bullet-ridden bodies under the tracks of a tank.”[94]

HRW went to great pains to deny that Operation Flash involved serious human rights violations, and its report on the subject chastised the UN for rushing to a hasty negative judgment.[95] In this case, HRW called for great care in dealing with witness evidence of human rights violations, a point that it never once makes in WTE as regards the ICTY’s eminently problematic acceptance of witness evidence of Serb actions.[96] It also singled out for reprimand the UN official Yasushi Akashi for public statements that HRW found “controversial” and unfairly critical of the Croatian military campaign. “[W]e believe that criticism of a government’s human rights record should be commensurate with the level of abuse,” HRW countered; “exaggerated and imprudent remarks... can potentially be counterproductive and damaging to respect for human rights.”[97] This report used the phrase “ethnic cleansing” three times, but only in reference to Serb actions, not Croat; and HRW never applies the word “genocide” to Operation Flash or Storm, though it uses this word liberally in remarks about Serb behavior. Keeping to the same line, a much longer 1996 report on Operation Storm limited its use of the phrase to “*bureaucratic* ethnic cleansing,” and then only in relation to laws enacted by Croatia to discourage the return of Serbs driven out by its military campaign.[98] “The Croatian government has...argued that ‘Operation Storm’ did not constitute—nor can it be compared to—the abuses associated with the policy of ‘ethnic cleansing’ of non-Serbs as practiced in Serbian-controlled territories in Croatia and Bosnia since 1991 and 1992,” this report noted. “Unless the Croatian government reverses its recent actions by allowing the safe return of Serbian civilians to the Krajina area...it will also have to answer to the charge of ‘ethnic cleansing’ that is often levied against Serbian forces.”[99] As regards Serb actions, HRW never makes the use of the phrase “ethnic cleansing” dependent on Serb failure to reverse what has already been done.

Even more dramatic were the gross apologetics for Operation Storm provided in August 1995 by Holly Cartner, then Executive Director of Human Rights Watch/Helsinki.[100] Cartner explained the vast exodus of Serbs from Krajina as resulting from “intensive military operations,” Serbs “encouraged to go by their own leaders,” and Croatia’s anti-Serb propaganda. She writes that Serbs “were able to collect their belongings...and leave in semi-orderly fashion.” She never acknowledges the high-level deliberate planning of this cleansing operation—it was just an inexplicable “military operation”—nor does she mention the active U.S. support for Operation Storm. She calls upon Croatian President Tudjman to send trained people to care for the remaining Serbs, to permit the return of those who fled, and to prosecute soldiers guilty of war crimes. But she doesn’t demand trials for the Croat leaders in the interest of “justice”—these leaders are apparently good folks who had made a little mistake but can get their own house in order. “While all parties to the wars in the former Yugoslavia have committed war crimes,” Cartner asserted, “only one side—the rebel Serbian forces in Bosnia and Croatia—has attempted to eliminate ‘in whole or in part’ a people on the basis of their ethnicity.” Pushing out 250,000 Serbs while killing over a thousand of them in just a few short days doesn’t qualify as eliminating on the basis of ethnicity!

Shortly before, Peter Galbraith, U.S. Ambassador to Croatia, had also denied that Operation Storm constituted a case of “ethnic cleansing,” telling a BBC radio interviewer that “Ethnic cleansing is a practice sponsored by the leadership in Belgrade, carried out by the Bosnian Serbs and also by the Croatian Serbs,” not by Croatia—a position condemned throughout much of the world.[101] But though Storm was one of the clearest cases—and the largest—of cleansing a geographic space of its people on the basis of their ethnicity during the Balkan conflicts, neither the U.S. Government, HRW, nor Holly Cartner could bring themselves to use such a term to describe this Croatian action. The HRW double standard in word usage as well as in the selection (and misuse) of evidence follows closely the official agenda. Twice over the course of three months in 1995, Croatia had militarily emptied Serb population centers, and HRW principals attacked the critics of Croatia’s offensives for their insensitivity towards the perpetrators, truly a remarkable chapter in the history of this human rights organization.

While WTE pretends to be fair-minded on the Milosevic trial, it is not: It hews closely to the Prosecution’s case against Milosevic, takes for granted all the premises of the Prosecution and establishment narrative, and selects and massages evidence on a regular basis to support that narrative. Thus WTE takes it as a simple truism that the ICTY is pursuing justice, and it never addresses ICTY’s political origins, purpose, integration into NATO plans and operations, problematic rules and rule-making, staffing, and selectivity.

According to a celebrated maxim: “Justice must not only be done, it must also be seen to be done.” But both the ICTY and WTE postulate Serb and Milosevic guilt; and WTE sees no contradiction between presuming guilt and conducting a fair trial, much less between the integration of the work of the ICTY and U.S.-NATO policy, on the one side, and the likelihood or even the possibility of its rendering justice, on the other. WTE does not find it problematic that Richard May, the Presiding Judge until a fatal illness forced his resignation in late February 2004, Geoffrey Nice, the lead prosecutor, and four of the five *amicus curiae* appointed by the court heralded from countries that participated in the NATO war against Yugoslavia, or close allies.[102] Similarly, of the 25 judges now serving at the ICTY, 12 are from NATO members; one is from South Korea, a close U.S. ally; three from Jamaica and Guyana, countries having close relations with Great Britain; three from Austria, Sweden and Switzerland, countries generally supportive of NATO in the Balkans; two from Pakistan and Senegal, which are Muslim countries. ICTY President Fausto Pocar is from Italy, a NATO country; and Vice President Kevin Parker is from Australia, a close U.S. ally.[103] One proposed judge from Russia was vetoed on the basis of a potential “pro-Serb bias”! [104]

The ideas stressed in John Laughland’s *Travesty*, that legal justice requires a lawful base in an enabling statute, a separation between prosecution and judges, a stable body of rules not changeable by the judges in accord with passing convenience,[105] an appeals process outside the body of appointed judges themselves, qualified judges, and independence from powerful interests with a political agenda, are outside HRW’s and WTE’s orbit of thought.[106] This failure to question structured bias is remarkable for a body that claims to

support the rule of law—which HRW seems to regard as something that an advanced civilization needs to impose upon backwards peoples. But while HRW allegedly seeks the rule of law and “accountability” in these backward areas, it is extremely cavalier about the lack of rigor of the law, judicial practice, and accountability, in an institution pursuing “justice” in accord with U.S. and NATO priorities. As we have stressed, with HRW’s principals regularly violating the UN Charter prohibition of aggression, that area of justice is set aside, and although it accepts the urgency of the ICTY principle that one can hardly hope to “restore the rule of law [etc.]... if the culprits are allowed to go unpunished,”[107] HRW fails to see the necessity of applying this in the case of those committing the “supreme international crime,” such as Richard Holbrooke, Madeleine Albright, Bill Clinton and George Bush.

The most important achievement of the Milosevic trial, WTE declares, was that it “showed how Belgrade enabled the war to happen.”[108] The “JNA, the Serbian Ministry of Interior and other entities...armed Serb civilians and local territorial defense groups in Krajina and Bosnia prior to the start of conflict...”[109] To support this line, WTE cites NATO commander Wesley Clark: “We knew that the Serb military had been...carved out of the Yugoslav military.”[110]

But the armed forces of Bosnia and Herzegovina , Croatia , and even Macedonia were carved out of the JNA no less than were the Serb forces. In a series of civil wars, each rival sought and acquired arms, allies, and sponsors—some more successfully than others. If the JNA helped to create the military formations of the Serbian Krajina and Republika Srpska, it did likewise for the Bosnian Muslim and Bosnian Croat armies, for Fikret Abdic’s Muslim troops in Bihac, and for countless paramilitary groupings. Unlike Berlin , Vienna or Washington , however, (or Riyadh , Tehran , Islamabad or Ankara ,) Belgrade was not a foreign power. This point is lost on WTE. As is the fact that if aid to the Croatian and Bosnian Serbs “enabled the war to happen,” so did aid to the Croats and Muslims, with decisive consequences as the wars dragged on.

But the Milosevic trial shed little light on which rival inherited what from the JNA, including its arms, organizational knowledge, plant and infrastructure. The Prosecution showed no interest in this line; nor does WTE. During cross-examination of Morton Torkildsen, a financial “expert” whose testimony figures prominently in WTE (the document cites Torkildsen’s name 20 times), Milosevic asked whether the analysis he produced had covered “not just [the] weapons and equipment but entire military factories” left behind in territories “under control of the Croats and Muslims?” “No,” was Torkildsen’s reply. His mandate went only as far as “evidence relative to the indictment of the accused.” But no further.[111]

In any case, how the rivals acquired their weapons is secondary to who took up arms first, and for what purposes. Also prominent in WTE (mentioned 15 different times) is the testimony of the former JNA General Aleksandar Vasiljevic. Prosecutor Nice asked Vasiljevic about the JNA’s “goals.” “[T]he first and basic objective was...for the JNA to separate the

parties in conflict,” Vasiljevic explained, referring to court documents. “Later, the objectives were to protect...the JNA units which were then...in facilities and barracks that were under blockade in the territory of Croatia . And sometime from August or September onwards, 1991...the protection of endangered peoples is referred to, the people in those areas that were attacked by either side, any side. Specifically in that period of time that we’re referring to, that is to say September 1991, this had to do with the protection of the Serb people in some areas....” Nice then asked a follow-up question: “Was there, in your opinion, any question of the JNA forcing a political solution to the crisis?” Vasiljevic replied: “Never. Not in any period of time. The JNA never imposed a solution or ways of getting out of the crisis.”[112] But these aspects of Torkildsen’s and Vasiljevic’s testimony do not interest WTE, and none of it “enabled the war to happen.” Instead, the Serbs were most responsible for the wars in Yugoslavia . The Serbs committed crimes far more horrendous than their rivals. The Serbs, alone, were guilty of genocide.

WTE commits many errors, each invariably supportive of its biased treatment of the issues. For example, following the ICTY and party line narrative, WTE reports that the Serbs “expelled” 800,000 Kosovo Albanians by June 1999.[113] But large numbers fled from fear of NATO bombs and fighting, some were pushed out by the KLA, and literal expulsions by the Yugoslav army were concentrated in areas of strong KLA presence.[114] What is more, the larger fraction of Kosovo Serbs than Kosovo Albanians who fled during that bombing war were hardly “expelled,”[115] although some may have been pushed out by, or fled in fear of, the KLA.

In addition to offering an error-laden history, WTE stops short in its descriptions of events when the story might appear to contradict the benign version of NATO’s and the ICTY’s supposed campaign for justice. Thus WTE writes that since the end of the bombing war and the withdrawal of FRY and Serb forces from Kosovo on June 20, 1999, the “United Nations has administered Kosovo with support from a NATO-led peacekeeping force, although it formally remains part of Serbia .”[116] But that is all. No mention of the fact that under UN and NATO auspices there were over a thousand killings and disappearances, that over 150,000 Serbs and tens of thousands of Roma were driven out of Kosovo in what Jan Oberg has called the “largest ethnic cleansing [in proportionate terms] in the Balkans,”[117] and that it is a state dominated by fear and chronic low level terror and with a thriving drug and sex trade, but with a huge U.S. military base planted in its center.

HRW’s bias and blasé acceptance of abuses of a supposedly judicial process were quickly made evident in their putting forward the “Scorpion video” as a case in which an “important item” of “evidence” came into view through the work of the ICTY.[118] This video, “which showed members of the notorious ‘Scorpion’ unit, believed to have been acting under the aegis of the Serbian police, executing men and boys from Srebrenica at Trnovo. Although the video was never admitted as evidence, it was shown at the trial and would not have become public but for the trial. It had enormous impact....”[119] Contrary to WTE, the statement that this group was “believed to be operating under the aegis of the Serbian police” was convincingly refuted during the Milosevic trial (see Appendix). WTE’s and HRW’s contempt for the rule of law is also displayed by WTE’s failure to mention that the video was

shown by the prosecutor during Milosevic's defense, free of cross-examination, despite its lack of authentication and the absence of any connection between it and the knowledge and testimony of the witness on the stand. As *amicus curiae* Steven Kay objected in court, it was "sensationalism...not cross-examination,"[120] an unjudicial propaganda contribution to the imminent 10th anniversary memorial to the Srebrenica massacre, and clear evidence of the ICTY's political role.[121]

But why was this evidence deemed "important" by WTE? There has never been any doubt that Serb paramilitaries executed "men and boys" during these years of fighting in Bosnia, just as there is no question but that Croat and Bosnian Muslim (and imported Mujahadeen) did the same. Naser Oric, the Bosnian Muslim commander at Srebrenica until shortly before its fall to Bosnian Serb forces in July 1995, proudly showed Western reporters videos of beheaded Serbs that forces under his command had killed during their operations.[122] Back in May 1993, the Yugoslav government submitted to the UN Secretary-General an extensive 132-page dossier titled *War Crimes and Crimes and Genocide in Eastern Bosnia...Committed Against the Serb Population from April 1992 to April 1993*, listing by name and place hundreds of Serbs killed by Muslim and Mujahadeen forces in that early period.[123] More recently, the Tabeau-Bijak report estimated some 16,000 Serb civilians killed in Bosnia during the 1992-1995 wars.[124] In civil wars people are killed, sometimes using the most heinous methods. So a video record of the execution of six young Bosnian Muslim males is only important for identifying particular individuals as engaging in criminal acts or for propaganda service.

The Prosecution's evidence in the Milosevic trial consisted heavily of witnesses who claimed killings and other abuses by Serb forces, and WTE follows in the same well-worn path. As Laughland notes, however, "Indictments [by the ICTY] are drawn up with little or no reference to the fact that the acts in question were committed in battle: one often has the surreal sensation one would have reading a description of one man beating another man unconscious which omitted to mention that the violence was being inflicted in the course of a boxing match." [125] At the opening of his trial Milosevic devoted several hours to showing video evidence of deaths and injuries to Serbs from NATO violence,[126] and there is every reason to believe that he could have called several hundred witnesses, and presented a great deal more video evidence of crimes against Serbs. That would have represented a different agenda and political purpose than the trial in place, but only committed partisans like the ICTY and HRW could believe that civil war atrocities were unique to one side and that a video showing six executions was "important" evidence.

In early August 2006, Serbian and Croatian television began playing videotapes that allegedly depict scenes shot at various stages of Operation Storm. One shows the "Croatian army's 'Black Mamba' unit and the Bosnian military's 'Hamze' squad killing and abusing Serb soldiers and civilians," Agence France Presse reported. A second shows the Army of Bosnia and Herzegovina Fifth Corps Commander Atif Dudakovic "ordering his troops to torch Serb villages in northwestern Bosnia in September 1995. 'I'm ordering the village to be torched....Torch everything without exception', Atif Dudakovic...shouted in the film that

showed houses in flames.” A BBC report translated Dudakovic ordering: “[B]urn that village....Burn, burn everything....Go on, burn everything in your wake!”[127] The State Department’s information bureau acknowledged that “One tape reportedly shows Croat and Bosnian troops harassing and attacking convoys of Serb refugees, in one scene killing a Serb who has surrendered. Another tape shows a prominent Bosnian general apparently ordering his troops to burn Serb villages.”[128]

Bosnia-Herzegovina’s Foreign Minister Mladen Ivanic (a Serb) called for an investigation, and said authorities needed to show that they would “treat all war crimes the same way.”[129] But when asked during its weekly press briefing whether the Office of the Prosecutor “was conducting an investigation” into these matters, spokesman Anton Nikiforov “stated that it was regrettable that the tape had surfaced now just as the OTP had finished its investigative mandate.”[130] Through early 2007, the ICTY had not indicted Dudakovic. Is it not interesting how videotapes such as these, and Naser Oric’s, are not “important” to WTE or the ICTY, and allegedly come too late for action, just as the long-awaited (and perhaps nonexistent) indictments of Tudjman and Izetbegovic were never served during their lifetimes?[131]

WTE suggests that the Milosevic trial has served a truth commission-like function on behalf of the historical record, both in its having assembled evidence, decisions, and transcripts of proceedings, and for the news accounts of journalists who reported on what transpired in the courtroom. The “Milosevic trial may be one of the few venues in which a great deal of evidence was consolidated about the conflicts,” WTE affirms. As a result, it “should help shape how current and future generations view the wars and in particular Serbia’s role in them.”[132] But this is history according to the Office of the Prosecutor, whose lawyers and staff can at least claim that their job was to win a conviction at trial. Not so HRW or its IJP; and yet throughout WTE, the only history that is recounted for future generations is one of countless criminal acts perpetrated by ethnic Serbs. WTE shapes this version of history by reference not to the work of historians, but to the charges and the language adduced by ICTY indictments.[133]

For WTE, the record is not weakened by the Serb-only focus and political aims and structuring of the trial. Nor is it damaged by the fact that the ICTY corrupted the record by allowing hearsay evidence, anonymous testimony, closed sessions, the use of unauthenticated evidence such as illegal interceptions of telephone conversations or diaries that witnesses transcribe from memory; and frequently refused to allow full cross-examination of prosecution witnesses.[134] When NATO’s wartime General Wesley Clark testified, strict limits were placed on the questions Milosevic could ask him, and the ICTY permitted the transcript of his testimony to be redacted by U.S. officials, contrary to the ICTY’s own rules.[135] When Milosevic cross-examined William Walker, a career U.S. Foreign Service Officer who as head of the Kosovo Verification Mission during the pre-war period was suspected of working at cross-purposes with it, and promoting a war-agenda, the court placed a three-hour limit on Milosevic, and Judge May interrupted him “over 60 times,” while never once interrupting the Prosecution.[136] In one remarkable instance, Milosevic asked Presiding Judge Richard May, “are you prohibiting me from calling in question or challenging

the credibility of this witness?" And May replied: "Yes, I am. Now, move on." [137] When Milosevic was questioning former U.S. Ambassador to Croatia Peter Galbraith about his and U.S. co-responsibility for the ethnic cleansing of Krajina Serbs during Operation Storm—a point well-established in the historical record [138]—Judge May declared that this was "a preposterous question" and terminated the inquiry. [139] This trial was engaged in no truth-search under May's and the ICTY's auspices.

WTE continues the HRW double standard of allowing NATO to do things for which it condemns Serbia. As noted, the main thrust of WTE is its attempt to summarize the ICTY's records that show that Belgrade provided both the Bosnian and Croatian Krajina Serbs with financial, material, and administrative support. [140] But the United States supplied weapons, training, logistic and diplomatic support to the Bosnian Muslims and Croats; and it created a network for the delivery of weapons and Mujahadeen to the Bosnian Muslims from foreign states such as Iran and Saudi Arabia [141]—all in violation of a Security Council "embargo on all deliveries of weapons and military equipment to Yugoslavia." [142] These U.S. actions which would seem to be the counterpart of those engaged in by Serbia somehow fall out of the HRW-WTE orbit of the condemned; only one side is guilty of supplying arms and of keeping the war going. Thus, in an Orwellian process, the crime of aggression, which both the ICTY and HRW purport to exempt from their human-rights and war-crimes province, is allowed to come to life when the Belgrade Serbs allegedly do it, and WTE is indignant over this further example of Serb perfidy, although in this case the "aggression" occurred within a disintegrating Yugoslav state and, hence, was civil warfare. On the other hand, massive U.S. support for the Bosnian Muslims and Croats is exempted from the term here, just as the ICTY (and HRW) exempted from any condemnation the 1999 U.S. and NATO attack on Yugoslavia, which was a pure example of aggression across internationally recognized borders.

In portraying the Milosevic trial as "groundbreaking" and a "watershed moment for justice," WTE states that "With the establishment of the International Criminal Court, no government official, on the basis of his or her position, is beyond the law. The time when being a head of state meant immunity from prosecution is past." [143] This is untrue. Like the ICTY Statute, the Rome Statute that created the ICC also exempts the "supreme international crime" from its jurisdiction, so U.S. invasions in violation of the UN Charter are beyond the ICC's reach, and U.S. Government officials enjoy complete immunity from prosecution for acts of aggression. [144] Nowhere does WTE mention that the United States refuses to join the ICC, and in fact has formally notified the UN Secretary-General and ICC that it "does not intend to become a party to the treaty," and therefore "has no legal obligations arising from its signature on December 31, 2000." [145] What is more, the United States has exploited Article 98 to reach bilateral agreements with over 100 different states, securing their pledges never to surrender U.S. citizens to ICC custody, or to transfer U.S. citizens to states that have not reached similar agreements with the U.S. [146] This behavior, and the different U.S. treatment of the ICTY, might plausibly be seen as based on lesser U.S. power over the ICC as compared with the U.S.-controlled and *properly* "politicized" ICTY, points not in accord with WTE and HRW biases.

Trying to suggest an even handedness on the part of the ICTY, after having had to concede that many Serbs were ethnically cleansed from Croatia in 1995, and suffered from “violations of international humanitarian law” in Bosnia as well, WTE notes that these “are the subject of ICTY proceedings.” WTE supports this assertion with footnotes that refer to three additional ICTY cases: *Prosecutor v. Ante Gotovina et al.* (Croatia), *Prosecutor v. Oric* (Bosnia), and *Prosecutor v. Naletilic and Martinovic* (Bosnia).[147] What neither text nor footnotes point out, however, is that only the Serbian head of state, Milosevic, was brought to trial, in accord with the Serb-oriented priorities indicated by U.S. officials from late 1992 onward, just prior to the creation of the ICTY in 1993.

The massive trial of Milosevic, with 295 witnesses and 49,191 pages of testimony, failed to produce a single credible piece of evidence that Milosevic had ordered any killings that might fall under the category of war crimes. But the so-called Brioni Transcript of talks that Croatian President Franjo Tudjman held with his military and political leadership on July 31, 1995, show Tudjman instructing his military leaders to “inflict such a blow on the Serbs that they should virtually disappear.”[148] What followed in Operation Storm in the next month was a massive blow that made the Krajina Serbs “virtually disappear.”[149] Imagine the windfall that a statement such as Tudjman’s would have provided Carla Del Ponte, Geoffrey Nice, Dermot Groome, and HRW, had it been Milosevic instead who uttered a statement linking him directly to criminal activity of this magnitude! But Tudjman was a U.S. ally, and Operation Storm was approved and aided by the United States and some of its corporate mercenaries.[150] As Chief Prosecutor Del Ponte explained in an address before Goldman Sachs-London, “These crimes were committed in the course of a military operation, undoubtedly legitimate as such, aimed at re-taking the part of the Croatian territory which was occupied by Serb forces.”[151] That its clear purpose and result was a major ethnic cleansing is covered over by making it merely a “military operation” that is “legitimate as such,” while avoiding the critical language reserved for Serb military operations.

Were the ICTY honest in its devotion to justice and accountability—and not a political-public relations-“judicial” arm of NATO—then not only Tudjman, but also Bill Clinton, Madeleine Albright, Richard Holbrooke, and Peter Galbraith would have been indicted as “co-perpetrators” of a “joint criminal enterprise,” the clear purpose of which was the forcible and permanent removal of the majority of ethnic Serbs from large areas of Croatia. But given political realities, Del Ponte finds Operation Storm “legitimate,” and Tudjman would die in bed unindicted, while his co-perpetrators never would be brought to trial either. In the judgment of the ICTY as well as HRW, they were all too busy bringing “justice and accountability” to the Balkans!

But don’t the indictments of the Croatian General Ante Gotovina and the notorious Bosnian Muslim fighter Naser Oric show that the ICTY is even-handed? No, they do not. Gotovina’s indictment was not publicized until shortly after the kidnapping of Milosevic, almost surely as a public-relations demonstration of the ICTY’s even-handedness.[152] This was necessary, given the scale of Operation Storm—ignoring it altogether would have been an admission of extreme bias, perhaps too much even for the ICTY to manage. Not only was Tudjman never indicted, in a kindly gesture Carla Del Ponte informed Croat leaders of the

still-sealed indictment of Gotovina, giving other Croats time to wash their hands of Gotovina and Gotovina a chance to flee—a gesture that is never extended to Serbs, where very frequently the target of the secret indictment has been seized in raids by NATO troops.[153] Nevertheless, the Croats have been very angry with the ICTY for “betraying” them in the interest of apparent balance, especially in light of the fact that the patron of the ICTY (the United States) was itself an active participant in Operation Storm, and Gotovina’s counsel is sure to raise this close alliance if Gotovina is ever actually tried.

In the case of Naser Oric, it took the ICTY a decade before it got around to indicting him,[154] although his murderous record was clear and the videos he showed reporters of his beheaded Serb victims had belonged to the public record, along with much other evidence, for the entire period. Furthermore, the indictment charged Oric only with abusing eight prisoners, although the evidence of his command-role in hundreds of killings of civilians was solid and long known. His term of imprisonment was modest, although he was an active and direct killer who as General Philippe Morillon said in his testimony to the ICTY, didn’t take prisoners (i.e., he executed all captives).[155]

The key legal concept used by the ICTY to deal with Milosevic’s alleged criminality over not only Kosovo but also—belatedly—Croatia and Bosnia, is the “joint criminal enterprise” (JCE). This concept does not appear in the ICTY Statute or in law tradition—it was an original concoction to fit the needs of this trial. WTE states that “A joint criminal enterprise is a doctrine of liability whereby the accused is individually responsible if he acts in concert with others pursuant to a common criminal purpose with the same criminal intent.”[156] In the ICTY version, the individual doesn’t have to jointly plan with his fellow criminals, and doesn’t even have to know what they are doing, let alone control their activities. The common purpose can be inferred from the fact that they are all fighting a common enemy, and those doing so are collectively guilty. The common “criminal purpose” can even be imputed from this—in the Milosevic trial the alleged quest for a “Greater Serbia,” which can be inferred from the efforts Milosevic made to help Serbs who were losing the protection of a Yugoslav nation to join together in a lesser entity. Thus, if Milosevic was despised by the Bosnian Serbs for his willingness to accept a string of proposed agreements that would have left them outside Serbia, and for even imposing a boycott on them to induce them to sign one such agreement,[157] and the Croatian Serbs were furious at him for failing to help them as they were ethnically cleansed under Operation Storm, still he was occasionally supporting them, along with the Serbs in Kosovo. Hence he was guilty of acting in concert with these other Serb leaders.

It is obvious that this wonderfully expansive concept makes soldiers who are part of an army engaged in warfare potentially all guilty of being members of a joint criminal enterprise, and they have been found collectively guilty, but only when the Serbs do it.[158] Laughland points out that a strong supporter of the Tribunal, William Schabas, “has ridiculed ‘JCE’ as standing for ‘just convict everyone.’”[159] Thus, as we have pointed out, there could be no clearer case of JCE than the commonly planned and executed Operation Storm, as well as the JCE of NATO leaders in attacking Yugoslavia in violation of the UN Charter. These are a much better fit to the JCE concept than the case against Milosevic. But in these cases

NATO or NATO allies were doing the killing or cleansing, so that in this Alice-in-Wonderland tribunal's quest for justice, while the JCE doctrine is perfectly applicable to these major cases in logic, it does not apply in practice. WTE does not have a word of criticism of this doctrine. Nor does it advance any reason of its own to accept it, other than the fact that the Prosecution happened to make it,[160] and the Appeals Chambers ultimately accepted it.[161]

WTE displays its bias further by alleging Milosevic's "frequent courtroom grandstanding,"[162] a charge that the establishment narrative has always used to help explain the length of the trial as well as to denigrate the villain. Carla Del Ponte's periodic wild public statements condemning the man still to be tried, or her appearance before Goldman Sachs-London, begging for money on the grounds that ICTY-style justice will help create a favorable climate of investment,[163] and her apologetics for Operation Storm, are of course unmentioned.[164] The repeated showing of a BBC film *The Death of Yugoslavia*, "on which the prosecution relied very heavily to make its case" (Laughland), is ignored, and WTE fails to note the numerous times that Geoffrey Nice orated at length without relevance to the charges—Laughland points out that in his opening statement, Nice "had a highly emotive and unverifiable story about a baby crying itself to death during the Bosnian war, absurdly claiming that 'of course' Milosevic knew about this." [165] Nice was given a free hand, while Milosevic was subjected to a stream of interruptions and arbitrary cut-offs by an extremely hostile and impolite Judge May.[166] Most important, May allowed the prosecution to bring on a vast number of witnesses and "experts" offering hearsay or irrelevancies at great length. This resulted from the fact that this was a highly political case, not one dealing with soldiers committing war crimes (the main thrust of laws of war), with the Milosevic indictment almost surely extended to Bosnia and Croatia for fear that with Kosovo alone it would be difficult to answer why NATO's war crimes in its bombing war did not constitute a "joint criminal enterprise" as much as the Serb war that followed the NATO attack. But the prosecution had not tied Milosevic to the Bosnia/Croatia wars previously, and were grievously unprepared in this political proceeding in which they found guilt first—in fact, knew it back in 1992!—but then a decade later still struggled to find the evidence.

Concluding Note

While it has often done valuable service, HRW has failed badly in dealing with the disintegration of Yugoslavia. It supported that dismantlement, its leaders arguing that this would help minorities. They were wrong and thus their stance contributed to an escalation of human rights abuses. Their claim that justice must be given greater weight than peace-making fed into the interests of those eager for war and had disastrous effects on all the "nations" of the former Yugoslavia. Their claim that justice must come first in order to deliver peace of mind to the victims and as essential for peace and reconciliation, which follows the ICTY party line, is untenable and hypocritical in the light of ICTY and HRW practice. A focus on justice merges easily into vengeance and feeds antagonism and hostility, particularly when carried out in a one-sided fashion. The first Milosevic indictment listed 344 Kosovo Albanian victims, so presumably their relatives needed "justice," but as noted earlier the ICTY found that 495 Serb victims of NATO bombing did not provide a

sufficient “crime base” for any action, so how are the families of these victims to obtain justice? Where is the justice for the victims of Operation Storm, or the scores of thousands of Serbs and Roma ousted from the Kosovo under NATO control? (Serbia has had to deal with more refugees than any other area in the former Yugoslavia .)

If the Serbs feel—and we believe are fully justified in feeling—that they have been victims of a Great Power assault based on geopolitical considerations, and subjected to extreme and politicized discrimination in the workings of the ICTY, the show trial of their leader will hardly make them more peace-minded. That show trial was also a “travesty” in terms of substance. If it was to educate Serbs by instructing them about their leaders’ guilt, it failed abysmally, and not just because it was managed incompetently. It failed because, at bottom, it was a political trial in which the political case was not only unsustainable, but was shown to be trying the lesser villains—the bigger ones being those guilty of the “supreme international crime”—and it revealed itself throughout to be a “rogue court” serving the bigger villains, violating every legal principle, and moving inexorably toward the pre-determined finding of guilt.

Sadly, HRW has played an important role in this travesty and has therefore been an important contributor to human rights violations in the former Yugoslavia . HRW helped stir up passions in the demonization process from 1992 onward and actively and proudly contributed to preparing the ground for NATO’s “supreme international crime” in March 1999. It has conveniently assumed “neutrality” on matters of aggression, though WTE focuses on Serbia’s cross-border aid to the Bosnian and Krajina Serbs as something to be strongly condemned—so it ceases to be neutral on aggression when the Serbs can be targeted, although, with a droll application of the double standard, U.S. and Croatian aid to their allies in Bosnia are exempt from criticism. There are no holds barred in finding against the bad guys, just as our side only makes regrettable mistakes. This human rights group is even completely oblivious to the violation of Slobodan Milosevic’s human rights as a prisoner. Indicted Croats are exempted from being put on trial for ill health,[167] indicted Kosovo Albanians are released from Hague incarceration to return to campaign for office in Kosovo,[168] but Milosevic, a very sick man, was not released to get medical attention in Moscow even with Russian assurances of his return.[169] His death just 16 days after this rejection was regretted by Carla Del Ponte because “It deprives the victims of the justice they need and deserve”[170]—but WTE and HRW have no word of criticism for this improper treatment. They are on the team with Carla Del Ponte and the Western establishment.

In the past, two of the present authors have compared the Milosevic trial to the Moscow show trials of the late 1930s.[171] Recalling the Dewey Commission of Inquiry’s conclusion that the Moscow trials “served not juridical but political ends,” we observed that, among the parallels between these trials and the bodies conducting them, one that stands out is their public-relations function, and, more broadly, their drafting of a historical record that serves the needs of the dominant political faction, even if executed in juridical form. Here we add the observation that Human Rights Watch’s *Weighing the Evidence* concludes its summary of the Prosecution’s case against Milosevic in the same place where it begins, with the affirmation that, going forward, “Trials of high-level suspects will be important for the

documentation of events and the role and responsibility of various actors, irrespective of any conclusion relating to the defendant's guilt or innocence." [172] If this is true, and if we allow the Milosevic trial and the ICTY to become our models for "international justice," then both the historical record and human rights will suffer damaging blows.

Appendix: The "Scorpions" and the Serbian Police

Neither the execution videotape [A1] nor any of the other evidence presented during the trial of Slobodan Milosevic substantiated the prosecution's claim—now repeated by WTE—that the Scorpions were "acting under the aegis of the Serbian police." [A2]

In fact, the most detailed evidence about the Scorpions to have emerged at the trial occurred nearly two years earlier, during the testimony of prosecution witness Milan Milanovic, a former deputy defense minister of the Republika Srpska Krajina.

Milanovic is a witness on whose word HRW attaches great weight. [A3] When asked by the Prosecution under whom the Scorpions served (i.e., "were subordinated") during the period they were active in the Bihac Pocket, Milanovic replied: "They were subordinated to the command of the army of the Republic of Serbian Krajina ." [A4] Asked for a second time under whom the Scorpions were subordinated when they subsequently went to Trnovo in eastern Bosnia , Milanovic replied: "To the MUP of the Republika Srpska." [A5]

Later, during Milanovic's cross-examination by Slobodan Milosevic, the following exchange took place: [A6]

Milosevic: Did you engage them [the Scorpions] in your area?

Milanovic: I proposed to the director of the oil company that they secure the oil fields that were on the separation lines....I proposed Slobodan Medic as the person who should be in charge of that security, and then they were under the director of the oil company.

Milosevic: So this was a security unit for the oil company, the head of which you yourself proposed?

Milanovic: Correct....

Milosevic: But you also sent them to Bosnia and Herzegovina , didn't you?

Milanovic: I didn't send them. The command of the corps sent them to accomplish various assignments, and most of those units that went outside the area I would visit very frequently.

Milosevic: Very well. So the government sent them.

Milanovic: Yes, the government and the army command.

So the Scorpions were recruited by the government of the Republika Srpska Krajina to protect the oil fields. Milanovic, a prosecution witness with no love for the government of Serbia , made no claim about the Scorpions serving under the command of (or having been "subordinated" to) the Serbian MUP. It was the Srpska Krajina government that sent the Scorpions into Bosnia .

Shortly thereafter, Milanovic explained that in 1999, while NATO was bombing Serbia , the Scorpions wanted to go to Kosovo. According to Milanovic's testimony:[A7]

[A]fter the NATO attack on the Federal Republic, seven, eight, or ten days after that he [Slobodan Medic] called me up and told me that he'd rather not go as a reservist to the army of Yugoslavia but as a member of MUP. At the same time...I was called up by General Djordjevic, the head of the public security, saying that he needed volunteers. So I didn't know what to do for three or four days, whether to send him or not, because everything was being monitored. I didn't know whether I should get in touch with the two of them, and three or four days later I did establish—link the two of them up, and two or three days later he went to Kosovo.

Milosevic then asked Milanovic: "Was he returned from there following General Djordjevic's orders? He demanded that he return?" And Milanovic replied: "Yes. He was returned, but he went back and stayed until the end of the bombing raids." [A8]

Again, we emphasize that Milanovic never made any claim about the Republic of Serbia 's MUP. Were the Scorpions already a unit of the Serbian MUP, it would have made no sense for the Scorpions to ask Milanovic to arrange for them to be sent to Kosovo as members of the Republic of Serbia's MUP.

Appendix Notes

A1. For the passage where Prosecution Geoffrey Nice presents the alleged “Scorpions video,” see [Milosevic Trial Transcript, June 1, 2005](#), pp. 40275 ff.

A2. Sara Darehshori, [Weighing the Evidence: Lessons from the Slobodan Milosevic Trial](#), Human Rights Watch, December, 2006, p. 14.

A3. WTE mentions Milan Milanovic’s name 16 different times.

A4. [Milosevic Trial Transcript, October 14, 2003](#), p. 27431.

A5. *Ibid.* “MUP” denotes *Ministarstvo Unutrašnjih Poslova*, meaning in this instance the Ministry of the Interior of the Republika Srpska—not the MUP of the Republic of Serbia , i.e., under the command of Belgrade and Slobodan Milosevic.

A6. [Milosevic Trial Transcript, October 14, 2003](#), pp. 27493 – 27494.

A7. [Milosevic Trial Transcript, October 14, 2003](#), pp. 27494 – 27495.

A8. [Milosevic Trial Transcript, October 14, 2003](#), p. 27495.

Endnotes

1. *U.S. Helsinki Watch Committee: The First Fifteen Months* (U.S. Helsinki Watch Committee, 1980), pp. 3. “[H]uman rights provisions” referred to Article VII of the [Declaration on Principles Guiding Relations between Participating States](#) (a.k.a. the [Helsinki Final Act](#)), adopted at the First Summit of the Conference on Security and Cooperation in Europe in Helsinki on August 1, 1975. Article VII affirmed among other things that “participating States will respect human rights and fundamental freedoms,” and “act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights [and] the International Covenants on Human Rights, by which they may be bound.” The other nine articles largely reaffirmed the principles set out in the UN Charter (e.g., the sovereign equality among States (I), refraining from the threat or use of force in international affairs (II), the peaceful settlement of disputes (V), the non-intervention in the internal affairs of other States (VI), and so on (pp. 3-8)). (Also see note 47, below.)

2. Orville Shell, quoted in Dusko Doder, “Helsinki Watch Unit Set Up To Monitor U.S. on Rights,” *Washington Post*, March 18, 1979.

3. *U.S. Helsinki Watch Committee: The First Fifteen Months*, p. 4. Among the activities highlighted by this document (pp. 9-19), fundraisers, lobbying, and publishing efforts on behalf of Soviet bloc dissidents featured the most prominently, and a mark of distinction attached to expressions of solidarity with figures running afoul of Soviet, Czech, and Polish authorities. One Helsinki Watch op-ed that appeared in the June 16, 1979 *New York Times*

was quoted: "Soviet leaders should be told in Vienna that until the legitimate rights of the Helsinki monitors are restored, the fulfillment of another goal of the Helsinki Accords—the granting of most-favored-nation-status—is out of the question" (p. 12). Notwithstanding its pledge to monitor "domestic compliance" to Article VII standards, the U.S. Helsinki Watch Committee was organized around monitoring the Soviet bloc above all.

4. One of the major players within the network of Western-based non-governmental organizations, HRW has strong linkages with both the U.S. foreign policy establishment and George Soros' operations. Within the past six years, HRW's Europe and Central Asia Advisory Board has included U.S. State Department veteran Morton Abramowitz, the former Voice of America/Radio Liberty head Paul Goble, former Republican congressman Bill Green, and former U.S. ambassadors Warren Zimmerman (Yugoslavia), Jack Matlock (Soviet Union), and Herbert Okun (United Nations). By 2005, Okun alone was left from that group. As of 2006, HRW's 33 member Board of Directors included Lloyd Axworthy, a former Foreign Minister of Canada; Richard Goldstone, a former South African judge and chief prosecutor at the ICTY; Vartan Gregorian, the Carnegie Corporation's President; James Hoge, editor of *Foreign Affairs*; Kati Marton, the wife of Richard Holbrook; and a number of business executives, lawyers, academics, and rights activists. George Soros has served on the HRW advisory boards for both the Americas and Europe-Central Asia for many years; and several of his associates do likewise, such as Gara LaMarche (U.S.) and Peter Osnos (Europe-Central Asia —Osnos is also a HRW Board of Directors emeritus). An Open Society Institute annual report speaks of its "partnership" with HRW, which is "of enormous importance to the Soros foundations: the relationships with grantees that have developed into alliances in pursuing crucial parts of the open society agenda." (See [Building Open Societies: Soros Foundation Network 2005 Annual Report](#), pp. 175-176.) Although we can only touch on this topic here, the overlap between a whole network of like-minded political, media, and human rights organizations throughout the Balkans and Eastern Europe, and Soros- and OSI-funded groups such as HRW and the International Crisis Group, is substantial. For a glimpse at some of them, see Gilles d'Aymery, "[The Circle of Deception: Mapping the Human Rights Crowd in the Balkans](#)," *Swans*, July 23, 2001; Andrew Bolt, "Justice for Sale," *Herald Sun* (Melbourne), June 20, 2002; Paul Treanor, "[Who is behind Human Rights Watch?](#)" 2004; and Neil Clark, "[NS Profile-George Soros](#)," *New Statesman*, June 2, 2003.

5. Whatever its origins, HRW has turned itself into a very profitable nonprofit enterprise. According to HRW's [Annual Report 2006](#) (the most current at this time), for the fiscal year ended June 30, 2006, HRW reported revenue of \$39.8 million, of which \$31.5 million derived from donations ("public support"). With expenses reported at \$30.2 million (including programs, salaries, and supporting services), HRW thus earned some \$9.6 million during the period in question. (See "Financial Information," pp. 52-56.) Turning to HRW's financial supporters, we read that for the 12 month period through March 2006, HRW had 57 donors of \$100,000 or more; these included a wide array of wealthy individuals and business people (9 of whom remained anonymous), and many foundations (Annenberg, Ford, Hewlett, McArthur, Merck, Mott, the Open Society Institute, and the Sandler Family). Another 102 donors gave between \$25,000 and \$99,999; and scores of others gave between \$5,000 and \$24,999. (See pp. 62-65.) The exact amounts given in each case are not reported. But it is of interest that Soros' Open Society Institute gave HRW \$1 million (as reported in its own annual report: see [Building Open Societies: Soros Foundation Network 2005 Annual Report](#), where HRW is described as a "longtime" OSI grantee (p. 172)). George Soros' name is listed separately as another HRW contributor of over \$100,000. Indeed, each of the last five *Annual Reports* archived by the HRW website in electronic form ranks both Soros and the

OSI among the “\$100,000 or more” donors. (See [2001](#), p. 38; [2002](#), p. 50; [2003](#), p. 40; [2005](#), p. 63; and [2006](#), p. 62.) Although HRW’s funding is broadly based, there is a top-heavy concentration among the very wealthy, corporate, and establishment foundations, and Gorge Soros and the OSI figure prominently.

6. In one notorious editorial about its “unsettled business with Americas Watch,” the *Wall Street Journal* echoed Reaganite rhetoric and accused the organization of siding with Cuba and Russia against the United States. “[T]he moral authority they won with Helsinki Watch in support of human rights in the Soviet Union and East Europe they have squandered in Latin America,” the editorial concluded. “We admit that we are not pristinely apolitical. We tend to give a benefit of doubt to those resisting totalitarianism rather than to those spreading it. Americas Watch does the opposite, and calls it apolitical.” “‘Universal Standards’,” August 17, 1984. Unfortunately, the HRW website archives very little prior to 1990. So what by far was the organization’s (i.e., Americas Watch) most important work in monitoring U.S. violations of Article VII standards is not available in electronic form.

7. Kenneth Roth, “[Indict Saddam](#),” *Wall Street Journal*, March 22, 2002.

8. On the illegality of aggressive war, see [Final Judgment of the International Military Tribunal for the Trial of German Major War Criminals](#) (September 30, 1946), specifically “[The Common Plan or Conspiracy and Aggressive War](#),” from which this passage derives.

9. Fred Abrahams, “[The West Winks at Serbian Atrocities in Kosovo](#),” *International Herald Tribune*, August 5, 1998.

10. See Thomas J. Nagy, “[The Secret Behind the Sanctions: How the U.S. Intentionally Destroyed Iraq’s Water Supply](#),” *The Progressive*, September, 2001; and Joy Gordon, “[Economic Sanctions as a Weapon of Mass Destruction](#),” *Harper’s Magazine*, November, 2002. Note that as early as June, 1991, the *New York Times* was reporting that the “Bush Administration’s internal findings” on the damage inflicted to Iraq’s infrastructure had concluded that “Iraq has, for some time to come, been relegated to a pre-industrial age, but with all the disabilities of post-industrial dependency on an intensive use of energy and technology.” Patrick E. Tyler, “U.S. Officials Believe Iraq Will Take Years to Rebuild,” *New York Times*, June 3, 1991. Summing up the U.S. targeting strategy during the 1991 war, the *Washington Post* reported that “its purposes and selection of targets” were less military in nature than civilian: Namely, “disabling Iraqi society at large.” The *Post* continued: “The worst civilian suffering, senior officers say, has resulted not from the bombs that went astray but from precision-guided weapons that hit exactly where they were aimed—at electrical plants, oil refineries and transportation networks.” In the words of a confidential source who “played a central role in the air campaign,” so-called “Strategic bombing...strikes against ‘all those things that allow a nation to sustain itself’.” Barton Gellman, “Allied Air War Struck Broadly in Iraq ; Officials Acknowledge Strategy Went Beyond Purely Military Targets,” *Washington Post*, June 23, 1991.

11. John Mueller and Karl Mueller, “[Sanctions of Mass Destruction](#),” *Foreign Affairs*, May/June, 1999. “The destructive potential of economic sanctions can be seen most clearly, albeit in an extreme form, in Iraq,” the authors note. “It is interesting that this loss of human life has failed to make a great impression in the United States.”

12. Madeleine Albright to Lesley Stahl, “Punishing Saddam,” *60 Minutes*, CBS TV, May 12, 1996. Their exchange went exactly as follows: *Stahl*: “We have heard that a half a million children have died. I mean, that’s more children than died when-wh-in-in Hiroshima. And-and, you know, is the price worth it?” *Albright*: “I think this is a very hard choice, but the price—we think the price is worth it.”

13. The closest that HRW ever came to treating the “sanctions of mass destruction” with the gravity that an advocate for human rights should was under the entry for “[Iraq](#)” in its [World Report 1997](#) and, later, in two documents addressed to the members of the UN Security Council that argued for a restructuring of the sanctions so as to reduce their human impact and help rebuild the civilian economy. See Hanny Megally, “[Letter to United Nations Security Council](#),” Human Rights Watch, January 4, 2000; and “[Explanatory Memorandum Regarding the Comprehensive Embargo on Iraq](#),” Human Rights Watch, January, 2000. Even the “United Nations was bound by customary norms of international humanitarian law,” the 1997 entry stated, noting explicitly that “Article 54 of Protocol I to the 1949 Geneva Conventions prohibits the use of starvation of civilians as a method of warfare.” “The Security Council must share responsibility for the enormous impact of the measures it has imposed on the well-being of Iraq’s population,” the *Explanatory Memorandum* argues. “The Council must do all within its reach to remove itself as a party to this destructive and deadly dynamic by ensuring that its actions lie well within the parameters established by basic humanitarian principles.” This later intervention also pointed out the overwhelming role of a “single country” (the United States) in blocking humanitarian relief efforts. But this clearest and most dramatic case in modern times of the use of sanctions as a method of warfare to deprive Iraqi civilians of life and liberty was never accompanied by calls for referral to the International Court of Justice or an *ad hoc* tribunal to bring to justice the political leadership of the states most responsible for their multi-year enforcement. Instead, in keeping with familiar priorities, HRW took the occasion to remind the Council to “take immediate steps towards the long overdue establishment of an international criminal tribunal that would indict and, to the extent possible, try those individual Iraqi officials and former officials credibly reported to be responsible for acts of genocide, war crimes, and crimes against humanity.” (“[Explanatory Memorandum Regarding the Comprehensive Embargo on Iraq](#),” January, 2000.)

14. We note that in Kenneth Roth’s approximately 1,140 word commentary, he used the word ‘genocide’ to describe the practices of the Baghdad regime no fewer than eight different times, but the effects of the sanctions regime not so much as once.

15. According to a team of researchers headed by Gilbert Burnham of the Bloomberg School of Public Health at Johns Hopkins University, in the 40 months between the start of the U.S. war in March 2003 and when the research was concluded in July 2006, 654,965 Iraqis may have died as a result of the war, 91.8 percent of them (or 601,207 in all) due to violent causes. See Gilbert Burnham et al., “[The Human Cost of the War in Iraq: A Mortality Study, 2002-06](#),” *The Lancet*, Vol. 368, No. 9544, October 14, 2006 (as posted to the website of the Center for International Studies, MIT).

16. As Garlasco told the *Washington Post*: “The methods that they used are certainly prone to inflation due to overcounting....These numbers seem to be inflated.” Rob Stein, “100,000 Civilian Deaths Estimated in Iraq,” *Washington Post*, October 29, 2004. For the original research to which Garlasco was responding, see Les Roberts et al., “[Mortality before and after the 2003 invasion of Iraq: cluster sample survey](#),” *The Lancet*, Vol. 364, No. 9448, November 20, 2004 (as posted to the Count The Casualties website).

17. Lila Guterman, “[Lost Count](#),” *Chronicle of Higher Education*, February 4, 2005.

18. According to Ewa Tabeau and Jakub Bijak, two researchers employed by the Demographics Units at the International Criminal Tribunal for the Former Yugoslavia, the total “number of war-related deaths in Bosnia and Herzegovina [was] 102,622 individuals, of which 47,360 (46%) [were] military victims and about 55,261 (54%) [were] civilian war-related deaths.” See “[War-related Deaths in the 1992-1995 Armed Conflicts in Bosnia and Herzegovina: A Critique of Previous Estimates and Recent Results](#),” *European Journal of*

Population, Vol. 21, June, 2005, p. 207. (Also see note 32, below.)

19. See Michael Mandel, *How America Gets Away With Murder: Illegal Wars, Collateral Damage, and Crimes Against Humanity* (Pluto Press, 2004), pp. 3-28, where the inherent criminality of aggressive war is discussed at length. In an argument diametrically opposed to HRW, Mandel quotes Robert H. Jackson, the Chief Prosecutor at Nuremberg: "Any resort to war—any kind of war—is a resort to means that are inherently criminal. War inevitably is a course of killings, assaults, deprivations of liberty, and destruction of property. An honestly defensive war is, of course, legal and saves those lawfully conducting it from criminality. But inherently criminal acts cannot be defended by showing that those who committed them were engaged in a war, when war itself is illegal" (p. 6). See [Nuremberg Trial Proceedings, Second Day](#), November 21, 1945, Transcript pp. 145-146.

20. "[Human Rights Watch Policy on Iraq](#)," ca. late 2002 or early 2003. This scandalous disavowal of interest in an imminent "supreme international crime" continued: "As in the case of other armed conflicts, Human Rights Watch thus does not support or oppose the threatened war with Iraq. We do not opine on whether the dangers to civilians in Iraq and neighboring countries of launching a war are greater or lesser than the dangers to U.S. or allied civilians—or, ultimately, the Iraqi people—of not launching one. We make no comment on the intense debate surrounding the legality of President George Bush's proposed doctrine of 'pre-emptive self-defense' or the need for U.N. Security Council approval of a war."

21. In Craig R. Whitney, "Hands Off: The No Man's Land in the Fight for Human Rights," *New York Times*, December 12, 1999.

22. See "[ICTY: Milosevic Trial Exposed Belgrade's Role in Wars](#)," Human Rights Watch Press Release, December 14, 2006.—Part 3 of this paper is devoted to an analysis of *Weighing the Evidence*.

23. See Kenneth Roth, "Why justice needs NATO," *The Nation*, September 22, 1997; Kenneth Roth, "[Human Rights Watch Calls on Yugoslav War Crimes Tribunal to Investigate Possible War Crimes in Kosovo](#)," March 7, 1998.

24. Discussed in Part 3, but documented at length in John Laughland *Travesty: The Trial of Slobodan Milosevic and the Corruption of International Justice* (Pluto Press, 2007), *passim*; and Mandel, *How America Gets Away With Murder*, Part II.

25. Laughland, *Travesty*, pp. 70-71; and Mandel, *How America Gets Away With Murder*, pp. 148-149.

26. See the discussion of "collateral damage" in Mandel, *How America Gets Away With Murder*, pp. 46-56.

27. This is well illustrated by the rate of Israeli and Palestinian casualties, which for years, and during the first intifada, ran at 1-25, dropping to 1-3 during the second intifada. See James Bennet, "Mideast Turmoil: News Analysis; Mideast Balance Sheet," *New York Times*, March 12, 2002.

28. Marc W. Herold, "[Is One-Third of the Truth, the Whole Truth? Counting by Human Rights Watch](#)," July 28, 2002. (Or see the several documents archived on [Marc Herold's webpage](#) at the University of New Hampshire.)

29. Richard Dicker, "[Milosevic Won't Escape History's Verdict](#)," *International Herald Tribune*, March 13, 2006.

30. [World Report 2007](#) (Human Rights Watch, 2007), p. 368. (Or see the electronic entry for "[Bosnia and Herzegovina](#).")

31. See "[Status of the Database by Centers](#)," a webpage updated monthly by the Research and Documentation Center. As of December 2006, the RDC's estimate stood at 97,826.

Here we simply note the contrast with Richard Dicker's "hundreds of thousands killed."

32. Kenneth Roth, "[Fight the Good Fight](#)," *The Guardian*, October 22, 2002.

33. Mandel, *How America Gets Away With Murder*, p. 184.

34. See Amnesty International, "[Collateral Damage](#)" or *Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force*, June, 2000, pp. 11-13.

35. Kenneth Roth, "[Indiscriminate Bombardment](#)," *Jerusalem Post*, August 20, 2006. Also see Peter Bouckaert and Nadim Houry, [Fatal Strikes: Israel's Indiscriminate Attacks Against Civilians in Lebanon](#), Human Rights Watch, August, 2006.

36. "[Lebanon/Israel: Hezbollah Hit Israel with Cluster Munitions During Conflict](#)," Human Rights Watch Press Release, October 19, 2006. According to this report, "Hezbollah launched cluster attacks that were at best indiscriminate, i.e., they violated the principle of distinction by using unguided and highly inaccurate cluster munition models against populated areas. At worst, Hezbollah deliberately attacked civilian areas with these weapons." The total number of attacks for which HRW singled out Hezbollah on this occasion was *two*, both taking place on July 25 against the Galilee village of Mghar.

37. Hans Köchler, *Global Justice or Global Revenge* (Springer-Verlag Wien, 2003), p. 294, p. 313.

38. Orville Shell, Robert L. Bernstein, and Aryeh Neier, Letter, *Wall Street Journal*, June 5, 1984. These writers note that their Letter was quoting the same 1984 report that the *Journal* had attacked. For a copy, see *Human Rights in Nicaragua*, Americas Watch, April, 1984, p. 5. And for some excerpts from this report, see David Peterson, "[Something about Human Rights Watch](#)," ZNet, February 24, 2006.

39. For two classic expressions of this U.S.-protective point of view, see Virginia N. Sherry et al., [Needless Deaths in the Gulf War: Civilian Casualties During the Air Campaign and Violations of the Laws of War](#), Human Rights Watch, June, 1991; and Bonnie Docherty and Marc E. Garlasco, [Off Target: The Conduct of the War and Civilian Casualties in Iraq](#), Human Rights Watch, December, 2003.

40. As we show in Part 3, HRW's treatment of Serbia's conduct in Kosovo (i.e., *within Serbia itself*), ca. 1998-1999, remains the exemplary case of this human rights organization's service on behalf of U.S. war objectives.

41. For its strongest statement yet on the issue of command responsibility and torture, see the analysis by HRW Special Counsel Reed Brody, [Getting Away with Torture? Command Responsibility for the U.S. Abuse of Detainees](#), April, 2005.

42. "[US: Mark Five Years of Guantanamo by Closing It](#)," Human Rights Watch Press Release, January 5, 2007.

43. Kenneth Roth appeared as a guest on *Your World Today*, CNN, Transcript 011101CN.V10, January 11, 2007.

44. See Deborah Pearlstein, [Ending Secret Detentions](#), Human Right First, June, 2004; and Deborah Pearlstein and Priti Patel, [Behind the Wire: An Update to Ending Secret Detentions](#), Human Rights First, March, 2005.

45. See Fred Abrahams et al., [Under Orders: War Crimes in Kosovo](#), Human Rights Watch, October, 2001, the "Executive Summary," pp. 3-16.

46. Jeri Laber and Kenneth Anderson, "Why Keep Yugoslavia One Country?" *New York Times*, November 10, 1990.

47. See the [Declaration on Principles Guiding Relations between Participating States](#) (a.k.a. the [Helsinki Final Act](#)), August 1, 1975. As of the date on which the Laber - Anderson commentary appeared in the *New York Times* (indeed, straight through the Dayton Peace Accords of November 21 1995, which formally brought to an end all but one of the internal

wars over the SFRY), the “inviolability of frontiers” (Art. III) and the “territorial integrity of states” (Art. IV) so loudly proclaimed by Helsinki could only refer to the internationally recognized border that separated the SFRY from the other sovereign states that neighbored it—not the internal borders that separated its six republics from one another. For foreign states and non-governmental actors to have regarded the internal republican borders as the relevant “frontiers” under Helsinki principles not only contradicted the actual Declaration at Helsinki, but was a highly provocative interference in the sovereign affairs of the SFRY.

48. Robert M. Hayden, *Blueprints for a House Divided: The Constitutional Logic of the Yugoslav Conflicts* (University of Michigan Press, 1999), pp. 91-92.

49. Robert Hayden, “Don’t Turn Yugoslavia Into Europe’s Lebanon,” Letter, *New York Times*, December 3, 1990.

50. See notes 4 and 5, above.

51. In his book *Collision Course: NATO, Russia, and Kosovo* (Greenwood Publishing Group, 2005), John Norris, a State Department spokesman during the 1999 U.S. war against Yugoslavia, writes that “it was Yugoslavia’s resistance to the broader trends of political and economic reform—not the plight of Kosovar Albanians—that best explains NATO’s war” (p. xxiii). Basically, Norris denies that the Clintonites’ war had anything to do with humanitarian principles—the rhetoric of humanitarianism aside.

52. See Mandel, *How America Gets Away With Murder*, Ch. 4, “The War Crimes Tribunal,” pp. 117-146; and Köchler, *Global Justice or Global Revenge*, esp. the Annex: Memorandum “On the Indictment of the President of the Federal Republic of Yugoslavia...,” pp. 353-356.

53. See, e.g., “[No Kosovo Settlement Without Accountability for War Crimes](#),” Human Rights Watch Press release, February 6, 1999.—The earliest high-profile use of the slogan “no peace without justice” in relation to the former Yugoslavia appears to have been a resolution introduced into the U.S. House of Representatives by Rhode Island’s Patrick J. Kennedy, *War Crimes in Bosnia*, November 20, 1995. — The relevant paragraph stated: “The United States should oppose amnesty for any indicted war criminals. On this anniversary [of the Nuremberg Tribunal], as the world hopes for peace in the Balkans, it is the responsibility of Congress to say unequivocally that there can be no peace without justice.” The very same day, the *New York Times*’s veteran columnist Anthony Lewis recounted a discussion he had had with the ICTY’s Chief Prosecutor Richard Goldstone: “No Peace Without Justice,” it was titled (November 20, 1995). “As the Tribunal’s Chief Justice Richard Goldstone has repeatedly said, there can be no peace without justice,” the *Wall Street Journal* editorialized. “On the 50-year anniversary of the Nuremberg trials, that’s worth remembering” (“Prisoners of Peace,” November 21, 1995). Less than one month later, John Shattuck, the Assistant Secretary of State for Human Rights, picked up the same theme when he noted that one of the positives of the Dayton Accords was its pledge of cooperation with the Yugoslav Tribunal: “There will be no peace without justice.” (“U.S. official: No cooperation on human rights issues by Serbs,” Deutsche Presse-Agentur, December 13, 1995.)

54. See, e.g., Yossef Bodansky, *Some Call It Peace: Waiting for the War in the Balkans* (International Media Corp., 1996); Peter Brock, *Media Cleansing: Dirty Reporting. Journalism and Tragedy in Yugoslavia* (GM Books, 2005); David Chandler, “Western Intervention and the Disintegration of Yugoslavia,” in Philip Hammond and Edward S. Herman, Eds., *Degraded Capability: The Media and the Kosovo Crisis* (Pluto Press, 2000), pp. 19-30; Robert M. Hayden, *Blueprints for a House Divided: The Constitutional Logic of the Yugoslav Conflicts* (University of Michigan Press, 1999); Brendan O’Shea, *The Modern Yugoslav Conflict 1991 – 1995: Perception, deception, dishonesty* (Frank Cass, 2005); David Owen, *Balkan Odyssey* (Harcourt Brace & Company, 1995); Dennison Rusinow, Ed., *Yugoslavia: A Fractured Federalism* (Wilson Center Press, 1988); Susan L. Woodward, *Balkan Tragedy: Chaos and*

Dissolution After the Cold War (The Brookings Institution, 1995); Warren Zimmerman, *Origins of a Catastrophe* (Random House, 1996).

55. These sweeping charges represent an amalgam of the no fewer than *eight* different indictments and amendments thereof of Slobodan Milosevic *et al.* for Serb conduct in Kosovo ([May 22, 1999](#); [June 29, 2001](#); and [October 29, 2001](#)), Croatia ([October 8, 2001](#); [October 23, 2002](#); and [July 28, 2004](#)); and Bosnia and Herzegovina ([November 22, 2001](#); [November 22, 2002](#)).

56. Among the ceasefires and peace proposals that Milosevic supported were the Brioni Pact of 1991, the Vance Plan of 1991, the Cutileiro (or Lisbon) Plan of 1992 (vetoed by the Bosnian Muslims), the Vance-Owen Plan of 1993 (a plan eventually sabotaged by U.S. authorities, as Owen describes in his memoirs), the Owen-Stoltenberg Plan of 1993 (vetoed by the United States), the European Action Plan of 1993 (also sabotaged by the United States), the Contact Group Plan of 1994, the extension of the Carter ceasefire beyond May 1, 1995, and, of course, the Dayton process, about which Richard Holbrooke observed of the twentieth, and next-to-last, day, the U.S. was “going to close down in the morning—unless Milosevic could save the negotiations.” See *To End A War* (New York: The Modern Library, Rev. Ed., 1999), pp. 306-312.

57. Writing about the new Clinton Administration’s efforts in early 1993 to kill-off the Vance – Owen Peace Plan, which allocated some 42 percent of Bosnia and Herzegovina to the Pale Serbs, rather than the 49 percent under Dayton, chief negotiator David Owen explains that Alija Izetbegovic withdrew his signature from the plan because “he felt encouraged by US attitudes to hold out for a better deal.” Owen reproduces an excerpt from an early 1993 telegram he sent to an aid in Washington. “We have this Administration briefing the press in a way that could not but stiffen those Muslims who want to continue the war. We have [the Sarajevo Government’s UN Representative Muhamed] Sacirbey openly telling everyone that the US Administration has said they should not feel any need to sign the map.” Later, Owen adds that “The new administration had already made up their mind and were intent on killing off the [Vance – Owen Peace Plan]....They promised to come up with an alternative policy over the next few weeks, but in the meantime seemed intent on killing off a detailed plan backed by all their allies and close to being agreed by the parties. It was by any standard of international diplomacy outrageous conduct.” *Balkan Odyssey*, pp. 111 – 119. —Here we add simply that this was in early 1993; the Dayton Peace Accords were not signed until nearly three years later, in late 1995.

58. The Rambouillet Conference was held at the Chateau Rambouillet in France from February 6 – 20, 1999. Its ostensible purpose was to negotiate an interim political settlement to the conflict over the Serbian province of Kosovo. But the conference was held under extreme duress, as at no point were the Serb negotiators free from the threat of military attack by NATO, which six days prior to the conference had issued an Activation Order “authoriz[ing] air strikes against targets on [Federal Republic of Yugoslavia] territory” (January 30, 1999). As the former State Department official George Kenney reported shortly after the war, a “senior State Department official had bragged that the United States ‘deliberately set the bar higher that the Serbs could accept’. The Serbs needed, according to the official, a little bombing to see reason.” See Marc Weller, Ed., *The Crisis in Kosovo 1989 – 1999* (Documents and Analysis Publishing Ltd., 1999), Ch. 15, “The Rambouillet Conference,” pp. 392-474, which includes a copy of NATO’s Activation Order (p. 416); and George Kenney, “[Rolling Thunder: the Rerun](#),” *The Nation*, June 14, 1999.

59. Elaine Sciolino, “U.S. Names Figures It Wants Charged with War Crimes,” *New York Times*, December 17, 1992.

60. [UN Security Council Resolution 808 \(S/RES/808\)](#), February 22, 1993. The exact same phrasing appears as Article 1 of the Statute of the Tribunal. Also see [UN Security Council Resolution 827 \(S/RES/827\)](#), May 25, 1993.

61. [Prosecute Now!](#), Helsinki Rights Watch, August 1, 1993. As this advocacy document explained, “Helsinki Watch’s failure to name other heads of state and top military commanders as defendants in no way is intended to absolve them of responsibility. While we have not presented such information here, we believe that many senior officials should also be found criminally liable for aiding and abetting in the ‘planning, preparation, or execution’ of war crimes.”

62. See [Statute of the International Tribunal Adopted May 25, 1993](#), along with subsequent [updates](#). None of articles 2 through 5, which run the gamut including breaches of the Geneva Conventions of 1949, the laws and customs of war, genocide, and crimes against humanity, so much as mentions the “supreme international crime”—or anything remotely like it.

63. Michael P. Scharf, “[Indicted for War Crimes, Then What?](#)” *Washington Post*, October 3, 1999 (as posted to the Public International Law & Policy Group website).

64. Mandel, *How America Gets Away With Murder*, p. 126.

65. “The Milosevic Case,” in *When People’s Basic Rights Are Trampled*, Human Rights Watch, undated press release.

66. Kenneth Roth, “[Human Rights, American Wrongs](#),” *Financial Times*, July 1, 2002.

67. [Press Conference Given by NATO Spokesman Jamie Shea, May 16, 1999](#).—The very next day, Shea responded to much the same question: “As you know, without NATO countries there would be no International Court of Justice, nor would there be any International Criminal Tribunal for the former Yugoslavia because NATO countries are in the forefront of those who have established these two tribunals, who fund these tribunals and who support on a daily basis their activities. We are the upholders, not the violators, of international law.” ([Press Conference Given by NATO Spokesman Jamie Shea, May 17, 1999](#).)

68. See [Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia](#), Office of the Prosecutor, ICTY, June, 2000, par. 90. Also see the accompanying [Press Statement](#) (PR/P.I.S./510-e), ICTY, June 13, 2000.

69. See Article 18 of the ICTY’s Statute, “[Investigation and preparation of indictment](#)” (1993, 2006). Par. 4 states: “Upon a determination that a *prima facie* case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute.”

70. See Louise Arbour, [Prosecutor of the Tribunal Against Slobodan Milosevic et al.](#) (IT-99-37), Schedules A – G, May 22, 1999. —These schedules list the names of 344 dead Kosovo Albanians whom, in this particular case, constituted a sufficient “crime base” to bring the indictment. As noted, however, the deaths of only the 45 persons named in Schedule A (“Racak,” January 15, 1999) date from prior to the start of NATO’s war.

71. See Amnesty International, “[Collateral Damage” or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force](#), June, 2000, pp. 11-13.

72. Mandel, *How America Gets Away With Murder*, pp. 132-146.

73. Kenneth Roth, “[Human Rights Watch Calls on Yugoslav War Crimes Tribunal to Investigate Possible War Crimes in Kosovo](#),” Press Release, March 7, 1998.

74. George Robertson, [Testimony before the Select Committee on Defense](#), U.K. House of Commons, March 24, 1999, par. 391. Robertson’s exact words were: “Up until Racak earlier

this year the KLA were responsible for more deaths in Kosovo than the Yugoslav authorities had been."

75. Ian Bruce, "Serbs used CIA phone to call in convoy raid," *The Herald* (Glasgow), April 19, 1999; Gregory L. Vistica, "Cyberwar and Sabotage," *Newsweek*, May 31, 1999; "Secret Help for Kosovars," *Intelligence Newsletter*, June 24, 1999; "Western Spy Stampede," *Intelligence Newsletter*, September 9, 1999; Tom Walker and Aidan Laverty, "CIA aided Kosovo guerrilla army," *Sunday Times*, March 12, 2000; "NATO Faces Combat With KLA Forces Which the US Trained and Armed," *Defense and Foreign Affairs Strategic Policy*, February, 2001; Peter Beaumont et al., "'CIA's bastard army ran riot in Balkans'," *The Observer*, March 11, 2001; David Hackworth, "Dodging bullets from home," *Washington Times*, March 17, 2001; James Bissett, "We created a monster," *Toronto Globe and Mail*, July 31, 2001; and Vesna Peric Zimonjic, "Balkans: CIA Probes Possible Kosovo Links to London Blasts," *Inter Press Service*, July 25, 2005.

76. At a news conference held in Washington on July 31, 1995 to publicize a letter signed by 27 non-governmental organizations, HRW Executive Director Kenneth Roth read out from the letter: 'The time has come for multilateral action to end the massacre of innocent civilians in Bosnia. Nothing else has worked. Force must be used to stop genocide, not simply to retreat from it. American leadership, in particular, is required.' In Peter Sisler, "Rights groups call for action in Bosnia," *United Press International*, July 31, 1995; and Dana Priest, "Coalition Calls for Action in Bosnia; Groups Want More Allied Military Force Used 'to Stop Genocide'," *Washington Post*, August 1, 1995.

77. Sara Darehshori, [*Weighing the Evidence: Lessons from the Slobodan Milosevic Trial*](#), Human Rights Watch, December, 2006, p. 77. (Hereafter cited as WTE.) We wrote to Sara Darehshori and the HRW Communications Department, and inquired whether HRW would share with us a list of the people interviewed or consulted during the preparation of WTE. But citing confidentiality, HRW reiterated its policy against making these names public, and declined.

78. See the homepage of the [International Justice Program](#), Human Rights Watch, from which this quote derives.

79. See [IJP Reports](#), which archives material dating as far back as an April 1991 report on the experiences of Argentina. Our data are valid through the December 2006 publication date of *Weighing the Evidence*.

80. Through December 31, 2006. See "Documents by Region," a heading which appears in the right-hand column of the homepage of the [International Justice Program](#). The regions or theaters of interest archived here are: Afghanistan (6); Argentina (14); The Balkans (150); Cambodia (11); Chad ("The Case Against [former President] Hissène Habré, an 'African Pinochet'") (14); "Tchad: L'affaire Habré" (the French-language version of the above); Chile (4); Democratic Republic of Congo (31); Indonesia and East Timor (20); Iraq (95); Rwanda (35); Sierra Leone (57); Sudan (32); and Uganda (12). Note that for the sake of our tabulation here, we counted the number of documents listed under "Chad" once, while excluding the French-language copies listed under "Tchad: L'affaire Habré."

81. Jennifer Trahan et al., [*Genocide, War Crimes and Crimes Against Humanity: A Topical Digest of the Case Law of the International Criminal Tribunal for the Former Yugoslavia*](#), Human Rights Watch, July, 2006, p. ii. Excluded from this list are HRW's annual reports.

82. Fred Abrahams et al., [*Under Orders: War Crimes in Kosovo*](#), Human Rights Watch, October, 2001, p. xix.

83. To cite another example of HRW's advocacy on Balkan issues, we read in a May 1992 commentary that Yugoslavia's wars were the "results of a relentless propaganda campaign, aimed at stirring up old tensions and engineered by Serbia's irresponsible, power-mad leader, Slobodan Milosevic, a communist who turned nationalist to further his own cause....[Milosevic] is involved in an insatiable land grab. Under the pretext of protecting Serbs, his government—using the Yugoslav army and Serbian paramilitary forces—has committed just about every crime against civilians known to international law: summary executions, hostage taking, indiscriminate shelling and destruction of towns and cities, and forcible removal of populations....The United States...must now urge every measure possible to shame and isolate Milosevic, including a call for an international tribunal to investigate Serbia's war crimes." Jeri Laber and Ivana Nizich, "Milosevic's Land Grab," *Washington Post*, May 22, 1992.

84. See Part 1, and notes 30 and 31.

85. See [*Final Report of the Commission for Reception, Truth and Reconciliation in East Timor*](#), esp. Part 6, "The Profile of Human Rights Violations in Timor-Leste, 1974 – 1999" (as posted to the ETAN website). The report itself gives confusing and inconsistent numbers—a problem we cannot address here. But it does provide additional sources, and fn. 7 (p. 5) states in full: "Estimates based on official Portuguese, Indonesian and Catholic Church data suggest an overall magnitude of approximately 200,000 deaths. See, for example, Ben Kiernan, 'The Demography of Genocide in Southeast Asia: The Deathtolls in Cambodia, 1975-79, and East Timor, 1975-80', *Critical Asian Studies* 35(4), 2003, pp. 585-597, and Geoffrey Gunn, *East Timor and the United Nations: The Case for Intervention*, Red Sea Press, Lawrenceville, NJ, 1997, pp. 26-27. On the lower side, see Robert Cribb, 'How Many Deaths? Problems in the statistics of massacre in Indonesia (1965-1966) and East Timor (1975-1980)', in Ingrid Wessel and Georgia Wimhoefer (eds.), *Violence in Indonesia*, Abera-Verl, Hamburg, 2001. John Waddingham offers a review of estimates derived from 'intuitive' and indirect methods: see John Waddingham, 'Timor-Leste Death Toll Claims: a Proposal for Listing and Critical Commentary', Submission to CAVR, 14 July 2003."

86. See "[Asia Watch Calls for International Monitors at Trials for East Timorese](#)," January, 1992, as posted to [IJP Reports](#) on the HRW website.

87. "Making History: Profile of a human rights activist: Richard Dicker," HRW's [Annual Report 2005](#), p. 34.

88. Holbrooke, who was head of the State Department's Bureau of East Asian and Pacific Affairs in the Carter administration, was in charge of U.S. policy toward Indonesia and East Timor in 1977 and 1978, when Indonesian terror and killings reached their peaks, and during which time the United States continued its support of Indonesia and did nothing to curb the violence. In testimony before Congress on December 4, 1979, Holbrooke lied about the origins of the war and Indonesian responsibility for the deaths, telling Congress that the "welfare of the Timorese people is the major objective of our policy toward East Timor"—a blatant lie—and lauded Indonesia for its "humanitarian approach to the Indochinese refugee problem." (See Noam Chomsky, *Toward A New Cold War* (Pantheon, 1982), p. 350 and p. 471.) U.N. Security Council resolutions condemned Jakarta's invasion and occupation, but the Carter-Holbrooke team provided Jakarta with advanced counter-insurgency aircraft, which the Indonesian military employed to bomb and napalm the East Timorese. An Australian parliamentary report later described the period as one of "indiscriminate killing on a scale unprecedented in post-World War II history." See Joseph Nevins, "[First the](#)

[Butchery, Then the Flowers: Clinton and Holbrooke in East Timor](#)," *CounterPunch*, May 16 – 31, 2002 (as posted to the ETAN website).

89. See, e.g., "Holbrooke Speaks," *HRW Update*, Spring 2000. In January 2006, HRW sponsored a "luncheon [in Zurich] for 150 prominent and interested individuals from the banking capital of the world." Among the speakers was "former U.S. Ambassador to the United Nations Richard Holbrooke." See HRW's [Annual Report 2006](#), p. 35.

90. The Kati Marton – Richard Holbrooke couple are pictured together in HRW's [Annual Report 2005](#), p. 65.

91. Roger Cohen, citing Croatian Defense Minister Gojko Susak, "In Towns Taken by Croats, Many Deaths but Few Details," *New York Times*, May 8, 1995.

92. O'Shea, *The Modern Yugoslav Conflict: 1991 – 1995*, p. 187.

93. See, e.g., "[Notification regarding anniversary of Serbs suffering in the aggression of Croatian army on the Serb Krajina in the August 1995](#)," as posted to the [Veritas](#) website (last accessed on February 20, 2007). Here we read that this organization estimated that 1,883 Krajina Serbs had been killed in Operation Storm through August, 1995, and that these included 524 women and 14 children. Also see "Croatian Serb Exodus Commemorated," Agence France Press, Aug. 4, 2004. In the graves around Srebrenica exhumed through 2000, only one of bodies that have been exhumed to date was identified as female.

94. Tim Ripley, *Operation Deliberate Force: the UN and NATO Campaign in Bosnia 1995*, (Centre for Defence and International Security Studies, 1999), p. 192.

95. See [The Croatian Army Offensive in Western Slavonia and its Aftermath](#), Human Rights Watch, July, 1995.

96. Laughland, *Travesty*, Ch. 8, "Witnesses for the Prosecution," pp. 150-175; and Mandel, *How America Gets Away With Murder*, Ch. 5, "The Trial of Milosevic," pp. 147-175.

97. [The Croatian Army Offensive in Western Slavonia and its Aftermath](#), p. 2; pp. 17-18.

98. Ivana Nizich and Holly Cartner, [Impunity for Abuses Committed During "Operation Storm" and the Denial of the Right of Refugees to Return to the Krajina](#), Human Rights Watch, August, 1996, p. 29 ff.

99. *Ibid.*, p. 30.

100. Holly Cartner, "Artificial Symmetry of Atrocity," Letter, *Washington Post*, August 18, 1995.

101. "US snubs Portillo over 'cleansing'," *The Herald* (Glasgow), August 9, 1995; and "Britain angry after US denies 'ethnic cleansing'," *The Independent*, August 9, 1995. "Red Cross officials, United Nations representatives and Western diplomats rejected Mr Galbraith's assessment," *The Independent* reported. "One ambassador described the remark as 'breathtaking'."

102. The U.K. (Richard May, Steven Kay, and Gillians Higgins); the U.S. (Geoffrey Nice); the Netherlands (Michail Wladimiroff); Australia (Timothy McCormack). The lone exception was

amicus curiae Branislav Tapuskovic (a Belgrade Serb).

103. Data as of early 2007. See [Organs of the Tribunal](#), ICTY website.

104. Laughland, *Travesty*, p. 92. Also see Köchler, *Global Justice or Global Revenge?*, p. 354.

105. Laughland cites calls by the ICTY trial chambers for rule “flexibility” and a realistic law that “disregards legal formalities.” He gives a number of examples where the ICTY altered its rules to allow it to achieve its (conviction) aims. *Travesty*, p. 94 and p. 96; and Ch. 5, “Potemkin Justice,” pp. 88-109.

106. John Laughland, *Travesty*, chaps. 4-5.

107. See Antonio Cassese *et al.*, [Annual Report of the International Tribunal for...the Former Yugoslavia \(A/49/342 – S/1994/1007\)](#), ICTY, August 29, 1994, par. 15.—Being the first of the ICTY’s Annual Reports to the UN, its authors were eager to dismiss concerns that the “establishment of the Tribunal might jeopardize the peace process.” They countered: “[T]he Tribunal will contribute to the peace process by creating conditions rendering a return to normality less difficult. How could one hope to restore the rule of law and the development of stable, constructive and healthy relations among ethnic groups, within or between independent States, if the culprits are allowed to go unpunished? Those who have suffered, directly or indirectly, from their crimes are unlikely to forgive or set aside their deep resentment. How could a woman, who had been raped by servicemen from a different ethnic group, or a civilian whose parents or children had been killed in cold blood quell their desire for vengeance if they knew that the authors of these crimes were left unpunished and allowed to move around freely, possibly in the same town where their appalling actions had been perpetrated? The only civilised alternative to this desire for revenge is to render justice: to conduct a fair trial by a truly independent and impartial tribunal and to punish those found guilty. If no fair trial is held, feelings of hatred and resentment seething below the surface will, sooner or later, erupt and lead to renewed violence.”

108. WTE, p. 2; p. 15.

109. WTE, p. 25.

110. WTE, fn. 79, p. 25.

111. [Milosevic Trial Transcript, April 11, 2003](#), p. 19128.—This exchange continued: *Milosevic*: “You hadn’t heard of the takeover of entire brigades and corps and their equipment, weapons, ammunition factories, military factories, airports, and everything else that was in the possession of the JNA and was left behind in those territories? You had none of that in mind?” *Torkildsen*: “I have not looked at that aspect, no” (pp. 19128 – 19129).

112. [Milosevic Trial Transcript, February 5, 2003](#), pp. 15769 – 15770.

113. WTE, p. 9.

114. See, e.g., Daniel Pearl, “Body Count In Kosovo Falls Short Of Feared Total,” *Wall Street Journal*, November 11, 1999; and Daniel Pearl and Robert Block, “Body Count: War in Kosovo Was Cruel, Bitter, Savage; Genocide It Wasn’t,” *Wall Street Journal*, December 31, 1999.

115. We have always believed that a close and honest study of official sources showed that refugee flows both prior to and during NATO’s 1999 bombing war correlated, not with a plan of “systematic forced expulsion” and unambiguous “ethnic cleansing” (HRW), but with

strategic military factors, including the intensity of fighting, the operational presence of the KLA in the various theaters of combat, and the relative density of the national groups living in the areas being contested. Across Kosovo's 29 municipalities, ethnic Albanians did not flee the territory uniformly. Nor were they alone—members of *all* ethnic groups fled areas where fighting took place. Municipalities in different parts of Kosovo where the KLA's presence was thin saw relatively little fighting and therefore little refugee flow. This was particularly true *prior* to the withdrawal of the observers and the start of the bombing campaign. See the report published by the OSCE, [Kosovo/Kosova: As Seen, As Told. The human rights findings of the OSCE Kosovo Verification Mission October 1998 to June 1999](#), esp. Part III, Ch. 14, "Forced Expulsion," pp. 146-162; and Part V, "The Municipalities," pp. 226-585. Also see the treatment of this matter in Noam Chomsky, *A New Generation Draws the Line: Kosovo, East Timor and the Standards of the West* (Verso, 2000), p. 114 ff. Chomsky summarized the work of former *New York Times* reporter David Binder, who "notes 'a curiosity' documented in the OSCE report: 46 percent of the Albanians left Kosovo during the bombing, along with 60 percent of the Serbians and Montenegrins. Thus, 'proportionately more Serbs were displaced during the bombing, and they did not return to Kosovo'" (p. 114).

116. WTE, p. 10.

117. Jan Oberg, "[UN Broke in Kosovo](#)," PressInfo 86, Transnational Foundation for Peace and Future Research, February 7, 2000.

118. See "[Ex-Yugoslavia: Srebrenica Indictees Still at Large](#)," HRW, June 13, 2005.

119. WTE, p. 14.

120. [Milosevic Trial Transcript, June 1, 2005](#), p. 40278.—As Kay stated: "We haven't established any foundation for this. To my mind, this looks like sensationalism. There are no questions directed to the witness on the content of that film in a way that he can deal with it. It's merely been a presentation by the Prosecution of some sort of material they have in their possession that has not been disclosed to us and then it has been shown for the public viewing without any question attached to it. It's entire sensationalism. It's not cross-examination."

121. Although the "Scorpions" video was never admitted into the evidence at trial—a fact conceded without comment by WTE (p. 14)—its contribution to ICTY propaganda was enormous. Chief Prosecutor Carla Del Ponte seized on its showing to repeat her demand for the arrest of the Bosnia Serbs Radovan Karadzic and Ratko Mladic, and on a trip to Sarajevo, told the Mothers of Srebrenica Association: "I have other video material but as you know, it is public only when we can provide it in the court during the trials"—uncorroborated allegations repeated without challenge. (Samir Krilic, "Chief prosecutor of U.N. war crimes tribunal says court has more video material on killings," Associated Press, June 3, 2005). News coverage of the "Scorpions" video event owed everything to the Prosecution at the ICTY, according to whom each incident, however great or small—including the execution of a number of male prisoners at Trnovo on or about July 17, 1995—is alleged to be linked to every other incident under the concept of a "joint criminal enterprise." (See our discussion elsewhere in Part 3.)

122. See Bill Schiller, "Muslims' hero vows he'll fight to the last man," *Toronto Star*, January 31, 1994; John Pomfret, "Weapons, Cash and Chaos Lend Clout to Srebrenica's Tough Guy," *Washington Post*, February 16, 1994; and Bill Schiller, "Fearsome Muslim warlord eludes Bosnian Serb forces," *Toronto Star*, July 16, 1995.

123. See [Memorandum on War Crimes and Crimes and Genocide in Eastern Bosnia \(Communes of Bratunac, Skelani and Srebrenica\) Committed Against the Serb Population from April 1992 to April 1993 \(A/48/177 - S/25835\)](#), May 24, 1993.

124. See Tabeau and Bijak, fn. 12, p. 213, where they explain the method by which they reached their provisional estimate of 16,700 war-related Bosnian Serb civilian deaths.

125. Laughland, *Travesty*, p. 83.

126. For Milosevic's opening statement at trial, see [Milosevic Trial Transcript, February 14, 2002](#); and [Milosevic Trial Transcript, February 15, 2002](#).

127. Tanja Subotic, "Bosnian minister urges action on war crime videos," AFP, August 8, 2006; "TV shows footage of ex-Bosnian army chief ordering torching of Serb villages," BBC Worldwide Monitoring, August 7, 2006.

128. Vince Crawley, "[U.S. Welcomes Cooperative Inquiry of New Balkans War Videos](#)," *Washington File, U.S. Department of State*, August 16, 2006.

129. Tanja Subotic, "Bosnian Serbs file charges against ex-Muslim general," Agence France Presse, August 10, 2006.

130. Anton Nikiforov, [ICTY Weekly Press Briefing, August 9, 2006](#).

131. For Tudjman, see Graham Blewitt, OTP, "[ICTY Weekly Press Briefing](#)," November 8, 2000; and Paul Lashmar et al., "The Tudjman Tapes—Secret recordings link dead dictator to Bosnia crimes," *The Independent*, November 1, 2000; and for Izetbegovic, see Mirko Klarin, "[Izetbegovic Investigated](#)," Institute for War and Peace Reporting, November 5-10, 2001.

132. WTE, p.1, p. 5.

133. WTW, footnotes 5, 6, 7, 8, and 11, pp. 7-8.

134. Laughland, *Travesty*, Ch. 8, "Witnesses for the Prosecution," pp. 150-175; and Mandel, *How America Gets Away With Murder*, Ch. 5, "The Trial of Milosevic," pp. 147-175.

135. See Judge Richard May, [Decision on Prosecution's Application for a Witness Pursuant to Rule 70](#), ICTY, October 30, 2003.

136. Mandel, *How America Gets Away With Murder*, p. 169. Mandel adds: "The effect of all this harassment of Milosevic was not only to prevent [William] Walker from getting caught in any lies, but also to put him at his ease by showing him that the Court was on his side, that they did not think anything Milosevic said reflected at all adversely on Walker's credibility" (p 170).

137. [Milosevic Trial Transcript, October 30, 2003](#), pp. 28326-28327.

138. Raymond Bonner, "War Crimes Panel Finds Croat Troops 'Cleansed' the Serbs, *New York Times*, March 21, 1999.

139. [Milosevic Trial Transcript, June 26, 2003](#), p. 23183.—This revealing exchange went exactly as follows: *Slobodan Milosevic* (addressing Peter Galbraith on the subject of Operation Storm): "[D]o you consider yourself and the United States government responsible for the crimes that were committed against the Serbs?" *Judge May*: "No need to answer that. That's a preposterous question. You've heard it, you've heard what the witnesses has said. Now, you've got one minute left, so you better have your last question."

140. WTE, pp. 14-49.

141. See Cees Wiebes, [*Intelligence and the War in Bosnia, 1992 – 1995*](#) (Lit Verlag, 2003). Esp. Ch. 4, Section 2, “[Arms supplies to the ABiH: the Croatian Pipeline](#),” pp. 158-177; and Section 3, “[Secret arms supplies to the ABiH: the Black Flights to Tuzla](#),” pp. 177-198. Also see William Drozdiak *et al.*, “U.S. Helps Bosnian Arms Get Arms, Europeans Say,” *Washington Post*, July 28, 1995; James Risen and Doyle McManus, “Clinton Secretly OKed Iran’s Arms Shipments to Bosnia,” *Los Angeles Times*, April 5, 1996. (We note that the month of April 1996 produced a considerable number of news reports on these topics.) Most important, see the massive investigative report by the House Committee on International Relations (a.k.a. the “Iranian Green Light Subcommittee”), *Final Report of the Select Subcommittee to Investigate the United States Role in Iranian Arms Transfers to Croatia and Bosnia*, U.S. House of Representatives (Washington, D.C.: U.S. Government Printing Office, 1997); and the report by the Senate Select Committee on Intelligence, *U.S. Actions Regarding Iranian and Other Arms Transfers to the Bosnian Army, 1994-1995*, U.S. Senate, November 1996.

142. [UN Security Council Resolution 713 \(S/RES/713\)](#), September 25, 1991, operative par. 6. Res. 713 applied to the Socialist Federal Republic of Yugoslavia and its Republics, as well as to the subsequent independent states and the successor Federal Republic of Yugoslavia. Res. 713 was rescinded on November 22, 1995 by [Security Council Resolution 1021 \(S/RES/1021\)](#).

143. WTE, pp. 5-6.

144. Although Article 5.1 of the [Rome Statute of the International Criminal Court](#) (adopted July 17, 1998; it entered into force on July 1, 2002) lists the “crime of aggression” among the four “most serious crimes of concern to the international community as a whole” for which the ICC is to exercise jurisdiction, Article 5.2 adds: “The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.” Also see Mandel, *How America Gets Away With Murder*, pp. 207-219.

145. See John R. Bolton (signed), “[International Criminal Court: Letter to UN Secretary General Kofi Annan](#),” U.S. Department of State, May 6, 2002. At the time, Bolton was the Under Secretary of State for Arms Control and International Security.

146. See Article 98.2 of the [Rome Statute of the International Criminal Court](#): “The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.”

147. WTE, notes 6 and 8, p. 8.

148. For our reference to the Brioni Transcripts of July 31, 1995, see [Milosevic Trial Transcript, June 26, 2003](#), p. 23200. In this instance, the former U.S. Ambassador to Croatia Peter Galbraith was undergoing cross-examination by *amici curiae* Brislav Tapuskovic.

Reading from the text of a Prosecution Exhibit that included Tudjman's words as quoted in the Brioni Transcript, Takuskovic said: "We have the inclination of the United States if, gentlemen, you decide to engage in that attack as you did in Slavonia.....That is the purpose of this discussion today, to inflict such a blow on the Serbs that they should virtually disappear" (lines 1-10). For a slightly different version of this quote, which has Tudjman instructing his military to "strike in a way to make it sure that the Serbs will practically disappear from Croatia," see Sladjana Kovacevic, "[Tugjman's Orders to Expel the Croatian Serbs Found?](#)" as posted to the One World Southeast Europe website, October 18, 2004.

149. For Operation Storm, see above, and notes 91-101.

150. On the role of the U.S.-based military planning and logistic work behind Operation Storm, see, e.g., Ken Silverstein, *Private Warriors* (Verso, 2000). One firm, the Virginia-based Military Professional Resources, Inc., "got its first big overseas contract in 1995, when Croatia hired the firm to advise and train its military forces." "Just months after MPRI went into Zagreb," Silverstein continues, "Croatia's army—until then, bumbling and inept—launched a series of bloody offensives against Serbian forces....'No country moves from having a rag-tag militia to carrying out a professional military offensive without some help', says Roger Charles, a retired Marine lieutenant colonel and military researcher who has closely monitored MPRI's activities....As of early 1995, he says, the Croatian army 'consisted of criminal rabble, a bunch of fucking losers. MPRI turned them into something resembling an army'." See esp. Chapter 4, "Mercenary, Inc.," pp. 171-175.

151. Carla Del Ponte, "[The Dividends of International Criminal Justice](#)" (Address at Goldman Sachs – London), ICTY, October 6, 2005.

152. See Carla Del Ponte, [Prosecutor of the Tribunal Against Ante Gotovina](#) (IT-01-45-I), ICTY, May 21, 2001. Here we note simply that although the date of this indictment was May 21, 2001, and Milosevic's transfer to the custody of the ICTY at The Hague was June 28, 2001, the Gotovina indictment was kept under seal until July 26, 2001.

153. As noted, although the ICTY indicted the Croatian General Ante Gotovina on May 21, 2001, it kept the indictment under seal until July 26, 2001. Yet on July 6, Carla Del Ponte visited Zagreb, where she announced that two Croatian citizens had been indicted by the ICTY, and publicized the fact that the sealed indictments already had been turned over the government of Prime Minister Ivica Racan. This meant that any potential indictee was bound to know about his having been named in the still-sealed indictments. At the time, news reports circulated widely that correctly named the two men (the other being General Rahim Ademi); and several top ministers resigned from the government in protest. Ademi surrendered to the ICTY in late July, but Gotovina went underground, and was not apprehended until December 2005 on the Canary Islands. See Peter Beaumont and Ed Vulliamy, "Croats accused of war crimes: Now net closes on generals who killed Serbs," *The Observer*, July 8, 2001; Nick Thorpe, "Hague indictments spark Croatian crisis," *The Guardian*, July 9, 2001; Carlotta Gall and Marlise Simons, "Croatia in Turmoil After Agreeing to Send 2 to Tribunal," *New York Times*, July 9, 2001; Ian Traynor and Giles Tremlett, "Capture of war crimes suspect paves Croatia's way to EU entry," *The Guardian*, December 9, 2005; Renwick McLean and Marlise Simons, "Croatian Suspect In War Crimes Is Arrested In Canary Isles," *New York Times*, December 9, 2005; and Molly Moore, "Top Croatian War Crimes Suspect Is Arrested," *Washington Post*, December 9, 2005.

154. See Carla Del Ponte, [Prosecutor of the Tribunal Against Naser Oric](#) (IT-03-68-I), ICTY, March 28, 2003.

155. See [Milosevic Trial Transcript, February 12, 2004](#), p. 32044. During cross-examination of the French General, former Commander of UNPROFOR (September 1992 – July 1993) and later Commander of the E.U.’s Rapid Reaction Force (June 2, 1995 –), Philippe Morillon, the *amici curiae* Branislav Tapuskovic read quotes from Morillon’s November 1999 testimony before a French Parliamentary inquiry, the transcript of which one of the exhibits in the Milosevic trial records. At one point, their exchange went exactly as follows: *Tapuskovic*: “‘Oric said’, and I’m quoting you, ‘that those were the rules of the game, and that in this type of partisan warfare, he cannot take prisoners’. Were those your words or not?” *Morillon*: “Yes” (lines 17-20).

156. WTE, fn. 13, p. 10.

157. Richard Holbrooke recounts “Milosevic’s astonishing decision” on the eighteenth day of negotiations at Dayton “to give Sarajevo to the Muslims.” “Why,” Holbrooke wondered, has Milosevic “decided to abandon the Bosnian Serbs?” Holbrooke speculates that Milosevic “was fed up with the Bosnian Serbs and decided to weaken their Pale base by giving away the Serb-controlled parts of SarajevoThis explanation was consistent with one of Milosevic’s main themes at Dayton that the Bosnian Serb leadership had become an impediment.” Holbrooke adds: “To further weaken Pale, I proposed that the Dayton agreement include a provision moving the Bosnian Serb capital to Banja Luka . Milosevic seemed interested in this proposal, but, to my surprise, Izetbegovic demurred....We should have pushed Izetbegovic harder to agree to establish the Serb capital at Banja Luka .” *To End A War*, pp. 292-293. Also see the exchange at trial between Milosevic and David Owen, the co-chair, first with Cyrus Vance, later with Thorvald Stoltenberg, of the International Conference on the Former Yugoslavia, beginning with Milosevic’s statement (p. 28469): “Well, you said yourself, Lord Owen, that we spent hours and hours putting forth arguments for reasons to accept those peace plans. Now, do you consider that we should have used force against Republika Srpska, perhaps, which, apart from presenting arguments, that’s the only other thing that we could have done, use force. Did you really think we should have used force, that the Serbs should attack the Serbs in order to resolve some of these outstanding problems? We opted for political settlements, political means, to solve the problem.” [Milosevic Trial Transcript, November 3, 2003](#), pp. 28469 – 28472.

158. In the most extreme case, a September 30, 2005 report by the Srebrenica Working Group of the Republika Srpska made the determination that 19,473 Bosnian Serbs had participated on the Srebrenica massacre of July 1995; as of the date of this report, 17,074 of them had been identified by name. We caution, of course, that this working group was organized at the behest of the Office of the High-Representative for Bosnia and Herzegovina , the colonial administration created by the 1995 Dayton Accords, and the highest political authority in the country. It should not be regarded as the product of an independent inquiry. See “[RS Government Finally Meets Its Obligations](#),” Press Release, Office of the High Representative for Bosnia and Herzegovina, October 4, 2005; “[Transcript of the International Agencies’ Joint Press Conference](#),” Office of the High Representative for Bosnia and Herzegovina, October 4, 2005; Irene Knezevic, “Bosnian Serb panel identifies 17,000 participants in 1995 Srebrenica massacre,” Associated Press, October 4, 2005; Olga Lola Ninkovic, “Over 19,000 Serbs took part in Srebrenica—report,” Reuters, October 4, 2005; Nicholas Wood, “From list of 19,000, 90 more trials,” *International Herald Tribune*, October 6, 2005; “Numbers,” *Time Magazine*, October 17, 2005.

159. Laughland, *Travesty*, p. 122.

160. See *Prosecutor of the Tribunal Against Slobodan Milosevic*, [Pre-Trial Hearing on](#)

[Prosecution's Motion for Joinder](#), (IT-99-37-PT, IT-01-50-PT, IT-01-51-I), December 11, 2001, p. 71 ff. Also see Judge Richard May, [Decision on Prosecution's Motion for Joinder](#), ICTY Trial Chamber, December 13, 2001.—Summarizing the argument submitted by the Prosecution, May noted that according to the Prosecution, the “‘transaction’ or common scheme, strategy or plan which connects the three Indictments is Milosevic’s plan to create a ‘Greater Serbia’, encompassing Kosovo and the areas of Croatia and Bosnia and Herzegovina with a substantial Serb population: this was to be achieved through the forcible removal of non-Serbs from large areas of the territory of the former Yugoslavia by means of acts which constitute crimes under the Statute” (par. 16). May added that, “given the continuous and evolving nature of the crimes, it would be impossible adequately to consider his participation in the crimes in any one of the Indictments without considering his role in the crimes in the other two Indictments” (par. 17). And later, May explained that the Prosecution “used the words ‘Greater Serbia’ only as a ‘handle’ and that the alleged overall plan of the accused was a centralised Serbian State encompassing Serb populated areas and the determination to retain or gain whatever would fall within that plan” (par. 21).

161. See Judge Claude Jorda, [Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder](#), ICTY Appeals Chamber, February 1, 2002; and Judge Claude Jorda, [Reasons for Decision on Prosecution Interlocutory Appeal from Refusal To Order Joinder](#), Appeals Chamber, April 18, 2002.

162. WTE, p. 1; p. 5.

163. Del Ponte, [“The Dividends of International Criminal Justice”](#) (Address at Goldman Sachs – London), ICTY, October 6, 2005.

164. As recounted by Laughland, *Travesty*, p. 149.

165. Laughland, *Travesty*, pp. 23-24; p. 129.

166. After studying transcripts of the early days of the Milosevic trial, Canadian defense attorney Edward L. Greenspan observed that the interaction between the Prosecution and the Trial Chamber showed that the result of the trial “is a foregone conclusion.....In the Hague, justice is manifestly and undoubtedly seen to be not done....[Presiding Judge Richard] May doesn’t even feign impartiality or, indeed, interest. He clearly reviles Milosevic.... The result is certain. A kangaroo court is one in which legal procedures are largely a show, and the action ‘jumps’ from accusation to sentencing without due process. No matter how long a trial takes, if the result is inevitable, then it’s a show trial. The accusers might as well shoot Milosevic. At least, it doesn’t soil the process.” Edward L. Greenspan, “This is a lynching,” *National Post*, March 13, 2002.

167. In April, 2003, the ICTY suspended its warrant for the arrest of the former Chief of Staff of Croatia’s Army, General Janko Bobetko, under indictment by the ICTY since August, 2002. An ICTY-appointed doctor determined the 83-year-old too ill to travel to The Hague, and the previous month, an ICTY judge had declared that if Zagreb agreed to serve the six-month-old indictment on Bobetko, suspension of the arrest warrant would be “effective immediately,” thus rendering the whole indictment meaningless. Bobetko died less than three weeks later. See Judge Carmel Agius, [Order for Service of Indictment](#), March 19, 2003; “ICTY Officially Informs Zagreb on Suspension of Arrest Warrant,” ONASA News Agency, April 9, 2003; and “Obituary of General Janko Bobetko,” *Daily Telegraph*, April 30, 2003.

168. Kosovo Prime Minister Ramush Haradinaj was indicted in March 2005 ([IT-04-84-I](#)) on multiple counts of crimes against humanity and violations of the laws or customs of war for events that occurred while he was a commander of the Kosovo Liberation Army. He resigned his office and surrendered to ICTY custody. On June 6, 2005, Haradinaj was granted provisional release to return to participation in the political life of Kosovo, pending trial. (See Judge Carmel Agius, [Decision on Ramush Haradinaj's Motion for Provisional Release](#), ICTY, June 6, 2005.) Some 20 months later, Haradinaj remained at large, and with a final date for his trial scheduled for March 2007, he was ordered to return to ICTY custody no later than February 26, 2007. (See Judge Alphons Orie, [Order Recalling Ramush Haradinaj from Provisional Release](#), ICTY, February 1, 2007.)

169. See Judge Patrick Robinson, [Decision on Assigned Counsel Request for Provisional Release](#) (IT-02-54-T), ICTY, February 23, 2006. Milosevic's release from custody for special medical care at the Bakoulev Center in Russia was denied because, "notwithstanding the guarantees of the Russian Federation and the personal undertaking of the Accused, the Trial Chamber is not satisfied that the first prong of the test has been met—that is, that it is more likely than not that the Accused, if released, would return for the continuation of his trial" (par. 18).

170. Carla Del Ponte, "[Press Conference by the ICTY Prosecutor at The Hague](#)," March 12, 2006.

171. See Ch. 2, "A Study in Propaganda," in Michael Barratt Brown, Edward S. Herman, and David Peterson, *The Trial of Slobodan Milosevic* (Spokesman, 2004), pp. 31-78. (For an electronic version, see "[Marlise Simons on the Yugoslavia Tribunal: A Study in Total Propaganda Service](#)," ZNet, 2004.)

172. WTE, p. 75. Compare the assertion WTE makes in its Introduction: "Human Rights Watch believes the evidence introduced [in the Milosevic trial] should help shape how current and future generations view the wars and in particular Serbia's role in them" (p. 5).

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